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**IN THE HIGH COURT OF DELHI AT NEWDELHI
+ CRIMINAL LEAVE PETITION No. 703/2015**

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Judgment dated 13th May, 2016

STATE (NCT OF DELHI)

.....Petitioner

Through: Ms. Aashaa Tiwari, APP for the State.

Versus

OM PRAKASH

.....Respondents

Through: Mr. Y. S. Parmar, Advocate.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

Crl. M. A. No. 15877/2015 (Delay)

1. This is an application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure seeking condonation of 127 days' delay in filing the present leave petition.
2. Heard. Delay in filing the present leave to appeal is condoned.
3. Application stands disposed of.

Crl. L. P. 703/2015

4. By the present criminal leave petition filed under Section 378(i) of the Code of Criminal Procedure, the State seeks leave to appeal against the order of acquittal dated 11.03.2015 passed by the learned Additional Sessions Judge – 03, North East, Karkardooma Court, Delhi in Sessions Case No. 2/13.
5. The case of the prosecution in nutshell is that Om Prakash got married with Suman on 08.02.2007. On 01/02.10.2012, accused (Om Prakash)

went to the police station and informed that his wife had hanged herself. On the said information, DD No.4A was recorded by PW7 HC Kamal Singh Negi and assigned to PW10 ASI Yogesh Tyagi, who along with accused and PW9 Ct. Hukam Singh went to H. No. 346, Gali No.1, Phase IV, Shiv Vihar, Karwal Nagar, Delhi and found the dead body of Suman hanging with dupatta with one end of which was tied to the ceiling fan. PW13 Inspector Lekh Raj was informed about the incident, who reached at the spot. Since, it was a case of unnatural death within seven years of marriage, area magistrate was informed by PW13 and crime team was also summoned. Crime team reached at the spot and scene of crime report Ex.PW8/A was prepared and scene of crime was also photographed. The dead body of the deceased was sent to the mortuary of Guru Teg Bahadur Hospital. PW1 Devender Kumar, brother of the deceased was also informed about the incident, who along with PW2, mother of the deceased and PW3, brother of the deceased went to the police station and thereafter to the hospital. Sub Divisional Magistrate recorded the statements of PW1, PW2 and PW3 wherein they held the accused responsible for the death of the deceased. They alleged that the deceased was married to the accused Om Prakash on 08.02.2007 and at the time of marriage they had given gifts and dowry as per their capacity. After marriage, the deceased started living with accused and her in-laws at her matrimonial home at Karawal Nagar, Delhi. The deceased was ill treated by the accused who used to beat her after consuming liquor.

6. On the statement of PW1, FIR Ex.PW4/A was recorded and accused was arrested vide memo Ex.PW1/D. Postmortem on the dead body of

the deceased was conducted wherein Doctor opined that the cause of death was *asphyxia* as a result of hanging. On completion of the investigation, the prosecution filed chargesheet against the accused. Charges under section 498A/304B/306 of the Indian Penal Code was framed against the accused wherein he pleaded not guilty and claimed trial.

7. To bring home the guilt against the accused, the prosecution examined 14 witnesses in all. Statements of accused was recorded under Section 313 of Code of Criminal Procedure by the learned trial court wherein he reiterated his innocence and claimed to be tried and led two witnesses in his defence.
8. Ms. Aashaa Tiwari, learned Additional Public Prosecutor for the State argued that the impugned judgment passed by the learned trial court is not sustainable in the eyes of law as it is based on presumptions, conjectures and surmises and thus the same is liable to be set aside.
9. Learned counsel further argued that PW1 Devender Kumar (brother of the deceased), PW2 Smt. Maya Devi (mother of the deceased), PW3 Amarjeet (brother of the deceased) and PW5 Babu (maternal uncle of the deceased) remained consistent, coherent and trustworthy since the beginning and the trial court failed to take their testimonies in the right perspective. She further argued that minor contradictions/lacunas in the testimonies of the witnesses can not be held to be fatal to the case of the prosecution.
10. On the other hand, Mr. Parmar, learned counsel appearing for respondent supported the impugned judgment passed by the trial court and contended that respondent is innocent and has been falsely

implicated in the present case as prosecution failed to bring forward any material on record to suggest any specific demand of dowry or that soon before her death the deceased was subjected to cruelty or harassment made by the appellant.

11. We have carefully considered the rival contentions raised by learned counsel for the parties and perused the evidence on record and the impugned judgment as well.
12. Before we discuss the evidence adduced by both the parties, we deem it appropriate to discuss the relevant provisions which are involved in the instant case.
13. The appellant was charged with an offence under Section 304B of the Code which clearly spells out the basic ingredients as well as the matters which required to be construed strictly and with significance to the cases where death is caused by burns, bodily injury or the death occurring otherwise than under normal circumstances, in any manner, within 7 years of a marriage. It is the first criteria which the prosecution must prove. Secondly, that '**soon before her death**', she had been subjected to cruelty or harassment by the husband or any of the relatives of the husband for, or in connection with, any demand for dowry then such a death shall be called '**dowry death**' and the husband or the relative, as the case may be, will be deemed to have caused such a death. Explanation to this Section requires that the expression '**dowry**' shall have the same meaning as in Section 2 of the Act. The definition of dowry under Section 2 of the Act reads as under :

In this Act, "**dowry**" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or
(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.--The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

14. The Hon'ble Supreme Court in *S. Gopal Reddy Vs. State of Andhra Pradesh, AIR 1996 SC 2184* has held that "Property or valuable security so as to constitute dowry within the meaning of the Act must, therefore, be given or demanded as consideration for marriage." Therefore, the term "consideration" assumes importance because if any article is not given as a consideration for marriage, then it would not be covered with definition of dowry. The term "**Dowry**" was dealt with by Supreme Court in other cases as well. In *Appasaheb & Anr. Vs. State of Maharashtra* reported in *2007 (1) Crimes 110 (SC)*, Hon'ble Supreme Court as held as under:

"9. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking

of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. Demand for dowry is not established the conviction of the appellants cannot be sustained."

15. To convict a person under Section 304B Indian Penal Code, the following essential ingredients are to be established:
- (i) *The death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';*
 - (ii) *Such a death should have occurred within seven years of her marriage;*
 - (iii) *She must have been subjected to cruelty or harassment by her husband or any relative of her husband;*

(iv) *Such cruelty or harassment should be for or in connection with demand of dowry and*

(v) *Such cruelty or harassment is shown to have been meted out to the woman soon before her death.*

16. From the above, it is clear that 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the Muslim Personal Law. The expression 'in connection with the marriage' cannot be given a restricted or a narrower meaning. The expression 'in connection with the marriage' even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offended at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.
17. It is an admitted case of the parties that the deceased was married to respondent on 08.02.2007 and she died within seven years of her marriage i.e. on 01/02.10.2012 in an unnatural circumstances. The question therefore arises is whether the respondent made any demand for dowry and subjected the deceased to cruelty or harassment for or in connection with such demands.
18. To answer the aforesaid question, it is necessary to examine the testimonies of material witnesses examined by the prosecution more

particularly PW1 Devender Kumar (brother of the deceased), PW2 Smt. Maya Devi (mother of the deceased), PW3 Amarjeet (brother of the deceased) and PW5 Babu (maternal uncle of the deceased).

19. Maya Devi, mother of the deceased in her complaint Ex.PW1/A stated that on 08.02.2007 her daughter (Suman) married accused. After marriage, her daughter disclosed that accused used to give her beatings. She further stated that accused demanded money from them and she gave Rs.1,00,000/-. Accused had illicit relations with his sister-in-law (*bhabhi*). The deceased remained in her parental home for about one year. A *Panchayat* was held to resolve the dispute and thereafter accused started residing with the deceased but the behaviour of the accused did not change.

20. Maya Devi stepped into witness box as PW2 and deposed :

"My daughter Suman was not being treated well at her in-law house. Om Prakash used to consume liquor and beat my daughter. Om Prakash used to demand dowry. Once he demanded a motorcycle. I am poor person and has no capacity to fulfill the demand of Om Prakash. At the time of marriage there was no demand of dowry by Om Prakash, but subsequently he started raising demand. On one occasion I had given Rs.1,00,000/- in cash to accused Om Prakash at his house. It was Monday when Rs.1,00,000/- was given to accused at his house prior to the birth of Anshika to Suman."

21. Devender Kumar, brother of the deceased was examined as PW1 and he deposed on oath before the Court that deceased was her sister and she was married to accused on 08.02.2007 gifts and dowry were given to his sister as per their capacity at the time of marriage. He further

stated that accused used to give beatings to the deceased and they reported the matter to the *Panchayat*. The matter was pacified by the *Panchayat* and accused assured not to ill treat the deceased but accused did change his behaviour. He further deposed that in the year 2009, PW2 gave Rs.1,00,000/- to accused for running his shop.

22. Amar Jeet Singh, brother of deceased was examined as PW3 and he deposed on the lines of PW1.
23. Babu, maternal uncle of the deceased was examined as PW5 and he deposed that accused used to assault Suman after consuming liquor. He further deposed that a *Panchayat* was called to settle the matter between the accused and the deceased but the behaviour of the accused remained same towards the deceased.
24. From the testimonies of above material witnesses, it has emerged on record that the family of the deceased belongs to a weak strata of society and no demand was made by the accused and his family members prior to the marriage. PW1, PW2 and PW3 have consistently deposed about the accused committing cruelty upon the deceased after consuming liquor and gave her beatings but admittedly they had not lodged any complaint to the police regarding this cruelty. Though, PW1 had stated that he had made a call to 100 number and the accused sought pardon before the police and matter was resolved but prosecution failed to adduce any record to establish the stand taken by the witnesses.
25. The claim of PW1, PW2 and PW3 that they gave Rs.1,00,000/- to accused for running his shop also does not find support from any material on record. The money was allegedly withdrawn from the

bank accounts of PW2 and PW3 but nothing has been brought on record to suggest that any such transaction was made by these two witnesses.

26. During deposition before the court, PW2 and PW3 deposed that once, the accused demanded a motorcycle but they could not fulfill this demand as they were poor person. According to PW3, the demand of motorcycle was raised after 3-4 months of the marriage i.e. June/July, 2007 and the alleged amount of Rs.1,00,000/- was given to the accused in the year 2009. We are in consonance with the view taken by the trial court that :

"38.PW2 had stated that as she was very poor, she could not fulfill the demand of motorcycle as raised by the accused. That being the case, it is highly improbable that she could have fulfilled the demand of Rs.1,00,000/- which was more than the cost of a motorcycle."

27. According to PW1, PW2, PW3 and PW5, accused used to beat and harass the deceased and a Panchayat was held to resolve the dispute between the deceased and the accused wherein accused assured that he will not ill treat the deceased. During cross examination, PW3 stated that 50-60 people were present in the Panchayat. The prosecution failed to produce any of the member of the Panchayat or any person who attended the Panchayat to prove that the accused ever ill treated or harassed the deceased for non fulfillment of demand of dowry.
28. Thus to conclude, we find that allegations regarding to time to time demand of dowry are in general and not specific. No specific incident has been ascribed by any of the witnesses to suggest that the cruelty

and harassment was extended to the deceased by the respondent. Therefore, such alleged demand cannot be treated as demand for dowry. In that situation, there cannot be any question to invoke presumption under Section 113B of the Evidence Act or to raise presumption of guilt under Section 304B of the Indian Penal Code against the respondent as the allegation in itself do not satisfy the required ingredients of Section 304B of the Indian Penal Code. Any cruelty as contemplated under Section 304B of the Indian Penal Code has to be in connection with demand of dowry and even if, it is established that cruelty was there, but demand of dowry is not established by the prosecution, then there cannot be any question of assuming guilt under Section 304B of the Indian Penal Code. None of the material witnesses stated that the deceased was harassed “soon before her death” for or in connection with demand of dowry though the death occurred within seven years of her marriage.

29. Limited scope of interference against judgment of acquittal has been repeatedly highlighted by the Supreme Court in plethora of decisions. Interference against judgment of acquittal is permissible only when there are very substantial and compelling reasons, few of which have been illustrated by the Supreme Court in its judgment. In ***Sadhu Saran Singh Vs. State of UP*** reported in **2016 (2) SCALE 629**, the Hon'ble Apex Court observed :

"18. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would

*interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, in the case of **Sambasivan and Ors. v. State of Kerala : (1998) 5 SCC 412**, has held:*

The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are possible the appellate Court cannot be substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions there from that the appellate Court can interfere with the order of acquittal.

19. *This Court, in several cases, has taken the consistent view that the appellate Court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate Court, on scrutiny, finds that the decision of the Court below is based on erroneous views and against settled position of law, then the interference of the appellate Court with such an order is imperative.*

20. *This Court in **Chandrappa v. State of Karnataka : (2007) 4 SCC 415**, after referring to a catena of decisions, has laid down the following general*

principles with regard to powers of the appellate Court while dealing with an appeal against an order of acquittal:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further

reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

30. Keeping in view the aforesaid settled law and discussion, we are of the view that in the instant case, the essential ingredients of Sections 304B and 498A of the Indian Penal Code are not established beyond all reasonable doubts against the respondents. Accordingly, present leave petition stands dismissed.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

MAY 13, 2016
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