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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 27/2012

STATE

..... Petitioner
Through: Ms. Ritu Gauba, APP for the state

versus

BHAGWATI & ORS

..... Respondent
Through: None

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

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ORDER
27.07.2012

Gita Mittal (Oral)

Crl.M.A.No.587/2012

1. For the reasons stated, the delay is condoned.
This application is allowed in the above terms.

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2. The instant petition has been filed u/s 378 of the CrPC praying for leave to appeal against the judgment of acquittal dated 7th April, 2011 passed in SC No.53/10 arising out of FIR No.27/10 registered by the police station Nand Nagri u/s 498A/304B/34 of the Indian Penal Code. The case relates to an unfortunate death of Ms. Soni w/o Jai Prakash impleaded as respondent no.3 herein. DD No.5A was recorded by the police station Nand Nagri pursuant where to the police proceeded to the house no. D-3/100, Nand Nagri where they found Soni lying in an unconscious state on a bed in her room on

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the first floor of the house. She was removed to the GTB Hospital.

3. It was undisputed before the police or the trial court that Soni was married to Jai Prakash-respondent no.3 on 22nd November, 2004. From this marriage, the couple was blessed with two sons.

4. So far as her death is concerned, it is in the evidence of her mother Smt. Veena - PW-3, that on 12th February, 2010, she received a telephone call from her daughter on the telephone of PW-4 Sh. Manoj Kumar. There is considerable contradiction in what PW-3 Smt. Veena has said about the contents of the conversation with her daughter in this phone call.

5. In the court, PW-3 testified that in the telephone call received at about 1.40 p.m. on 12th February, 2010 her daughter was weeping and has told her that her father-in-law, mother-in-law and husband were demanding Rs.20,000/- to bring from parental house. She had consoled her daughter and told her that she would go to her. PW-3 says that she asked her son Vishnu to go to the house of the deceased on his cycle and he reached there before PW-3 with the other daughter Arti. When she reached the house, she saw her daughter hanging from the ceiling fan with the help of saree and her feet were touching the ground. As the deceased was found breathing, she had raised an alarm and people from the locality had gathered who helped her to get down her daughter.

6. PW-3 made general statements to the effect that Jai Prakash and his family or the in-laws of the deceased started harassing her after the marriage on account of insufficient dowry. It was alleged that they were harassing her daughter and asking her to bring money for the purpose of marriage of their daughter Kanchan, that Jai Prakash and his parents were accused of demanding a motorcycle from her deceased daughter and that she had given a

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second hand two wheeler scooter.

7. PW-3 Smt. Veena had also attributed a demand of Rs.20,000/- to Jai Prakash and his parents as disclosed by the deceased in the phone call made on 12th February, 2010. PW-3 also stated that the deceased had made a complaint on 8th July, 2007 to the SHO, Police Station Nand Nagri against her in-laws during her life time.
8. In the statement to the SDM who had conducted the inquest proceedings, PW-3 had stated that the father-in-law had asked her to wait for the police to bring her daughter down. She attributed a different statement to the father-in-law in the witness box.
9. PW-3 was confronted with the previous statement and it was found that the allegation of demand with regard to the motorcycle as well as the demand of Rs.20,000/- made in court was material improvements from her statement made earlier.
10. The trial court has also carefully analysed the testimony on record to the effect that PW-3 Smt. Veena was a widow whose husband had expired ten years prior thereto and was not alive even when the deceased was married to Jai Prakash. PW-3 had four children including the deceased who was her eldest child. It is also in the evidence that she was working as a domestic servant.
11. The testimony of PW-3 also established that the deceased and her husband Jai Prakash were living separately on the first floor of the house while the parents of Jai Prakash lived on the ground floor. His younger brother with his wife was living in a separate wing on the second floor. PW-3 also submitted that the deceased had maintained a separate kitchen for her family on the first floor of the house.
12. The most important witness examined by the prosecution in the case was PW-5 Master Vishnu, the brother of the deceased who

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had stated that it was the birthday of his sister on 12th February, 2010 and that he used to wish his sister every year on her birthday. On the date of the incident, she had made the telephone call prior to the family calling her and they wished her birthday greetings on the telephone. He stated that they used to celebrate the birthday of the deceased every year either at their home or at her matrimonial home by cooking special food. The witness PW-5 also stated that his brother-in-law Jai Prakash was affectionate towards him and he was not present there when he reached the house of the sister. He stated that her mother reached after about ½ hr after his arrival at the matrimonial home of his sister.

13. So far as the telephone call received on the phone call of PW-4 Manoj Kumar is concerned, the trial court has found the circumstances in relation thereto also suspicious inasmuch as he was unable to disclose any prior telephone calls or the number from which the call was received. There is clear testimony on record to the effect that after receipt of the phone call on 12th February, 2010, PW-3 Veena continued with her normal chores and dried clothes which she had washed before she proceeded to the house of the deceased. Her conduct displays no urgency commensurate with the alleged statement attributed to the deceased or her distress.

15. So far as the police complaint of 2007 is concerned, the learned trial judge has carefully scrutinized the complaint dated 8th July, 2007 which referred to beatings given to her the night before by her mother-in-law; father-in-law and sister-in-law of the deceased who had asked her to leave and were demanding dowry. The deceased had stated that her husband was very simple and believed his parents. She had stated that if anything happened to

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her, her in-laws would be responsible. No action was taken on the complaint. The deceased also had no grievance at all against her husband. No other incident has been pointed out or complained after 8th July, 2007.

16. It is in evidence before the trial court in the testimony of DW-1 Sunita as well as in the statement u/s 313 of the CrPC of Jai Prakash to the effect that the deceased had taken up a job seven days prior to the incident through one Manoj who was living in the neighbourhood of his wife's parental home. Manoj had taken his wife on a motorcycle on the pretext of getting her some job in a mall. As Manoj was known to his wife's parents (deceased's parents) and had also been a tenant in their home few years back, he had permitted the deceased to go with him. His wife had returned in the evening and told him that she had got a job in the mall opposite Anand Vihar terminal. However, she went to the job only for 23 days, whereafter she had informed Jai Prakash that the place where she was going was not good and people there were very bad. He had, therefore, advised her to leave the job and she had called Manoj and told him that she does not want to continue the job. She had asked him to get the four days' salary for which she had worked. Manoj had come to their house on 11th February, 2010 i.e. the day prior to the incident, and taken the deceased with him for getting the salary for the days that she had worked in the mall. When Jai Prakash had returned home from the work, he had found that his wife was not behaving in a normal manner. In answer to his query, she had stated that she was very upset and so he did not ask her any further question. On the next morning, he went to his work where at about 2 p.m., he received telephone call about the unfortunate incident. He had stated that he loved his wife very

much and he or his parents have never demanded dowry. DW-1 Sunita i.e. the sister-in-law (devrani) of the deceased had also deposed on oath that on 11th February, 2010, she had found the deceased crying. The deceased had disclosed that she had gone to her place of work where an incident of such nature had happened which she could not divulge to anybody and refused to divulge what was the matter. As she was in the family way, the witness had not questioned her further and returned to her room.

It has been suggested on record that there was some occurrence on 11th February, 2010 at the work place of the deceased which had traumatized her.

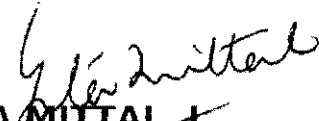
18. Given the evidence on record, the trial court has held that the prosecution had failed to prove that the deceased Soni was subjected to cruelty or harassment by her husband or in-laws for or in connection with the demand of dowry. So far as the evidence with regard to the alleged demands after marriage are concerned, it has been held that the allegations were vague and that PW-3 Veena had made material improvements in the allegations by her daughter in her testimony. It was held that the prosecution has failed to prove the case beyond reasonable doubt entitling them to the benefit of doubt. In this background, vide the judgment dated 7th April, 2011, the respondents were acquitted of the charges against them.

19. The findings of the learned trial judge are based on the evidence led by the prosecution on record. The challenge to the judgment of the trial court is not based on any legally tenable

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grounds and is found to be devoid of any merit.

This petition is, therefore, dismissed.


GITA MITTAL

J.R. MIDHA, J.

JULY 27, 2012
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