

\$~21

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

+ **CRL.L.P. 116/2016**

% ***Judgment dated: 22<sup>nd</sup> February, 2016***

THE STATE ( NCT OF DELHI) ..... Petitioner  
Through: Ms.Anita Abraham, APP for the State  
with SI Uma Dutt, P.S.Mangol Puri  
versus

RAMESH CHAND & ORS ..... Respondent  
Through

**CORAM:**

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

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

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

**Crl.M.A.3209/2016**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

**Crl.M.As.3208/2016 & 3210/2016**

3. This is an application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure filed by the State seeking condonation of delay of 149 days in filing and 18 days in re-filing the present leave to appeal petition.
4. Heard. Delay in filing the present leave to appeal petition is condoned. Let criminal leave to appeal petition be taken on record.
5. Application stands disposed of.

**Crl.L.P.116/2016**

6. By the present criminal leave petition filed under Section 378(1) of the Code of Criminal Procedure, the Appellant/State seeks leave to appeal against the judgment dated 28.04.2015 passed by the learned Additional

Session Judge, North District Courts, Rohini, New Delhi in Sessions Case No. 39/2012 whereby all the four accused persons, respondents herein were acquitted of the charges framed against them.

7. The case as set up by the prosecution before the Learned Trial Court is that on 16.2.2012, SI Rahul Kumar on receipt of DD No.11A in respect of a girl setting herself on fire went to the place of occurrence that is at B-573, Mangolpuri, Delhi. From there it came to the knowledge of SI Rahul Kumar that the injured was taken to SGM Hospital. The statement of the injured was recorded by the Executive Magistrate wherein she stated that she was burnt in an accident which occurred due to bursting of stove. On 17.2.2012, a member of Women Commission inquired from the injured about the incident when she stated that accused persons who are her in laws were inflicting mental and physical cruelty upon her for want of dowry due to which she had burnt herself. On 18.02.2012, SI Rahul recorded the statement of the injured wherein she named the accused persons stated to have burnt her by pouring kerosene oil on her. On 26.02.2012, Preeti unfortunately succumbed to her injuries.
8. After completion of the investigation, respondents were arrested and charge of offences under Section 498-A read with Section 34 of the Indian Penal Code and Sections 302/304-B read with Section 34 of the Indian Penal Code were framed against the respondents to which they pleaded not guilty and claimed trial.
9. To bring home the guilt of the respondents, prosecution examined 26 witnesses in all. The statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure wherein they denied all the incriminating evidence against them and reiterated their innocence. The defence also examined the husband of the deceased.
10. After going through the evidence brought on record by the prosecution, the

learned Trial Court came to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt and acquitted the respondents.

11. Aggrieved by the acquittal of the respondents, the present leave petition has been preferred by the State.
12. Ms. Anita Abraham, learned Additional Public Prosecutor contended that the Trial Court has committed grave error in holding the respondents not guilty of the offence under section 498-A/302/304-B read with section 34 of the Indian Penal Code. She further contended that the impugned judgment is erroneous and unsustainable, which would result in miscarriage of justice and the same is liable to be set aside.
13. Counsel for the State further submitted that the findings recorded by the learned Trial Court are not based on proper appreciation of the evidence on record and, in fact, they are perverse and totally untenable. Counsel submits that the trial court has failed to appreciate the evidence in the right perspective which has led to the acquittal of the respondents being the mother-in-law, father-in-law and two brothers in law. Counsel submits that the trial court has given undue importance to the first two dying declarations and failed to consider the third dying declaration which is voluntary, authenticated and corroborated by other witnesses of the prosecution and also corroborated by the medical evidence which also supports the case of the State that the kind of burns suffered by the deceased would not have been possible in case stove had burst.
14. Ms. Abraham has further contended that the third dying declaration of the deceased is not only clear and detailed but gives a vivid account of the series of event by the deceased leading to her setting on fire by pouring kerosene on her by the respondents and is duly supported by the testimonies of PW-12, PW-19 and the medical evidence produced on

record. She further contended that the deceased gave her dying declaration on 18.02.2012 and she died on 26.02.2012, after more than a week of her third statement but in that period her third dying declaration remained unchanged.

15. We have heard learned counsel for the State, who has taken us through the testimonies of the witnesses and the documents placed on record.
16. In this case, first dying declaration was made by the deceased on 16.2.2012 itself which was recorded by SI Rahul which reads as under:-

*“Today morning while preparing food, the stove got burst due to which a fire broke out. This is an accident and no body is at fault for it. My in-laws are very nice persons and they have never harassed me.”*

17. The second statement was made by the deceased Ex.PW 4/A which was recorded by the Executive Magistrate on the date of the incident which reads as under:-

*“I got married to Kapil on 30.11.2010. There was no dowry demand in my marriage. My husband is selling garments in weekly market. Today, on 16.02.2012, I was pouring kerosene in the stove and as soon as I ignited the stove, it got burst. The incident took place at about 9.30 am. My husband and brother-in-law brought me to the Hospital. Nobody is responsible for this incident as it was an accident.”*

18. Strong reliance has been placed by the learned counsel for the State on the third dying declaration which was made on 18.2.2012, Ex.PW 19/A which reads as under:-

*“.....I reside on the aforesaid address with family. My mother-in-law Manju, father-in-law Ramesh Chand and two brothers-in-law Gaurav and Rahul are staying in the same house. My parental house is at B-725, Rajdhani Park, Rohtak Rod, Nangloi. My father Amar Singh is doing a private job. We are two brothers and three sisters. I am*

*eldest of my siblings. On 03.11.2010, I was married to Kapil by my parents with pomp and show. As It was first marriage in our family, my parents gave dowry even more than they could afford. Everything was fine for few days of marriage but thereafter my mother-in-law Manju started taunting me for bringing less dowry. In collusion with my mother-in-law Manju, my father-in-law Ramesh Chand and both my brothers-in-law started demanding dowry and on my refusal started giving me mental agony and beating me. When I told this fact to my parents and husband they made me to understand that everything would be fine in some days. But my parents-in-law & brothers-in-law did not mend their ways. On 10.02.2002, the marriage of my mother-in-law's sister Beedo's son Bunty was held and he got a car in dowry and after attending marriage my parents-in-law & brothers-in-law taunted me by stating that a beggar has fell in their laps. They stated that since Bunty has got a car in his marriage, I should ask my parents to give a car. My parents were not capable of meeting their demand. On 16.02.2012, my mother-in-law again started to taunt me for bringing insufficient dowry and at that time my husband was away to take bath on the bathroom on first floor of the house. Then my father-in-law stated that they should teach me a lesson. My mother-in-law Manju, my father-in-law Ramesh Chand and my brother-in-law took me forcibly to a balcony in front of residential room of IInd floor and my mother-in-law poured kerosene on me from a bottle lying there and the remaining three persons caught hold of me and then my mother-in-law burnt me. Hearing my screams my husband Kapil came running and managed extinguish the fire and took me to Sanjay Gandhi Hospital. All of them have tried to kill me and a lawful action be taken against them.”*

19. We have noticed the three dying declarations made by the deceased and a comparison of the three dying declarations, in our opinion, shows certain glaring contradictions. In the first two dying declarations, the deceased has categorically stated that it was an accident for which no body is at fault. In fact, she has stated that her in-laws are very nice persons and they have never harassed her. In the second dying declaration as well, she has explained that the incident had taken place at about 9.30 am and there was no demand of dowry and her husband and brother-in-law brought her to the hospital and nobody was responsible for the incident as it was an accident.

In the third dying declaration, the deceased has stated that after few days of her marriage, her mother-in law had taunted her for bringing less dowry. She in collusion with her husband and sons started demanding dowry and on her refusal started giving her mental agony and beatings.

20. The third dying declaration, in our view, cannot be relied upon as the same is not trust worthy in view of the testimonies of father of the deceased and her relatives. PW-16 Amar Singh, father of the deceased has categorically deposed that his daughter had never complained to him for any demand or torture or ill behaviour by the accused persons. This statement was duly supported by the testimonies of PW-14 & PW-15 who are the uncle and aunt of the deceased who also testified that it never came to their knowledge that accused persons ever demanded any dowry or they ill treated or taunted or humiliated the deceased at any point of time on account of dowry.
21. We are of the view that the trial court has rightly analysed the evidence of the witnesses. The conduct of the family members post the incident would also show that after the incident, she was rushed to the hospital by her husband and brother-in-law. PW-17, Kailash Chand, brother of the accused persons has testified that when he saw Kapil, husband of the deceased shouting for help, he reached the spot from where he also shouted for help and upon listening to his alarm, accused Ramesh Chand rushed to the second floor and he also tried to extinguish the fire. The testimony of PW-17 does not reveal presence of any of the respondents at the spot when the incident had taken place.
22. The law with regard to placing reliance on the multiple dying declarations is well settled. In *Mehiboobsab Abbasabi Nadaf v. State of Karnataka* (2007) 13 SCC 112, having noticed multiple dying declarations Supreme Court held:

*“7. Conviction can indisputably be based on a dying declaration. But before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied.”*

23. In **Anoop Singh v. State of M.P. (SC) 2008 (3) RCR (Crl.) 602**, it was held that:

*“13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declaration but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent (See.: **Kandula Bala Subramanyam v. State of A.P. (1993) 2 SCC 684**). However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely whether they are material or not. While scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.*

24. In a recent judgment by this Court titled **Manoj Kumar Verma Vs. State**, Crl.Appeal No.3/2000, it was observed by the court:

*“.....the dying declaration made by the deceased must represent a truthful version of the incident and in a case where there are more than one dying declaration then there should be consistency, particularly on the material facts in all the dying declarations. If there are intrinsic contradictions and inconsistencies in multiple dying declarations and there are suspicious circumstances which surround such multiple dying declarations then it is for the prosecution to clear all such doubts with the help of other corroborative evidence*

*otherwise it may not be safe to act upon such inconsistent and discrepant dying declarations particularly where such discrepancies are on the material aspects.”*

25. Applying the aforesaid principles of law to the facts of the present case we are of the view that the trial court has rightly not reposed confidence on the third dying declaration which seems to be as a result of tutoring of deceased by PW-11 who claims to have reached the spot of her own. Her testimony shows that the deceased was in subconscious mind, that by itself, would make the third dying declaration unacceptable.
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 a petition merely because another view is possible or that another view is more convincing. [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 above and having regard to the facts of this case and the reasons given by the trial court in support of its findings, we find no material irregularity that may warrant interference by this court in the judgment passed by the trial court.
28. Consequently, the petition is dismissed.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**FEBRUARY 22, 2016**

ssb