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

+ **CRL.L.P. 598/2018**

STATE

..... Petitioner
Through: Mr. Kewal Singh Ahuja, APP.

versus

AFTAB ALAM & ORS

..... Respondents
Through: None.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

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ORDER
15.10.2018

1. The State seeks leave to appeal against the judgment dated 31st May 2018 passed by the learned Additional Sessions Judge, North West, Rohini Courts, Delhi in SC No.52175/2016 arising out in FIR No.334/2008 registered at PS Ashok Vihar acquitting the Respondents of the offences under Sections 498A/34 and 304B/34 IPC.

2. The case of the prosecution was that the deceased had married Respondent No.3 on 19th April 2008 in accordance with Islamic rites and ceremonies; that according to the father of the victim, Respondent No.3 was given sufficient dowry articles; that according to the victim's father, his

daughter returned to her parental home twice after her marriage, stating that her in-laws used to harass her; that her husband had strangled her and she had been pressurized due to a demand for dowry. Among the persons accused of harassing her were the two parents of Respondent No.3, four sister-in-laws, one *devar*, and one *behnoi*. One of the points of contention was about the in-laws demanding Rs.5.8 lakhs for purchase of a vehicle and telling the father of the deceased (the complainant in the present case) that if he did not comply with that demand, his daughter would be killed by them. He then purportedly took loans from his relatives and paid the father-in-law of the deceased Rs.5.8 lakhs on 20th August 2008. However, it is alleged that after taking this amount, the father-in-law of the deceased started demanding a plot of land.

3. On 31st August 2008, at around 3 pm, the father of Respondent No.3 called the brother of the deceased and told him that the deceased had hanged herself. The complaint itself was filed and FIR registered only on 1st September 2008. Statements were recorded by the Sub-Divisional Magistrate ('SDM') and thereafter, by the Investigating Officer ('IO'). On the analysis of the complete evidence, the trial Court has, in the impugned judgment, come to the conclusion that the death was suicidal by way of hanging as proved by the medical evidence and not homicidal. On the question of whether the deceased was subjected to cruelty soon after her marriage and immediately prior to her death for dowry, the conclusions drawn by the trial Court were that the several PWs who spoke on this aspect were inconsistent and unreliable.

4. One of the key witnesses in this regard is the father of the victim, who was examined as PW-1. In his examination-in-chief, he supported the prosecution case completely. However, it emerged in his cross-examination that he had made numerous improvements during his testimony in Court. In particular, the statements concerning his daughter being subjected to cruelty was not disclosed either to the SDM or to the IO in the first instance. His only explanation was that he had disclosed these facts to the SDM but the same were not recorded and PW-1 was instead instructed to speak about those facts only in Court. The trial Court, in the considered view of this Court, rightly refused to go by this explanation. The trial Court has observed in the impugned judgment that the delay in recording the statements of this witness has not been satisfactorily explained by the IO.

5. The trial Court has further observed that there are material contradictions in the testimonies of the PWs. This came from the fact that as statements of PWs 3, 4 and 10 were recorded on 8th October 2008, whereas the statements of PWs 6 and 26 were recorded on 15th October 2008. The statement of PW-5 was recorded on 20th October 2008 and the statement of another PW recorded on 25th October 2008. The analysis of the evidence has been duly summarised by the trial Court in para 70 of the impugned judgment which reads as under:

“70. Since, in the case in hand, statement of complainant Hafiz Khan Ex.PW1/A, was recorded by the SDM on dated 01.09.2008 and he had alleged therein that deceased was killed and then hanged. But, such allegation of killing is not corroborated with the medical evidence as from the testimony of PW14, it is proved that it is the case of suicidal death and after the demise of Ms. Suraiya Bano, the prosecution witnesses

started levelling allegation the demand of Rs.5,80,000/- for purchasing of the vehicle and also of demand of plot or floor of the house. The testimonies of PWs are found to be contradictory, inconsistent, embellished and improved, as complainant has alleged in his complaint that a demand of plot was raised by the accused. But at the at time of recording of statement, it is alleged the demand of floor of house was raised by the accused Aftab Alam. There is no specific allegation of demand of dowry against accused Murshida Khatoon, Firoz Alam, Wasim Alam, Mafoom and Ruby levelled by the complainant and the testimonies of the prosecution witnesses are found to be contradictory and the same appear to be afterthought and in view of improved and embellished testimonies of these prosecution witnesses, the statements of these prosecution witnesses become suspicious. So, the same do not inspire any confidence.”

6. Thereafter, in para 75, the trial Court has concluded as under:

“75. Since, the testimonies of material witnesses are found to be suspicious and PW 1, 2, 3 & 4 are near relatives of the deceased and their testimonies are also found to be improved, embellished & inconsistent as discussed hereinabove and they are the relatives of the deceased and same are full of doubts & suspicion, so, it will be unsafe to convict to the accused on such doubtful testimonies of the prosecution witnesses and possibilities of suicidal death of Suraiya Bano in a fit of anger cannot be ruled out and in the light of the law as laid down by the Hon’ble Supreme Court of India in the above said judgment & when two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused is liable to be adopted. Accordingly, the view favouring the accused is adopted.”

7. With the assistance of the learned APP, this Court has examined the testimonies of the witnesses and is unable to find any legal error committed by the trial Court in coming to the abovementioned conclusions. No grounds

have been made out for granting leave to appeal.

8. The petition is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 15, 2018
"sandeep"