

\$~4

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

+ **CRL.L.P. 429/2012**

Date of Decision: 03.07.2013

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Rajesh Mahajan, Addl. Standing
Counsel

versus

BISHAN SINGH & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

KAILASH GAMBHIR, J.

1. The present Criminal Leave to Appeal has been preferred by the petitioner/State under Section 378 (4) Cr.P.C. to challenge the judgment dated 17.12.2011 passed by the learned Additional Sessions Judge, FTC, New and South East District, Patiala House Courts, Delhi thereby acquitting the accused persons of the charges framed against them under Sections 498A/302/34 IPC.

2. The facts and circumstances which gave rise to the registration of the case against the accused persons as per prosecution are that on 23rd August,

2002, an information vide DD No.29 was recorded in PP Madangir at about 11.05 p.m. that the in-laws had burnt their daughter-in-law to death (*Sasural walo ne bahu ko jalakar maar dala*) at H.No.B-128 Shiv Park Near Khanpur. This DD was handed over to ASI Jaipal Singh who reached at the above address along with Constable Rajbir and Constable Dayanand where they came to know that one lady was removed to hospital in burnt condition. Leaving Constable Dayanand at the spot, IO reached the hospital and collected the MLC of deceased Smt. Jaswati. The IO recorded her statement after she was declared medically fit for giving her statement. In her statement, deceased Smt. Jaswati stated that she was married to Rajesh about ten years back and her father, mother-in-law, brother-in-law & sister-in-law used to harass her for demand of dowry. She also stated that her husband used to treat her properly. She further states that the light of her room was cut by her brother-in-law and when she came out of the room her sister-in-law and brother-in-law poured kerosene oil on her body and her father and mother-in-law caught hold of her and brother-in-law lit fire to her body. She further stated that some neighbour took her to the hospital. This dying declaration of deceased Smt. Jaswati was proved on record as Ex.PW-23/B.

Based on the said dying declaration, the IO prepared Rukka and got the FIR registered against the accused persons under Sections 498A/302/34 IPC. After completion of the investigation, challan under Sections 498A/302/34 IPC was filed in the Court. The charges were framed under the said provisions against the accused persons to which they pleaded not guilty and claimed trial. The prosecution examined as many as 28 witnesses. The statements of accused persons were recorded under Section 313 Cr.P.C. in which they had pleaded their innocence. In defence, the accused persons had examined four witnesses. After taking into consideration the testimonies of prosecution witnesses, defence witnesses and the material placed on record, the Additional Sessions Judge had passed a detailed order thereby acquitting all the accused persons from the charges framed against them. Feeling aggrieved by the said order of acquittal, the petitioner/ State has approached this Court to seek leave to appeal to challenge the said order.

3. Addressing arguments in support of criminal leave to appeal, Mr.Rajesh Mahajan, Additional Standing Counsel for State, contends that the learned Trial Court failed to properly appreciate the evidence on record and wrongly arrived at the decision of acquitting the accused persons.

Learned counsel further contends that the dying declaration of the deceased proved on record as Ex.PW-23/B recorded by ASI Jai Pal Singh PW-23 was sufficient to convict the respondents but the learned Trial Court has discarded the said dying declaration of the deceased without properly appreciating the legal position. Learned counsel further submits that the said dying declaration Ex.PW-23/B was recorded by PW-23 upon proper certification of fitness being granted by the attending doctor and the said certificate of fitness was duly proved on record in the evidence of PW-18. Learned counsel states that the said witness PW-18 in his deposition stated that the whereabouts of the said attending doctor were not known to him. Learned counsel also argued that the learned Trial Court erred in not relying on the ocular testimony of Kumari Bharti PW-6, eyewitness of the incident. Learned counsel also argued that the learned Trial Court failed to appreciate the fact that there are bound to occur some discrepancies or contradictions in the testimonies of the witnesses as such witnesses deposed in Court after a lapse of some time period, and therefore, such minor contradictions should not affect the substratum of the prosecution case.

4. Based on the above submissions, learned Additional Standing Counsel

for the State has prayed for the grant of criminal leave to appeal so as to challenge the said order of acquittal.

5. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them and we have also gone through the judgment passed by the learned Trial Court and the other material placed on record including the testimonies of the prosecution and the defence witnesses.

6. It is a settled legal position that in an appeal against an order of acquittal, the Appellate Court should not normally interfere with the findings of fact arrived at by the learned Trial Court unless the reasoning given by the learned Trial Court is perverse or illegal on the very face of it. The Appellate Court should also bear in mind that with the acquittal of the accused persons by the learned Trial Court, the presumption of innocence of the accused persons has been given the legitimacy. It is also a settled legal position that where there is possibility of arriving at two different conclusions on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal arrived at by the Lower Court merely because the other possible view is a preferred view.

7. In the aforesaid background of the legal position, let us deal with the contentions raised by the learned Additional Standing Counsel for the State to assail the finding of the learned Trial Court. The first contention raised by the learned counsel for the petitioner is that the dying declaration of the deceased was duly proved on record in the evidence of PW-23 ASI Jai Pal Singh and he had recorded the said dying declaration after the deceased was declared medically fit by the attending doctor, Dr.M.V.Shekhar of Safdarjung Hospital whose certification was proved on record as Ex.PW-23/C. This testimony of PW-23 was disbelieved by the learned Trial Court not only because of many contradictions in his cross-examination but because of deposition of PW-26 SI Padam Singh Rana who in his cross-examination also claimed that he had recorded the statement of deceased which was proved on record as Ex.PW-23/B. He also deposed that ASI was slow and was having difficulty in writing so he had assisted him being present in the hospital. PW-16 – Constable Rajbir in his deposition has stated that he alongwith ASI Jaipal (PW-23) reached SJ Hospital, where deceased Smt. Jaswanti was found admitted and was declared fit for statement by the doctor. He further deposed that ASI Jaipal recorded her

statement and made his endorsement and thereafter he took the rukka and got the case registered and came back at the spot, as per the directions of ASI Jaipal, the Investigating Officer of this case. This witness also nowhere disclosed the presence of SI Padam Singh Rana (PW-26) at the time of recording of the statement of the deceased. It is also a matter of record that no endorsement was made by ASI Jaipal (PW-23) either on PW-23/B or PW-23/C that he got recorded the same from SI Padam Singh Rana (PW-26). During the course of hearing Mr. Rajesh Mahajan, Additional Standing Counsel for the state claimed that the statement of the deceased was in the handwriting of ASI Jaipal Singh (PW-23) and not of SI Padam Singh Rana (PW-26). It has also come on record that investigation of the said case was taken over by SI Padam Singh Rana (PW-26) from ASI Jaipal Singh (PW-23) on 24th August 2002.

8. It is quite intriguing to find that PW-16, PW-23 and PW-26 have not taken a uniform stand so far recording of the dying declaration of the deceased was concerned. It is an admitted position that no other public witness was associated at the time of recording of the said dying declaration and no reasons have been explained by the prosecution for not joining any

public witness at the time of recording of the dying declaration of the deceased. It is beyond our comprehension to find that the signatures of the doctor M.V.Shekhar on the certificate of fitness proved on record as Ex. PW-23/C were not confronted to PW-18, S.S.Rawat, record clerk summoned from the hospital. It is also a matter of record that the said doctor was not produced by the prosecution and the ground taken for such non-production of the doctor was that the whereabouts of the doctor were no more available with the hospital. No efforts were made by the prosecution to produce the said doctor in any event. The prosecution even failed to prove on record the said certificate of fitness by not confronting the signatures of the doctor to the said witness PW-18. In the light of such material contradictions and lack of evidence, the learned Trial Court correctly held that Ex.PW-23/B cannot be treated as dying declaration as the same lacks corroboration and this Court does not find any perversity or illegality in the said reasoning given by the learned Trial Court which is based on proper appreciation of the facts and evidence placed on record.

9. Other contention raised by the learned counsel for the petitioner is that the learned Trial Court failed to give due weightage to the ocular evidence of

PW-6, the eyewitness of the incident. Undoubtedly, PW-6 is the daughter of the deceased and was present at home at the time of the incident. The statement of this witness under Section 161 Cr.P.C. was recorded by the police on 26.08.2002. In her statement, PW-6 stated that she was sleeping at the time of the incident and was woken up by her brother. In her deposition before the Court, she had changed her version but again in her cross-examination she could not stick to her stand. After taking into consideration the entire deposition of PW-6, the learned Trial Court found that PW-6 had deposed falsely at the instance of her maternal grand parents and her uncle Hemu and that she had not seen the incident of burning of her mother, although she was introduced by the prosecution as an eyewitness. This reasoning of the learned Trial Court is in consonance with the clear contradiction in the stand of PW-6 as she took contrary stands in her examination-in-chief and cross-examination, making her deposition totally untrustworthy and unreliable.

10. Before we conclude, we are constrained to observe that the prosecution has not performed its duty in a fair and honest manner. The conflicting stands taken by Constable Rajbir (PW-16), ASI Jaipal Singh

(PW-23) and SI Padam Singh Rana (PW-26) have ultimately resulted in giving a benefit of doubt to the said accused persons. Such position could have been different, had these police officials acted diligently and honestly in conducting the investigation and in giving their statements before the trial court. Therefore, we direct the Commissioner of Police to hold an inquiry into the role of Constable Rajbir (PW-16), ASI Jaipal Singh (PW-23) and SI Padam Singh Rana (PW-26) and take suitable action against them in accordance with law and settled procedure. The compliance report be filed by the Commissioner of Police within a period of one month from the date of this order.

11. In the light of the above discussion, we are of the view that the petitioner is not entitled to grant of criminal leave to appeal to challenge the said order of acquittal. The petition is devoid of any merits and the same is hereby dismissed.

KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

JULY 03, 2013

v