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

+ **CRL.L.P. 207/2017**

STATE

..... Petitioner

Through Mr. Hirein Sharma, APP for State

versus

SUMIT

..... Respondent

Through Ms. Shradha Karol, Advocate  
(Amicus Curiae)

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE VINOD GOEL**

**ORDER**  
**03.10.2018**

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1. The State seeks leave to appeal against the impugned judgment dated 2<sup>nd</sup> September, 2016 passed by Additional Sessions Judge-04 (North), Rohini Courts, Delhi in Sessions Case No.222/2014 arising out of FIR No. 188/2014 registered at Police Station ('PS'), Jahangirpuri acquitting the Respondent of the offences under Sections 498-A and 304B IPC as well as the alternative charge under Section 302 IPC.

2. The charge against the Respondent was that between 14<sup>th</sup> November, 2011 and 9<sup>th</sup> March, 2014, the Respondent subjected his wife Khushboo ('the deceased') to cruelty for or in connection with the demand of dowry thereby committing an offence punishable under Section 498-A IPC. Secondly, he was charged with having subjected the deceased to cruelty/harassment, for or in connection with the demand for dowry, soon

before her death on the intervening night on 9<sup>th</sup> & 10<sup>th</sup> March, 2014 at House No. 202, Bhalaswa Village, PS Jahangirpuri, which occurred otherwise than under normal circumstances and within seven years of marriage, thereby committing an offence punishable under Section 304 B IPC. The alternate charge was that he murdered his wife on the aforementioned date and place by giving her severe beatings thereby committing an offence punishable under Section 302 IPC.

3. The Court has with the help of the learned APP as well as learned counsel for the Respondent examined carefully the entire trial Court Record. It appears from the MLC Register of the Babu Jag Jiwan Ram Memorial (BJRM) Hospital (Ex.PW-3/A), that at 10.30 am on 10<sup>th</sup> March 2014, an unknown female was brought there by another unknown female in a seriously injured condition. The 'Name' was noted as unknown and was written down within brackets as 'Khushboo'. In the column 'Fathers/husband's name' it was written 'unknown' with the name 'Sumit' being written in brackets. The 'Residence' was indicated as unknown and it was written in brackets "*Bhalaswa Gaon near Park ka kona*". Even the 'Name of relative or friend' column has unknown noted down with "female" written within brackets. It is stated therein that the detailed history was not available, the patient had a head injury, was drowsy and was responding to deep painful stimuli. The head injuries were noted and the patient was referred to the Casualty department.

4. Three doctors were examined by the prosecution. Dr. Devender Dutt Tiwari (PW-3) saw the deceased at 10.30 a.m. and confirmed having made

the above notings. Dr. Gopal Krishna (PW-6) stated that the patient's name was subsequently revealed as Khushboo, wife of Sumit. He noted the two serious head injuries and stated that she was given treatment and referred to the Senior Resident (SR) (Surgery). In his cross-examination, PW-6 stated that the injuries reflected in the MLC were caused by a blunt object. He further deposed that "it is correct that if a person himself falls on a blunt surface he/she could sustain such type of injuries as reflected in the MLC. The possibility of injuries as mentioned in the MLC Ex.PW-3/A being self inflicted i.e. by dashing her head against wall/blunt surface cannot be ruled out."

5. The other doctor who was examined is Dr. Ashish Bhute (PW-1), who conducted the post mortem examination of the deceased. The post mortem was performed on 12<sup>th</sup> March, 2014. From his evidence, it appears that from the BJRM Hospital, Khushboo was referred to the LNJP Hospital where she expired during the course of treatment. Her dead body was identified by one Om Prakash (uncle of the deceased) and Sachin (cousin of the deceased), later examined as PW-18. PW-1 noticed as many as 14 external injuries. Injury No.1 was contused laceration 0.8 cm x 0.7 cm bone deep, present on the right parietal eminence, 11 cm above right ear and 2 cm to the right from the mid line. His opinion as to the cause of death was that "that it was cerebral damage consequent upon blunt force trauma to the head via injury no.1 which is sufficient to cause death in the ordinary course of nature". According to him, "all injuries were ante mortem in nature, fresh in duration, and were caused by impact with blunt object/weapon possible in an assault". In his examination-in-chief PW-1 mentioned that he also took

blood of the deceased on a gauze piece along with sealed sample of scalp hair and this was handed over to the IO. Unfortunately, it does not appear that the test report of the blood sample was collected by the IO and made part of the record.

6. The above factor was critical in the present case since it has emerged in the evidence of the mother of the victim i.e. Smt. Nirmal (PW-15) that her daughter i.e. the deceased was an alcoholic and had in fact been given treatment at a De-addiction centre prior to her marriage. It also came across in her cross-examination that the deceased had married the Respondent without the consent of her parents on 14<sup>th</sup> November, 2011. Strangely, although in her examination-in-chief PW-15 spoke about the deceased being given beatings by the Respondent on account of dowry and about his demanding that PW-15 should buy him a car from which he could earn his livelihood, on the next day after her examination-in-chief i.e. on 2<sup>nd</sup> June, 2015 when she was cross-examined, PW-15 resiled from her previous stand and now contended that the deceased and the Respondent were having cordial relations with each other and that “it is correct that accused Sumit had never demanded any dowry from me.” PW-15 added that he had also “not demanded any dowry from my daughter (Khushboo)”. Her daughter Khushboo “never complained me that her husband i.e. (accused Sumit) had ever treated her with cruelty on account of dowry.” At this stage, PW-15 disclosed that “my daughter Khushboo used to consume liquor daily. I also got my daughter admitted in De-addiction centre for about 5-6 months prior to her marriage. After marriage she was not in the habit of consuming liquor daily, but she used to consume liquor.” PW-15 further disclosed that it was

her daughter who requested her for an Eeco car so that the Respondent could drive it and earn a livelihood. The deceased also assured PW-15 that the Respondent would repay the loan in instalments and further that the Respondent “had paid few instalments also”.

7. PW-15 was confronted with her previous statements made both before the Executive Magistrate who conducted the inquest and the police under Section 161 Cr.PC and it transpired that she had, during her examination-in-chief made material improvements about the Respondent having given the deceased beatings prior to her death in connection with the demand for dowry. This, therefore, rendered her a totally unreliable witness and the trial Court has, in the considered view of this Court, rightly come to the conclusion that the evidence of PW-15, could not form the basis for conviction of the Respondent.

8. Satender (PW-24), another cousin of the deceased, too deposed that the deceased was in the habit of consuming liquor. He too admitted that the deceased was at a de-addiction centre for about 5/6 months prior to her marriage. He admitted as correct that the deceased was short-tempered and that “after consuming liquor, Khushboo used to lose her control.” He also disclosed that during his visits to the matrimonial home of the deceased, “she never complained me of any ill-treatment for demand of dowry at the hands of the accused or any of his family members”.

9. The version of the accused as to what had happened on the fateful night emerged in his statement under Section 313 Cr PC where he claimed that he had been falsely implicated. According to him, on the date of the incident,

i.e. the intervening night of 9<sup>th</sup>/10<sup>th</sup> March, 2014, the deceased had consumed excessive liquor. He had asked her not to drink so much liquor and thereafter had gone to sleep “in the room situated on the ground floor”. According to him, the deceased went upstairs and subsequently, under the influence of liquor, “was probably coming downstairs, but lost her control due to which she fell down on staircase and sustained injuries on her person.” He then stated, “she was immediately taken to the BJRM Hospital, wherefrom she was referred to LNJP Hospital, but ultimately succumbed to her injuries.” With so much evidence coming on record about the drinking habit of the deceased, it is strange that the IO did not consider it appropriate to have the blood sample collected from the body of the deceased tested for the presence of liquor in the blood.

10. There is also no clarity on what exactly happened at the place where the deceased was found in an injured condition before being taken to the BJRM Hospital. The evidence of the landlady of the room occupied by the Respondent and the deceased on the ground floor i.e. Smt. Maya Devi (PW-8) reveals that the Respondent and the deceased took that room on the monthly rent of Rs.2,000/- just about one month prior to the occurrence. However, PW-8 was totally non-cooperative and turned hostile. What the Court finds strange is that when she was cross-examined by the APP in the trial Court, a suggestion was given to her that she had made enquiry from the Respondent when she found the deceased being carried in his lap at around 10 am outside the house, upon which he is supposed to have replied that the deceased was not feeling well “and thus he had been taking Khushboo to the hospital”. Such a suggestion was contrary to the case

sought to be developed by the prosecution which was that the Respondent had actually had run away from the place of occurrence and went away to his brother's place and that three days later i.e. on 13<sup>th</sup> March, 2014 his brother had surrendered the Respondent to the Police. What is also not clear is whether the IO went to the place of residence and gathered the materials that would have indicated that the deceased was assaulted in that room by the Respondent. There is also a further angle of case with PW-15 disclosing that a daughter had been born to the Respondent and the deceased. There is no indication of where this child was during all this. Even that angle was not examined by the police.

11. It is unfortunate that PW-29, who was the IO in the case, simply states that the investigation was entrusted to him on 13<sup>th</sup> March, 2014 i.e. three days after the incident and on that day he searched for the Respondent at the house and later while they were at the PS, the elder brother of the Respondent produced him. What steps were taken by the police in this gap of three days is not spoken to by any witness whatsoever.

12. The evidence on record was clearly inadequate to conclusively establish that the deceased died a homicidal death. The reply given by Dr. Gopal Krishna (PW-6) in his cross-examination about the possibilities of injuries being sustained as a result of a fall has already been referred to. In other words, the medical evidence did not conclusively establish a homicidal death. With their being no evidence to establish the demand of dowry soon prior to the death or of the deceased being subjected to cruelty after her marriage in connection with the demand of dowry, the prosecution was

unable to establish the case against the Respondent for the offences under Section 498A and 304 B IPC.

13. The learned APP then sought to invoke Section 106 of the Indian Evidence Act to contend that since it was an unnatural death which occurred in the room which was occupied, apart from the deceased, only by the Respondent, it was incumbent upon him to explain the unnatural death of the deceased. Unfortunately for the prosecution, the investigation on this aspect has been totally shoddy with there being so many glaring holes in the narration. With the Respondent claiming that he was sleeping on the ground floor while the deceased had gone 'upstairs', whether such a possibility existed at all has not even been examined by the IO. Further, as indicated earlier, what was the situation of the room in which the deceased and the Respondent lived is also not clear. There are no photographs of that room at all. All that is placed on record is a site plan which is totally inadequate to rule out the possibility of the deceased having gone upstairs and then having fallen downstairs to sustain the fatal injury. There is no indication of any crime team being called to the spot to further investigate these aspects of the case.

14. The investigation being unsatisfactory and inadequate in the present case, the prosecution has been unable to establish the case against the Respondent even for the alternative charge under Section 302 IPC.

15. For all of the aforementioned reasons, the Courts finds that no grounds have been made out for interfering with the impugned judgment of the trial Court.

16. The Criminal Leave Petition is accordingly dismissed. The trial Court record be returned forthwith together with a certified copy of this order.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**OCTOBER 03, 2018**

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