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

+ CRL.L.P. 505/2019

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through Ms. Aasha Tiwari APP for State

versus

VINOD KUMAR & ORS. Respondents
Through None.

% Date of Decision: 05th November, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present criminal leave petition has been filed challenging the judgment and order dated 02nd April, 2019 passed by the Court of Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts, New Delhi, arising out of FIR No.129/2013 registered with police station Najafgarh, Delhi, whereby the respondents-accused were acquitted of all charges framed under Sections 302, 498A, 304B and 34 IPC.

2. Learned APP for the State contends that the Trial Court failed to appreciate the cause of death of deceased Pinki as per post-mortem report was "*asphyxia caused by manual strangulation*" and the same occurred within seven years of marriage. She submits that as the death of the deceased Pinki was unnatural and within seven years of marriage, the

presumptions under Sections 113A and 113B of the Indian Evidence Act would be attracted and the respondents-accused were guilty under Section 498A as well as Section 304B read with Section 354 IPC .

3. Briefly stated the relevant facts of the present case are that respondent-accused No.1 Vinod Kumar was married to Pinki on 09th December, 2008 and thereafter deceased Pinki started residing with him as well as other accused persons namely, respondent-accused No.2 Jai Bhagwan (father-in-law), respondent-accused No.3 Murti Devi (mother-in-law), respondent-accused No.4 Deepak (brother-in-law) and respondent-accused No.5 Manisha @ Sonu (sister-in-law) at her matrimonial house i.e. village Sidhhipur Loha, District Jhajjar, Haryana.

4. It is the case of the prosecution that all the accused persons subjected deceased Pinki to cruelty for demand of dowry. In February, 2010, deceased Pinki gave birth to a boy and all the accused persons demanded Rs.51,000/- in *Chhuchhak* ceremony, which was fulfilled by the parents of the deceased. However, due to continuous harassment and cruelty, the family members of the deceased Pinki filed a case for maintenance at Tis Hazari Courts. After intervention of Court, the accused persons brought back deceased Pinki to the matrimonial home.

5. At the time of the incident, deceased Pinki as well as her son and respondent-accused No.1 Vinod Kumar were living separately in a rented premises i.e. House No.11-12, Bajrang Enclave, near Udaseen Ashram, Nangloi Road, Najafgarh.

6. It is the prosecution's case that on 05th May, 2013 at about 7:20 AM, respondent-accused No.1 Vinod Kumar called from mobile phone No.8285507008 to the police at 100 number stating that he had committed

the murder of his wife at his residential premises and he was desirous of surrendering. On receipt of this information DD Entry No.7A was made and the local police upon reaching the residential premises of respondent-accused No.1 Vinod Kumar, found the dead body of the deceased Pinki lying on the bed with strangulation marks on her neck. After the body of the deceased-Pinki had been recovered, respondent-accused No.1 Vinod Kumar gave a confessional statement to the police.

7. However, upon a perusal of the paper book, this Court is in agreement with the finding of the Trial Court that the prosecution has miserably failed to prove the allegations against any of the respondents-accused under Sections 498A, 302, 304B and 34 IPC.

8. Firstly, all the respondents-accused were not living together as a family unit on the date of death of the deceased-Pinki. Consequently, no presumption can be drawn against the family members of respondent-accused No.1 Vinod Kumar i.e. respondents-accused Nos.2, 3, 4 & 5.

9. Secondly, the alleged confessional statement made by respondent-accused No.1 Vinod Kumar to the police is inadmissible in evidence as the same is barred by Section 25 of the Indian Evidence Act. Moreover, no fact was discovered in pursuance to any confessional statement allegedly made by respondent-accused No.1 Vinod Kumar to the police inasmuch as the body of deceased Pinki had been recovered by the police prior to the confessional statement of the respondent-accused No.1 Vinod Kumar being recorded by the police. The Supreme Court in the following judgments has held as under:-

A) *Aghnoo Nagesia Vs. State of Bihar, (1966) 1 SCR 134;*

“9. Section 25 of the Evidence Act is one of the provisions of

law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Sections 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: "No confession made to a police officer, shall be proved as against a person accused of an offence". The terms of Section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by Section 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by Section 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Sections 24, 25 and 26. It provides that when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be

deemed to affect the provisions of Section 27 of the Evidence Act. The words of Section 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by Section 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under Section 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by Section 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by Section 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

(emphasis supplied)

B) *Debapriya Pal Vs. State of West Bengal, (2017) 11 SCC 31;*

*10.Under Section 27 of the Evidence Act only so much of recovery, as a result of the disclosure statement, which directly pertains to the commission of crime is relevant. Otherwise, such an evidence is barred under Section 25 of the Evidence Act. Recovery of laptop does not have any bearing. It is neither the weapon of crime nor it has any cause of connection with the commission of crime. The law on this aspect is succinctly said in *Jaffar Hussain Dastagir v. State of Maharashtra* in the following manner:*

“5. Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused

notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.

(emphasis supplied)

10. Consequently, in the present case, even Section 27 of the Indian Evidence Act is not attracted.

11. Thirdly, the prosecution's case of cruelty, harassment and dowry demand was based on the statements of family members of the deceased Pinki, namely, her mother Munni Devi (PW-1) and brother Gagan Bhardwaj (PW-2), who turned hostile before the Court. The finding of the Trial Court on this aspect, which has not been impugned in the present appeal, is reproduced hereinbelow:-

"73.....Here, one thing is important to note that in her examination in chief, this witness has supported the case of the prosecution and levelled allegation of dowry demand and harassment by the accused persons which according to her was the reason for her death but surprisingly in her cross examination, recorded on 26.09.2015, she took U-turn and somersaulted from her examination in chief by stating that her daughter did not tell her anything about any harassment by her in-laws for demand of any dowry. She further deposed that she

did not receive any phone call from her daughter informing therein that she was being harassed by the accused persons for want of dowry on the day of incident or 2/4 days prior to the date of incident. She even deposed that there was no interference of any type by other accused persons in the matrimonial life of accused Vinod and her daughter Pinki after the settlement of case of maintenance.

74. PW-2 Sh. Gagan Bhardwaj, is brother of deceased Pinki who deposed in his examination in chief that deceased Pinki and accused Vinod got married on 09.12.2008 at Chanchal Park, New Delhi. In the month of February, 2010, his sister Pinki was blessed with a son..... It is very surprising fact that this witness also took Uturn in his cross examination and negate all the allegations levelled by him in his examination in chief. In his cross examination, he deposed that he is not having any receipt of the items given at the time of marriage to his sister. He admitted that Vinod and his family members never demanded any dowry at the time of marriage. He also admitted that the household articles which were given to the accused family at the time of marriage were given by our own. His deceased sister never complained to him regarding demand of dowry and any harassment. He further admitted that Vinod and his family members never demanded Rs. 2500/-, Rs. 5,000/- and Rs. 51,000/- and Rs. 1 lac. He could not tell the exact date, time and year of any alleged demand. He further admitted that he was not present at the time of receiving the telephonic call prior to the death of his sister for alleged demand of Rs. 4 lacs. He did not have the diary of page Ex.P-1. He had never seen the diary of page Ex.P-1. He could not say with certainty if the hand writing in page Ex.P-1 is of his sister Pinki or not. He further admitted that his statements were not read over to him by the police. Accused persons did not make any demand from him of any dowry. He further admitted that accused Vinod and his sister along with their son were residing separately in rented premises after the settlement of case under section 125 Cr.P.C. filed at Tis Hazari Courts. He also admitted that after the settlement, there was no interference of the family members of the accused Vinod in the matrimonial life of his sister and accused Vinod. His sister

was residing separately with her husband and her son from her in-laws for about one year prior to her death. During this period, his sister Pinki never complained him against accused Vinod for any harassment to her. He could not tell the cause of death of his sister Pinki and he came to know about her death after she had expired. He was informed by the police that they had arrested accused Vinod. He did not receive any phone call from his sister on the day of incident or 2/4 days prior to the incident regarding any harassment to her. He admitted that since the accused Vinod was arrested by the police, he had deposed against the accused persons before the police.

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85.The prosecution has miserably failed to prove the allegations against all the accused persons for the offence under section 498A/304B/34 IPC. The factum of dowry demand and harassment are totally vanished with the hostile attitude of all the material witnesses of this case. So far not a single evidence has come on record on the basis of which it can be said that deceased Pinki was subjected to cruelty or harassment by her husband or other accused persons or that such cruelty or harassment was for or in connection with demand of dowry....

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87. Accordingly, all the accused persons are acquitted for the offence punishable under section 498A/304B/34 IPC. ”

(emphasis supplied)

12. Even the witness namely Sanjay (PW-7) to whom the respondent-accused No.1 Vinod Kumar had allegedly made extra judicial confession and whose phone was allegedly used by the respondent-accused No.1 Vinod Kumar to make the confessional call had turned hostile. The finding of the Trial Court on this aspect, which has not been impugned in the present appeal, is reproduced hereinbelow:-

“102. In order to connect the accused Vinod, deposition of PW-7 Sh. Sanjay is very important because as per prosecution story, he was a witness of extrajudicial confession, his phone was used by the accused for calling to the police on number 100 and he accompanied to the accused when he surrendered in the police station. This is the witness who produced alleged mobile phone make Nokia Ex.P-4 before IO Insp. Satish Kumar stating that the same was used by accused Vinod for calling at 100 number on the day of incident. To clear the cloud, let appreciate the testimony of PW-7 Sanjay.

103. PW-7 Sh. Sanjay deposed that accused Vinod is the resident of his village. His mobile phone was not seized by the police. This witness also did not support the case of the prosecution and therefore cross examined by Ld. Addl. PP. wherein he denied the suggestion that on 05.05.2013 at about 5.30 a.m., accused Vinod had told him that he had committed murder of his wife in his rented house at about 4.30 a.m. It is further wrong to suggest that accused Vinod told him that he had to appear in Police station Najafgarh and he had taken accused Vinod to PS Najafgarh in his car. He further denied that on the way accused Vinod had called 4-5 persons from his mobile phone. He further denied that Vinod had called the police on telephone no. 100 number from his mobile phone. In his volunteer statement, he stated that he was not having any mobile phone. He further denied that his statement was recorded by the police. He further denied that he was having mobile phone no. 8285507008. He further deposed that police had obtained his signature on some papers and the contents of the same were not read over to him.”

(emphasis supplied)

13. Fourthly, the registered owner of mobile phone No.8285507008 was not produced and examined by the prosecution.

14. Fifthly, even the witnesses who had allegedly last seen the respondent-accused No.1 Vinod Kumar with the deceased in the house were not produced and examined.

15. Sixthly, the FSL report did not confirm that the note alleging cruelty and harassment handed over by the deceased's brother Gagan Bhardwaj (PW-2) to the police was written by the deceased Pinki. The finding of the Trial Court on this aspect which has not been impugned in the present appeal is reproduced hereinbelow:-

"107.The FSL report does not opine that the hand writing on the page Ex.P-1 is of deceased Pinki. The FSL report Ex.PW34/D opined that "the remaining characters as occurring in questioned signature could not be similarly account for from the available admitted signatures. As such it has not been possible to express a definite opinion on red en closed signature stamped and marked Q1 in comparison with red enclosed signatures similarly and marked A1 to A-7." So, in view of above facts, it is clear that prosecution has failed to prove the fact that the diary page provided by PW-2 Sh. Gagan Bhardwaj was actually written by deceased Pinki or not, benefit of which is certainly goes to accused Vinod."

(emphasis supplied)

16. From the aforesaid, it is apparent that even the necessary ingredients to attract the presumptions under Sections 113A and 113B of the Indian Evidence Act, are not fulfilled.

17. Consequently, the present matter is a case of no evidence. Accordingly, present leave petition being bereft of merits is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 05, 2019

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