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

+ **CRL.L.P. 488/2015**

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Date of Judgment : 04.02.2016

STATE

..... Petitioner

Through : Ms. Aashaa Tiwari, APP for State.
SI Sandeep Kumar, PS – Ashok Vihar

versus

RAVI KUMAR VERMA

.... Respondent

Through : Mr. Akhilesh Kumar Pandey and
Mr. Manoj Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

CRL. M. A. 8515/2015

1. By the present application, the State seeks condonation of 127 days' delay in filing the present leave petition.
2. For the reasons stated in the application, delay is condoned.
3. Application stands disposed of.

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4. The present leave to appeal arises out of a judgment dated 20.10.2014 passed by the trial court by which the respondent being husband of the deceased was acquitted for the offences under Sections 498-A/304-B/302/34 of the Indian Penal Code. The respondent was residing along with his wife/deceased at Jhuggi No.C-312, S. S. Nagar, WPIA between 18.04.2012 to 20.01.2013. The case of the prosecution was

that in furtherance of his common intention, the deceased was subjected to cruelty, illegal demands of dowry were made, she was harassed and beaten frequently.

5. Learned counsel for the State submits that the learned trial court has failed to appreciate the evidence of PW-12 being the mother of the deceased and PW-19 being the sister of the deceased who have categorically testified that the deceased was being harassed for dowry and the deceased had informed her mother after the incident that she was forced to drink Milk with Baygon Spray.
6. Counsel further contends that PW-19 has proved the demands made by the respondent.
7. Counsel further submits that admittedly the period of marriage between the parties was less than 7 years. The deceased died an unnatural death and thus a case under Section 304-B of Indian Penal Code would be made out. Reliance is also placed on the scientific evidence wherein it was proved that the deceased consumed a poisonous substance (chlorpyrifos).
8. Counsel also submits that the trial court has wrongly highlighted the fact that no neighbour or mediator to the marriage was produced to corroborate the testimony of PW-12 and PW-19.
9. Counsel for the State further contends that it is not the number of witnesses which would make a difference but it is quality of the evidence which is produced.
10. In this case, the counsel contends that the evidence of PW-12 & PW-19 is truthful and reliable and their testimonies alone would lead to the guilt of the respondent.

11. Counsel submits that the trial court has unnecessarily highlighted the minor contradictions which do not go to the root of the matter. The judgment of the trial court being perverse, unjustified and not free from conjectures and surmises, is liable to be set aside.
12. Per contra, learned counsel for the respondent submits that the petitioner has failed to point out the discrepancies in the view taken by the trial court and the judgment of the trial court is not perverse. It is based on clear understanding of law and further the trial court has taken into account the settled position of law and applied it correctly to the facts of the present case.
13. We have heard the learned counsel for the parties and have carefully examined the judgment of the trial court.
14. The parties have also taken us to the testimonies of various witnesses and the documents placed on record based on the trial court record.
15. In this case, in order to prove their case, the prosecution has examined 20 witnesses. No evidence was led by the defence. Statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure.
16. Since the testimony of PW-12 & PW-19 have been strongly relied upon by the learned counsel for the State, we deem it appropriate to discuss in detail the evidence of these two witnesses.
17. PW-12 Gauri, mother of the deceased deposed before the Court that:-

“Upon four-five months after marriage, the matrimonial life of her daughter was normal and after that period her daughter (Kranti) used to tell to her other daughter Seema who is younger to Kranti that her Nanad Savitri used to harass Kranti due to not

*fulfil her demand of gold ring and gold chain. On one day i.e. 20th of day Kranti had made a telephone call to her daughter Seema that the accused Ravi his mother and Savitri were taunting her daughter that chain and ring was not given in the marriage. On 22.01.2013 in Sunder Lal Jain Hospital her daughter regain her conscious. According to the witness her daughter Kranti caught hold of her hand and she thought she wanted water and so she asked her if she wanted water i.e. pani chahiye on which she whispered to her in a very soft voice that she herself has not consumed the poison but it was forcibly administered to her. **"Mummy mene nahi pee mujhe pilai gai hai."***

PW-12 further deposed that :

The sister-in-law of Kranti used to taunt my daughter by not bringing the dowry and gifts.

18. PW-19 Seema, sister of the deceased deposed that :

*"On 26.01.2013 my sister regained her consciousness. She had told to my mother in a soft voice **Mummy mene nahi pee mujhe pilai gai hai** thereafter my sister again become unconscious and she did not regain her consciousness up to 28.01.2013. On 28.01.2013 at about 6 p.m. my sister died due to poison."*

PW-19 further deposed that :

"My statement was recorded on 22.01.2013 by SI Azad Singh. I have stated in my statement Ex.PW19/DX-1 that my sister used to tell me on telephone that her sister-in-law used to harass her that my parents did not given gold ring, chain to Ravi in the marriage and used to taunt her that Ravi has married in the house of beggers."

19. The trial court has also dealt with the claim of the PW-12 and PW-19 on the aspect of alleged dying declaration made by the deceased and observed that :

“On the contrary the medical evidence on record does not show that the deceased Kranti had regained consciousness at any point of time after she became unconscious and throughout the period she remained admitted in the hospital she was unconscious till her death. Further, the husband of the deceased i.e. accused Ravi Kumar Verma was present in the Hospital throughout. I am sure if the deceased had regained consciousness the doctor on duty or some ward boy on duty would have been told about the same which is not the case.”

20. In our view the trial court has carefully analysed the testimonies of the witnesses, more particularly the material witnesses being PW-12 & PW-19. According to the testimony of PW-12, the deceased had regained consciousness for a very short while when she had whispered **“mummy mene nahi pee mujhe pilai gayi hai”**. As per these two witnesses, after whispering the deceased never regained consciousness at any point of time and she remained unconscious till the time of her death.
21. We find the testimonies of these two witnesses by itself to be highly unsafe to take a view different than the view taken by the trial court for the reason that there is no endorsement on any document which would corroborate the fact that at any point of time the deceased had regained consciousness. There is no evidence of any other person who was present in the ward who would corroborate the evidence of the

mother and sister of the deceased that the deceased who remained unconscious prior to the alleged statement and thereafter, ever regained consciousness.

22. We may also notice as has correctly been noticed by the trial court that the deceased was in regular touch with her family which is borne out from the fact that she possessed a mobile phone and in case she was being harassed for dowry or being tortured, her husband may not have allowed her such freedom.
23. The trial court has also highlighted the fact that the prosecution has failed to produce a single witness other than the mother and sister of the deceased either from the neighbourhood or the mediator to the marriage to show that the deceased was either being tortured or harassed in relation to dowry or as to whether any kind of complaint was made to them or whether any neighbour had ever heard the couple quarrelling.
24. In this case in the MLC of Sunder Lal Jain Hospital, Ashok Vihar, Delhi Ex. PW7/A It is stated “.....*alleged history of poisoning taken with milk as stated by the patient herself ? Baygon.....*”.
25. It is well settled that there is no such format of dying declaration. The dying declaration can be made to the doctor or even to the police officer which is admissible in evidence.
26. Hon’ble the Supreme Court in the case of ***Paparambaka Rosamma v. State of A.P.***, reported at (1999) 7 SCC 695 has taken a view that since the certificate of the Doctor was not to the effect that the patient was in a fit statement of mind to make the statement the dying declaration cannot be accepted by the Court to form the sole basis for

conviction. Another three Judge Bench in the case of ***Koli Chunilal Savji v. State of Gujarat***, reported at (1999) 9 SCC 562, has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased could not be ignored merely because the Doctor had not made the endorsement that the deceased was in a fit statement of mind to make the statement. Since the decisions in the aforesaid two matters were somewhat contrary, the matter was referred to the Constitution Bench. In the case of ***Laxman v. State of Maharashtra***, reported at (2002) 6 Supreme Court Cases 710. Paras 3 and 5 read as under:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit

mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

5. The court also in the aforesaid case relied upon the decision of this court in Harjeet Kaur v. State of Punjab case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the

declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in ***Paparambaka Rosamma and Ors. v. State of A.P.*** (at SCC P. 701, para 8) to the effect that

"...in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this court in ***Paparambaka Rosamma and Ors. v. State of A.P.*** must be held to be not correctly decided and we affirm the law laid down by this court in ***Koli Chunilal Savji and Anr. v. State of Gujarat*** case."

27. In the present case the deceased has herself made a statement and having regard to the fact that there is no reliable testimony on record to show that the deceased was being harassed in relation to dowry or was being tortured. There is no doubt or disbelief in the alleged history which has been recorded in the MLC by the concerned doctors of Sunder Lal Jain Hospital. The record would also show that after the incident the deceased was rushed to Sunder Lal Jain Hospital by

the respondent. He arranged for money and ensured that the best treatment was possible from a private hospital.

28. Keeping in view the above settled law and in totality of the facts and circumstances, we do not find any reason to interfere with the impugned judgment passed by learned Trial Court. Accordingly, present leave petition being devoid of merit is dismissed.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

FEBRUARY 04, 2016/sc