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

+ **CRL.L.P. 682/2015 & CRL. M.A. 14541/2015**

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*Judgment dated 23<sup>rd</sup> March, 2016*

STATE

..... Petitioner

Through : Ms. Aashaa Tiwari, APP for State with SI  
Ashok Kumar, PS – Fatehpur Beri.

Versus

VIJAY & ORS

..... Respondents

Through : Ms. Rakhi Dubey, Advocate for R 1 to 3.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J (ORAL)**

**CRL.M.A. 14541/2015**

1. By the present application, the petitioner seeks condonation of 4 days' delay in filing the present criminal leave to appeal petition.
2. 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.
3. Application stands disposed of.

**CRL.L.P. 682/2015**

4. Present criminal leave to appeal petition has been filed by the petitioner/State under Section 378(1) of the Code of Criminal Procedure against the judgment dated 30.05.2015 passed by the learned Additional Sessions Judge, Saket Courts, Delhi, by which the respondents herein have been acquitted.
5. As per the case of the prosecution, on 31.07.2011, an information vide

DD No.6A was received in the Police Station Fatehpur Beri pursuant to which W/SI Surekha reached at A545, Sanjay Colony, Bhati Mines where HC Ramphal was already present. W/SI Surekha found dead body of a lady on the bed. Upon enquiry, she learnt that the name of the deceased was Sulena, who was married to respondent no.1 herein, on 08.11.2009. Ligation marks were found on the neck of the deceased. Crime team was called at the spot and the spot was photographed. The concerned SDM was informed about the incident. The dead body of deceased was sent to the mortuary and her *chunni* was seized. The SDM recorded the statements of PW-18, Sanjay Kumar, brother of the deceased, and PW-1, Naukar Ram, father of the deceased. After post-mortem, dead body of the deceased was handed over to the relatives of deceased. PW-18, Sanjay Kumar, brother of the deceased, in his statement has testified to the SDM that his sister was married to respondent no.1 Vijay on 08.11.2009 and they had spent good amount of money as per their status on the marriage. PW-18 also stated that respondents were in debt and they used to demand money from the deceased. On refusal of the deceased to bring money from her parents' house, they used to beat her and throw her out of her matrimonial house. Sanjay Kumar further testified before the SDM that mother-in-law of the deceased i.e. respondent no.3 herein, Parmeshwari, used to abuse the deceased. Sanjay Kumar also alleged that accused Pyarelal, respondent no. 2 herein, who is the father-in-law of the deceased, used to demand jewellery from the deceased so that he could repay his debts. After recording the statement of Sanjay Kumar, the SDM directed the concerned SHO to register a case under

appropriate provisions of law. Thereafter, FIR was registered under Sections 498A/304B/34 IPC. Investigation was handed over to Inspector A.K. Singh, who arrested respondent no.1, Vijay. Since, respondents, Pyarelal and Parmeshwari, were absconding and hiding themselves, non-bailable warrants were issued against them. After completion of investigation, charge sheet was filed in the Court under Sections 498A/304B/34 IPC. Subsequently, respondents, Pyarelal and Parmeshwari, were also arrested and supplementary charge sheet was filed. Respondent no.1, Vijay, was charged under Sections 498A/304-B IPC on 30.11.2011. Respondent no.2 and 3 were charged under Sections 498A/304B/34 IPC on 09.02.2012. Respondents pleaded not guilty and claimed trial.

6. In support of its case, the prosecution has examined 18 witnesses in all. Statements of the respondents were recorded under section 313 of the Code of Criminal Procedure. The respondents pleaded innocence and false implication.
7. Ms.Aashaa Tiwari, learned counsel for the petitioner/state, submits that the trial court has passed the impugned judgment on conjectures and surmises and the impugned judgment is perverse and lacks legality. Counsel further submits that the learned trial court has failed to appreciate the evidence led by the prosecution witnesses in the right perspective. The learned trial court has also failed to appreciate the fact that minor contradictions are bound to creep in the deposition of the witnesses due to the passage of time.
8. Ms.Aashaa Tiwari further submits that the learned trial court has failed to appreciate the fact that there was no reason for the parents and brother of the deceased to falsely implicate the respondents. Ms.Tiwari also contends that the trial court has failed to take into consideration the settled position

of law and has wrongly reached the conclusion of acquittal against the respondents.

9. Based on the aforesaid submissions, learned counsel for the state strongly urged for setting aside the impugned judgment dated 30.05.2015.
10. Ms.Dubey, learned counsel for respondents no.1 to 3, submits that there is no infirmity in the judgment passed by the learned trial court. The trial court has correctly analysed the testimonies of all the witnesses.
11. We have heard the learned counsel for the parties, considered their rival submissions and carefully examined the trial court record including the impugned judgment passed by the learned trial court.
12. The prosecution's version revolves around the testimonies of material witnesses, being PW-1 Naukar Ram, father of the deceased; PW-3, Geeta, step-mother of the deceased; PW-4 Roshan Lal, uncle of the deceased; and PW-18, Sanjay Kumar, brother of deceased.
13. PW-1, Naukar Ram, has testified that his daughter was married to Vijay, respondent no.1, 3-4 years back. He has further deposed that Vijay did not ask for money from him and it is his family members who caused the death of his daughter. He has also deposed that his daughter and son-in-law were living separately from the family members of Vijay. He has also deposed that the deceased told him that Vijay used to harass her and her father-in-law used to abuse her after having drinks. He has also deposed that he was further informed by the deceased that her sister-in-law and mother-in-law also used to quarrel with her. He has further testified that on 31.07.2011 at about 2:30 – 2:35 a.m. he learnt that his daughter had expired. He visited the matrimonial house of his daughter and found her lying dead. PW-1 further deposed that all the respondents ran away from there and the PW-1 made a police complaint. He further added that the dead body of his daughter was identified by him in the hospital.

14. PW-3, Geeta, has testified that Sulena got married with respondent Vijay. She has further testified that during her stay with respondents, they used to give beatings to her and also used to ask her to bring money from her parents' house. She has further deposed that Parmeshwari used to live separately from Sulena and Vijay.
15. PW-4, Roshan, uncle of the deceased, has deposed that on 08.11.2009 Sulena got married with Vijay. He has further deposed that whenever Sulena used to visit him, she used to tell him that she was not given meals thrice in a day by the respondents and PW-4 used to give her some money. He has further added that Vijay used to beat the deceased whenever she visited the house of PW-4. PW-4 also deposed that on the date of incident at about 2-2:30 a.m., Fufa (husband of Father's Sister) of Vijay came to PW-4 and told that something has happened to Sulena and PW-4 informed the father of the deceased. After they reached her house, they found Sulena dead with injury and her broken leg.
16. PW-18, Sanjay Kumar, brother of the deceased, has testified that his younger sister Sulena was married to Vijay on 08.11.2009 and the family of Sulena had given dowry in the form of gold and other articles. He has further deposed that respondents were under some debt. After one year of marriage, the respondents started harassing and putting pressure on the deceased to bring jewellery so that they could sell the same and repay their debts. He has further deposed that when the deceased refused to bring the jewellery or hand over her own jewellery to the respondents, the respondents used to give beatings to her. He has further added that in the month of July 2011, one Kashmiri Lal, neighbour of the respondents, informed PW-4 on phone that Sulena is unwell and he along with others reached the house of respondents at Sanjay Colony, Bhati Mines, and found that his sister had died because of hanging and her body was lying on the

bed. He has further deposed that when he and his family members reached the house of his sister, they found that Sulena was already dead. He has also testified that on asking Vijay about the incident, he showed his ignorance and Pyarelal and Parmeshwari ran away from the spot.

17. In the instant case, there is no dispute that the marriage of Sulena (since deceased) was solemnized with respondent no.1, Vijay, on 08.11.2009. Sulena died on 31.07.2011 otherwise than in normal circumstances and the cause of death was 'asphyxia due to antemortem hanging' at her matrimonial home.
18. While acquitting the respondents, the trial court has taken note of various contradictions made by the witnesses i.e. PW-1, PW-3 and PW-18. In the statement made by PW-1, the trial court has noticed that PW-1 has deposed that it was the family members of Vijay, who caused the death of his daughter, however, he has also deposed that his daughter and his son-in-law were living separately. The trial court has also noticed that PW-1 has failed to explain as to how respondent no.2 and 3 could have harassed or caused death of Sulena when these two were living separately from the deceased and her husband.
19. The trial court has also noticed that even PW-3 has testified in the statement made by her that respondent no.3 used to live separately, which only goes to show that not only Vijay is innocent but respondent no. 2 and 3 have also been falsely implicated.
20. Further, the trial court has also observed a conflict with regard to the presence of respondent no.3 at the spot. It may be noticed that PW-1 has testified that his brother, Roshanlal, forced respondent no.3 to sit and not to run away from the house where the incident took place, whereas PW-5, W/SI Surekha, deposed that the father-in-law and mother-in-law of the deceased were not present at the spot when she reached there. It may also

be noticed that PW-18 has also deposed that respondents no.2 and 3 ran away from the house.

21. The trial court has also noticed that the depositions made by PW-18, Sanjay Kumar, with respect to various facts, are against the record. It may be noticed that the evidence of PW-18 about the harassment of his sister by respondents on account of demand of dowry is hearsay evidence. PW-1, who is stated to have told PW-18, about the demand of dowry by respondents from the deceased, himself deposed that he has no complaint against Vijay.
22. It may further be noticed that the trial court has observed that PW-1, Naukar Ram, in his examination-in-chief did not mention any demand of dowry on the part of respondents and further in his cross-examination PW-1 has testified that the respondents had not made any demand at the time of marriage, however, he volunteered to depose that respondents used to ask for money off and on later on.
23. PW-18 in his cross examination has deposed that jewellery which was locked in a box, whose key was with deceased, was demanded from the deceased by the respondents and when the deceased refused to give the jewellery, she was forced to commit suicide, whereas the respondents had a better option to break the lock than to make the deceased commit suicide. PW-18 has also deposed that the SDM recorded the statement of his uncle, Roshan Lal, whereas SDM nowhere stated that he recorded the statement of Roshan Lal. The testimonies of PW-1, PW-3 and PW-18 show that there are material contradictions and improvements in them.
24. It may further be noticed that the trial court has made an observation with regard to the conduct of parental family of the deceased. The trial court has observed that after the death of the deceased, PW-1 (father of the deceased) and PW-3 (step mother of the deceased), more particularly the step-mother

of the deceased, were not interested in keeping the daughter of the deceased, which shows that the respondents have been falsely implicated by the family of the deceased.

25. The testimonies of the witnesses would further go to show that they do not inspire any confidence in its truthfulness and correctness and, thus, cannot be relied upon.
26. It is well settled that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. The High Court cannot entertain another view that is more plausible. [See *Arulvelu and Anr. v. State*, 2009 (10) SCC 206 and *Ghurey Lal v. State of Uttar Pradesh*, (2008) 10 SCC 450].
27. For the reasons stated hereinabove and having regard to the facts of this case and the reasoning given by the trial court in support of its findings, we find no material irregularity in the impugned judgment, which would warrant any interference by this court in the judgment passed by the learned trial court. Consequently, the criminal leave to appeal petition is dismissed.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**MARCH 23, 2016**

sc/msr