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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: May 07, 2018.

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CRL.L.P. 309/2018

SMT. BINDU

..... Petitioner

Through: Mr.Uday Gupta, Mr.Hiren Dasan,
Mr.Harish Dasan and Mr.Chand
Qureshi, Advocates.

versus

STATE & ANR.

..... Respondent

Through: Ms.Aashaa Tiwari, APP for the State
with Insp.Davinder Singh, PS Sarojini
Nagar.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S. TEJI, J. (Oral)

1. The present leave petition has been filed by the petitioner under Section 378(4) of the Cr.P.C. seeking leave to appeal against the judgment dated 28.10.2017 delivered by the learned Additional Sessions Judge-03, South District, Saket Court, New Delhi in Sessions Case No.7486/2016 titled as *State vs. Sagar Yadav*, arising out of FIR No.21/2009 registered under Section 302 IPC, Police Station Sarojini Nagar, New Delhi.

2. Brief facts of the prosecution case are that the FIR of the instant case was registered on the directions of the learned Magistrate vide order dated 09.01.2009 in an application filed under Section 156(3) Cr.P.C. by Smt.Bindu, mother of the deceased. The allegations leveled in the FIR are that the Smt.Leela, daughter of the complainant was having friendly relations with accused Sagar Yadav. On 20.11.2008, accused came to the house of the deceased and gave poison to her. The deceased was taken to Safdarjung Hospital and she was admitted there by the accused by introducing himself as husband of the deceased. When complainant went to the hospital and met her daughter, she was told by her daughter that accused had given her poison and she wanted to get her statement recorded. The complainant was turned out of the hospital by the accused. Thereafter, the complainant could not meet her daughter. On 24.11.2008, daughter of the complainant expired.

3. The police filed the cancellation report before the Court. The learned Magistrate took cognizance of the offence and committed the case to the Court of Session. A charge under Section 302 IPC was framed against the accused to which he pleaded not guilty. To prove its case, the prosecution examined 8 witnesses, namely, Smt. Bindu (PW1), Dilip Kumar Pandey (PW2), Dr.Manish Kumath (PW3), Vijay Kumar (PW4), Insp.Anil Sharma (PW5), Insp. Sunil Kumar (PW6), SI Mohd. Yusuf (PW7) and Dr.Lalit Mohan (PW8). After conclusion of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which he took the plea that he and deceased

used to do the business of rehri patri. On the day of the incident, they both had to attend a programme of vendor Divas at Jantar Mantar and he was called by the deceased at her house. When accused went to the house of the deceased, he saw the deceased quarreling with her mother, as the deceased did not want to sell her plot at Narela. On seeing the accused, mother of the deceased went out. Deceased offered the accused a glass of water and thereafter the deceased started feeling dizzy and asked the accused to take her to hospital.

4. The learned trial court, after considering the material placed before it and the evidence adduced, found that there is no evidence against the accused to establish the charge, and thus acquitted him of the charge framed.

5. Being aggrieved by the aforesaid judgment of the learned trial court, the complainant-mother of the deceased has preferred the instant leave to appeal against the impugned judgment. It is argued that the accused administered poison to the deceased. The police was in hand in gloves with the accused, therefore the medical evidence was manipulated. It is submitted that when deceased was shifted to the hospital, she was in her house along with the accused, and it was the accused who got her admitted in the hospital, which is a strong circumstance pointing towards the guilt of the accused.

6. We have heard the submission of learned counsel appearing on behalf of both sides, gone through the material placed before us, and perused the impugned judgment.

7. The only allegation leveled in the FIR is that the accused administered poison to the deceased which led to the death of the deceased. PW1-Smt.Bindu, mother of the deceased, deposed that her daughter Leela was married to Dalip Pandey and was having a son aged about 17 years. Her son-in-law was having a shop at Rajasthan. Therefore, he used to visit the house of the deceased frequently. Her daughter had a plot of land in Narela and the accused used to reside in the neighborhood plot of the deceased. On the day of the incident, PW1 was informed by one guard of her locality that her daughter had been taken by one person on a scooter. PW1 then went to the school of son of the deceased and when he called her mother, the accused picked up the phone and the accused called him to come at Safdarjung Hospital. PW1 along with the son of the deceased went to the hospital where she found her daughter admitted and the accused was present there. Her daughter was shifted to a ward and accused asked the complainant to go out of the ward. The complainant kept on waiting. Thereafter, her daughter was shifted to ICU. The condition of her daughter improved but she was not allowed by the accused to enter in the ward. PW1 went to a temple to pray for her daughter and when she returned, she found that the oxygen on which her daughter was put had been removed. The complainant was informed by a person on duty in the ward that the accused and his wife had removed the oxygen. Her daughter died. During cross-examination, PW1 stated that nobody had told her that oxygen of her daughter was removed by the accused or his wife, but she herself had seen that the oxygen of her daughter had been removed.

8. PW3-Dr.Manish Kumath conducted autopsy on the dead body of the deceased. He deposed that he had opined that the death of the deceased was caused due to acute cerebral and pulmonary congestion.

9. Perusal of record shows that in the FIR, it was nowhere alleged by the petitioner-complainant that oxygen mask/supply of her daughter was ever removed by the accused, as alleged by her in her deposition before the trial court. She had deposed that she was not allowed inside the ward, or ICU, by the accused and his wife. She had gone to temple to pray for the deceased and when she returned she was informed by one person on duty in the ward that the accused and his wife had removed the oxygen of her daughter. During cross-examination, PW1 changed her version by stating that she did not know the name of the person who informed her about the removing of oxygen of her daughter by the accused and his wife. She stated that she herself had seen that accused and his wife remove the oxygen.

10. The allegations leveled in the FIR are completely different from the testimony of the complainant-petitioner before the Court. In the FIR, she had alleged that when she went to the hospital and met her daughter, her daughter told her that she was given poison by the accused. But in her deposition before the Court, she stated that the accused and his wife had removed the oxygen of her daughter which resulted into her death.

11. There is no other evidence on record to establish that the deceased was administered any poison, or that it was the accused who

had administered any poisonous substance to the deceased. It is important to note that the viscera of the deceased was preserved and as per FSL report, no poison or organo phosphorous compound was detected in the sample. Since, no poison or poisonous substance was found in the viscera of the deceased, the possibility of administering poison to the deceased is ruled out.

12. So far the allegations of the complainant-petitioner are concerned, there is no basis in the same. There is no evidence against the accused to connect him with the death of the deceased. Even no motive had been brought on record which was the reason for committing murder of the deceased allegedly by the accused.

13. In the circumstances mentioned above, this Court is of the considered opinion that the present case is not a fit case for grant of leave. Consequently, we dismiss this leave petition.

P.S. TEJI, J

VIPIN SANGHI, J

MAY 07, 2018

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