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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. No.161/2012 & CrI.M.A. No.3585/2012

Date of Decision: 23rd August, 2012

STATE OF NCT OF DELHI Petitioner
Through Ms. Ritu Gauba, APP

Versus

SANJAY PASWAN Respondent
Through

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

GITA MITTAL (Oral)

CrI.M.A. No.3585/2012

1. This application has been filed by the applicant praying for condonation of delay in filing the appeal.
2. For the reasons stated in the application, the same is allowed. Delay in filing the appeal is condoned.

CRL.L.P. No.161/2012

3. The record of the trial court has been perused.
4. The instant petition has been filed under Section 378(1) of the Code of Criminal Procedure, 1973 praying for leave to appeal against the judgment dated 24TH February, 2011 whereby the learned Additional Sessions Judge In Sessions Case No.11/2009 arising out of FIR No.278/08 registered by the

Police Station Alipur, Delhi has acquitted the respondent of the charges under Sections 498-A/304-B/34 of the Indian Penal Code.

5. It was the case of the prosecution before the trial court that Vinod Kumar and Meeta Devi were having two sons and three daughters and one of daughters namely Sanju Devi, deceased was married to the respondent no.1 in the year 2005. Her parents claimed that at the time of marriage of Sanju Devi, they had given sufficient dowry and spent Rs.1,20,000/-. From her wedlock, Sanju Devi was blessed with one male child. The prosecution case was that at the time of birth of the male child, Sanjay Kumar Paswan, respondent no.1 demanded one motor cycle and Rs.10,000/- from Shri Vinod Kumar. As these demands were not fulfilled by her parents, Sanjay Paswan used to beat his wife.

6. On 24th October, 2008, DD No.3A was recorded by the police at about 12:30 am with regard to the admission of a lady in a burnt condition. SI Mohd. Ismail proceeded to the hospital where Sanju Devi with burns stood admitted and obtained MLC No.778/08 (Exh.PW 4/A). Sanju Devi was unfortunately declared unfit for a statement. She was referred to LNJP Hospital having sustained 100% burn injuries and was declared dead. As Sanju Devi had died within seven years of her marriage, Shri V.K. Chauhan, the then SDM was informed who recorded the statement of Vinod Kumar Paswan. An FIR No.278/08 was registered by the police under Section 304-B/498-A of the Indian Penal Code. Her husband-Sanjay Paswan-respondent

no.1 was arrested in this case. The post-mortem was duly conducted on the dead body of Sanju Devi.

7. On completion of investigation, the accused/respondent was charge-sheeted for commission of offences under Sections 498A/304B of the IPC on 29th July, 2009 to which he pleaded 'not guilty' and claimed trial. Thirteen witnesses were examined by the prosecution to establish the commission of offences by the accused persons.

8. So far as the allegations of dowry and harassment of the deceased are concerned, the prosecution examined father of the deceased-PW 3 Vinod Paswan, her mother PW 7 Meeta Devi and brother PW 8- Sachin Paswan. The court recorded the statement of the accused person under Section 313 of the Cr.P.C. who preferred not to lead defence evidence. After a close examination and scrutiny of the evidence led by the prosecution, the learned Trial Judge held that the prosecution had failed to make out a case for commission of offence under Section 498-A as well as 304-B of the IPC and consequently, acquitted the respondent by the judgment dated 24th February, 2011. By way of the present petition, leave is sought to appeal against the said judgment.

9. The record of the lower court has been produced and we have been taken through the same by the learned APP. We have given our considered thought to the evidence led by the prosecution. The learned Trial Judge has noted that the deceased has given a dying declaration at the time of her admission to the SRHC Hospital. The same stands recorded on the MLC of

the deceased which was proved on record as Exh.PW 4/A. The MLC records that the patient had informed the doctor that she was burnt while cooking. The Exh.PW 4/A also records that smell of kerosene oil was present. The site plan of the house where the incident occurred (Exh.PW 8/A) marks the location where the police had found the stove lying at the spot.

10. A perusal of the statement of the respondent recorded under Section 313 of the Cr.P.C. shows that he had stated that the deceased had got burnt while cooking in the kitchen and that he had himself taken the deceased to the hospital from where she was referred to LNJP Hospital and had died. A similar statement finds mention on the death summary recorded by the doctor at LNJP Hospital which was proved on record as exh.2/A.

11. Section 304-B of the Indian Penal Code creates a legal fiction to the effect that where a death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

12. The learned Trial Judge has also referred to Section 113-B of the Indian Evidence Act which mandates that if it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment

for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

13. On the aspect of demand for dowry made upon Sanju Devi and harassment, PW-3-Vinod Paswan, father of the deceased and PW 7-Meeta Devi mother of the deceased PW 1, testified about the expenditure incurred by them in the marriage of the deceased. They further deposed that after the marriage, the respondent would beat the deceased for not fulfilling the demand of Rs.10,000/- and a motor cycle. The evidence on record of these witnesses is also to the effect that the respondent was heavy drinker and had killed their daughter. We find that the PW 3-Vinod Paswan had made varying statements on different occasions. On 24th October, 2008, his statement was recorded by PW-6-Shri Virender Kumar (who was the then SDM) which statement was proved on record as Exh.PW 3/A. In Exh. PW 3/A, the PW 3 has merely referred to the respondent quarrelling with the deceased after consumption of liquor with regard to which she had complained to him. It was further stated by PW 3 that the respondent did not take care of the deceased when she had given birth to their son. PW 3 accused the respondent of killing his daughter in his statement and sought legal action against him. No allegation of any dowry demand by the respondent or harassment with regard thereto of the deceased, has been made in Exh. PW 3/A by her father. No cruelty of any kind has been attributed to the respondent on account of dowry demands. In the light of this statement, the learned Trial Judge had questioned the registration of FIR under Section 304-

B/498-A of the IPC by the police authorities and has observed that it was mandatory for the SDM as well as SHO to ascertain the correct provisions of law under which the case could be registered. It appears that after this statement of PW 3 Vinod Paswan recorded on 24th October, 2008, another statement under Section 161 of the Cr.P.C. was recorded on 10th December, 2008 and 8th January, 2009. In his statements, PW 3 makes no allegation with regard to a dowry demand or harassment of the deceased by her husband-the respondent herein.

14. So far as PW 7 Meeta Devi is concerned, in her statement to the police on 10th December, 2008, she merely stated that the respondent used to quarrel with the deceased after consumption of liquor and used to beat her for not bringing sufficient dowry. She also stated that when her deceased daughter delivered the male child, the respondents did not take care of the deceased and demanded motor cycle and Rs.10,000/-.

15. In this background, the learned Trial Judge observed that the parents of the deceased have made no allegation of any dowry demand alleged to have been made by the respondent upon the deceased soon before her death. The above narration would show that material improvements were made by these witnesses in the statement in court. The father of the deceased as PW 3 stated that the respondent used to beat his daughter for not fulfilling demand of Rs.10,000/- and motor cycle upon the birth of the male child. No dates thereof have been stated by the witnesses. It has been observed by the Trial Court that the only general allegations regarding dowry

demands which do not inspire any confidence of the court, have been made. The testimony of PW 7-mother of the deceased was to the same effect and it has been observed by the Trial Judge that even if the allegations were accepted, they were not in the nature of dowry demand. The statement of the deceased recorded by the doctor on the MLC Exh.PW 4/A coupled with the statements of her parents lead to the only conclusion as held by the learned Trial Judge that the prosecution had failed to establish commission of offences under Section 498A/304-B of the IPC.

16. Ms. Ritu Gauba, learned APP has placed reliance on the pronouncement of the Supreme Court reported at **(2010) 3 SCC 152 G.V. Siddaramesh Vs. State of Karnataka**. In this case, death of the deceased was within one month of marriage by suicide by hanging herself. The demand of dowry and efforts to meet the same were proved in the testimony of witnesses who had visited the deceased on the day of occurrence and stated that there was further demand of dowry pursuant to which the deceased was harassed and ill treated and that she was mentally disturbed by the same. It was observed that threats by the defendants had been made over the course of two days when the deceased was in her matrimonial home but was not in fragile state of mind to reach breaking point and end her life. In this background, the court rejected the challenge to the conviction laid by the appellant for his conviction inter alia for commission of offences under Section 498A and 304B of the Indian Penal Code. There can be no dispute with the principles considered by the

Supreme Court. However, this judicial precedent would not apply to the facts of the instant case inasmuch as prosecution has failed to establish dowry demand or harassment of the deceased.

17. In view of the above discussion, we are unable to agree with the challenge to the impugned judgment dated 24th of February, 2011 of the learned Trial Judge by way of the present petition.

This petition is consequently dismissed.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

AUGUST 23, 2012
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