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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : 02.01.2012

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CRL.L.P.458/2010
CRL.M.A.18614/2010

STATE NCT OF DELHI Petitioner
Through: Mr.Sanjay Lao, APP.

versus

KAUSHALYA Respondent/accused
Through: Ms.Saahila Lamba, Amicus Curiae.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. The State seeks leave to appeal against a judgment and order of the learned Additional Sessions Judge dated 31.03.2010 whereby the respondent/accused was acquitted for the offence punishable under Section 302 IPC.

2. It is alleged that on 26.09.2009 by DD No.5A information was received at PS Chhawla at 1.03 AM from mobile No.9212089862 that at Paprawat village near Vaishno Mata Mandir a lady had escaped after killing her three year old daughter. The DD was assigned to SI Sudesh Pal who reached the house of Om Prakash s/o Sh.Mauji Ram, village Paprawat and found that one lady aged about 80 year was lying dead on the cot in the varandah of the house. There were strangulation marks on

CRL.L.P.458/2010.

the left side of her neck. SI Sudesh Pal recorded the statement of Om Prakash (son of the deceased) who disclosed that earlier he was married to one Bimla and had obtained divorce from her about seven years back. There was no issue from the said marriage. In the month of February, he had brought one Kaushalya (since accused) through one Chaman Lal after undergoing ceremony of “Mang Bharaï”. Kaushalya also brought alongwith her a three year old daughter from her first marriage. The complainant, Om Prakash, further disclosed that relations between the accused Kaushalya and the deceased were not cordial and there used to be frequent quarrels between the two. The accused had threatened him many times uttering the words “Mein Tujh Ko Aisa Kar Dongi Ke Tum Hamesha Yad Rakhoge”. On that day at about 10 PM the accused fought with the deceased. He intervened and then went to sleep. The accused continued to abuse the deceased and threatened her saying that she would not spare the old woman. Thereafter, he (Om Prakash) went to sleep in another room in the house.

3. It is further alleged that at about 12.30 midnight when the complainant got up for urination, he saw that the accused was sitting on the chest of his mother and was pressing her throat with her hands. When he ran towards them and got his mother released from the accused, the deceased had already died. Someone, returning after watching Ramlila informed the police.

4. On the basis of this statement of the complainant Om Prakash the police registered the present case by FIR No.196/09 under Section 302 IPC. During investigation, the IO prepared the site plan; summoned the crime team; sent the dead body to RTRM hospital for post-mortem;

collected exhibits from the hospital and deposited them in the Mal Khana. Subsequently, the post-mortem report was collected. The accused was arrested. After investigation, the police filed a challan for the offence punishable under Section 302 IPC.

5. Before the Trial Court, the prosecution examined 20 witnesses. The statement of the accused was recorded. After hearing the learned Additional PP for the State and the learned defence counsel of the respondent/accused, the Trial Court acquitted the accused by the impugned judgment.

6. Learned APP has urged that the Trial Court fell in error in acquitting the respondent. He emphasised that testimony of the complainant Om Prakash was not properly appreciated by the learned Trial Court. Om Prakash had no ulterior motive to accuse the respondent for committing the murder of his own mother. The incident took place at midnight and there was no possibility of any other person committing the deceased's murder. There used to be frequent quarrels between the accused and the deceased and for that reason, the accused had a clear motive to murder the deceased. He further emphasised that the learned Trial Court gave undue weightage to the non-examination of the complainant's father as his testimony was of no relevance, since he did not witness the incident. The complainant was a witness to the occurrence and there was nothing to discard his testimony. Minor contradictions are not material to acquit the accused.

7. Learned Amicus Curiae Ms.Saahila Lamba supported the judgment of the Trial Court and urged that there is no illegality or irregularity in acquitting the accused.

8. We have carefully considered the submissions and have gone through the Trial Court records which were requisitioned for the purpose of these proceedings.

9. On scanning the impugned judgment, we find no illegality or irregularity in the findings recorded by the learned Trial Court in acquitting the accused. The learned Trial Court noted various lacunae, inconsistencies and contradictions in the prosecution's case in the impugned judgment. The prosecution failed to prove the compelling circumstances for the accused to take the extreme step of committing murder of the deceased on the intervening night of 25/26.09.2009 in the matrimonial home itself and in the presence of her husband. The case of the prosecution is that there used to be frequent quarrels between the accused and the deceased and that was the apparent reason for the accused to murder the deceased. However, the prosecution failed to produce on record any oral or documentary evidence to show that the relations between the accused and the deceased were hostile on any specific issue. The accused had stayed in the matrimonial home for about seven months after she was brought home by the accused on alleged "Mang Bharai" ceremony. At no stage, did the deceased or her husband lodge any complaint against the accused for her improper behaviour. The complainant Om Prakash did not testify if he had any grievance against the accused for her behaviour or that she used to quarrel with him too. The father of the complainant also never complained about the conduct of the accused during her stay at the matrimonial home. The prosecution failed to record statement of any neighbour to establish if relations between the accused and the deceased were not cordial or that the accused had ever

threatened to kill her mother-in-law. The evidence on record is that the deceased was a bed ridden lady. Since the husband of the accused had not complained against the accused for her behaviour and the deceased herself was bed ridden, there was no occasion for the accused to commit her murder, to get rid of her. On the other hand, evidently the deceased was annoyed with the complainant for bringing the accused to the house after having the ceremony of “Mang Bharai”.

10. The learned Trial Court correctly found fault with the prosecution’s case as it failed to record the statement of the father of the complainant. In the investigation, nothing emerged from the record to show if the IO recorded the statement of the complainant’s father to ascertain what the conduct and behaviour of the accused towards the deceased and other family members. In the complaint Ex.PW-1/A, the complainant did not disclose the presence of his father in a particular room at the time of incident. It was not disclosed where the complainant’s father was sleeping on the day of incident. The complainant disclosed that there were only two rooms and one varandah and in one room the accused and in the other room he had gone to sleep after 10 PM. The deceased was sleeping in the varandah. Adverse inference is to be drawn against the complainant for not disclosing the presence of the husband of the deceased at the time of incident. The deceased was the wife of father of the complainant and had he any grievance against the accused, he might not have refused to get his statement recorded as is alleged by the prosecution.

11. The complainant’s conduct too is unnatural. There are number of inconsistencies in his deposition before the court. He deposed

that when he got up at night, he saw the accused sitting on his mother's chest. Under these circumstances, the complainant would not have allowed the accused to abscond. He did not chase the accused, to apprehend her. He failed to disclose the whereabouts of the accused till she was arrested by the police on the next day in the afternoon from the house itself. The prosecution failed to justify this action of her in first absconding and thereafter returning to her matrimonial home merely to get arrested. There was no occasion for the accused to return to the matrimonial home if she had absconded after the alleged incident.

12. The complainant further failed to explain why he did not inform the police about the incident. The information to the police was given by someone who was returning home after watching Ram Lila. The complainant did not inform any neighbour about the incident. His silence in not reporting the incident to the police soon after the occurrence points an accusing finger against him. PW-11 Ved Pal had called the police at No.100 from the mobile phone of one Vikas Yadav. He did not support the prosecution on material aspects. He merely stated that when he returned to his house after watching Ram Lila at about 12.30/12.45 AM, he saw the crowd near Vaishno Mata Mandir and came to know that a lady namely Kaushalya after killing her three year old daughter had run away. Thereafter, he went to the house of the complainant and he found there that Draupadi, the mother of the complainant was dead. He further stated that he was not aware of any other fact when he visited the house of Om Prakash. The Police did not reach the spot in his presence and he left the spot after 10/15 minutes. The testimony of the witness reveals that even he did not come to know about involvement of the accused in the

commission of the murder when he visited the house. He did not state that the accused was not present inside the house at that time.

13. The learned Trial Court has noticed that there was an inordinate delay in getting the FIR delivered to the learned MM. The incident took place at midnight. However, the FIR reached the learned MM on the next day at about 4.30 PM. Learned APP has fairly admitted that there was delay in delivering the FIR to the learned MM. However, the explanation for delay in delivering the FIR has not been given and the learned Trial Court was justified in concluding that there was manipulation with the complainant after due deliberation in recording the FIR. There was even a delay in sending the rukka at about 3.20 AM.

14. The learned Trial Court has given other reasons for the acquittal of the accused and we do not differ from those conclusions. The Trial Court considered the deposition of each material witness. All the arguments of the learned APP were considered and discussed in the impugned judgment.

15. Having regard to the well settled parameters which the High Courts have to follow while examining Petitions for leave to appeal against the orders of acquittal, i.e., the existence of substantial or compelling reasons in the impugned judgment, this Court is of the opinion that the Trial Court adopted one of the two possible views. The view so chosen by it favours the defence which is neither, palpably improbable nor so unreasonable as to persuade this Court to hold that there are compelling or substantial reasons to invoke the jurisdiction and grant leave.

16. The petition - CRL.L.P.458/2010 – therefore, being unmerited is dismissed.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

January 02, 2012
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