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

Judgment delivered on: 19th February, 2016

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CRL.M.C. No.705/2016

BAHAR ALAM

..... Petitioner

Represented by: Mr.Ritesh Bahri &
Mr.Randeep Kumar
Rehan, Advs

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Amit Ahlawat, APP
for the State with SI Amit
Verma, PS Gokalpuri,
Delhi.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

Crl.M.A.2989/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.705/2016

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby setting aside the order dated 12.01.2016 passed by learned Trial Court in case FIR No.294/2013 registered at police station Gokulpuri, Delhi for the offences punishable under Sections 302/201 of the IPC.

2. Consequently, also seeks direction that PW8 Sh Kaleem Ahmad may be recalled for cross-examination.

3. Notice issued.

4. Mr.Amit Ahlawat, learned APP accepts notice on behalf of the State.

5. With the consent of learned counsel for parties petition is taken up for disposal.

6. Learned counsel appearing on behalf of petitioner submits that as per the statement of PW8 Shri Kaleem Ahmad recorded under Section 161 of the Cr P C, he made deposition during investigation as under:-

“.... On dated 2/7/13 I was at my home then in Hindustan Times Hindi newspaper at page No.3 I read a notice of a unidentified dead body of woman. As I read carefully the physique of said dead body were like my sister-in-law Shama Praveen. Immediately, I have told all this to Delhi my uncle father-in-law and I reached at district government hospital where police of police station Kotwali City were carrying on proceedings regarding the dead body. Where HC Bijender shown us the dead body and my younger sister-in-law Nasreen D/o Atikurrahmaan indentified the dead body of my sister-in-law Shama Parveen at that time she was wearing yellow colour shirt and red pajami. My sister-in-law Nasreen had brought same two pair of suit from Jaipur one of which she has gifted to Shama Praveen w/o Bahar Alam and other suit is still with her.”

7. Whereas, in his deposition dated 15.09.2014, the said witness has deposed in the Court as under:-

“On 27.06.2013, I came to know that Shama Parveen had gone missing. On 02.07.2013, I saw a hue and cry notice in ‘Hindustan Times’ Newspaper. From the description given in hue and cry notice, I apprehended that the dead body mentioned in that notice might be of my sister in law Shama Parveen. I called my mother in law on telephone who was in Delhi and told her about this fact, then I told her that I was going to see the dead body. Thereafter, I along with Nasrin, my sister in law, went to District Hospital, Bijnaur. After sometime some policemen arrived and showed us a dead body. On seeing the dead body my sister in law started crying as she could recognize the dead body from her clothes. I then saw one of her thumbs which had been rounded because of an injury in childhood and from that thumb, I could recognize it to be dead body of Shama Parveen. After the PM, the dead body was handed over to me and my sister in law.”

8. Learned counsel also submits till the examination of this witness, PW16 Dr.Bhoj Raj Singh, who conducted the postmortem on dead body of deceased, was not examined. This witness during his deposition in the Court on 20.12.2014, inter alia deposed as under:-

“... On external examination, I found that the dead body was swelled all over, skin peeled at places, maggots were present, eyes and nose were missing, face and both feet appeared to have been eaten by animals, nails were loose, teeth were also loose.”

9. Learned counsel for petitioner submits that in view of specific deposition of PW16 Dr. Bhoj Raj Singh and PW8 Sh Kaleem Ahmad, it is necessary to cross-examine latter witness, who was earlier not cross-examined on 15.09.2014 and for this relief, petitioner moved an application before learned Trial Court under Section 311 of the Cr P C,

which was dismissed vide order dated 12.01.2016 on the ground that PW8 is a formal witness.

10. On perusal of the statement of witness recorded under Section 161 Cr P C and his deposition made before the Court on 15.09.2014 and after going through the deposition of PW16 Dr Bhoj Raj Singh, I am of the opinion that to grant fairest opportunity to petitioner to prove his innocence during trial, one more opportunity be granted to petitioner to cross-examination PW8 Shri Kaleem Ahmad.

11. Consequently, the impugned order dated 12.01.2016 passed by learned Trial Court is hereby set aside. Learned Trial Court is directed to afford one more opportunity to cross-examine PW8 Shri Kaleem Ahmad on taking requisite steps in this regard, preferably for the date already fixed i.e. 28.02.2016. It is also expected from all quarters that after putting in appearance by the witness in Court, he shall be cross-examined and discharged only in one day.

12. In above terms, instant petition stands allowed and disposed of.

13. Copy of this order be sent to learned Trial Court for compliance.

**SURESH KAIT
(JUDGE)**

FEBRUARY 19, 2016

M/jg