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

+ CRL.L.P. 124/2018 and Crl. M.A. No.3082/2018

STATE

..... Petitioner

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

versus

SHENSHA & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

12.03.2018

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1. The Trial Court Record has been received.
2. We have heard Ms. Tiwari, the learned APP.
3. The State has preferred the aforesaid leave petition along with the aforesaid application to seek condonation of 10 days delay in filing the same. Since we are not inclined to issue notice in the leave petition, no useful purpose would be served in issuing notice in the delay application.
4. The leave petition is directed against the judgment dated 13.10.2017 passed by the learned ASJ-II (North-West), Rohini Courts, Delhi in Sessions Case No.62/2015 titled *State Vs. Shensha & Another*. The same arose out of the FIR No.575/2015 registered at PS – Shalimar Bagh under Sections 304B/ 498A/ 34 IPC.

5. By the impugned judgment, the learned ASJ has acquitted the respondent accused of the charges framed against him. The learned ASJ has disbelieved PW-9 and PW-10 Sharaft Ali and Rehmat Jahan, who are brother and the mother of the deceased. PW-12 and PW-14, i.e. Phool Jahan and Shaukat Ali did not support the case of the prosecution. On that premise, the learned ASJ held that the charge under Section 498A was not substantiated. Consequently, the charge under Section 304B was also held to be not substantiated. The reason for disbelieving PW-9 and PW-10, as found in the impugned judgment, is that both of them had improved their case before the Court, which was at variance with their earlier statement recorded before the learned Magistrate. Before the learned SDM, PW-9, the brother of the deceased did not state that the deceased had ever informed him of any dowry demands being made by the accused. The allegations made against the accused before the Court were also found to be very vague since no date or time had been mentioned as to when the accused had demanded the motorcycle as dowry from the deceased. There was no specific allegation with regard to the manner in which the deceased was harassed and tortured for the alleged demand. The reasoning found in the impugned judgment may be reproduced for appreciation thereof.

“43. It is not out of place here to mention that PW13 Riyasat Ali (brother of deceased) and PW22 ms. Phool Jahan (Sister of the deceased) in their testimony before the court are completely silent about any demand of dowry or cruelty or harassment carried out on Muskan by the accused persons at any point of time. In my view, it is not possible that if Muskan was treated with cruelty and harassment in her matrimonial house for so long as the marriage is subsisted for about 3 years, her siblings namely Riyasat Ali and Phool Jahan would not be aware about

the same. Their complete silence on this issue raises serious doubt on the case of prosecution. PW22 Ms. Phool Jahan has rather deposed in court that husband of Muskan and her in laws never gave any opportunity to them for annoyance for anything and that Muskan was living happily in her matrimonial house.

44. The allegations of both the said witnesses i.e. PW9 Sh. Sharafat Ali and PW10 Smt. Rehmat Jahan in their testimony about the demand of dowry and harassment and torture on Muskan are very vague. No date and time has been mentioned as to when accused demanded motorcycle as dowry from Muskan. Nothing has been specified as to how Muskan was harassed and tortured for non fulfillment of the said demand. The allegations are vague in nature. Similarly, no date and time has been mentioned about the demand of Rs.20,000/ from PW10 Ms. Rehmat Jahan.

45. The prosecution has heavily relied upon the evidence led by Sh. Sharafat Ali (PW9) and Smt. Rehmat Jahan (PW10) to prove the ingredient of Section 304B of IPC i.e. "soon before death" the woman was subjected to cruelty and harassment by her husband and other relatives. As stated above, the testimony of both the said witnesses is not reliable and believe worthy and the same are found to be full of improvements. Smt. Rehmat Jahaan in her initial statement ExPW10/A said that her daughter told her after about 67 months of marriage she was being taunted in the matrimonial house for not bringing a car. This incident, allegedly happened about 2 ½ years prior to the incident as the marriage was solemnised about 3 years prior to the incident in question and thereby it means that there is no proximate or live link between the allegation of taunting and the death of Muskan as the same is too remote.

46. The prosecution has also examined Smt. Rajenderi Devi (PW16) and Sh. Raheesh (PW21) who are neighbours of accused persons and both the witnesses have affirmed in their cross examination that accused persons used to take good care of Muskan and they never heard or saw any sought of quarrel

or dispute between the accused persons and Muskan.

47. It is the defence of the accused persons that Muskan was suffering from Tuberculosis (T.B.) and on 2/5/2015 when her sister had come to their house to take her along for the ring ceremony of her brother, Muskan could not cook food owing to her medical condition and hence her husband Sehnsa brought food from outside but Muskan threw the food in anger on which he rebuked her in general and rapped on her head but it appears that she took it by her heart and committed suicide due to the said reason on the same day itself.

48. The factum of Muskan suffering from tuberculosis has been admitted by her mother Smt. Rehmat Jahaan and his brother Sh. Sharafat Ali in their cross examination. PW16 Smt. Rajenderi Devi who is an independent witness has also admitted that Muskan was suffering from T.B. and most of the time the meals were brought from outside at their house and she was not able to cook because of her disease. Although the exact reason for Muskan committed suicide could not be established but it may be due to the reason which has come in the explanation rendered by the accused persons in their statement u/s 313 CrPC as narrated above. The fact that Muskan had refused to prepare the meal when her sister had come home and that he had brought meals from the hotel but Muskan had thrown away the food and on this he had snubbed Muskan and rapped her on her head has been corroborated by PW16 Smt. Rajenderi Devi who was among the first person who had seen Muskan hanging in the room.

49. It is admitted by Smt. Rehmat Jahan in her cross examination that there was heavy work load on the accused persons at the time of the incident as it was mango season and accused persons used to put powder on mangoes at home and they were short of time during that season. This part is also admitted by PW22 Ms. Phool Jahan in her cross examination and she further admitted that Muskan also used to help her family members in the matrimonial house in the said work. In view of the same, when it was season of work for the accused

persons, the fact that Muskan was not allowed to go with her sister Phool Jahaan to her paternal house as she had come to take her along on the occasion of the mangni ceremony of her brother, is not of much significance. Ms. Phool Jahan admitted in her cross examination that Sohrab told her to stay there and he further stated that in the morning, all of them would go together to attend the mangni ceremony of her brother.

50. That the conduct of the accused persons is also relevant and on the perusal of the record it can be seen that immediately after the incident they telephonically informed the family members of the deceased. As per the MLC ExPW6/A, PCR form ExPW3/A and testimonies of Smt. Rajenderi Devi (PW16) and Rahees (PW21) clearly proves that accused Shensha tried to save the life of Muskan by making an effort to resuscitate her and immediately took her to MAX hospital.

51. In view of the above, the testimony of PW9 Sh. Sharafat Ali and PW10 Smt. Rehmat Jahaan is highly in doubt. They are not trustworthy witnesses and on the basis of their deposition, it cannot be said that the prosecution has been able to prove the factum of any cruelty or harassment caused to Muskan in her matrimonial house on account of dowry or otherwise and hence the allegations u/s 498A IPC and u/s 304B IPC are not proved.

52. The testimony of the remaining witnesses, apart from the family members of the deceased discussed above, only relates to the medical examination of the deceased and the investigation conducted by the police officials and the testimony of the said witnesses is of no help to the prosecution, in view of the above, in proving its case.”

6. Thus, it was established that the deceased was suffering from Tuberculosis and the said suffering could have been the cause of her taking her own life.

7. In view of the aforesaid, we find no merit in this petition.

8. Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MARCH 12, 2018
B.S. Rohella