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

+ **CRL.L.P. 406/2018**

STATE

..... Petitioner

Through: Mr. Hirein Sharma, APP for State.

versus

FIRDOS BEGUM & ANR

..... Respondent

Through: None.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

ORDER

02.07.2018

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Crl.M.A.No.11781/2018

1. Exemption allowed, subject to all just exceptions.

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2. The State seeks leave to appeal against the judgment and order dated 6th March 2018 passed by the learned Special Judge, NDPS-02, Central in Sessions Case No.27780/2016 arising out of FIR No.296/2004 registered at Police Station ('PS') Hauz Qazi acquitting Respondent Nos.1 and 2 of the offences punishable under Sections 498A/306/304B IPC as well as of the alternate charge for the offence punishable under Section 302 IPC.

3. The case against Respondent No.1, the mother-in-law of the deceased, and Respondent No.2, the husband of the deceased, was that they subjected the deceased to harassment and cruelty as a result of which she committed suicide by setting fire to herself on 28th December 2004.

4. Although the medical evidence confirmed that the deceased had died as a result of 100 per cent burns suffered by her and that the smell of kerosene was present, she gave a dying declaration before a Sub-Divisional Magistrate (PW-5) in which she clearly stated that neither her mother-in-law (Respondent No.1) nor her husband (Respondent No.2) or her *jethani* had done anything to cause her to commit such an act. The prosecution also did not bring on record any evidence to suggest that either of the two accused set the victim fire at the matrimonial home.

5. The prosecution relied on the evidence of Mohd. Ahsan (PW-4), the father of the victim, who has stated in his examination-in-chief that his daughter had been subjected to harassment by the accused persons. However, PW-4 expired after his examination-in-chief and there was no opportunity for the defence to cross-examine him. The trial Court rightly therefore held that his testimony could not be relied upon.

6. The other evidence was that of the brother of the victim (PW-3) but he admitted that the victim never ever herself told him about any harassment or violence with her by any of the two accused prior to her death. The trial Court rightly concluded that the testimony of PW-3 with regard to the harassment of his sister at the hands of the accused persons was hearsay evidence as he only knew what was told to him by his father.

7. In sum, there was no evidence to show that the victim was subjected to harassment shortly prior to her death and that she committed suicide as a result of such harassment.

8. The conclusion reached by the trial Court that “there is nothing on record to suggest that prior to 28.12.2004, any incident of harassment was reported to the police” and that “there is no evidence that anyone saw any of the two accused instigating (the deceased) to commit suicide or set herself on fire” cannot be said to be improper or perverse in the facts and circumstances of the case.

9. No grounds have been made out for grant of leave to appeal.

10. The petition is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 02, 2018

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