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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.L.P. No.197/2012 & CrI.M.A. Nos.4567-4568/2012**

Date of Decision: 23rd August, 2012

STATE Petitioner
Through Ms. Ritu Gauba, APP
Versus

RAM BABU & ORS. Respondents
Through

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA**

GITA MITTAL (Oral)

CrI.M.A. No.4567/2012

1. For the reasons stated in the application, delay in re-filing the appeal against acquittal is condoned.

This application is allowed.

CrI.M.A. No.4568/2012

2. For the reasons stated in the application, delay in filing the appeal is condoned.

This application is allowed.

CRL.L.P. No.197/2012

3. The record of the trial court has been perused.

4. The instant petition has been filed under Section 378 of the Code of

Criminal Procedure praying for leave to appeal against the judgment dated 26th April, 2011 whereby the learned Additional Sessions Judge has acquitted the respondents of the charges under Section 304-B/34 of the IPC and 302/34 of the Indian Penal Code (IPC). The learned Trial Judge has, however, found the respondents guilty for commission of offence under Section 498-A read with Section 34 of the IPC and sentenced them for the same. We may note that we are not aware as to whether the respondents have assailed their conviction under Section 498-A/34 of the IPC by way of the statutory remedy of appeal available to them. We, therefore, make it clear that we are, hereby, not adjudicating upon the merits of the conviction under Section 498-A/34 of the IPC hereby inasmuch as this issue is not before us.

5. Coming to the challenge laid by the prosecution with regard to the acquittal of the respondents on the charge under Section 304-B/34 of the IPC and 302/34 of the IPC, we find that the case against the respondents relates to an incident in which Rajni, wife of Rinku-respondent no.2 herein, was burnt on 24th December, 2007.

6. It is in the evidence of PW 20 SI Uma Dutt that on 24th December, 2007, he was on emergency duty from 8.00 a.m. to 8.00 p.m. in the Police Station Mangol Puri when he received DD No.11A recorded by the police at about 10.25 a.m. with regard to the incident. PW 20 reached the premises along with Constable Yogender when he came to know that the lady had already been removed to SGM Hospital. In the hospital, PW 20 SI Uma Dutt has recorded Rajni's statement (Exh.PW 3/DB). It is not disputed before us

that as per the evidence led by the prosecution, this statement was recorded in the presence of PW 3 Amit Kumar, who was a brother of Rajni as well as the Chief Medical Officer-Dr. Manisha Tomar.

7. Ms. Ritu Gauba, learned APP has carefully taken us through the testimony of PW 11 Dr. Manisha Tomar, an independent medical expert who has deposed about the fitness of the deceased as well as the presence of PW 3 Amit Kumar at the time of recording Exh.PW 3/DB by the PW 20 SI Uma Dutt. PW 11 – Dr. Manisha Tomar has also identified the signatures and thumb impression of the deceased Rajni in the statement Exh.PW 3/DB and the other present. The learned Trial Judge has carefully noticed that the prosecution chose not to even prove the statement and the same was proved on record in the cross-examination of the witness carried out by the defence. In this statement, the deceased Rajni has voluntarily disclosed that she had caught fire accidentally while boiling potatoes on the gas in the residential premises. It is also in evidence that at that time, Rajni's husband-respondent no.2 was not present in the house and only her father-in-law-respondent no.1 and mother-in-law-respondent no.2 were in the house.

8. Learned APP has staunchly contended that this dying declaration ought not to be believed inasmuch as the deceased had given a second dying declaration which was recorded at about 1.15 pm by PW 1- Shri Ranjeet Singh, SDM on 24th December, 2007. This statement has also been carefully noticed in the judgment impugned before us. The learned Trial Judge has noticed that this statement was recorded in the Lok Nayak Jai Prakash

Narayan Hospital to which the deceased was transferred from SGM Hospital. At the time of her shifting, the deceased Rajni was accompanied by her father PW 6 Ravinder Gupta. It is also in evidence that at the time of recording of statement, PW 6 Ravinder Gupta was present in the room.

9. Further close relatives have been observed on occasions to tutor or influence victims to make statements in a particular manner. In this case, there is evidence that there were family members and police official present at 1.15 pm or thereafter when Rajni's statement was recorded by the SDM.

10. It needs no elaboration that the fitness of a person to make a dying declaration is an essential concomitant to support its creditworthiness and to support its admissibility and reliability. The second statement, which has been proved on record as PW 1/A, bears the signatures of one Dr. Kanav. No witness has been brought in the witness box to support the case of the deceased at the time of recording of statement. In this background, the finding of the learned Trial Judge that there was nothing to support that the deceased was in a fit state of mind to have given the statement which has been brought on record as Exh.PW 1/A is unassailable.

11. The learned Judge has also found that the SDM has recorded the entire statement in first person except the last sentence. The allegation with regard to having been burnt by in-laws is contained only in the last sentence which inexplicably is in third person. This sentence is to the effect that Rajni had told the SDM that her father-in-law and mother-in-law had burnt her. It has been held by the learned Trial Judge that this interpolation was made at

the instance of the father of the deceased Rajni subsequent to recording of her statement. We see no reason to disbelieve this finding. The finding of the learned Judge with regard to the possibility of tutoring of the deceased by the relatives also deserves no interference in the light of the evidence which has been brought on record.

12. The presence of PW 6 Ravinder Gupta, father of the deceased at the time the SDM recorded Rajni's statement is manifested from his deposition. PW 6 has also stated that at the time of recording of statement Exh.PW 1/A, PW 16 Uma Dutt was also present. This is, however, contradictory to the statement made by PW 1 Ranjeet Singh, SDM, who denied the presence of family members of the deceased. The testimony of the SDM as PW 1 is also contradiction with the testimony of PW 20 in all material particulars with regard to the manner and time in which he reached the hospital.

13. The learned Trial Judge has also relied upon the judgment of the Supreme Court in ***Criminal Appeal No.3036/2007*** titled ***Mohan Lal & Ors. Vs. State of Haryana*** wherein the court had observed that if the dying declaration was recorded by the judicial magistrate in the presence of the mother and father of the deceased, this may get result of tutoring and not free and voluntary one. In this case, the Supreme Court had also observed that when there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration must be held trustworthy and reliable, it has to be accepted.

14. The learned Trial Judge has also relied on the pronouncement of the Supreme Court in ***Criminal Appeal No.1167/2006*** titled as ***Pureerselvam Vs. State of Tamil Nadu*** wherein it has been held that where there is more than one statement in the nature of dying declaration, one first in time must be preferred.

15. In ***Criminal Appeal No.828 of 2009*** titled ***Raman Kumar Vs. State of Punjab***, the Supreme Court has held that if there are material improvements made by mother and brother of the deceased in the Court in respect of harassment and demand of dowry soon before the death of the deceased and if prosecution has failed to rule out the possibility of accidental death and could not establish that there was harassment meted out to the deceased for dowry soon before her death, then it is not a dowry death.

16. In support of the finding that in the light of the evidence brought on record, the first declaration made by the deceased deserves to be accepted. The learned Trial Judge has relied upon the pronouncement of the Supreme Court in ***AIR 1993 SC 374 Kamia Vs. State of Punjab*** wherein the Supreme Court held that if one of the dying declaration indicating the incident as independent, then conviction under Section 302 of IPC based on one of the dying declaration implicating the accused is liable to be set aside. The court held that the prosecutions are not being able to prove the offences under Section 304-B/34 of the IPC and 302/34 of the IPC beyond reasonable doubt against the respondents.

17. In the present case, Smt. Sudesh, the mother of the deceased had appeared in the witness box as PW 2. She has made material improvement in the statement recorded by the police and also attributed a dying declaration as having been made by the deceased to her in the hospital. On a close scrutiny of testimony of PW 3 Amit, brother of the deceased as well as the testimony of PW 6 Ravinder Gupta, father of the deceased vis-a-vis the testimony of PW 2 Sudesh, the learned Trial Judge has doubted the presence of PW 2 Sudesh at the place.

18. We may also note that the statement attributed to the deceased by the SDM is in material contradiction to the statement attributed by her mother-PW 2 to the deceased. Exh.PW 1/A shows that the deceased made no allegation of having been burnt by her husband. The statement attributed by her mother-to the deceased by the PW 2 ropes in the husband as well.

19. The evidence led by the defence on this aspect has been examined and both DW 1 Urmila and DW 2 Kamla in answer to the query as to what happened, had set up a plea that when she was boiling potatoes, the corner of her saree caught fire.

20. We find that the learned Trial Judge has carefully analysed the entire evidence on record and has concluded that the deceased was boiling potatoes and a corner of her saree caught fire resulting in the burn suffered by her while she was removing the utensils from the gas burners.

21. In the light of the above discussion, we find no infirmity with the

findings of the learned Trial Judge.

22. For all these reasons, the instant petition is without merit and is dismissed.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

AUGUST 23, 2012
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