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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. L.P. 324/2017**

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Date of Judgment: 25th May, 2017

STATE (GNCT OF DELHI)

.... Petitioner

Through: Mr. Rajat Katyal, APP

versus

DEVENDER SINGH & ORS

.... Respondents

Through: *Nemo.*

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE REKHA PALLI

G.S.SISTANI, J. (ORAL)

Crl.M.A. 8913/2017 (Exemption)

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

Crl.M.A. 8912/2017 (delay)

3. Although we do not find any sufficient ground to condone delay, but since we have heard the leave to appeal on merits, delay of 172 days in filing the leave to appeal is condoned.
4. Application stands disposed of.

Crl. L.P. 324/2017

5. The present leave to appeal has been filed by the State under Section 378 (1) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') seeking leave to appeal against the impugned judgment dated 27.08.2016 passed by the learned Additional Sessions Judge in

Sessions Case no.17/15, FIR No.202/12, Police Station Dwarka South, under Sections 498A/304B/34 of the Indian Penal Code (in short the 'IPC').

6. The case of the prosecution is that on 15.09.2012, an information was received from the respondent Devender Singh that his wife had committed suicide, which was recorded vide DD No.30, ASI Satbir Singh reached at the place of incident i.e. Flat No. B-302, Rudra Apartments, Plot No. 12, Sector-6, Dwarka and found that the respondents Devender Singh, Vimla Devi and Satveer Singh were present and the dead body of the deceased Divya was lying on the double bed in her bedroom along with a chunni. On the inspection of the dead body, he noticed some marks on the neck of the deceased. Crime team was called which took photographs and inspected the spot. The chunni was seized and the dead body of the deceased was shifted to the mortuary of DDU Hospital.
7. On 16.09.2012, the statements of the Jai Inder Singh (PW2) and Gaurav (PW3), the father and brother of the deceased respectively were recorded and a case under Sections 498A/304B/34 of IPC was registered at Police Station Dwarka South.
8. To bring home the guilt of the respondents, the prosecution has examined 25 witnesses in all. No evidence was produced by the respondents in their defence. Statements of the respondents were recorded under Section 313 of the Cr.P.C wherein it was stated that they have been falsely implicated in the present case.
9. Mr. Rajat Katyal, learned counsel for the State submits that the learned Trial Court has failed to take into consideration that PW-2 Jai Inder Singh and PW-3 Gaurav have supported the case of the

prosecution in their examination-in-chief. Counsel further submits that the learned Trial Court has given undue weightage on the witnesses of the prosecution, who turned hostile after December 13, whereas all the statements made by them prior to December 13 largely supported the case of the prosecution. Counsel submits that the learned Trial Court failed to appreciate that in matters of offence arising out of Section 304B IPC, the presumption is against the accused persons and the burden of proof would shift on the accused (respondents) herein. Counsel contends that the defence raised by the respondents in their statements under Section 313 Cr.P.C. that the deceased used to remain under depression as her sister-in-law was not taking care of her mother, who had been suffering from paralysis and had committed suicide for this reason, cannot be accepted as the defence did not chose to lead any evidence on this aspect of the matter.

10. We have heard the learned counsel for the State and examined the judgment passed by the learned Trial Court and also examined the testimonies of various witnesses, copies of which have been placed on record by the counsel for the State. The relevant para 7 of the impugned judgment rendered by the Trial Court reads as under:

“7. As per the case of prosecution, on receipt of information about the death of deceased Divya, the Executive Magistrate had recorded the statements of Sh. Jai Inder Singh and Sh. Gaurav, the father and brother of the deceased, which were on the same lines. Sh. Jai Inder Singh and Sh. Gaurav have been examined by the prosecution as PW2 and PW3. Though in their examination-in-chief, PW2 and PW3 supported the case of prosecution, but in their cross- examination, they denied that their statements were recorded by the Executive Magistrate. They stated that the

police had obtained their signatures on blank papers and that their deposition in the examination-in-chief was under the influence of the investigating agency. They admitted that the accused persons never demanded any car, gift or cash from them nor the deceased Divya ever told them about any dowry demand or harassment by the accused persons.

The prosecution has also examined PW4 Ms. Sushil and PW5 Sh. Upender Kumar, who are the sister-in-law/bhabhi and brother of the deceased. However, in their testimonies, they have also failed to support the case of prosecution and utter anything incriminating against the accused persons. They were cross-examined by the APP but they denied that they made any statement to the police.

The prosecution has further examined Sh. Anil Kumar Maan, the brother-in-law of Sh. Gaurav, as PW6 to prove that Sh. Gaurav had told him on 11.04.2012 that he required a sum of Rs. 2 lacs for giving the same to the in-laws of his sister Divya and that the said amount was given by him to Sh. Gaurav on loan by withdrawing it from his bank account. In his testimony, though PW6 admitted that he had given Rs. 2 lacs to Sh. Gaurav but denied that the latter had informed him that he needed the aforesaid amount for giving to the in-laws of his sister Divya.

Besides the family members of the deceased, the prosecution has examined Sh. Rajender Singh Chhikara (inadvertently examined as PW3) and PW8 Sh. Dharambir Singh, who are the acquaintances of Sh. Jai Inder Singh, to prove that they had accompanied Sh. Jai Inder Singh to the matrimonial home of his daughter Divya for attending a meeting wherein it was revealed that she was being harassed by her in-laws for the demand of a big car and gold necklace and bangles. However, in their testimonies, both the said witnesses denied that they had attended any such meeting or that they were told by the family members of the deceased Divya that she used to be subjected to cruelty by her in-laws for the demand of dowry."

11. The deceased was married to respondent no.1 on 01.05.2011. She died on 15.09.2012, within seven years of her marriage. The learned Trial Court has analysed the testimonies of all the witnesses. The star witnesses in this case are the father and brother of the deceased, being PWs 2 and 3 respectively. The learned Trial Court has taken into account the fact that the star witnesses have not supported the case of the prosecution and have testified that the police had obtained their signatures on blank papers as also their deposition in examination-in-chief was under the influence of the investigating agency. A categorical assertion was made that the respondents never demanded any car, gift or cash from them, neither the deceased ever told them about any demand of dowry or harassment at the hands of the respondents. The learned Trial Court has also taken into account the testimonies of Shri Rajender Singh Chhikara (PW3) and Shri Dharambir Singh (PW8). Both the aforesaid witnesses had testified that they had participated in a meeting which was held between the two families on account of the deceased being harassed by her in-laws and whether demand of car, gold and bangles were made. However, in Court both the aforesaid witnesses did not support the case of the prosecution and they had denied of any such meeting being held or that they were told by the family members of the deceased that the in-laws of the deceased used to subject her to cruelty or there was any demand of money.
12. In the case of *Kallu alias Masih and Ors. v. State of M.P.* reported at (2006) 10 SCC 313, the Hon'ble Supreme Court in para 8 held as under:

“8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial Court.”

13. The Hon’ble Supreme Court culled out five general principles for deciding an appeal against an order of acquittal in the case of ***Chandrappa and Ors. v. State of Karnataka*** reported at (2007) 4 SCC 415, which are as under:

“42. (1) An appellate court has full power to review, reappreciate 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 and 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.”

14. Keeping in view the aforesaid enunciation of the legal principles and on scrutiny of the evidence available on record, we find no infirmity in the view taken by the Trial Court. In our view, the respondents have been rightly acquitted by the Trial Court in the absence of any incriminating evidence on record. We find no grounds to entertain this leave to appeal. The same is accordingly dismissed.

G. S. SISTANI, J.

REKHA PALLI, J.

MAY 25, 2017

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