

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.26410 of 2010 in
Crl. Appeal -D No. 1142-DB of 2015(O&M)**

Date of Decision: August 30 , 2016.

Raj Kumar Applicant

Versus

State of Haryana and another Respondents

CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Robin Dutt, Advocate for the applicant.

LISA GILL, J.

The applicant – Raj Kumar aggrieved against the acquittal of respondent No.2 – Pankaj Kumar of the charge of the offence punishable under Section 306 Indian Penal Code ('IPC' - for short) filed an appeal against the judgment and order dated 31.03.2015 passed by the Id. Additional Sessions Judge, Sirsa. In view of the judgment of Hon'ble the Supreme Court in **Satyapal Singh v. State of M.P.**, MANU/SC/1119/2015, CRM No.26410 of 2010 was filed for grant of leave to appeal.

The learned Additional Sessions Judge, Sirsa in her impugned judgment concluded that the prosecution had failed to prove its case beyond reasonable doubt against respondent No.2 –

Pankaj Kumar. Consequently, respondent No.2 has been acquitted.

Raj Kumar Bansal (applicant) son of Indersain Bansal got his statement (Ex.P25) recorded before ASI Ramesh Chander (PW3) on 13.12.2009 stating that he was a Chemist having four brothers and three sisters. Ved Parkash, Bahadur Chand and Vinod Kumar were his elder brothers and Sanjeev Kumar was younger to him. His three sisters were Bimla Devi, Kaushalya Devi and Neetu Rani (deceased in the case). The marriage of his youngest sister Neetu Rani (deceased) was solemnized with Pankaj Kumar (respondent No.2) on 21.01.1999. Three sons, namely, Himanshu (9 years old), Rahul (8 years old) and Jitin (6 years old) were born out of this wedlock. His brother Sanjeev Kumar (PW9) on the day of the incident i.e. 13.12.2009 at about 1.30 p.m. received a telephone call from Pankaj Kumar (respondent No.2), i.e. Neetu Rani's husband, on his mobile number 9466748550, asking Sanjeev Kumar (PW9) to reach his (Pankaj's) house within two minutes. Sanjeev Kumar (PW9), who was in Fatehabad, immediately rushed to the house of Pankaj Kumar (respondent No.2). Sanjeev Kumar (PW9) was informed by Pankaj that Neetu (deceased) had done something in the bathroom. When Sanjeev Kumar peeped in the bathroom from the chinks in the door, he saw Neetu was hanging from the pipe of the shower with a 'saree' wrapped around her neck. Sanjeev (PW9) forcibly opened the door due to which both the bolts of the door were broken. A plastic chair was found next to Neetu's dead body. Sanjeev (PW-9) informed Raj Kumar (complainant) about the

occurrence and he too reached there and discovered the state of affairs for himself. Sanjeev (PW-9) thereafter made a telephone call to the Police.

Consequent to the statement (Ex.P25) made by Raj Kumar (complainant), an endorsement (Ex.P25/A) was made and the writing was sent to the Police Station. DDR No.220 dated 13.12.2009 (Ex.P26) was recorded in this respect at the Police Station. The dead body of Neetu was removed from the bathroom. Photographs (Ex.P1 to P16) were taken. The broken bolts of the door (Ex.P32 and Ex.P33) and broken pieces of bangles lying on the floor were taken in possession by the Police vide memo Ex.P27. A request (Ex.P18) for post-mortem was sent to the Government Hospital, Fatehabad. The post-mortem report (Ex.P19) was received. The dead body was handed over to the relatives vide receipt Ex.P30. Rough site plan (Ex.P29) of the place of occurrence was prepared. Scaled site plan of the place of occurrence was got prepared.

As per the post mortem report, the cause of death was asphyxia as a result of ante-mortem hanging. The viscera were sent for chemical examination. The inquest proceedings (Ex.P20) were initiated on the request by ASI Ramesh Chander vide Ex.P28.

Thereafter, an undated written complaint (Ex.P23) by Raj Kumar (PW6) (applicant) was received on 30.12.2009 at the Police Station, City Fatehabad from the office of the Superintendent of Police, Fatehabad. Registration of a case against the applicant

Pankaj, his parents - Narotam Mittal and Luxmi Devi and his siblings, namely, Neeraj @ Neeru and Nitin for having committed the murder of Neetu, was prayed for. It was stated that Neetu was married to Pankaj (respondent No.2) on 21.1.1999 and a sum of Rs.5.00 lacs approximately was spent on the marriage. Dowry beyond their means was given by the applicant's family. Three children were born out of this wedlock. When Neetu went to her in-laws house after her marriage, they were not happy with the dowry articles. Pankaj (respondent No.2), his parents and siblings (Neeraj @ Neeru and Nitin) started taunting Neetu for not bringing dowry as per the status of their family. Neetu revealed all these facts to Raj Kumar (applicant/complainant), their mother Sharda Rani and other family members. The complainant and other family members assured Neetu that they would talk to her in-laws. However, all the accused persons kept harassing the complainant's sister (Neetu) for bringing more dowry. She was also physically abused. Each time the complainant's family would make their daughter understand that her home is with her in-laws only. They also took Panchayats from the brotherhood to make the accused persons understand. Cash and various articles were given to the accused on various occasions but still all of them kept troubling and harassing Neetu. She was physically abused on small inconsequential things. It is also stated in the complaint that the complainant's brother-in-law Pankaj (respondent No.2) was habitual of gambling and incurred heavy losses due to this habit. He used to

trouble Neetu for getting money and also used to beat her. Neetu used to remain troubled because of this harassment and physical abuse.

Neetu had visited her brother Sanjeev Kumar twice after the birth of a child to her on 28.10.2009. On this occasion also, she revealed to her mother that trouble caused by Pankaj (respondent No.2), Narotam, Luxmi Devi, Neeraj @ Neeru and Nitin had not ended. They were also conspiring to kill her. The complainant and Neetu's mother made her understand that they would talk to her in-laws. Neetu used to tell her mother on telephone about the ill-treatment meted out to her.

The complainant's brother Sanjeev Kumar came home for lunch on 13.12.2009. He received a phone call from respondent No.2 – Pankaj that Neetu was not feeling well. Sanjeev rushed to Neetu's house and saw that a 'saree' was tied around Neetu's neck from one end and the other end was on the rod of the shower. Neetu's feet were touching the ground. On seeing his sister's dead body, Sanjeev was extremely troubled. Thereafter, a telephone call was also received by Raj Kumar (complainant) from Pankaj (respondent No.2) who informed that Neetu had committed suicide. Pankaj asked the complainant to come soon. Complainant Raj Kumar reached the spot and saw Neetu in the above said state. The police was already present at the spot. Upon discovering Neetu to be dead, Raj Kumar lost his senses. The dead body was taken down by the police and proceedings were conducted. The complainant was

asked by the police to identify the body and sign on some papers. Signatures of the complainant as well as of Sanjeev were taken at two-three places. After some time, the complainant (Raj Kumar) and Sanjeev stated all the above said facts to the police, specifically that Neetu had been hanged after being killed. The police assured that action would be taken against the accused. Post-mortem examination was conducted and the dead body of Neetu was received by the complainant and his brother. She was cremated thereafter.

It is further submitted that the complainant made inquiries at his own level and found out that a serious quarrel had taken place in the house of his sister Neetu. When they had seen the dead body at the spot prior to the photographs being taken as well as the post-mortem being conducted, they had noticed a number of injuries on the dead body including scratches, bruises etc. When they received the post-mortem report from the Government Hospital, none of the injuries were reflected in this report. There was a deep injury below the chin of the deceased. Broken pieces of the bangles were found on the stairs, which were 15 to 20 feet away from the bathroom which proved that all the accused had tried to cover up the murder of Neetu by projecting it to be a suicide. The complainant also alleged that the information regarding Neetu's death was not given to him or his family. The police proceedings were carried out in conspiracy with the police. Wrong and incorrect information regarding the cause of death was

obtained by the accused in conspiracy with the doctors. Signatures of the complainant as well as his brother Sanjeev were taken on blank papers and an effort was made to decimate the matter. At that time the complainant, his brother and other family members were not in their proper senses due to the trauma of Neetu's death. It was, thus, prayed that manifest injustice has been caused to the complainant in this manner and action should be taken against all the accused persons.

On receipt of this written complaint, FIR No. 676 was registered on 30.12.2009 for the offences punishable under Sections 498-A, 406, 306 and 34 IPC (Ex.P24). The accused Narrotam, Luxmi Devi, Nitin and Neeraj @ Neeru were found innocent during investigation.

On completion of investigation, report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' – for short) was submitted. Charge against respondent No.2 – Pankaj for the offence punishable under Section 306 IPC was framed on 16.03.2010. After a partial examination of PW6 Raj Kumar, an application under Section 319 Cr.P.C. was submitted by the prosecution for summoning Narotam, Luxmi Devi wife of Narotam and Neeraj @ Neeru and Nitin sons of Narotam, as additional accused. The application was kept pending for decision after the cross-examination of PW6 Raj Kumar was completed. The abovesaid application was partly allowed on 16.02.2012. Narotam and Luxmi Devi i.e. the father-in-law and mother-in-law of the

deceased Neetu were summoned as additional accused, while the application was dismissed in respect to Neeraj @ Neeru and Nitin brothers of respondent No.2 i.e., brothers-in-law of the deceased.

Charge against respondent No.2 – Pankaj Kumar along with Narotam and Luxmi Devi was framed for the offence punishable under Section 302 read with Section 34 IPC and in the alternate, under Section 306 read with Section 34 IPC. Narotam and Luxmi Devi impugned the order dated 16.02.2012 vide which they had been summoned. The passing of the final order by the trial court was stayed by this Court in Civil Revision No.631 of 2012. This Court vide order dated 09.02.2015 passed in the said Civil Revision No.631 of 2012, allowed their revision petition and the order dated 16.02.2012 summoning Narotam and Luxmi Devi was set aside. The matter was thus decided by the learned trial court on 31.03.2015 after the decision of the said Criminal Revision petition on 09.02.2015.

The prosecution examined nine witnesses to prove its case against respondent No.2 – Pankaj Kumar. The accused denied all the incriminating evidence put to him in his statement under Section 313 Cr.P.C. He pleaded innocence and false implication.

The learned trial court on considering the entire evidence on record concluded that there was a complete lack of conclusive evidence against the accused. Thus, the prosecution had failed to bring home the guilt of respondent No.2 (Pankaj Kumar) beyond shadow of reasonable doubt. Respondent No.2 was accordingly

acquitted of the charge against him.

Aggrieved therefrom, the applicant Raj Kumar seeks leave to appeal against the judgment dated 31.03.2015.

Learned counsel for the applicant vehemently argues that the complainant Raj Kumar (PW9) and the other witnesses have given a consistent version. According to the complainant, his sister, Neetu was harassed by respondent No.2 – Pankaj Kumar and other family members after her marriage with Pankaj Kumar on 21.01.1999. Neetu, deceased was subjected to physical abuse as well. There was a persistent demand of dowry by the accused. Respondent No.2 – Pankaj Kumar was in the habit of gambling. Neetu (deceased) always used to complain about this habit as well as of physical abuse and harassment meted out to her by all the accused. Whenever Sanjeev Kumar (her brother) would visit her, she would disclose about the harassment meted out to her by her husband and the other accused. Sanjeev Kumar (PW9) received a telephone call from his brother-in-law, Pankaj Kumar (respondent No.2) on 13.12.2009 at about 1.40 p.m., informing him that Neetu was not feeling well. Pankaj Kumar (respondent No.2) asked Sanjeev Kumar to reach his house immediately. It is contended that Neetu passed away in her matrimonial home, therefore, it was incumbent upon the accused to have offered an explanation for her death.

It is further contended that the deceased was first killed by the accused and then hanged to give the murder of Neetu, a

colour of suicide. It is submitted that the photographs (Ex.P1 to P16) show that the feet of the deceased – Neetu are touching the ground. Therefore, it cannot be said that Neetu had committed suicide by hanging herself. It is also urged by learned counsel for the applicant that the window of the bathroom where the deceased was found was repaired. Therefore, the deceased must have been done to death by the accused and then he must have escaped from inside. The bolting of the door of the bathroom from inside would thus, be of no consequence. The presence of broken bangles on the stairs was indicative of some scuffle etc. before Neetu's death. However, these aspects have been overlooked by the learned trial court, which has grossly erred in acquitting respondent No.2. It is further contended that in any case, it is proved on record that due to the harassment and cruelty meted out to Neetu (deceased), she committed suicide. It is, thus, prayed that leave to appeal against the acquittal of respondent No.2 be granted and the impugned judgment dated 31.03.2015 be set aside. Consequently, respondent No.2 – Pankaj Kumar be convicted for the murder of Neetu under Section 302 IPC and he be punished accordingly. In the alternate, it is submitted that he should be convicted for the offence punishable under Section 306 IPC.

We have given our thoughtful consideration to the contentions as raised by the learned counsel for the applicant and have gone through the record of the case with his assistance.

It is relevant to note that PW8 ASI Ramesh Chander, has

deposed that he received a telephonic message from PW9 Sanjeev Kumar Bansal regarding the death of his sister Neetu on 13.12.2009. Consequent to the receipt of this information, PW8 ASI Ramesh Chander reached the spot. The statement (Ex.P25) of PW6 Raj Kumar Bansal was recorded.

It has been testified by PW8 ASI Ramesh Chander, that the door of the bathroom was broken in his presence by PW9 Sanjeev Kumar and Neetu's dead body was taken out in the presence of PW6 Raj Kumar, PW9 Sanjeev Kumar and Purshotam etc. The door of the bathroom was bolted from inside. The broken bolts were taken in possession along with broken pieces of bangles found at the spot vide memo Ex.P27. Photographs of the spot and the dead body (Ex.P1 to P16) were taken. DDR No. 220 dated 13.12.2009 was recorded. Thereafter, an undated written complaint (Ex.P23) was received on 30.12.2009 at the Police Station City Fatehabad from the office of Senior Superintendent of Police, Fatehabad. On the basis of this written complaint, formal FIR (Ex.P24) was registered on 30.12.2009.

It is in the written complaint submitted subsequently that allegations of cruelty and harassment of the deceased Neetu by the accused were raised. It was stated in this complaint that Neetu was murdered by all the accused.

It is relevant to note that PW9 Sanjeev Kumar in his statement (Ex.D2/C), which was recorded had at the outset stated clearly that on 13.12.2009 he was telephonically called by his

brother-in-law Pankaj (respondent No.2) during lunch hours. Pankaj (respondent No.2) asked Sanjeev Kumar to come to their house immediately. Sanjeev Kumar was informed by Pankaj (accused respondent No.2) that his sister Neetu (deceased) had done something in the bathroom. When Sanjeev Kumar peered through the chinks of the door of the bathroom, he saw that one end of Neetu's 'saree' was tied around her neck and the other end around the shower rod. Neetu was hanging from the rod of the shower with her 'saree'. It was stated by PW9 Sanjeev Kumar that he broke open the door of the bathroom. The bolts were broken in the process. It is pertinent to note that even at the time of inquest proceedings neither Sanjeev Kumar (PW9) nor PW6 Raj Kumar (applicant/complainant) mentioned that their sister was compelled to commit suicide or had been done to death. There is not even a whisper of any ill-treatment meted out to her. It is only after due deliberations that a written complaint was submitted by Raj Kumar stating that Neetu was harassed and subjected to physical abuse on account of her bringing inadequate dowry. The explanation for not stating these facts at the outset is that they were deeply affected by the death of their sister. Their signatures were taken by the police on blank papers and the accused in connivance with the police had tried to sweep the matter under the carpet.

It was further contended that the doctor who conducted the post-mortem examination had also been prevailed upon to make an incorrect post-mortem report. It is pertinent to note that Sanjeev

Kumar as well as Raj Kumar (complainant) have admitted their signatures on the statements made at the time of incident, though it is stated that their signatures were obtained on blank papers by the police. Sanjeev Kumar while admitting his signatures on his statement (Ex.DB) under Section 175 Cr.P.C. has stated that he was semi-conscious at that time and was not fully aware of what he was stating. Such a stand definitely raises a serious doubt on the veracity of the prosecution case, the benefit of which certainly has to go to the accused.

The medical evidence on record is also not in consonance with the hypothesis of a homicidal death. PW4/A Dr. Renu Chhabra noted the following injuries on the dead body of deceased Neetu:

A ligature mark was present above the thyroid cartilage 10"x1 ½" which was obliquely placed on both sides of neck ligature mark was faint on right side, below the angle of mandible, knot mark present on right side, below the angle of mandible. Ligature mark was pale in colour. On dissection tissues underlying were dry, white and glistening with occasional ecchymoses in the adjacent muscle and tissues.

The cause of death was recorded to be asphyxia as a result of ante-mortem hanging. It is to be noted that no injury was present on the dead body of Neetu apart from ligature mark on the neck. This clearly negates the allegations of physical abuse of the

deceased or any kind of struggle immediately before her death. There is nothing on record to substantiate the contention that an incorrect medical report has been given. There is no reason averred much less proved as to why the doctors would give an incorrect report. Medical evidence on record cannot be discredited on the mere asking of the complainant.

The fact that the bolts of the bathroom door (Ex.P32 and P33) were found broken from the inside, negates all allegations of the deceased having been done to death first and thereafter the body being taken to the bathroom and hanged from the shower rod. Contention that the window of the bathroom was repaired and this points to the murder of the deceased, is a futile attempt on the part of the learned counsel to suggest foul play. The contention is noticed only to be rejected. There is no evidence on record to support such a hypothesis that Neetu (deceased) was done to death first and then hanged from the shower rod in the bathroom. Further the accused then bolted the bathroom door from inside, escaped from the window and then repaired it. It is clearly too farfetched and totally unsubstantiated by the evidence on record.

Similarly, the factum of the deceased Neetu's feet touching the floor by itself does not indicate that it was a homicidal death. Modi in his 'Text Book of Medical Jurisprudence and Medical Toxicology' defines 'hanging' as the ligature compression of the neck by the weight of one's own body due to suspension. It is further observed by Modi that in hanging from a low point of suspension, a

comparatively little force, about 4.5 Kg. is sufficient to occlude the blood vessels of the neck. Moreover, the ligature mark on the neck of the deceased was obliquely placed on both sides of the neck, above the thyroid cartilage. The underlying tissues were dry, white and glistening which are some of the signs of death by hanging. The death of Neetu is clearly suicidal in nature.

Therefore, the learned trial court has rightly held that there is nothing on record to prove the charge under Section 302 IPC against the respondent No.2. There is no scope for any interference with this finding which is accordingly upheld.

To prove the alternate offence punishable under Section 306 IPC against the respondent No.2, it was essential for the prosecution to prove a positive act on the part of the accused to instigate, abet or aid Neetu in committing suicide. The prosecution would necessarily have to prove an active and a positive act or omission on the part of the accused to prove its case against the accused. There is no evidence on record indicative of any such act being committed by respondent No.2 to prove that he had aided, abetted or instigated the commission of suicide by Neetu. The allegations that the deceased was subjected to harassment and physical abuse on account of demand of dowry are not proved on record. The allegation of cruelty and harassment not surfacing at the very outset and its effect has already been discussed in the foregoing paras.

The prosecution was unable to prove any complaint

which may have been lodged in respect to the physical abuse and harassment alleged to be meted out to the deceased from the time of her marriage i.e., 21.01.1999 till her death on 13.12.2009. The deceased had given birth to three children out of her wedlock with respondent No.2 - Pankaj. There is nothing on record to show that there was ever any complaint of harassment or cruelty by the deceased – Neetu at the hands of respondent No.2 – Pankaj Kumar. The assertion of Panchayats having been taken for settlement is not substantiated by any evidence on record. There is no medical evidence on record which is even suggestive of the deceased being subjected to physical abuse by the accused.

It is further revealed from the evidence on record that the accused had a joint business with the brothers of the deceased. It is admitted by PW9 Sanjeev Kumar that respondent No.2 had started the business of manufacturing medicines at Zirakpur in partnership with PW6 Raj Kumar (complainant) in the year 2008. Respondent No.2 was also running a crusher at Sujangarh in the State of Rajasthan. Respondent No.2 – Pankaj Kumar used to supply medicines to Sanjeev Kumar's firm at Fatehabad. There is indeed no evidence to support the allegations that the deceased was subjected to cruelty or harassment on account of insufficient dowry.

It is a settled position in law that for reversal of a judgment of acquittal there have to be clear, cogent and substantial reasons. An acquittal of the accused cannot be set aside merely because another view is possible.

Hon'ble the Supreme Court in **Mahamadkhan Nathekhan v. State of Gujarat**, (2014) 14 SCC 589 while reiterating the basic principles in this regard has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused as it stands reinforced, reaffirmed and strengthened by acquittal of the accused, by the trial court. Reliance was placed on an earlier decision in **Chandrappa v. State of Karnataka**, (2007) 4 SCC 415 wherein it was held that an appellate Court, however, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Besides, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

It was further said that it is due obligation of the High Court to consider and identify the error in the decision of the trial Court and then decide whether the error is gross enough to warrant interference. The High Court is not expected to merely substitute its opinion for that of the trial Court only because of the first two principles in the decision referred to above permit it to do so and

because it has power to do so – it has to correct an error of law or fact significant enough to necessitate overturning the verdict of the trial Court. The High Court it was said has to exercise its discretion very cautiously, keeping in mind the acquittal of the accused and the rights of the victim.

Therefore, where the learned trial Court in the present case has taken a reasonable and a possible view, the same is not to be upset merely because another view may be possible.

No other argument has been raised.

Learned counsel for the applicant is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 31.03.2015 passed by the learned Additional Sessions Judge, Sirsa acquitting respondent No.2-Pankaj Kumar, which would warrant any interference by this Court.

Consequently, leave to appeal prayed for by the application against the acquittal of respondent No.2 – Pankaj Kumar, is declined.

(S.S.SARON)
JUDGE

(LISA GILL)
JUDGE

August 30 , 2016.
'om'

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No