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

+ CRL.REV.P. 426/2017 & CRL.M.A. 9684/2017
JASBIR SINGH KOHLIPetitioner

Through: Mr. Vineet Chadha, Adv.
along with petitioner in
person.

versus

STATE (NCT OF DELHI) & ORSRespondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
along with Inspector
Arvind Kumar P.S. Kirti
Nagar and Inspector B. M.
Bahuguna, Vigilance/PHQ
for R-1.

Mr. Ravin Rao, Mr. Akshit
Sawal, Mr. Pallav Gupta
and Mr. Ayan Sharma,
Advocates for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **15.10.2024**

1. The present petition is filed challenging the order on charge dated 01.05.2017 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), West District, Tis Hazari Courts, Delhi, in SC No. 170/2017 arising out of FIR No. 405/2016, registered at Police Station Kirti Nagar.

2. By the impugned order, Respondent Nos. 2 to 4 were discharged for the offence punishable under Section 304-B of the Indian Penal Code, 1860 ('**IPC**'). The charge-sheet was filed in the present case against Respondent Nos. 2 to 4 for the offences punishable under Sections 498A/304B/34 of the IPC.

3. The brief facts are that the marriage between the deceased

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Davneet Kaur and Respondent No. 4 was solemnized on 08.05.2016. After the marriage, they resided with Respondent Nos. 2, 3 and 5, that is, the parents and sister of Respondent no.4 respectively. It is alleged that a DD entry regarding information of the victim's admission in the hospital was received at Police Station Kirti Nagar. Pursuant to the same, on 31.10.2016, the learned Executive Magistrate recorded the statement of the deceased wherein she has stated as under:

"I stated that I am residing at above mentioned address with my husband, father-in-law Jasvinder Singh, mother-in-law Gurpreet Kaur and my sister-in-law Ashish Kaur in a house of tenancy and I am a teacher at Little Millennium Play School, situated at M. S Garden. That yesterday on 30/10/2016 I and my husband was at our home and my mother-in-law, father-in-law, sister-in-law had gone to temple at Chatterpur. I and my husband were preparing for the Diwali worship. We were lighting the Diyas from first floor to ground floor. On the first floor our land lord Narender Singh S/o Lt. Sh. Karam Singh, resides. We were lighting the Diyas and going up side. I was wearing a blue colored synthetic suit. My Suit catches fire from the Diya put in by my side. I burned due to synthetic cloth of my suit. My husband rushed inside in side and bring the bed sheet and tried to extinguish the fire but by the time I was mostly burnt by the fire. I was taken to Mai Kamli Devi Hospital at Rajouri Garden but they referred me at higher medical centre then I was taken to Kalra Hospital and after this I was sifted at B.L.K Hospital but B.L.K Hospital did not admitted me and at last I was sifted burn department ICU of Safdarjang Hospital where on I am under treatment. I got burnt by fire suddenly at the time of the lighting the Diyas. No one has fault in this incident. I do not want any legal action. My mother-in-law, father-in-law sister-in-law and my husband keep me with love. No one had done cruelty against me. I am making this statement full conscious without any pressure."

4. It is claimed that the parents of deceased also gave a statement on 31.10.2016 and 01.11.2016 where they stated that on enquiry from the victim they had found that the clothes caught fired accidentally and nobody was responsible for the same.

5. The statement of the victim was once again recorded on
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03.11.2016 where she stated that her Parents-in-law used to ask her to bring money from her maternal house. She stated that she used to refuse such demands and that she had set fire to her clothes herself. The FIR was registered on the basis of the said statement. The relevant portion of the statement is reproduced hereunder:

"It is stated that I the resident of above mentioned address was married on 08/05/16 with Sarbleen singh S/O Sh. Jasbinder Singh in Gurdwara at M S Garden. My father had transferred a sum of Rs. 12 Lacs in my account and for about 2-3 months my husband, father-in-law, Nanad and mother-in-law kept me well and I was working in Little Millinium play school as a teacher and I was getting salary of Rs. 15,000/- per month which I used to handover to my husband. The salary of we both persons used to be kept at one place and we both jointly used to spend our salary. My husband never beat me. My husband used to love me very much. I do not want any legal action against my husband. On 30.10.2016, at about 9.00 in the night, me and my husband, after coming from Gurudwara Rajouri Grden, were preparing for Diwali. My mother-in-law, father-in-law and Nanad had gone to Chatarpur Mandir. I was lighting up candles and Deepak. My inlaws used to force me to bring money from my parental home to which I used to refuse. I myself have put my lower on fire from candle and after catching fire I got frightened and ran towards stairs shouting bachao bachao and my husband ran to the stairs and wrapped me in bed sheet and took me in bathroom and doused the fire and took me first at Mai Kamli Hospital then Kalra Hospital and after that B.L. Kapoor Hospital in the car in the company of Jaspal and his wife. My parents had reached at Kalra Hospital who were informed by Sarbleen on phone and I was taken to Safdarganj hospital on 30.10.16 and I am being treated here. I gave my statement on 31/10/16 and still today I am reiterating that there is no fault of my husband. I had put myself on fire from my own hands through candle after getting distressed by the behaviour of my in-laws. I swear in the name of Sarab that whatever I have written is correct. Even after getting OK we both husband and wife shall remain together. I have recorded my statement in my full consciousness without any pressure. You have written my statement, read and heard and found correct."

6. On 06.11.2016, the victim expired in the hospital due to the burn injuries. On 16.11.2016, a complaint was given by the



father of the deceased making allegations of demand of dowry and harassment against accused persons. The charge-sheet was filed thereafter on 22.02.2017 against Respondent Nos. 2 to 4.

7. The learned Trial Court noted in the impugned order that the victim had not alleged the reasons as to why the fact that she was harassed on account of demand of dowry was not stated in her earlier statement recorded on 31.10.2016. It was also noted that her subsequent statement was bereft of any material details. The learned Trial Court further took note of the transcripts of the six video recordings that were stated to be prepared by the father of deceased. The learned Trial Court perused the transcripts and observed that the transcripts of one of the video clippings showed that in response to a specific query regarding the manner of incident, the victim had stated that her clothes had caught fire by accident when she was lighting the lamps on the staircase.

8. The learned Trial Court observed that the statement of the victim that was recorded on 03.11.2016 was nothing but an afterthought and a tutored version. In view of the aforesaid observations, the learned Trial Court discharged Respondent Nos. 2 to 4 of the offence punishable under Section 304B of the IPC.

9. Petitioner is the father of the victim and is aggrieved by the impugned order discharging the accused of offence under Section 304B of the IPC.

10. The learned counsel for the petitioner submits that the victim in her statement recorded on 03.11.2016 had categorically stated that she was being harassed on account of demand of dowry.

11. He submits that it is an admitted case that the victim had suffered burn injuries on 80% of her body, therefore, she could



not be in a fit state of mind to make a statement on 31.10.2016.

12. He further submits that the victim had even otherwise died under unnatural circumstances within six months of her marriage. He submits that unnatural death of the victim within seven years of her marriage, whether homicidal or suicidal or accidental, will be called as dowry death, since allegations in regard to demand of dowry have been made in the statement given by victim on 03.11.2016.

13. The learned counsel for Respondent Nos. 2 to 5 submits that admittedly no allegations were made against any of the accused persons by the victim when her statement was recorded on 31.10.2016.

14. He submits that even if the statement made on 03.11.2016 is taken at the highest, no allegation was made against her husband and it was only stated that her Parents-in-law used to demand money. He submits that no allegation in regard to harassment or cruelty was made. He further submits that if two views are possible, the benefit has to be given to accused.

15. He submits that no allegations have been made against Respondent No.5 and she has not been charge sheeted in the present case either.

16. The learned counsel for the petitioner fairly submits that Respondent No.5 has been inadvertently made a party in the present petition.

17. I have heard the counsel and perused the record.

18. From a bare perusal of the impugned order, it is apparent that the accused persons have been discharged essentially on the ground that no allegations were made against the accused persons when the statement of victim was recorded on 31.10.2016 and that the statement given on 03.11.2016 is nothing but an



afterthought and is a tutored version.

19. In the opinion of this Court, while the discrepancies in the statements of the victim may be a defence, however, the same alone cannot be a ground for discharge of the accused persons.

20. Without the evidence being led, it was not open to the learned Trial Court to conduct a roving enquiry and observe at the stage of framing of charges that the statement given on 03.11.2016 was an afterthought and a tutored version.

21. The last statement given by the victim, who succumbed to her injuries after a few days, can be taken as a dying declaration and has to be given special status. Evidently, specific allegations have been made by the victim that her Parents-in-law used to force her to bring dowry. She has also stated that she had put fire from her own hands due to being distressed from the behaviour of her Parents-in-law.

22. The statement could not have been discarded by holding the same to be an afterthought without any evidence being led to that effect. Concededly, the said statement was also recorded in front of the Executive Magistrate. No allegations have been made that it was not within the jurisdiction of the Executive Magistrate to record the statement of the victim.

23. It is also not the case either of the prosecution or the complainant that the doctor had not given a certificate of fitness to the victim to give a statement on 03.11.2016.

24. In the opinion of this Court, the order discharging the accused has been erroneously passed on the sole ground that the statement recorded on 03.11.2016 is nothing but an afterthought.

25. The learned counsel for Respondent Nos. 2 to 5 contends that the learned Trial Court also considered other grounds while passing the impugned order discharging the accused persons.



26. As noted above, from the refusal of the impugned order, the same appears to have been passed essentially on the ground that the statement of the victim recorded on 03.11.2016 is nothing but an afterthought. Undoubtedly, the order discharging the accused can be passed after considering the arguments raised on behalf of the accused persons and considering the evidence collected by the prosecution. However, the discrepancies in the statement of the victim could not be the sole reason for the same.

27. The matter is, therefore, remanded to the learned Trial Court to consider afresh keeping in view the observation made in the present order.

28. It is directed that the matter be placed before the learned Principal District & Sessions Judge for being listed before the appropriate Court on 19.11.2024.

29. The learned Trial Court is directed to pass an order afresh after considering the arguments raised by the parties and the observations made in the present case.

30. The present petition is disposed of in the aforesaid terms.

31. Pending application (s) also stand disposed of.

AMIT MAHAJAN, J

OCTOBER 15, 2024

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