

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

**+ CRL.L.P. No.574/2016**

**Date of Decision: 22.11.2016**

STATE (NCT) OF DELHI

..... Petitioner

Through

Ms.Aashaa Tiwari, APP for State.  
With SI Kamlesh, PS Ambedkar  
Nagar

Versus

MANOJ KUMAR @ LALA & ORS.

..... Respondents

Through None.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**GITA MITTAL, J (Oral)**

**CRL. M.A. 16827/2016**

1. The petition is accompanied by an application seeking condonation of delay of 55 days in filing the leave petition.
2. For the reasons stated in the application, we are satisfied that the petitioner was prevented from sufficient cause in filing the leave petition belatedly. The delay of 55 days in filing the leave petition is, therefore, hereby condoned. This application is allowed.

**CRL.L.P. No.574/2016**

1. By way of the present petition, the petitioner has sought leave to appeal against a judgment dated 19<sup>th</sup> April, 2016 whereby four persons, namely, Manoj Kumar @ Lala (Husband), Mrs.Meena (mother-in-law), Ms.Barkha and Ms.Alka (Sisters-in-law) were granted benefit of doubt and acquitted of the charges under Section 498A/304B/34 IPC which stood framed against them.
2. We have heard learned Additional Public Prosecutor for the State on this petition and have carefully perused the record of the trial court placed before us.
3. The factual matrix giving rise to the present petition is within a narrow compass. The deceased Anita was married to Manoj @ Lala on 28<sup>th</sup> September, 2011 as per Hindu rites and customs. From their wedlock, the couple was blessed with a female child. On 5<sup>th</sup> March, 2013, Manoj found Anita unconscious in her room and rushed her to the Saket City Hospital in a critical condition. Anita, unfortunately, expired in hospital on 6<sup>th</sup> March, 2013.
4. Inasmuch as the hospital opined that the death was on account of consumption of the poison within 16 months of the marriage, the matter was brought to the notice of the police. FIR No.103/2013 came to be registered on 7<sup>th</sup> March, 2013 by the Police Station Ambedkar Nagar under Section 498A/406/304-B/34 IPC which was logged as DD No.45A time 20:40 hours.

5. During the investigation, the petitioner recorded the statements of the parents of the deceased, namely, Dharamwati (Mother) and Brahmjit (Father). Placing the reliance on the statements of the parents of the deceased, a charge sheet against the husband (Manoj), mother-in-law (Meena) and sisters-in-law (Barkha and Alka) was filed under Section 304B/498A/406/34 IPC in court. By an order dated 3<sup>rd</sup> July, 2013, the case was committed by the Metropolitan Magistrate after compliance of Section 207 of the Cr.P.C. A charge was framed by the Sessions Court under Section 498A/304B/34 IPC.
6. The prosecution examined 29 witnesses in support of its case. The evidence which came on record against the respondents was put to them under Section 313 Cr.P.C. in which they controverted the evidence and claimed innocence. All the respondents in their statements stated that the deceased had been a strong headed person and stubborn in nature.
7. So far as the circumstances in which she would have consumed the poison are concerned, the respondents had explained that on 13<sup>th</sup> March, 2013, the deceased wanted to accompany her family to Agra to attend a marriage at her maternal uncle's place. Her husband Manoj – the respondent No.1 who was working as a Class-IV employee at the All India Institute of Medical Sciences, had told Anita that he got his salary only around 7<sup>th</sup> day of the month and consequently, they would go after receipt of his salary. This had infuriated the deceased and led to Anita consuming the poison out of anger.
8. The respondents led evidence in defence and examined four

witnesses, namely, DW-1 Mahesh, DW-2 Reena, DW-3 Abhay Singh and DW-4 Vijay Kumar Jha.

9. After considering the entirety of the material placed before him, by the judgment dated 19<sup>th</sup> April, 2016, the learned trial Court came to the conclusion that there was no credible evidence of demand of dowry before or at the time of marriage.
10. The learned trial Judge also noted that the only allegation of a demand of dowry which was made by the parents of the deceased related to the demand of a Motorcycle and Rs.50,000/-.
11. There was no reference at all to the demand of Rs.50,000/- and a motorcycle in the first statements of Anita's parents recorded before the Executive Magistrate on 7<sup>th</sup> March, 2013.
12. The statement to this effect made in the witness box was held to be not only a material improvement over their previous statement but also disbelieved for the reason that Anita's mother Dharamwati, as PW-4, testified that the husband Manoj already had more than three motorcycles and two cars.
13. We are of the view, that the trial Court has rightly held that the prosecution has miserably failed to establish a case under Section 498A IPC.
14. The trial Judge has also noted that deceased was given best medicare at the time of the child delivery. It is recorded that Anita was also given best possible treatment at the Saket City hospital which fact also would not support the culpability of the respondents in the commission of the offence.

15. Ms. Aashaa Tiwari, learned APP for the State has taken us through the record and we find that it stands established on record that the deceased was living with her husband and child in a nuclear family, independent of the in-laws. The implication of the in-laws has been found to be unjustified.

16. The judgment assailed by way of the instant petition shows a careful discussion of the statutory provisions including Section 113B to the Evidence Act that brings in a presumption when an unnatural death of a married woman takes place within seven years of her marriage and it is shown that she was subjected to cruelty and harassment in connection with dowry by her husband or relatives for dowry soon before her death. Only then would the commission of the offence under Section 304B would be presumed. In the present case, the trial Court has found that the prosecution has completely failed to establish that the husband or his relatives ever demanded dowry or that they treated the deceased with cruelty and harassment at any point of time. On account of the evidence placed before it, the learned trial court has held that the deceased was given the best treatment ever possible. It cannot be disputed that the deceased Anita died an unnatural death within seven years of the marriage, however, that by itself is not sufficient to attract the applicability of the presumption under Section 113(B) of the Evidence Act or could enable the Court to find respondents guilty of commission of the offence under Section 304B.

17. No material has been placed before us which would enable us

to take a view contrary to the discussion and the findings returned by the Trial Court in para 24 of the judgment.

18. In view of the above, this leave petition is dismissed being devoid of any merit.

**GITA MITTAL, J**

**NOVEMBER 22, 2016**

**ANU MALHOTRA, J**

**SV**