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

+ CRL.L.P. 198/2016

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Date of Judgment: 26th April, 2016

DALIP SINGH RAJOURA & ANR Petitioners

Through: Mr. Dharmender Kumar, Advocate.

Versus

RAM AVTAR & ORS Respondents

Through: Ms. Anita Abraham, APP for the State, SI
Satbir Singh, P.S. Tilak Nagar.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

1. The present Criminal Leave Petition has been filed under Section 378 (3) of the Code of Criminal Procedure by the appellants (brothers of the deceased) against the impugned judgment dated 04.02.2016 in Sessions Case No. 44/2013 whereby the learned Additional Sessions Judge, Tis Hazari Courts, New Delhi, has acquitted all the respondents of the charges levelled against them under Section 498A and 304B of the Indian Penal Code.
2. The brief facts of the case as noted by the learned trial court are as under:

“Smt. Savitri was married with Sh. Ram Avtar on 17.05.2011. In the marriage the dowry was given as per the demand and the status of the family of the girl. Five FDR's of Rs.50,000/- each were also given which were in

the joint names of Savitri and Ram Avtar. After 2-3 days of marriage when Savitri visited her parental home she told that her inlaws i.e. Ram Avtar, brother-in-law, mother-in-law and father-in-law had taunted her that in the marriage they expected a big car and huge cash. They also started harassing her. After the marriage Ram Avtar got one FDR encashed on the pretext of taking motorcycle which he has never taken. He also demanded the entire salary from Savitri from the date she joined the service upto marriage. He also demanded the bank passbooks, FDR's and ATM cards which she had not given but in December 2012 Ram Avtar again asked for the bank Passbooks, FDR's and ATM cards on the pretext that he has to purchase a car and also the house. Thereafter, Savitri handed over these documents to him but when Savitri realized the intention of Ram Avtar that he wanted to spend all this money on the marriage of his brother Kishan and the car to be sent to Jaipur on that Savitri handed over all those documents to her parents. In February 2012 Ram Avtar took Rs.50,000/- for giving earnest money for purchase of a house. On 28.12.2012 there was Katha in the parental house of Savitri but she did not join. She told that Ram Avtar had come to know that she had sent all her passbooks, FDR's and ATM Cards to her parental house and he had asked her to bring all those documents and when Savitri refused he also harassed her. In February 2012 Savitri was admitted for pre-mature delivery at Kukreja Hospital, regarding payment of that also both had quarreled with each other. After the delivery Savitri went to her parental home at that time also the mother-in-law of Savitri asked for the purchase of house and on refusal Ram Avtar misbehaved with his mother-in-law Smt. Dhanni Devi. In August 2012 Ram Avtar took insurance policy of Rs.80,00,000/- (Eighty Lacs) and those documents are in possession and custody of Ram Avtar. On 02.01.2013 Dalip Kumar received a call from his brother Manoj Kumar to reach police station Tilak

Nagar. At 8:30 pm he reached there and came to know that Savitri had died. He informed police that he had suspicion that Savitri had been murdered by Ram Avtar, his mother Phoola and father Ghanshyam and brother Kishan and may be other relatives. One suicide note was also found on the spot which reads as under:

“Main Savitri Aatmahatya Kar Rahi Hoon Iss Ke Liye Main Swayam Zimmedaar Hoon Kyunki Main Iss Duniya Ke Layak Nahin Hoon Main Na Toh Ek Achi Beti, Na Ek Achi Behen, Na Ek Achi Patni, Na Ek Achi Bahu Aur Na Ek Achi Maa Ban Payi Issliye Main Aone Aap Ko Khatam Kar Rahi Hoon.”

In the post-mortem report doctor opined the manner of death is suicide and cause of death is Asphyxia caused by ante mortem ligature hanging. After completion of investigation charge sheet was filed. As the relatives were not arrested at that time therefore, supplementary charge-sheet against Kishan Kumar, Ghanshyam and lateron against Phoola was filed. Ld. MM after complying with provisions of Section 207 Cr.PC committed the case to the Sessions Court as the offence punishable u/s 304B is exclusively triable by the Sessions Court. All the accused were charged for the offences punishable u/s 498A and 304B IPC to which they pleaded not guilty and claimed trial.”

3. In order to bring home the guilt of the respondents accused persons, the prosecution examined 26 witnesses in all. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure wherein the factum of marriage and the birth of a child was admitted but all the incriminating circumstances appearing in evidence against them were denied and they pleaded their innocence. The accused persons examined 10 defence witnesses in their defence.

4. The trial court, after scrutinising the arguments addressed by the counsel for both the parties and the evidence adduced by them, while giving the benefit of doubt to the accused persons, acquitted them of all the charges levelled against them keeping in view the dying declaration coupled with the fact that the independent witnesses had failed to depose that there was any dowry demand or harassment meted out to the deceased at the hands of the accused persons.
5. Mr. Dharmender Kumar, learned counsel appearing on behalf of the appellants, while assailing the judgment of the trial court, contended that the acquittal of the respondents is perverse and based on conjectures and surmises, resulting in flagrant miscarriage of justice and that the impugned judgment cannot be sustained in law. The learned counsel vehemently argued that the trial court had turned a blind eye to the testimonies of PW-1 Vijay Rajoura, PW-2 Dr. Om Prakash Rajoura, PW-15 Dalip Singh Rajoura, PW-22 Manoj Kumar Rajoura (brothers of the deceased).
6. The learned counsel for the appellants also contended that the trial court gravely erred in appreciating the admitted facts of the case and the evidence adduced in support of the same. Further, he submitted that PW-23 i.e. Savita Sagar (colleague of the deceased) is an independent and reliable witness as she was a close confidant of the deceased, who used to narrate the cruelties faced by her on a daily basis.
7. Lastly, the learned counsel for appellants submitted that the recovered suicide note cannot be treated as a dying declaration.

8. The learned counsel for appellants in support of his contentions relied upon the decision of the Hon'ble Supreme Court in ***Naresh Kumar v. State of Haryana & Ors.*** reported in **2014 (4) RCR (Criminal)**. The relevant para is as under:

“10. We may now refer to the suicide note. It, inter alia, states:

“All the doors are closed for me. Besides this, no other way is available to me and I adopted the way which I liked.”

The tenor of the suicide note clearly shows that the deceased was in helpless condition and she found no other way to come out of the situation. The suicide note cannot be taken to be encyclopaedia of the entire situation in which the deceased was placed. It is not possible to infer from the said note that the deceased was happy in her matrimonial home. Mere mention that nobody may be held responsible, while also stating that all the doors were closed for her and she had no other way available (except to leave the world), is not enough to exonerate the Appellant. When a young married girl finds herself in helpless situation and decides to end her life, in absence of any other circumstance, it is natural to infer that she was unhappy in her matrimonial home. A suicide note cannot be treated as conclusive of there being no one responsible for the situation when evidence on record categorically points to harassment for dowry. One cannot lose sight of the fact that unfortunately the menace dowry deaths still exists in our society and has been subject of expert studies. The Law Commission, in its 91st Report dated 10th August, 1983, recommended reform of the law to deal with the situation which led to incorporation of Sections 304B in Indian Penal Code, making 'dowry death' an offence and Section 113B in the Evidence Act which provides for raising a presumption

*as to dowry death in case of an unnatural death within seven years of marriage when it is shown that a woman was subjected to harassment for dowry soon before her death. These aspects have been considered by this Court in **Hira Lal and Ors. v. State (Govt. of NCT) Delhi, 2003(3) R.C.R.(Criminal) 830 : (2003) 8 SCC 80** and other judgments.”*

9. Reliance was also placed by Mr.Dharmender Kumar on **State of U.P. v. Damodar & Anr.** reported in **2015 (4) Crimes (122) SC**, wherein the Hon’ble Supreme Court held as under:

“10. In our considered view the approach of the High Court in the instant case was completely incorrect. The order does not indicate that it considered the evidence led by the prosecution. To say the least, it appears improbable that a person as a result of falling of a lamp on the mattress could be reduced to the status of 100 per cent burns. Even if he was asleep, the normal reaction of such person and the other inmates of the house would be to douse the fire. Therefore the matter had to be considered whether the death occurred in suspicious circumstances or not. The statement "jo hona tha ho gaya" attributed to Sunita is not indicative that whatever happened was a pure accident. We are conscious that the appeal itself was of the year of 2003 and left to ourselves, we would have gone into the matter and considered the merits. However, leave to appeal having been dismissed without even issuing notice to the other side, screening of the material and consideration of rival submissions at the appellate stage stood completely denied.

11. In the circumstances we set aside the order passed by the High Court and remit the matter to the High Court, which may be considered afresh. We request the High Court to dispose of the same as expeditiously as possible.

We may not be taken to have expressed any opinion on merits of the matter.”

10. The learned counsel for appellants concluded his arguments by relying upon the judgments of the Hon'ble Supreme Court in the case of ***Maya Devi & Anr. vs. State of Haryana*** reported in **2015(4) Crimes 572 (SC)** and ***Kirender Sarkar & Ors. v. State of Assam*** reported in **AIR 2009 SC 2513**. Reliance was also placed on a decision of this Court in the case of ***Ravi Prakash @ Ravi v. State (Govt. of NCT, Delhi): 2013 X AD (Delhi) 277***.
11. Before we dwell into the factual aspects, it would be relevant to reproduce Section 498A and Section 304B of the Indian Penal Code:

"498A - Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this Section, "cruelty" means-

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

304-B - (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. Under Section 498A, cruelty can be of two types. Firstly, wilful conduct of a nature which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Wilful conduct can be both mental and physical but it must relate to a woman. Secondly, cruelty can also mean harassment with a view to coercing her or any person related to her to meet unlawful demand of any property or valuable security or on account of her failure or of any person related to her to meet such demand. The second aspect is relatable to property, and should be with a view to coerce her or any other person related to her to meet any unlawful demand of property or valuable security. Further, the harassment should be on account of her failure or failure of any other person related to her to meet the said demand.

13. To prove the accusation against a person for the offence of dowry death, the prosecution is obliged to prove that:
- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
 - (b) such death should have occurred within 7 years of her marriage;
 - (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
 - (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
 - (e) the deceased should have been subjected to such cruelty or harassment soon before her death.
14. It is in evidence that the marriage of the respondent Ram Avtar and the deceased was solemnized on 17.05.2011 and the death of the deceased took place on 02.01.2013 i.e. within seven years of marriage. Hence, two ingredients of Section 304B of the Indian Penal Code are satisfied as it is not in dispute that firstly the death of the deceased was within seven years of her marriage and secondly the death of the deceased was otherwise than under normal circumstances.
15. Now, the questions we need to ponder upon are as to:
- 1. Whether the deceased was subjected to harassment or cruelty at the instance of her husband or any relative of her husband?
 - 2. If answer to the first question appears to be in affirmative, whether that harassment or cruelty was in connection with the demand of dowry?

3. Whether such cruelty or harassment has been subjected to soon before death?

16. The answer to the first two questions appears to be inextricably linked with the third question. The entire case of the prosecution rests upon the testimonies of PW-1, PW-2, PW-15, PW-22 (brothers of the deceased), PW-23 Savita Sagar (colleague of the deceased), PW-4 Sh. Ved Singh (neighbour) and PW-5 Harbhajan Singh (landlord).
17. In order to prove that the deceased was subjected to harassment and cruelty in connection with the demand of dowry “soon before her death” the testimony of PW-23 (colleague of the deceased) assumes importance. PW-23 Savita Sagar is an independent witness and deposed as under:

“After about three months of her marriage Savitri told me that her in laws had taken Rs.2.5 lacs to 3 lacs as a loan for the marriage expenses. She also told me that her in-laws were demanding her salary prior to the marriage to pay the loan. She also told me that her husband used to tell her that her husband love the money and not to her. She also told me that her husband told me that “tere se shaadi karke me ghate me raha tere se achche rishte aa rahe the”

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While she was three months pregnant she was beaten by her husband and some tension arose in her family on the financial matter and on the issue of marriage of her devar of Savitri. She told me that she want to make complaint to the police but I made her again understand not to make the complaint so early.

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In the month of December there was a Pooja in the parental house of Savitri and her inlaws were invited with Savitri but her inlaws did not permit her to attend the said pooja. She told me before the Pooja that her husband had stated to her that if you go to attend the Pooja you have to bring FDRS, pass book and statement.”

18. However, PW-23 in her cross-examination stated as under:

“I never had any talk with the family members of Savitri and therefore, I did not tell all these facts to them. No body asked me to give the statement. After the death of the deceased I approached to one of my colleague namely Aadarsh and got the telephone no. of the deceased’s brother Manoj. Thereafter I talk to Manoj telephonically and informed him about the facts and also told him that I do not want to go to police station. Thereafter I went to the house of the Manoj where I met with the Inspector who had heard our statement separately.”

19. Keeping in view the testimony of PW-23, she being a close confidante of the deceased was aware of all the alleged atrocities and cruelties that the deceased was going through since the beginning of her marriage i.e. around August, 2011. In such a situation, PW-23 chose not to make any complaint or even tell the family members of the deceased till the very end. PW-23 admits that she never spoke to the family members of the deceased, which raises doubts as to the reliability of PW-23 as a witness.
20. Now, dealing with the testimonies of the interested witnesses i.e. the brothers of the deceased PW-1, PW-2, PW-15 and PW-22, who have deposed on the similar lines. According to their testimonies, the ATM

cards of the deceased were already with them as the deceased had handed over such documents to them in December, 2012. Despite their statements on record they claim that it was respondent Ram Avtar who withdrew Rs. 10,000/- after the death of the deceased on 07.01.2013 by using her ATM card. The brothers of the deceased categorically deposed that there were 5 FDR's that were encashed before the date of maturity however, they were never produced before the trial court. Furthermore, the testimony of DW-9 Pushpinder Kaur who used to board the cab together with the deceased deposed before the court as under :

“In November end or December 2012 she started keeping quiet. On inquiry she told that she is having tension of Baby. When we all asked she told that she had already given a Bayana for purchase of house but now her brother to whom she had lend some money are not returning the amount on one pretext or the other and if that amount is not returned the Bayana/ earnest amount will be forfeited.”

21. Therefore, we are inclined to draw an adverse inference in light of the contradictions in the deposition of the brothers of the deceased, PW-23 and testimony of DW-9.
22. As far as the testimonies of the independent witnesses are concerned, the testimonies of PW-4 Ved Singh (neighbour), PW-5 Harbhajan Singh (landlord), PW-6 Babu Lal Bagri (mediator) and PW-7 (landlady) are relevant to discuss.
23. PW-4 Sh. Ved Singh (neighbour) testified that mother-in-law of the deceased met him on 02.01.2013 and told that her daughter-in-law got electrocution in the bathroom and the door is locked from inside. PW-

4 deposed that he tried to open the door but failed. Thereafter, he brought an iron rod from the basement of his shop and broke open only a piece of the door. PW-4 further deposed that he saw wife of the respondent Ram Avtar hanging with the window and tied from cloth. He deposed that mother-in-law asked him to cut down the cloth but he refused on which she brought knife from the kitchen and cut the chunni.

24. PW-5 Harbhajan Singh (landlord) deposed before the court as under :

“I had never heard any voice of Ram Avtar and his late wife. They both had residing in a very peaceful manner. I was never informed by any one in the locality about the quarreling of Ram Avtar and his late wife.

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I was never heard any exchange of hot word between the mother in law and the deceased vise versa. It is correct that mother in law and the deceased were also used to live in a very peaceful manner.”

25. PW-7 Paramjit Kaur (wife of the landlord) deposed on the similar lines as deposed by PW-5.
26. PW-6 Babu Lal Bagri (mediator in the marriage) also deposed to the effect that he was in touch with both the families and that he had never heard of any harassment, ill treatment or torture meted out to the deceased at the instance of the respondents.
27. After perusal of the afore mentioned testimonies, we have found that the respondent Ram Avtar and the deceased had cordial relations between them. It is in evidence that the above discussed witnesses never heard any quarrel or even exchange of hot words between them. Furthermore, the testimony of PW-6 is more relevant as he is neutral

to both the parties and was instrumental in the marriage of the deceased with respondent No. 1. and cannot be discarded.

28. It is further in evidence that one suicide note was recovered from the spot, wherein no allegations were raised against the respondents and the deceased specifically mentioned that she is ending her life and no one is responsible for this act. The deceased, in the said note, does not disclose any dowry demand or harassment meted out to the deceased at the instance of the respondents. Before commenting on this, it would be relevant to discuss the relevant law on this aspect.

29. Section 32 of the Indian Evidence Act reads as under:

“32. Statements, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expenses which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

30. On the issue whether a suicide note can be treated as a dying declaration, this Court in ***Smt Rani & Anr. Vs. State*** reported in ***1996 Cri LJ 1026***, made the following observation:

*“4. Another fact to be noticed is that while the husband and the deceased were living in Madangir area, the sister of the husband was living with her husband at Rajpur Road and there is a considerable distance to be commuted from Rajpur Road to reach Madangir and it is not convenient to commute that distance very frequently. All the allegations against the present petitioners leveled by the mother and aunt are quite vague and do not give any date or the nature of any demand for dowry. The requirement of the provisions of law is that the deceased should have been subjected to such cruelty and harassment for demand for dowry before her death and not a vague stray taunt for bringing less dowry. **A taunt for not bringing dowry is quite distinct from demand for dowry.** There is no mention of demand for dowry by the petitioners in the dying declaration. There is no material on record against the petitioners about demand for dowry. I am of the opinion that when there are two versions available, one is narration from the deceased on what happened to her, and the other is the version of aunt and mother, which was recorded in the course of investigation subsequent to the death. The version contained in the dying declaration cannot be relegated to a place inferior to that of aunt and mother, at least at this early stage of the case. Cause for death is suicide admittedly and cause for suicide has been disclosed in the dying declaration, wherein only the husband Ganesh has been mentioned and there is no mention therein of any role having been played by the present petitioners. The death had taken place at the residence of the deceased's parents. The possibility of the mother and aunt exaggerating the facts in their version cannot be ruled out. Their version is vague and lacks any specific particulars. For these reasons, their version does not merit any preference over the dying declaration.”*

31. Similarly, a division bench of this Court in ***Sudhakar Singh vs. State*** reported in **2014 (3) JCC 1943**, observed as under:

“13. The aforesaid fact that the suicide note was found under the pillow should be accepted in view of the statement of PW-16, which is corroborated by the contemporaneous report (Exhibit PW-16/A). It is obvious that after the note was found, it had to be preserved. Reliance placed by the counsel for the appellant-Sudhakar on the testimony of PW-18 Head Constable Ramji Lal does not propel us to accept the argument that the suicide note was possibly written much earlier in point of time or was found in the diary itself. PW-18 Head Constable Ramji Lal had reached the spot after receiving copy of DD No. 38B (Exhibit PW-18/A) dated 19th December, 1989. Upon reaching the spot, PW-18 had noticed that a diary was lying on a table in the room. The Investigating Officer, i.e., PW-18 opened the diary and found suicide note written by hand available in the said diary. IO recorded statement of Om Prakash (PW-5), who had come on the spot. It is apparent that after the suicide note was recovered and the diary was noticed, the diary and suicide note were kept on the table. DD No. 38B dated 19th December, 1989 was recorded at 3.47 P.M. whereas the crime team led with SI Devinder Singh (PW-16) had reached the spot earlier. Crime team report (Exhibit PW-16/A) mentions period of inspection as 4 to 5.15 P.M. and it is specifically recorded that the suicide note was lying beneath the pillow lying on the bed. It was in two pages and written in red ink and the diary from which the pages were torn was also found along with the pen refill used for writing the suicide note. It is, therefore, clear to us that the suicide note was written immediately before the death. The deceased had torn two pages from the diary and had written the said note in red ink, signifying blood and death. As noticed above, the deceased had died by hanging herself from a ceiling fan after standing on a stool, which was kept on the bed. It was a deliberate act. The suicide note, therefore, has been rightly treated and regarded as a "dying declaration" of the deceased. The handwriting of the

deceased on the said note was identified by Om Prakash (PW-5), brother of the deceased.”

32. In light of the above discussed law and applying the same to the facts and circumstances of the present case, we hold no infirmity in treating the said suicide note as a dying declaration. There is no material available on record to rebut the same.
33. In ***State of Rajasthan Vs. Raja Ram*** reported in ***AIR 2003 SC 3601*** the Hon’ble Supreme Court held as under:

“7. There is no emerge 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 no 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 re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by 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, it is a compelling reason for interference.”

34. Keeping in view the aforesaid settled law as discussed above and after perusal of the testimonies available on record, we are of the view that in the instant case, the ingredients of Section 498A and 304B of the Indian Penal Code are not established beyond all reasonable doubts against the respondents. We hold no infirmity in the view taken by the trial court and hence, interference with the findings of the trial court is not warranted. Accordingly, present leave petition stands dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

APRIL 26, 2016

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