

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing & Decision : 28.03.2011

+ Criminal Leave Petition No. 1/2011

STATE ...Appellant

Through: Mr. Jaideep Malik, APP for State.

versus

PRADEEP ... Respondent

Through: Mr. Ashwin Vaish with Mr.Vinod Pandey and
Mr. Sanjeev Manchanda, Advocates

CORAM:

MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G.P. MITTAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

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Crl.M.A. 11/2011(U/S 5 of Limitation Act)

Delay of 132 days in filing the leave petition is condoned for the reasons as stated in the application.

Criminal Leave Petition No. 1/2011

1. The State seeks leave to appeal, in this petition, against a judgment and order of the Additional Sessions Judge (hereafter "ASJ") dated 19.05.2010, in SC No. 37/2009, by which he acquitted the respondent of the charge of committing offences under Sections 498-A and 304-B, Indian Penal Code, 1860 (IPC).

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2. The prosecution allegations briefly were that the deceased, Malti Devi, got married to the respondent Pradeep, on 07.06.2006. The deceased's father, Hukum Singh (PW-1) alleged that at time of marriage, the respondent was given CT Motor bike, and ₹ 51,000/- in cash. It was also alleged that Pradeep, the respondent husband, made a further demand that he wanted a Pulsar bike. PW-1 alleged that he spoke to the husband's father and uncle, who stated that they would talk with (counsel) him (i.e. Pradeep). PW-1 alleged that finally, he paid ₹ 20,000/- to Pradeep.

3. It was further alleged that on 13th August, 2007, PW-1 received a telephone call from the deceased that she was being beaten by the husband. As a result, he (PW-1, the father) went to her matrimonial home, and took her to LBS hospital, where she was treated for six hours. The next date fixed for her examination and treatment, in that hospital was 25.08.2007. It was stated that Malti's condition deteriorated on 24.08.2007; she was taken to the LBS hospital, where she was declared dead at 7.45 PM.

4. On the basis of PW-1's complaint, the first information report was lodged, and investigations were carried out. The police filed a final report, indicating the respondent; he was charged with the offences punishable under Sections 498-A and 304-B IPC. After considering the prosecution evidence, and the documentary evidence led before it, the Trial Court concluded that the respondent could not be held guilty of having committed the offences he was charged with; he was therefore acquitted, by the impugned judgment.

5. The learned APP contended that the Trial Court fell into error in acquitting the accused of the charges. He argued that the evidence clearly showed that the respondent had demanded a Pulsar motorcycle; PW-1 and PW-2 spoke about the beatings given to the deceased by Pradeep, which led her to be taken back by her parents. She was beaten badly on 13.08.2007, when she was finally taken away by her parents. The hospital records revealed that she had to be treated, and the next date for her examination and follow up treatment was 25th August, 2007. Her condition deteriorated, and even before she could be treated, she succumbed to the injuries on 24th August, 2007. It was argued that the demand, i.e. purchasing a Pulsar motorcycle was proved; the prosecution witnesses also proved that ₹ 20,000/- was paid to Pradeep. In addition the material witnesses deposed about the beatings given to the deceased, by the accused. Further, the death occurred within seven years of marriage. Under the circumstances, the prosecution had discharged the initial burden of

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demands, pursuant to the marriage, the acts of cruelty and beatings. These led to the applicability of the presumption mandated by law. In the absence of any cogent explanation, the respondent's guilt had been established.

6. Learned counsel for the respondent submitted that the allegations made by the material witnesses about the cruelty meted out to the deceased, were general and vague. It was argued that no attempt to pin point or specify what kind of beatings were given to the deceased, and when, was made by the prosecution. It was contended that the Trial Court correctly deduced that the gift of a CTS bike, at the time of marriage, could not be considered as a dowry demand. Counsel highlighted that there was material contradiction between the testimonies of the deceased's parents, PW-1 and PW-2. One stated that the deceased was being harassed on account of monetary demands; the other stated that the harassment was on account of her bad cooking skills. It was submitted that the testimony of the deceased's uncle, PW-6, is unreliable, because he never witnessed any alleged demand, nor did the deceased confide in him, about anything, ever.

7. It was submitted that the medical evidence totally belies the prosecution story, because the material placed on record reveals that Malti had been examined on no less than six occasions, between 13th August, 2007, and 24th August, 2007, when she died. Counsel relied on Ex. PW-8/J, the medical card of Lal Bahadur Shastri Hospital (LBS hospital) which revealed that on 13th August, the deceased had complained of left thigh pain. It also recorded that she had been suffering from fever for about 3 days. The document did not anywhere reflect the prosecution allegations about the deceased being beaten, or (as suggested by PW-6) receiving burn injuries. The line of treatment which became manifest on subsequent dates, of the deceased's examination was consistent with her being a patient of Osteomyelitis, an acute bacterial bone infection. In support of this submission, the respondent's counsel relied on the Post mortem report, which had in turn pointed to the Histopathological report for the cause of death. That report stated that the cause of death was septicemia, and multiple organ failure, due to prolonged infection. Learned counsel submitted that from 13th August, 2007, the material on record clearly revealed that the deceased had been taken to the LBS hospital, and another hospital, on 16th August, 2007, 18th August, 2007, 20th August, 2007, 22nd August, 2007 and 23rd August 2007. The line of treatment adopted by doctors on all these occasions was in respect of Osteomyelitis, and not on account of any beatings administered by the respondent. That was a pre-existing condition for which the respondent could not be

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held responsible. Thus, stated counsel, the deceased died of natural causes, on account of a chronic illness, and not due to any cruel treatment.

8. The jurisdiction of the High Court, while considering a petition for leave to appeal, by the prosecution, is well defined. The court does not examine the impugned judgment as an appellate court; it has to be alive to any exceptional features in the Trial court's judgment, which compel the exercise of its discretion to grant leave, and hear the appeal. Mere errors, in the Trial Court's order are insufficient; the legislature has advisedly not permitted appeals, a factor which has led the courts to say that a judgment of acquittal is an affirmation of the accused's innocence, which should not be lightly interfered with by the High Court, except for substantial and compelling reasons. As to what constitute such reasons, has been spelt out in *Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415 as follows:

"In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

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2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.*

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

9. In this case, the Trial Court has noted that the material witnesses who speak about alleged cruelty meted out to the deceased and the alleged demand for dowry, are PW-1, PW-2 and PW-6. There are contradictions in the depositions of these. PW-1 admitted that there was no demand for dowry at the time of marriage. He had, in the previous statement, recorded by the SDM (Ex. PW-1/A) not mentioned about the payment of ₹ 20,000/- after he demanded a Pulsar motorcycle. The prosecution witnesses have also admitted that the deceased gave birth to a son, and the entire expenses for post delivery and care were borne by the respondent. PW-2 admitted that the deceased never complained about dowry demands, or that she was being beaten by the respondent. Her evidence, as well as that of PW-1 reveals that the deceased had been taken to hospitals, including the GTB hospital, for her treatment. PW-2 admitted that the respondent had even borne the expenses for the deceased's treatment, earlier. PW-1 admitted that the deceased had been taken to the hospital six times after she returned to her parents' place, and that he had furnished the police with those medical records.

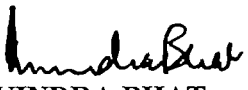
10. An examination of the six medical documents, four issued by the LBS hospital, and two by the GTB hospital (both of which are government institutions) reveal that the deceased was suffering from a condition known as Osteomyelitis, which afflicts bones. Apparently, there was some underlying infection (as there was an allusion to fever, and the history of medication for it). The doctors could not control the infection, which apparently led to septicemia, which ultimately caused her death.

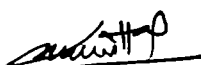
11. All the above factors, in the opinion of this Court, led to the death of Malti, on account of natural causes. The Trial Court correctly deduced that contrary to the charges, the prosecution was unable to prove any history of harassment or beatings, which caused her death. The prosecution also was unable to establish that soon before the death of Malti, the accused, had made dowry or money demands. On the other hand, the evidence suggests that

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the respondent had borne the medical expenses of the deceased, as well as the expenses for her delivery. The evidence also points to his having taken care of the deceased, by having her medically treated. The condition which she was in unfortunately persisted, and reached such a serious stage that it became untreatable. Ultimately she succumbed to her illness.

12. In view of the above discussion, the Court is of the opinion that the prosecution has been unable to show that the impugned judgment contains such substantial errors as should compel, this Court to grant leave to appeal, to it. Therefore, the petition fails, and is dismissed.


S. RAVINDRA BHAT
(JUDGE)


G.P. MITTAL
(JUDGE)

March 28, 2011