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

+ **CRL. L.P. 101/2017**

% *Date of Judgment: 17th April, 2017*

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP for State along
with SI Niranjana Kumar.

Versus

GIRISH KASHYAP & ORS.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

Crl.M.A.2974/2017(delay)

This is an application seeking condonation of 144 days delay in filing the present leave to appeal. We have heard the learned counsel for the appellant.

We may notice that another Division Bench of this Court about two years ago had taken a strong exception to leave to appeals having been not filed within the time allowed. Much more time was spent in attempting to streamline the procedure. Affidavits were filed by the senior officials explaining reasons for the delay and also how steps are to be taken to avoid delays in future. We find that in almost every leave to appeal, applications are being filed seeking condonation of delay. We hope that the Department

would ensure that leave to appeals are filed within the time allowed, else we would be forced to take a strict view in the matter.

Copy of this order will be placed before the Commissioner of Police and Directorate of Prosecution.

Heard. For the reasons stated in the application, delay of 144 days in filing the present leave to appeal is condoned.

The application stands disposed of.

CRL.L.P. 101/2017

1. The present leave to appeal has been filed under Section 378(1)(b) of the Code of Criminal Procedure, 1973 assailing the judgment and order of acquittal dated 05.09.2016 whereby all the respondents have been acquitted from all the charges framed against them.
2. The factual matrix of the case are that on the night intervening 8th & 9th January, 2010 the deceased Smt.Shashi (in short “the deceased”) was brought to the Casualty of Guru Teg Bahadur Hospital (hereinafter referred to as GTB Hospital) by the accused Sh.Girish Kashyap (her husband) in an unconscious condition with alleged history of hanging. She was examined by Dr. Satish Chandra, a Junior Resident, and he found her unconscious, BP not traceable, pulse rate not palpable, bilateral pupil were dilated and fixed and ECG was straight line, cardiac and respiratory activity were absent. . She was declared dead at 2:20 AM on 9th January, 2010. He observed hanging mark over upper neck extending from left lateral neck, anterior side of neck to left side of neck laterally. He observed that it was a case of hanging vide MLC Ex.PW-13/A.

3. At 2:50 AM Duty Constable Mahesh Yadav, GTB Hospital, provided information to PW-15 HC Jayanti Prasad, Police Station Bhajanpura by telephone and DD No.27A Ex.PW-15/A was recorded. The said DD was assigned to PW-5 ASI Sh. Ram for appropriate action.
4. Since the deceased died an unnatural death within seven years of her marriage, PW-5 ASI Sh. Ram informed PW-11 Sh. P.K. Sofat, Executive Magistrate, Seelampur, Delhi. On the same day at about 12 noon, the Executive Magistrate reached the mortuary, GTB Hospital, where he recorded the statement of the father of the deceased namely Sh.Ramesh Chand (PW-1). The statement of PW-1 Sh.Ramesh Chand as recorded by the Executive Magistrate and referred in para 5 of the judgment of the Trial Court reads as under:

“I, Ramesh Chand S/o Sh. Tej Ram R/o 1500, Bhagwan Puri, Garh Road, Hapur, District Ghaziabad, U.P. age 60 years state that my daughter Shashi Rani was wedded to Girish kashyap S/o Sh.Raghubir Singh in accordance with Hindu rites and ceremonies on 02.12.2008 at Hapur, Ghaziabad. My daughter was mentally tortured in her matrimonial house. Today at 2.40 a.m., we were informed that my daughter hanged herself and admitted in I.C.U. and she was admitted in Guru Teg Bahadur Hospital. They informed us about her death. My daughter had talked to her mother through telephone in the night at about 9.00 p.m. and she was alright.

Saas, sasur, devar, devrani, jeth and jethani used to torment my daughter on one or other pretext. Deep marks on the neck of the dead body of my daughter do not appear to me evidence of suicide and I have suspicion that she was murdered. I consider it a case of murder and not a case of suicide.

I have made this statement voluntarily. I have made this statement in full senses and without any pressure. I have read the statement. I have heard the statement. It is correct.”

5. After recording the statement of the father of the deceased Sh.Ramesh Chand, the Executive Magistrate PW-11 Sh.P.K. Sofat made an endorsement thereon to the effect that the SHO Police Station Bhajanpura, Delhi, shall take action as per law. The post-mortem on the on the body of the deceased was conducted by Dr.Sweta Garg (PW-12) and she observed the following injuries:

“Dry, hard, reddish brown parchment like ligature mark present around neck incompletely, obliquely and above thyroid cartilage. The ligature mark is 6.0 cm below chin and is 1.5 cm broad. On left side, the mark goes obliquely upwards and is 2.2 cm below left angle of mandible and is 1 cm broad. The mark further goes obliquely upwards on left side and is 4.0 cm below left ear lobe and is 0.8 cm broad. On right side, the mark is 4 cm below right angle of mandible and is 1.2 cm broad, the mark further goes obliquely upwards on right side and is 5.0 cm below right ear lobe and is 0.7 cm broad. The mark goes posteriorly and merges with hair line. The mark is absent for a distance of 6 cm posteriorly over neck.”

6. As per the post-mortem report Ex.PW-12/A, the time since death was about 12 hours and the cause of death was asphyxia as a result of ante-mortem hanging.
7. After the autopsy conducted by Dr.Sweta Garg, the body of the deceased was handed over to Sh. Rajesh Kumar (PW-4) who is the brother of the deceased. At 4:20 p.m. on receipt of *rukka* an FIR No.07/2010 Ex.PW-7/A was registered and investigation of the case was assigned to PW-10 Inspector Ramesh Kumar.
8. PW-10 Insp. Ramesh Kumar inspected the place of incident. Ten photographs of the place of incident were taken. The *dupatta* tied on the grill of the ventilator above the door of the room was cut by the

PW-10 Insp. Ramesh Kumar with the help of a knife and was kept in a piece of cloth and seized the same vide Ex.PW-5/B. The accused Girish Kashyap was arrested next day at 2:30 PM by PW-10 Insp. Ramesh Kumar from his house on identification of PW-3 Sh.Naresh Kumar vide Arrest Memo Ex.PW-3/A.

9. *Dupatta* in a sealed cover was sent to an Autopsy Surgeon for opinion and Dr.Sweta Garg after examining *dupatta* Ex.P-1 opined that ligature mark present around the neck of the deceased could be caused by the said *dupatta*. She observed that no definite opinion could be given if the hanging was suicidal, homicidal or accidental.
10. The Court of Additional Sessions Judge framed the charge against the accused persons under Section 498-A/34 and 304-B/34 IPC to which they pleaded not guilty and claimed trial. Later on, charge under Section 302/34 IPC was also added.
11. To bring home the guilt of the accused persons/respondents, the prosecution examined 16 witnesses including father of the deceased Sh.Ramesh Chand (PW-1), cousin brother of the deceased Sh.Beenu (PW-2), brother of the deceased Sh.Naresh Kumar (PW-3), IO Inspector Ramesh Kumar (PW-10), Executive Magistrate Sh.P.K. Sofat (PW-11), Dr.Satish Chandra (PW-13), Junior Resident, GTB Hospital, and Dr.Sweta Garg (PW-12).
12. Separate statements of the accused persons were recorded by the Trial Court under Section 313 Cr.P.C.
13. In their defence, the accused persons examined seven witnesses.

14. By the impugned judgment dated 5th September, 2016, learned Additional Sessions Judge acquitted all the accused persons of the charges under Section 498-A/34, 304-B/34 and 302/34 IPC.
15. It is argued by the learned APP for the State that the learned Trial Court failed to appreciate the evidence adduced by the prosecution regarding the demand of dowry and that the deceased having been subjected to cruelty and harassment “soon before her death” by the respondents. He submits that the learned Trial Court has grossly erred in holding that it was a case of suicide and not of murder despite there being overwhelming evidence. He submits that learned ASJ has erred in misconstruing the graphic and specific testimonies of PW-1, PW-2 and PW-3 and holding their evidence as vague and general allegations in nature. He submits that learned Trial Court has wrongly discarded the testimonies of PW-1, PW-2 and PW-3 with regard to instances of harassment narrated by them qua the demand of dowry by the respondents.
16. He argued that the learned Trial Court completely ignored the motive, intentions and common object of all the respondents in committing the crime against the deceased. The learned APP emphasised that inconsistencies and contradictions in the testimonies of PW-1, PW-2 and PW-3 were on account of natural wear and tear of the human memory. He argued that while dealing with the leave to appeal against an order of acquittal by the learned Additional Sessions Judge, this court being a Court of Appeal has unbridled powers and jurisdiction to appreciate the entire evidence and material brought on record before the trial court under section 378 of Cr.PC.

17. He submitted that there is sufficient evidence on the record that the dowry articles which were given to the deceased were placed in the gallery of the house and she was not permitted to keep those articles in her house and respondents had asked the deceased to get a room constructed for herself from her father to keep those articles. He submits that PW-1 deposed that the respondents demanded Rs.30,000/- from the deceased, which is corroborated by the brother of the deceased Sh. Naresh Kumar (PW-3) on the aspect of the harassment of the deceased for dowry. He referred to the statement of PW-3 Sh. Naresh Kumar wherein he has stated that the respondents did not permit the deceased to go out from the home. He also referred to the statement of the cousin brother of the deceased Sh. Beenu (PW-2), who stated that when he went to meet the deceased, the respondent no. 2, mother-in-law of the deceased, informed him that the deceased had gone to market whereas she was in the home. He also deposed that the deceased used to tell him that the respondent no. 1 and his family members used to taunt her for bringing insufficient dowry.
18. The learned APP for the State further referred the statement of PW-3 Sh. Naresh Kumar, who deposed that the deceased requested him to deposit money in her bank account in Hapur instead of giving her gifts as the respondents used to demand money and for the said purpose the deceased opened a bank account with Punjab National Bank, Hapur Branch. Lastly, he submitted that the prosecution has proved the charges against the respondents beyond any reasonable doubt.
19. We have heard the learned APP for the State and examined the record.

20. As the prosecution is on the charge of the offences envisaged in section 304-B of the IPC, the provision for reference is extracted herein below: -

“304-B. Dowry death.—(1) 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 purpose 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.”

21. For making out an offence of “dowry death” under Section 304-B, the following ingredients have to be proved by the prosecution:

“(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.”

22. Recently, the Hon'ble Supreme Court in **Bajnath and Anr. v. State of Madhya Pradesh, (2017) 1 SCC 101**, observed as under:

“25.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis “cruelty” as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression “cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.— For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above-referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be over-eased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty.”

23. The Apex Court in *Rajeev Kumar v. State of Haryana*, (2013) 16 SCC 640, propounded that one of the essential ingredients of dowry

death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. Reference can also be given to earlier decision of the Apex Court in ***K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217**, to the effect that to attract the provision of Section 304-B of the Code, 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 and harassment “in connection with the demand for dowry”.

24. Admittedly, the deceased was married to the respondent no. 1 on 02.12.2008 and she died an unnatural death on 09.01.2010 i.e. within seven years of her marriage. The crucial question is whether the deceased was subject to cruelty or harassment by the accused person “soon before her death” and such cruelty or harassment was in connection with demand for dowry as required to be proved by the prosecution under section 304-B of IPC.
25. To prove this issue the prosecution has examined three witnesses i.e. PW-1 Sh. Ramesh Chand (father of the deceased), PW-2 Sh. Beenu (cousin brother of the deceased) and PW-3 Sh. Naresh Kumar (brother of the deceased) to sustain the charges.
26. Soon after the incident in question on 09.01.2010, the father of the deceased Sh. Ramesh Chand (PW-1) made his statement Ex. PW-1/A before the Executive Magistrate, Seelampur, Delhi, on the basis of

which FIR was registered. In his statement he informed that his daughter was mentally tortured in her matrimonial home and at about 02:40 AM they were informed that his daughter hanged herself and was admitted in ICU. He further alleged that *Saas, Sasur, Devar, Devrani, Jeth* and *Jethani* (respondents no. 2 to 6) used to torment his daughter on one or the other pretext and since there were deep marks on the neck of the dead body of his daughter, he had suspicion that she was murdered and did not commit suicide.

27. There is no allegation that his daughter was harassed on account of any demand for dowry by the respondents. His statement under section 161 Cr.PC Ex.PW-1/DA was also recorded by the IO on 16th February, 2010 i.e. 38 days after the incident in question wherein also he did not allege that his daughter was subjected to any harassment for or in connection with any demand for dowry. In this statement he stated that his daughter remained happy for 2-3 months after marriage and thereafter the respondents no. 2 to 6 started harassing his daughter. He also stated that articles of her daughter were kept in a gallery and the respondents no. 2 to 6 did not allow the deceased to keep her articles in the room. He also stated that the respondents no. 2 to 5 asked his daughter to get a room constructed from her father and respondent no. 2 (mother-in-law) used to put lock on the kitchen and open it whenever she desired.
28. When the statement of PW-1 Ramesh Chand was recorded in the court he, however, alleged that the accused persons demanded Rs.30,000/- in the year 2009 from his daughter which was conveyed to him and he arranged money of Rs.30,000/- and paid the same to the accused

persons. This deposition of PW-1 in the court is nothing but a material improvement over the statement which he had made before the Executive Magistrate (Ex.PW-1/A) followed by his statement under section 161 Cr.PC (Ex.PW-1/DA) to which he was confronted before the trial court. He could not tell in his cross-examination the date, month or year when his daughter told him that she was being harassed by the respondents for the dowry. He also admitted that prior to the death of his daughter they did not make any complaint to anyone or any authority including the police that his daughter was being harassed by the respondents for bringing insufficient dowry. He also could not tell the date, week and month when the respondents demanded Rs.30,000/- or he paid the same to the respondents. He deposed that his daughter told him on phone that the respondents were demanding Rs.30,000/- but could not tell the telephone number of his daughter Smt. Shashi (deceased). He admitted that his daughter Shashi was happy in the said marriage. He also admitted that whatever articles were given in the marriage, he gave the same of his own free will and out of love and affection towards his daughter.

29. It is, therefore, evident from the deposition of PW-1 Sh. Ramesh Chand that he has not testified that the respondents made any demand for dowry either at the time of marriage or “soon before the death” of the deceased. Rather he admitted that his daughter was happy in the said marriage. The allegation of demand of Rs.30,000/- by the respondents from his daughter was not stated by PW-1 in his statement recorded for the first time soon after the incident before the Executive Magistrate. In his statement recorded by the Executive

Magistrate there were only vague and general allegations that his daughter was mentally tortured in the matrimonial home and respondents no.2 to 6 used to torture his daughter on one pretext or the other.

30. PW-3 Sh. Naresh Kumar, brother of deceased, has deposed that the deceased told him that the respondents used to tell her not to bring gifts but only the cash amount and deceased suggested him to open an account in her name in Hapur and requested him to deposit cash amount instead of giving her gifts in the said account. He further testified that the deceased opened a bank account in Punjab National Bank in Hapur. In his cross-examination, he admitted that he has not stated in his statement under section 161 Cr.PC (Ex.PW-3/DA) that the respondents were demanding money and she asked him to open an account in her name in Hapur. He also admitted that he did not state in his statement Ex.PW-3/DA that the deceased suggested to him that whenever she would visit her parental home she should be given cash amount and not any gift. Surprisingly, after levelling this allegation he stated that he had not deposited any amount in the said account. He also could not tell the account number or date of its opening and lastly he admitted that they never deposited any cash amount in the said account.
31. Therefore, the testimony of PW-3 does not support the case of the prosecution at all and he has made only general allegations against the respondents. He has made improvement over statement recorded under section 161 Cr.PC to which he was confronted with in the trial court regarding the allegation that the respondents asked the deceased

to bring cash amount and not the gifts or that she suggested to PW-3 Sh. Naresh Kumar to open a bank account in Hapur or deposit cash amount therein. He could not tell the account number or date of its opening and ultimately admitted that they never deposited any cash amount. Here it is pertinent to mention that PW-1 Sh. Ramesh Chand has also not stated in either of his statement that the respondents had ever asked his daughter to bring cash amount and not the gifts or to open a bank account in Punjab National Bank, Hapur.

32. Therefore, there is nothing in the evidence of PW-3 also from which any inference of demand for dowry much less than the demand of dowry “soon before her death” can be raised.
33. Sh. Beenu PW-2, cousin brother of the deceased who was residing near the matrimonial home testified that he visited the deceased twice, firstly after six months from the date of marriage and secondly after about eight months from the date of marriage but could not meet the deceased. He further deposed that the deceased told him on telephone that the respondent no. 1 and her in-laws used to taunt her for bringing insufficient dowry. In his cross-examination, he admitted that the deceased Smt. Shashi did not make any complaint to him against the respondents. He also admitted that he cannot tell the date, month or year when he visited the house of in-laws of deceased Smt. Shashi.
34. On careful analysis of depositions of PW-1, PW-2 and PW-3, it is clear as crystal that there is no demand of dowry. It does not make out from their depositions that the deceased was subjected to cruelty or harassment “soon before her death” for or in connection with the dowry.

35. In the light of the aforesaid case law discussed and tested on the judicial adumbrated parameters as above, we are of the unhesitant opinion that the prosecution has failed to prove beyond reasonable doubt the cruelty or harassment to the deceased for or in connection with any demand for dowry as contemplated in either of the provisions of the Code under which the respondents had been charged. Noticeably the allegation of demand and payment of Rs.30,000/- by cash to the respondents were not alleged by PW-1 Sh.Ramesh Chand before the Executive Magistrate or by PW-2 in their statements under Section 161 Cr.PC. They also could not tell the date of alleged demand and payment. Admittedly even if such demand was raised no complaint was ever lodged with anyone far less the Police.
36. As per the Post-Mortem Report Ex.PW-12/A it was a case of suicide by hanging and the cause of death was asphyxia as a result of ante-mortem hanging. Ligature mark was incomplete/oblique and above thyroid cartilage. PW-12 Dr.Sweta Garg, Autopsy Surgeon, testified that no definite opinion can be given whether the hanging was suicidal, homicidal or accidental. She could not give definite opinion whether hanging was suicidal, homicidal or accidental. The prosecution has not put to Dr.Sweta Garg, Autopsy Surgeon, that it was a case of murder and not a suicidal death. There were no injuries or struggle marks on the dead body of the deceased. It is thus evident from the pattern of ligature mark around the neck of the deceased that it was a case of suicide by hanging.
37. In all, tested on the overall scrutiny of the evidence as well by the Trial Court in the proper perspective factually and legally, the findings

recorded by the Trial Court are valid and are liable to be sustained and the learned Trial Court has rightly acquitted the respondents from the charges under Section 498-A/34, 304-B/34 and 302/34 IPC

38. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reason to do so [See *Sheo Swarup v. King Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 2000 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); and *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42)].
39. Thus, the leave to appeal is dismissed being without any merit.
40. The trial court record, if received, be sent back.

VINOD GOEL, J.

G. S. SISTANI, J.

APRIL 17, 2017/jitender