

\$~01.

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

+ CRL.L.P. 153/2013

% Judgment dated 24th July, 2013

STATE Petitioner

Through : Ms.Rajdipa Behura, Adv.

versus

RANDHIR SINGH & ORS. Respondents

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE G.P. MITTAL

G.S.SISTANI, J (ORAL).

CRL.M.A. 3639/2013.

1. This is an application filed by the petitioner/State seeking condonation of 370 days' delay in filing the present leave to appeal.
2. Learned counsel for the petitioner submits that the delay in filing the present leave to appeal petition is not intentional and the same has occurred on account of procedural delays.
3. Heard counsel for the petitioner and also perused the status report filed by Principal Secretary, LJ & LA, GNCT of Delhi. For the reasons stated in the application and the Status report, present application is allowed. Delay in filing the leave to appeal petition is condoned. However, it is hoped that in future appeal shall be filed by the State within the prescribed period. We hope further necessary measures would also be taken by the State including a time frame will be fixed for each functionary so as to ensure that the files reaches the concerned Standing Counsel at least fifteen days before the period of limitation expires.
4. Applications stand disposed of.

CRL.L.P. 153/2013

5. Present leave to appeal has been filed by the State under Section 378(1) of the Code of Criminal Procedure against the judgment passed by learned Additional Sessions Judge on 12.12.2011 in case FIR No.127/07, under Sections 498-A/304B/34 IPC, P.S. Kanjhawala, whereby the respondents have been acquitted of all the charges.
6. This is an unfortunate case where the wife of respondent no.3 and his minor son, aged eight months, died on account of electrocution on 20.7.2007.
7. The relevant facts, as noticed, by the trial court, are that the deceased was married to respondent no.3 on 29.6.2001. On 20.6.2007 on receipt of DD No.5A, PW-11, ASI Johar Singh, along with Ct.Gaya Prasad, reached Ladpur Village at the house of Randhir Singh where Additional SHO, Inspr.Surender Dev, was also present. The SDM was requested to reach the spot and crime team was also summoned. The SDM reached the spot, inspected the same and recorded the statement of deceased's mother, Kitabo Devi, and maternal uncle, namely, Randhir Singh, who stated that Poonam and her child died due to electric current from the cooler lying inside the room, however, they did not express any suspicion over anyone regarding the death. The post-mortem on the dead bodies of both the deceased was conducted. It is only subsequently on 6.7.2007 one typewritten complaint was made by the mother of the deceased to the office of SDM and on the basis of the said complaint the SDM directed the SHO to register a case. As per the complaint of Smt.Kitabo Devi, she had given sufficient dowry in the marriage of her daughter which included 51 ladies suits for the deceased daughter and her in-laws, 20 bed sheets, 7 blankets, 25 suits, 10 pairs of pants and shirts, bedding, double bed, iron almirah, cooler, fridge, electric churner, one electric press, 51 utensils, 4

pair of anklets (pajeeb), one gold and one silver necklace, a pair of ear tops of gold, two gold chains for the mother in law and Rs.11,000/- in cash. It was further stated in the complaint that in-laws of the deceased started torturing the deceased, Smt. Poonam, for more dowry. They also committed physical and mental cruelty on the deceased and due to the said cruelty on her daughter the mother of the deceased lodged a complaint at Women Police Station, District Sonapat, Haryana, whereby the family members of respondent no.3 were called at the Police Station and they were accompanied by eight or ten persons of Village Ladpur. It is next stated that on the assurance given by the in-laws of the deceased and the said persons of Village Ladpur the deceased was sent back to the house of her in-laws but the harassment and misbehavior continued. The in-laws sometimes asked for Rs.20,000/- and Rs.25,000/- respectively. It is also stated in the complaint that mother of the deceased made the payment thinking that on payment of these amounts the harassment would stop. On 19.6.2007 at about 2.00 a.m. the father-in-law of the deceased informed Smt.Kitabo Devi, mother of the deceased, that her daughter had received an electric current and on reaching the matrimonial house of her daughter she found her daughter and her son (aged eight months) lying dead. The mother of the deceased also stated in her complaint that she heard the ladies of the village whispering that the deceased was killed by the electric current and it is only then she also learnt that her daughter and grand-son were murdered.

8. Learned counsel for the State submits that learned trial court completely misdirected itself and failed to consider that the deceased had died an unnatural death within seven years of her marriage and accordingly a case under Section 304B IPC was made out. Counsel further submits that a demand was made soon before her death and taking into consideration

that her death was an unnatural death the case would be fully covered by Section 304B IPC.

9. We have heard learned counsel for the petitioner and also perused the impugned judgment dated 12.12.2011 passed by the trial court. The evidence of Smt.Kitabo Devi, mother of the deceased, would show that the first statement made by her gives a clean chit to the respondents. The typed written complaint made by the mother of the deceased to SDM on 6.7.2007 is primarily based on hearsay evidence as she submits that she heard whispers of the women of the village. In our view the trial court has correctly analysed the evidence placed on record and rightly come to the conclusion that the prosecution has failed to bring the case within the ambit of the offence mentioned in Section 498A IPC and Section 304B IPC. We deem it appropriate to reproduce the observations of the trial court. Paras 20 to 23 of the judgment read as under:

20. So far as demand of dowry and cruelty are concerned, the deposition of PW4 is nothing but full of self contradictions and she has improved her version before the court for the first time to a great extent which cannot be reconciled with her previous statements and difficult to swallow. Admittedly, the initial statement given to the SDM on 20.06.2007, Ex.PW10/B, mentions no allegation against any anyone or any kind of foul play in the death of the deceased but suddenly on 05.07.2007, she came out with a typed complaint, which is now correctly exhibited as Ex.PW4/A, making allegations against the accused and as per the said complaint also, it was the whispering of the village ladies, where the matrimonial house of the deceased was situated, that PW4 came to know that the deceased was killed by electrocution of the electric current and such kind of rumours or hearsay have no evidentiary value in the legal system prevalent by way of Evidence Act. In the last para of Ex.PW4/A, she has tried to explain the reason as to why she did not levelled allegations against the accused in her previous statement Ex.PW10/B given to the SDM, she has stated that she was under threat from the accused to kill her only son if she takes any action against the accused for allegedly killing the deceased. If it was so, then as to how that threat has

wiped out on 05.07.2007, when she moved the complaint Ex.PW4/A before the SDM or how she became free from the threat allegedly given to kill her only son. Even otherwise, the complaint is so vague and in general terms that

no specification of the alleged Rs.20,000/- or Rs.25,000/- given to the accused sometimes after selling her buffalo or sometimes raising the fund on interest, have been provided in the complaint.

21. In her examination in chief as PW4 before the court, she had improved the version that deceased allegedly told her that in laws of the deceased were expecting a car from the complainant, a fact which does not find mention in Ex.PW4/A. The alleged complaint made to the Mahila Police Station Sonapat, admittedly could not be brought and proved on the record so as to know the contents of the same to be read against the accused. Again, she has deposed in her examination in chief that ten days before her death, the deceased visited the house of the complainant and requested to give money this time also and she had given her Rs.10,000/. A fact which has not only been confronted to her previous statement Ex.PW4/A where it was not found so recorded but it is a futile exercise done before the court for the first time in order to bring the case within the requirement of law that demand of dowry and resulting cruelty was committed with the deceased "soon before her death". Once again, she had improved her version in her examination in chief that she had given cash a number of times after the marriage and that once she had given Rs.20,000/and on other occasion she had given Rs.30,000/on different pretext such as purchase of a motorcycle etc by the accused, but the said fact also did not find mention in her said previous statement Ex.PW4/A. In her cross examination with regard to the complaint made at the Mahila PS Sonapat, she had changed her stand with regard to the copy of the said complaint kept by her and she alleged that same was taken from the deceased by accused Raj Bala and torn the same. Admittedly even if it is taken as true, the said complaint to the Mahila PS Sonapat was in the year 2003 but after that and till the death of the deceased, she did not make any second or subsequent complaint against the accused either at any PS or before any court or to any other authority with regard to alleged cruelties committed upon her on account of demand of dowry. She sold the buffalo to one Rajesh r/o Village Basodi, Barauli, but no receipt of the same could be produced.

22. From the surrounding circumstances also, the deposition of PW4 is not at all trustworthy as admittedly when she filed her complaint Ex.PW4/A, her brother Labhey and her husband's elder brother in relation namely Chandey were present at that time out of which said Chandey also signed the complaint along with one Sat Narain and one Maha Singh but why the said persons were withheld from the court as witnesses so as to throw the light upon the case, is not understandable and the inference of not producing the said witnesses must be drawn against the prosecution in the said circumstances.

23. Similarly, on the day of incident when the first statement Ex.PW10/B of PW4 was recorded before the SDM, on the same day, her brother's statement was also recorded which is Ex.PW10/A and name of the brother was Randhir Singh and admittedly said Randhir Singh has also not been produced in the witness box for the reasons best known to the complainant or the IO of the case, which creates a doubt in the mind as to whether Randhir Singh was deliberately kept back from the court so that the truth disclosed by him in his statement Ex.PW10/A, may not come on the record and Ex.PW10/A was to the effect that the deceased and her child died due to electric current and there was no suspicion or foul play in their death. In the said circumstances and in view of the said improvements, change of stand made in her deposition as PW4, I am of the considered opinion that prosecution has miserably failed even to bring the case within the ambit of the offence mentioned in Section 498A IPC much less Section 304B IPC.”

10. As per the deposition of the mother of the deceased, Smt.Kitabo Devi, the respondents had made a demand of a car, which is a material improvement and it does not find mention in Exhibit PW-4/A. Further the statement would show that the complaint made by the mother of the deceased to Mahila Police Station, Sonapat, was not proved on record by the mother of the deceased. Another statement made by the mother of the deceased was that ten days before the death of the deceased, the deceased had visited the house of the complainant and requested for a sum of Rs.10,000/-, which was also given, but the same was also not proved. The

trial court has rightly considered these aspects and arrived at a finding that the evidence contains material improvements by the mother of the deceased and no case is made out and the prosecution has miserably failed to establish the guilt of the respondents.

11. Learned counsel for the State has argued that since the deceased died an unnatural death within seven years of her marriage and thus a case under Section 304B IPC is made out. As noticed above the trial court has rightly reached a conclusion that no case is made out even under Section 304B IPC. We may add that Section 304B IPC was brought into force w.e.f. 19.11.1986. The Section was added with a view to curb the increasing menace of dowry death. Section 304B IPC reads as under:

“304B. Dowry death.— (1) Where the 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.

Explanation.- For the purposes of this sub- section," dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

12. In the present case, although wife of respondent no.1 has died in abnormal circumstances and that too within seven years of her marriage, the prosecution has been unable to show that soon before her death she was subject to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry. In the present case the prosecution has failed to establish that there was any live link of any

demand made by the respondents before the death of the deceased or that the death of the deceased was in any way related to any demand for the reason that they died of electrocution, which was an accident and in the absence thereof in our view Section 304B IPC would not be attracted. Simply to say that the deceased had died an unnatural death by itself would not attract the provisions of Section 304B IPC. Although death by electrocution can be termed as an unnatural death but the deceased got electrocuted on account of the fact that there was a leakage of electricity from the desert cooler, which was lying in the room and which was the cause of the electrocution. Further the report of the expert would also show that the death of the deceased was purely accidental.

13. The trial court has also observed the statement made by PW-7, Deputy Electrical Inspector, who is a quasi judicial authority and who had held an inquiry, under Section 161 of the Electricity Act, 2003, with regard to the accident. As per inquiry report of PW-7 (exhibited as PW-7/A), he inspected the spot and examined the desert cooler lying in the room where the deceased received electric current and he found that the electric supply leads of the cooler consisted partly of a three core cable and part of two core flexible wire and the metallic body of the desert cooler had not been earthed in contravention of the provisions of Rule 61(3) of the Indian Electricity Rules 1956. Moreover, although, a rotary switch was provided in the desert cooler for electric supply to the fan and motor but there was no switch on the cooler to control electric supply to the pump motor and when the said cooler was tested with the help of an insulation tester a complete leakage of current was observed and it was found to be so low as to prevent safe use of energy in contravention of the provisions of Rule 49(2)(b) of the Rules and due to this leakage of current the metallic body of the said desert cooler got electrically charged and the two deceased,

who happened to come in contact with the electrically charged metallic body of desert cooler, received an electric shock and both died subsequently. The report of the Deputy Electrical Inspector also found corroborated with the deposition of the autopsy surgeon that no external injury was seen on the dead body of both the deceased and further there is no evidence to the contrary that this was the handy work of the respondents.

14. We may notice that the present appeal has been filed by the State against the judgment and order of acquittal by the Trial Court. It is well settled that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. The Court must take into account the presumption of innocence of the accused and the trial court's acquittal adds to the presumption of his innocence.
15. We do not find good reasons for interference in the present case.
16. Accordingly, no grounds are made out and the leave to appeal petition stands dismissed.

G.S.SISTANI, J

G.P. MITTAL, J

JULY 24, 2013
msr