

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRIMINAL LEAVE PETITION No. 535/2015**

% *Date of decision : 4th February, 2016*

STATE

..... Appellant

Through : Ms. Anita Abraham, APP for the State with
Inspector S. P. Singh, Police Station-
Karawal Nagar.

versus

MANOJ & ORS.

..... Respondents

Through : Mr. Dinesh Garg, Advocate along with
respondent No. 1 in person.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

1. The present Criminal Leave Petition has been filed under section 378 of the Code of Criminal Procedure by the State seeking leave to appeal against the impugned order dated 08.01.2015 passed by the learned Additional Sessions Judge, North-East, Karkardooma Court, Delhi in Sessions Case No. 24/13.
2. The case as set up by the prosecution is that on 30.03.2013 DD No. 34/A was registered at Police Station - Karawal Nagar and was assigned to ASI Ashok Kumar who reached the spot and found a lady hanging from the ceiling fan. Concerned Station House Officer and Sub Divisional Magistrate were informed about the incident. Crime Team reached at the spot. On the direction of Sub Divisional

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Magistrate dead body of the deceased was sent for postmortem. Father of the deceased was also informed. On 31.03.2013, Sub Divisional Magistrate recorded the statements of the parents of the deceased wherein they held the accused persons responsible for the death of the deceased for non fulfillment of the demand of dowry. On 01.04.2013 postmortem on the body of the deceased was conducted and doctor opined that the cause of death was due to "*Asphyxia as a result of ante mortem hanging.*"

3. After the investigation that followed the complaint, police filed a charge sheet under Section 498A/304B read with Section 34 of the Indian Penal Code. Respondents pleaded not guilty and claimed trial to the charges framed against them.
4. The prosecution examined as many as 14 witnesses to bring home the guilt of the accused persons. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure wherein they denied the accusations levelled against them. One witness was examined in defence. The learned Trial Court eventually came to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubts and accordingly acquitted the accused persons.
5. Aggrieved by the acquittal of the accused persons, the present leave petition has been preferred by the State.
6. Ms. Anita Abraham, learned counsel for the State opened her arguments by contending that the impugned judgment is contrary to the material available on record and the same is based on

presumptions, conjectures and surmises and is in gross ignorance of settled law laid down by the Hon'ble Supreme Court in various cases and is liable to be set aside. She further submits that since the prosecution has been able to prove that the deceased had been subjected to not only demand of dowry but also cruelty soon before her death, however, the learned Trial Court has erred in acquitting the accused persons for the offences for which they have been charged. Reliance has been placed upon *Pradip Singh & Anr. Vs. State of Jharkhand* reported in *AIR 2007 SC 2154*.

Learned counsel further contends that it is a fit case where the respondents are liable to be convicted under Sections 304B and 498A of the Indian Penal Code. She further contends that the Trial Court committed a grave error in not considering the testimonies of the witnesses regarding the demand of dowry made by the respondents and commission of cruelty and torture against the deceased on account of non-fulfilment of the dowry demand. She further contends that the testimonies of the witnesses are reliable and truthful and that there was no apparent reason for false implication of the accused persons.

7. Mr. Dinesh Garg, learned Counsel for the respondents with all force countered the arguments addressed by learned counsel for the State. He has specifically contended that the Trial Court has appreciated the material on record by taking care and caution by giving equal importance to the evidence of the prosecution witnesses and also the defence witness. The trial Court has also appreciated the evidence

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considering the improvements and contradictions which are serious in nature elicited during the course of cross examination of the witnesses proved through the evidence of other witnesses. Reliance has been placed upon *Sunil Kumar Sambhudayal Gupta Vs. State of Maharashtra* reported in 2010 (4) JCC 3040 SC.

8. Mr. Garg has supported the impugned judgment and submitted that the Trial Court has rightly canvassed the acquittal of the accused persons by concluding that the prosecution failed to prove its case beyond reasonable doubt. Mr. Garg further submits that while dealing with the judgments of acquittal, the Appellate court must be very careful in reversing the judgment unless the judgment of the trial Court is so erroneous, illegal and it bites the conscience of the court. Therefore, he contended that there is no room for this court to interfere with the well-reasoned judgment of the trial Court. Hence, he has pleaded for confirmation of the said judgment of acquittal passed by the learned trial Court. He placed reliance upon *V. N. Ratheesh Vs. State of Kerala* reported in 2006 CrL L.J. 3634 and *Kallu @ Masih Vs. State of MP* reported in 2006 (1) Crimes 1 (SC).
9. Mr. Garg further argued that the prosecution has utterly failed to prove its case against the respondents. He further submitted that there was no demand for dowry by the respondents at any point of time and the prosecution has failed to prove that the deceased was subjected to cruelty or harassment by the respondents in connection with demand of dowry. The prosecution has utterly failed to establish the ingredients of Section 304B and 498A of the Indian Penal Code

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against the respondents and the appellants cannot be convicted on the basis of suspicion or imagination.

10. We heard learned counsel for the parties at length and also perused the impugned order as well as material available on record.
11. At the outset, before delving into the merits of the case, we deem it appropriate to discuss the relevant provisions which are involved in the present case. Section 304B reads as under:

304-B - 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. The legal position with regard to Section 304B of the Indian Penal Code has been reiterated by Hon'ble Apex Court recently in *Maya Devi & Ors. Vs. State of Haryana reported in 2015 (13) SCALE 336*, wherein it has been held that :

"16. To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in

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Section 304B Indian Penal Code and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned senior Counsel appearing for the Appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

17. The aforesaid provisions were considered by this Court in *Bansi Lal v. State of Haryana : (2011) 11 SCC 359* wherein it was held that while considering the case Under Section 304B cruelty has to be proved during the close proximity of the time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. This Court further held that where the cruelty has been proved during the close proximity of the time of death then the provisions of Section 113B of the Indian Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. In paras **19 and 20** of the judgment, this Court has further held as follows:

19. It may be mentioned herein that the legislature in its wisdom has used the word "shall" thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relating to Section 304-B Indian Penal Code, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression "soon before her death" has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.

18. This Court, in *Mustafa Shahadal Shaikh v. State of Maharashtra* : (2012) 11 SCC 397 held as under:

9. In order to convict an accused for the offence punishable Under Section 304-B Indian Penal Code, the following essentials must be satisfied:
(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
(ii) such death must have occurred within seven years of her marriage;
(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;
(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

10. When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. If the abovementioned ingredients are attracted in view of the special provision, the court shall presume and it shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of the prosecution witnesses or by adducing evidence on the defence side.

11. To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304-B Indian Penal Code and Section 113-B of the Evidence Act is present with the idea of proximity test. In

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fact, the learned Counsel appearing for the Appellant submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. These principles have been reiterated in *Kaliyaperumal v. State of T.N. and Yashoda v. State of M.P.*"

13. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B of the Indian Penal Code. In order to seek a conviction 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) To such cruelty or harassment the deceased should have been subjected to soon before her death.

14. In the instant case, two of the ingredients of Section 304B of the Indian Penal Code are answered in the affirmative firstly the death of the deceased was within seven years of marriage and secondly the death was otherwise than under normal circumstances. Thus, we are left to find out whether the respondents treated the deceased with cruelty or harassment on account of demand of dowry.
15. In order to prove that the deceased was subjected to harassment and cruelty in connection with demand of dowry "soon before her death", the prosecution primarily relied on the evidences of PW1 (father of the deceased) and PW2 (mother of the deceased) to establish its case. In the light of testimonies of these two witnesses, we will now examine whether such allegations stand proved by the prosecution.
16. PW1 Ram Niwas (father of the deceased) in his statement recorded by

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Sub Divisional Magistrate on the next day of incident stated that the marriage of the deceased was solemnized with accused No. 1 on 20.06.2011 and no demand was raised by the accused persons at the time of marriage and he gave articles out of his own sweet will. He further stated that after 2-3 months of the marriage accused persons started harassing the deceased for bringing less dowry. He also disclosed that in January, 2012 Omwati, mother of accused No.1 demanded Rs.2,00,000/- for meeting the expenses for the marriage of her daughter.

When examined in Court, this witness did not dispute the marriage of the deceased with accused No. 1 on 20.06.2011 and that there was no demand of dowry at the time of marriage. He further deposed that soon after marriage, her husband, mother-in-law and sister in law (*Nanad*) started taunting the deceased for bringing insufficient dowry and pressurized her with a demand of Rs.2 lakh which fact she communicated to him in January, 2012.

On the other hand, when subjected to cross examination this witness deposed :

"I had stated to the SDM in my statement that the accused used to demand money from my daughter.

(Confronted with Ex.PW1/A where it is not so recorded.)

I had also stated to the SDM in my statement that they used to beat my daughter Neetu and she was being pressurized to bring money from me and that the demand of Rs.2 lacs was raised by her husband and her sister in law and that this fact was conveyed to me in the month of January, 2012 when my daughter was dropped at my home by mother in law or that her mother in law told me that in case I wanted to see my

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daughter happy then I should give Rs.2 lacs.

(Confronted with Ex.PW1/A where it is not so recorded.)

I had also stated in my statement to the SDM and in my statement under Section 161 Cr.PC that my daughter had also conveyed the above said fact to me when she remained at my house and that in the month of March, 2012, after the festival of Holi my daughter was again taken to her matrimonial home or that at that time 5-7 persons had come including husband, father in law, mother in law, devar of my daughter and Mause and Mausie of Manoj and that I was assured that my daughter will not be harassed any more.

(Confronted with Ex.PW1/A and Ex.PW1/DA where it is not so recorded.)

I had also stated in my statement to the SDM and in my statement under Section 161 Cr.PC that again my daughter complained to me that she was being harassed by the accused persons for money and that my daughter further complained to me that she was assaulted by accused Manoj in Kalawati Hospital when her baby was being treated in Kalawati Hospital and that about one week of arrival of my daughter at my house, accused Manoj called me and requested that he was coming to my house for taking back Neetu and that he further told me that he was coming to my home for taking his daughter and not Neetu and that I declined and asked her not to come to my house and that accused manoj made a call to my brother in law Hari Kishan and persuaded him.

(Confronted with Ex.PW1/A Ex.PW/DA where it is not so recorded.)

I had also stated in my statement to the SDM and in my statement under Section 161 Cr. PC that on the occasion of Holi festival of 2013, my son Jeetu and my younger brother Pramod visited the matrimonial home of Neetu but they were not allowed by her in law to meet with Neetu and that my son Jeetu and brother Pramod informed me on their return, that Neetu wanted to say something but they were not allowed to meet Neetu by her in laws.

(Confronted with Ex.PW1/A and Ex.PW1/DA where it is not so recorded.)

I had also stated to the police in my statement that after one or two months of her marriage, the accused persons started harassing my daughter and that they were saying that nothing was given in the marriage of Neetu, neither jewelleary was given nor money was given or quality of clothes was not good.

(Confronted with Ex.PW1/DA where it is not so recorded.)

I had also stated to SDM in my statement that demand of Rs.2 lakh was made by accused Omwati when my daughter was dropped by her at my house in the month of January, 2012.

(Confronted with Ex.PW1/A where it is not so recorded.)

17. PW2 Omwati (mother of the deceased) also made a similar statement to the Sub Divisional Magistrate and to the police under Section 161 of the Code of Criminal Procedure. The testimonies of both the witnesses when examined carefully show that both the witnesses have to a great extent improved their statements and the statements are to be looked into with great caution.
18. To prove the harassment or cruelty meted to the deceased, PW1 and PW2 deposed before the Court that the husband of the deceased gave beatings to her in hospital when the deceased or her baby was being treated. Both the witnesses failed to bring this fact in their statements recorded by Sub Divisional Magistrate and by the police. No complaint whatsoever was lodged against the accused persons on that day or after the alleged incident. Both the witnesses in their statements recorded under Section 161 of Code of Criminal Procedure have stated that on the occasion of Holi, their son Jeetu and younger brother of PW1 Pramod had gone to meet the deceased at her

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Matrimonial Home but the accused persons did not allow them to meet her. The prosecution failed to cite either Jeetu or Pramod as witnesses who could support the fact as stated by PW1 and PW2.

Further, both witnesses deposed that in January, 2013, the husband of deceased along with his parents and *Mausa* Rakesh Kumar came to his house to take the deceased back to her matrimonial home and PW1 called some persons from the neighbourhood and on persuasion sent the deceased to her matrimonial home. It is material to note that prosecution failed to cite any of the person from the neighbourhood as a witness. Further, PW1 categorically stated that "My wife was also aware about the demand of Rs.2 lakh as made by the in laws of my daughter in January, 2012," but PW2 remained silent on this aspect and never stated any such thing to the Sub Divisional Magistrate when her statement was recorded.

19. In our opinion, the court below has properly appreciated the evidence and noticed the glaring improvements made by the witnesses in their evidence tendered before the Court. These improvements in our opinion materially affect the creditworthiness of the prosecution case hence it is not safe to base the conviction on their testimonies from the evidence it is not possible to come to the conclusion that the prosecution has established its case beyond all reasonable doubt in regard to the charges alleged against the accused persons/respondents.
20. So far as drawing of presumption under Section 113-B of the Evidence Act by the learned trial Judge is concerned, the prosecution has failed to prove that a demand of Rs.2,00,000/- was made by the

accused persons and also failed to prove that the deceased was subjected to cruelty and harassment by the respondents for and in connection with the demand of dowry and there is nothing on record to show that deceased was treated with cruelty or harassed with the demand for dowry and in absence of any such evidence, it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act and therefore, in these circumstances, the learned trial Judge was right in not drawing presumption under Section 113-B of the Evidence Act.

21. Keeping in view the above principles laid down by the Hon'ble Apex Court and facts and circumstances of the case, we are of the opinion that the crucial and necessary ingredients of Sections 304-B and 498-A of the Indian Penal Code that the deceased was subjected to cruelty or harassment by the respondents soon before her death for or in connection with the demand of dowry, were not established and proved by cogent and convincing evidence.
22. The law with regard to the 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 plausible. In *Arulvelu and Anr. vs. State represented by the Public Prosecutor and Anr.* : 2009 (10) SCC 206, while referring with approval the earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh* : (2008) 10 SCC 450, the Supreme Court

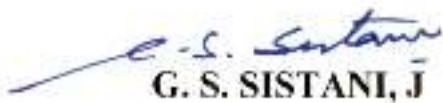
reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:-

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.
3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.
6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellant court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law.

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23. Having regard to the principles laid down by the Apex Court as discussed above, we find that there is no sufficient ground/material for proceeding against the respondents for the offences under Section 498A/304BA/34 of the Indian Penal Code and there is no infirmity in order dated 08.01.2015 passed by the learned Trial Court. Hence, the leave petition stands dismissed.


SANGITA DHINGRA SEHGAL, J


G. S. SISTANI, J

FEBRUARY 4, 2015

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