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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 59/2016**

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Judgment dated 21.03.2016

STATE

..... Petitioner

Through : Mr. R.S. Kundu, ASC (Crl.) for State
with Mr. Ankit Kr. Gulia, Advocate
and Inspector Viplesh, PS-Vijay
Vihar.

Versus

NAVED UR REHMAN

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

CRL.MA.1262/2016

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

CRL.MA.1261/2016

3. By the present application, the petitioner seeks condonation of 70 days' delay in filing the present criminal leave to appeal petition.
4. Heard. For the reasons stated in the application and in the interest of justice, present application is allowed. Delay in filing the present criminal leave to appeal petition is condoned. Let criminal leave to appeal petition be taken on record.
5. Application stands disposed of.

CRL.L.P.59/2016

6. Present leave to appeal petition has been filed by the State under Section 378 of the Code of Criminal Procedure against the judgment dated 17.08.2015 passed by Sh. Manoj Jain, Additional Sessions Judge, Fast Track Court, North West District, Rohini, Delhi in Sessions Case No. 97/01/13 whereby the respondent was acquitted of the charges framed against him under Section 306 and 302 of the Indian Penal Code.
7. The brief facts of this case, as noticed by the learned Trial Court are as under:

“That on 16/05/2011, Police Station Vijay Vihar received information from BSA hospital that Naaz (wife of Naved) had died as she had hanged herself. SI Virender was directed to go to the hospital and to carry out necessary investigation. SI Virender reached there and collected MLC of Naaz who had already been declared brought dead. SDM, Saraswati Vihar was informed. Relatives of both the sides also appeared before Sh. Ramphal Singh, SDM Saraswati Vihar and got recorded their statements. Lala (brother of deceased) revealed that his sister Maya had married accused on her own and after marriage, she assumed name of Naaz. He also stated that whenever she used to call them up, she used to complain that Naved was having illicit relation with some other girl. However, Lala also admitted that they did not help her out as Maya had married against their wishes and with her own sweet will. He, however, also suspected that accused had killed her. Statement of Chanda Devi (wife of Lala Ram) was also recorded on 27/05/2011 by SDM. FIR was registered for commission of offence u/s 306 IPC after more than three months i.e. on 23/08/2011. Investigation ruled out any angle of homicidal death

and confirmed it to be a case of suicidal hanging. Investigating agency also felt that accused was having illicit relation with some other girl, albeit unknown, which he did not discontinue despite appeal by his wife and he, resultantly, abetted her suicide as she could not withstand such act and conduct of her husband.”

8. Charge sheet was filed under Section 306 of the Indian Penal Code but subsequently the Trial Court noticed that there was a wound on the backside of the head of the deceased and thus framed an alternative charge under Section 302 of the Indian Penal Code. The respondent pleaded not guilty to the charged offences and claimed to be tried.
9. To bring home the guilt against the respondent, the prosecution examined 12 witnesses in all. Statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure wherein he claimed that he had never beaten or harassed his wife (victim) and had cordial relations with her. He further stated that his wife had some dispute with her parental family regarding some money which she had given to them and which they were not returning. He also claimed that he was out of his house and when he returned, he saw his wife hanging and he himself took her to the hospital. The respondent did not lead any evidence in his defence.
10. Mr. R.S. Kundu, Additional Standing Counsel for the State submitted that the Trial Court disregarded and failed to take into account the relevant material available on record and has based its findings on mere conjectures and surmises. Repudiating the judgment of Trial

Court, it was further submitted that there was sufficient evidence in the instant case to prove the guilt of the respondent.

11. Counsel for the State submitted that the death of the victim occurred within 7 years of her marriage and therefore the respondent was under an obligation under Section 106 of the Indian Evidence Act to explain the circumstances under which his wife died for which he failed to give any plausible explanation. Further, counsel submitted that the presumption under Section 113A of the Indian Evidence Act was against the respondent which he failed to discharge.
12. Counsel further submitted that witnesses PW5, PW7, PW8, PW9, PW10 were consistent in their stand to prove that the respondent used to severely beat up the victim and developed an illicit relationship with another woman. Counsel for the State vehemently argued that the inquest report and the post mortem report were conclusive to show that the victim was hit by a sharp weapon on the back of her head and the blood oozed out in huge quantity from the wound.
13. We have heard the learned counsel for the State and perused the record and have also examined the judgment rendered by the trial court in detail.
14. It appears to us that the proper avenue of approach in this case particularly having regard to the structure of the charges, first and foremost is to consider whether the case under Section 302 of the Indian Penal Code is made out. In the instant case, Section 302 of the Indian Penal Code was framed as the Trial Court noticed that there was existence of one wound on the backside of the head of the deceased from where blood had oozed out in huge quantity. It is a

cardinal principle of criminal jurisprudence is that the prosecution has to stand on its own legs. The burden is so heavy on the prosecution that blemishes in the story of the accused cannot give a right to the prosecution to claim that the version of the prosecution should be preferred, whereas the burden on the accused is slightly light as he has to discharge the burden by preponderance of probabilities.

15. Before elucidating the law in the matter, it would be appropriate to deal with the Medical report.
16. Postmortem examination report No. 161/2011 dated 17.05.2011 is reproduced as under:

“IV.BRIEF HISTORY AS PER I/O

Alleged h/o hanging from ceiling fan by Dupatta on 15-5-11 at about 11.00 PM. She was last seen alive at about 9.15PM. She was brought to Dr.BSA hospital where she was declared brought dead on 16-5-11 at 12.05 AM.

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IX.EXTERNAL EXAMINATION

Injuries:

- 1. Ligature mark 18 cm long reddish brown parchmented obliquely placed was present around the neck extending from 4 cm below right ear lobe across front of neck upto 3.5 cm below left mastoid process. The ligature mark was 1 cm wide placed 4 cm below the right ear lobe 1.5 cm wide placed 7.5 cm below the chin and 0.5 cm wide placed 3 cm below the left ear lobe. The total circumference of neck was 38 cm.*
- 2. Abrasion 5 cm long and 2 cm wide at the inner end of the abrasion and 0.5 cm wide at the outer end of the abrasion present on left front of neck extending outward from a point, on middle front of neck, 2.5 cm below chin.*

3. *Laceration 2 cm x 1 cm x bone deep present on middle occipital region of scalp.*

X. INTERNAL EXAMINATION

i. Head

No extravasation of blood was present on reflection of scalp. No fractures of the skull were present. Brain was congested on gross examination.

ii. Neck

No extravasation of blood was present in the soft tissue of neck. The subcutaneous tissue underlying ligature mark was white and glistening.

Nothing significant was seen in the Pharynx, Larynx, Esophagus, Trachea, neck vessels and thyroid. Hyoid bone and thyroid cartilage were intact.

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XI. OPINION:

Cause of death is asphyxia due to hanging."

17. PW2 Dr. Vijay Kumar, HOD forensic Medicine, BSA Hospital, Rohini deposed that as per the postmortem report the cause of death was asphyxia due to hanging and opined that death in this case was due to suicidal hanging. PW2 further stated in his cross examination that *"said laceration injury i.e. injury No. 3 is quite possible when any such victim is later on brought down and hits some objects in the process. In various other cases of the suicidal hanging, such injury mark can be noticed. Moreover, as per post-mortem report, when the internal examination of head was conducted, no extravasation of blood was present on reflection of scalp. Therefore, this injury can be postmortem also."*
18. Perusal of the medical evidence shows that the cause of death was due to suicidal hanging and the laceration injury was a post-mortem injury caused by hitting some object while bringing the body of the victim

down. There were ligature marks around the neck, below the right and left ear lobe of deceased. Even otherwise, except the ligature marks, abrasion and laceration there was no other external injuries, no mark of struggle and no other evidence to show that it was a homicidal death. In the absence of any definite evidence cited or proved, we are of the considered view that this case cannot be termed as homicidal death and the offence under section 302 of the Indian Penal Code is ruled out.

19. Returning to the charge framed under Section 306 of the Indian Penal Code, it would be pertinent to rummage through the testimonies of the relevant witnesses.

20. PW5 Chanda (Bhabhi of the victim) deposed as under:

“Two months prior to the death of deceased Maya, she had gone to Banaras with accused and during that time, one day Maya had telephonically told me that her husband had beaten her as she had seen him with some girl in close room. She further told that due to beatings, her left ear was damaged.”

21. PW5 in her cross examination stated as under:

"It is correct that child of Naaz from her first marriage, is residing with us. I do not remember the date when deceased Naaz had married with accused. The family members of Naaz stopped meeting with Naaz after her second marriage. Again said, Naaz used to visit her parental home after her second marriage.

xxxxx

Naaz came back to Delhi after about one week of making call to me from Banaras. I had not made any complaint to the police about the beatings given to Naaz by accused at Banaras after receiving the

telephone call or after Naaz came back to Delhi, however I have told the fact of beatings given to Naaz by accused to other family members when this fact came to my knowledge through the telephone call of Naaz.

xxxxx

It is correct that I was operated prior to the death of Naaz. It is correct that we have obtained a loan of Rs. 25,000/- from Naaz for my operation.”

22. PW7 Maya (Bhabhi of the victim) deposed as under :

“On 16/05/2011, we came to know that Maya @ Naaz had committed suicide by hanging. Maya committed suicide as after doing love marriage with him, accused indulged in illicit relationship with other girl and when she tried to stop him from doing so, he used to beat her and as a result of that she got frustrated and committed suicide.”

23. PW7 in her cross examination deposed as under:

“It is correct that the love marriage of Maya with accused was against the wishes of our family but after one month of the marriage we had cordial relations with Maya and her husband. Maya @ Naaz had performed with accused one year before her death but I do not remember the date. The deceased was happy with accused Naved upto one year of her marriage. I do not remember the mobile number from which I received the call from Maya @ Naaz. Even I do not remember the dates when Maya had called me.

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It is correct that we never reported to any authority regarding the fact that accused used to beat or harass the deceased. Vol. We thought that it is the personal matter of husband and wife, so we did not report to any authority.

xxxxx

Prior to death of Naaz, her realtions with us were cut off from last four months. I came to know about the death of Naaz as accused called on my mobile from the mobile phone of Naaz, around 2/3 am night, on 16/05/2011. It is correct that I have no knowledge about the name and particulars of any girl of which Naaz had alleged against the accused.

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It is correct that Naaz extended a loan of Rs. 25,0000/- to Smt Chanda Devi (my Jethani) at the time of operation of Chanda Devi.

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It is correct that I have stated in my statement to the police that accused kept the mobile phone of deceased with him and had not allowed her to talk with us."

24. PW8 Meenu (cousin sister of the victim) deposed in her cross examination as under:

"It is correct that I did not state the circumstances of the death of Naaz to police as I myself was unaware at that time. The mother, brother and bhabhi of deceased told me the reason of the death of Naaz. Vol. Reason regarding death I mean to say that regarding her strangulation.

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I had told to the IO that Maya used to accompany her husband in the catering/bartender business at Banaras.

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I do not know anything regarding the divorce of deceased from her first husband. I even do not know in which circumstances the divorce took place between the deceased and her first husband as Maya never told me about the same. Maya never told me as to when she met Naved and under what circumstances. Maya did not state me her date of marriage with accused. Maya did not even tell me for

how long her affair was with the accused before her marriage with the accused. Maya did not even tell me as to who had attended her marriage and where her marriage took place.

xxxxx

Maya used to go to Benaras regarding her work, but I do not know as to for what purpose Maya had gone to Benaras as she did not tell me about her visits to Benaras. I do not know who used to accompany and stay with Maya, while she used to go to Benaras.

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There was bundle of photographs, which were shown by Maya to me. These photographs were of Benaras, in which, number of other girls were also visiting the sight seeing of Benaras like temple etc. In some photographs, Maya was also visible."

25. PW10 Lala Ram (brother of victim) deposed as under:

"My wife also told me that she used to receive calls from my sister Maya and she had told her that accused was having some extra- marital affair. (objected to being hearsay). My sister had also informed my wife that when she had seen accused with another girl in a compromising position in Benaras, accused had even beaten her up. (objected to being hearsay). Thereafter, their relationship never improved.

In the year 2011, my wife told me that she had received a call from accused whereby he had informed that our sister Maya had committed suicide. However, I suspect that it was not a case of suicide and accused might have killed her."

26. It would be worthwhile to reproduce Section 306 of the Indian Penal Code, Section 107 of the Indian Penal Code and Section 113A of the Indian Evidence Act which reads as under:

*“306. **Abetment of suicide.**—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

"Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which reads as under:

***107. Abetment of a thing.**--A person abets the doing of a thing, who--*

*First.--**Instigates** any person to do that thing; or Secondly.--**Engages** with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.--**Intentionally aids**, by any act or illegal omission, the doing of that thing."*

Explanation 2 which has been inserted along with Section 107 reads as under:

*"Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to **facilitate the commission** of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."*

*“113A. **Presumption as to abetment of suicide by a married woman.**—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”*

27. In **S.S. Chheena Vs. Vijay Kumar Mahajan and Anr** reported in (2010) 12 SCC 190, the Hon'ble Apex Court held as under:

“28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.”

28. The Trial Court rightly placed reliance on **Pinakin Mahipatray Rawal Versus State of Gujarat** reported in (2013) 10 SCC 48 wherein the Hon'ble Apex Court held as under:

“We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498A IPC. Mental cruelty, of course, varies from person to

person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or Page 20 acted in such a manner which under normal circumstances, would drive the wife to commit suicide."

29. In ***Sunil Kundu and Anr. Vs State of Jharkhand*** reported in (2013) 4 SCC 422, Hon'ble Apex Court held as under:

"....When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probablise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt".

30. PW10 Lala Ram, brother of the victim stated that My wife also told me that she used to receive calls from my sister Maya and she had told her that accused was having some extra-marital affair. PW5 Chanda, Bhabhi of the victim stated that she had not made any complaint to the police about the beatings given to the victim, however, she did inform the other family relatives. PW12 SI Binit Pandey admitted that the victim used to call her relatives and informed them about the situation. However, he did not file any call details which he analysed as he did not find them relevant. Thus, an adverse inference is drawn against the prosecution for non production of this vital piece of evidence. From

the above testimonies it is clear that there is no eye witness to the occurrence of the alleged incident and the factum of extra marital affair is absolutely hearsay. No positive act on the part of the respondent was committed to instigate or aid the victim in committing suicide. We are in consonance with the view taken by the Trial Court that the factum of extra-marital affair does not stand proved and even if the same is assumed, such conduct, in itself, will not take the case of prosecution anywhere near the 'abetment'.

31. Suicide is a complex phenomenon. Suicides are committed by human beings for various reasons; some are not able to bear the normal stresses that are common in life; some are not able to cope with the circumstances in which they are placed; some commit suicide because of frustration of not achieving their desired goals. One, who commits suicide, is not alive to disclose as to what was going on in his or her mind when he or she committed suicide. There can be no presumption that every suicide committed by a married woman in her matrimonial house has to be because she was suffering harassment, torture, beatings at the hands of her husband or her in-laws.
32. It is settled proposition of law that suspicion howsoever, strong it may be, cannot take substitute of proof. It appears that the FIR was lodged against the respondent merely on the basis of suspicion that he may have been instrumental in abetting the suicide committed by the victim. Undoubtedly the deceased was hypersensitive to ordinary petulance, discord and differences which happen in the day-to-day life. In the instant case, we are of the opinion that there is no evidence and material available on record where from an inference of the

respondent having abetted commission of suicide by victim may necessarily be drawn and the conduct of the respondent was natural as he himself took the victim to the hospital.

33. The law with regard to grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more conceivable.
34. In ***Govindaraju @ Govinda vs. State by Srirampuram P.S. and Anr.*** ***AIR 2012 SC 1292***, the Hon'ble Supreme Court discussed the law while dealing with appeals against acquittal in the following words:

“13. When an accused is acquitted of a criminal charge, right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus and the error in appreciation of the evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to

prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

15. We may now refer to some judgments of this Court on this issue. In State of M.P. v. Bacchudas, the Court was concerned with a case where the accused had been found guilty of an offence punishable under Section 304 Part II read with Section 34 Indian Penal Code by the trial court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed by this Court, stating that the Supreme Court's interference was called for only when there were substantial and compelling reasons for doing so. After referring to earlier judgments, this Court held as under: (SCC pp.138-39, paras 9-10).

9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage

of justice which may arise from acquittal of the guilty is not less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

10. When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference."

35. In the case of ***State of Madhya Pradesh v. Dal Singh & Ors.***, reported at ***JT 2013 (8) SC 625***, the Hon'ble Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant materials have been unjustifiably ignored, it would be a compelling reason for interference.
36. 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

March 21, 2016
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