

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1362-DB-2015 (O&M)

Date of decision: 18.01.2016

Parvesh

..... Appellant

Versus

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. LS Lakhanpal, Advocate
for the appellant.

RAMENDRA JAIN, J.

CRM-30335-2015

Prayer in the instant application filed under Section 5 of the Limitation Act is for condonation of 290 days' delay in filing the instant appeal.

Heard.

Sufficient grounds have been shown for condonation of delay in filing the present appeal. Accordingly, the application is allowed and delay of 290 days in filing the instant appeal is condoned.

CRA-D-1362-DB-2015

Parvesh, appellant-complainant has preferred this appeal for setting aside the impugned judgment of acquittal dated 18.09.2014, passed by the learned Additional Sessions Judge (Exclusive Court), Jhajjar, acquitting respondent No. 2-Ashok.

2. Brief facts of the prosecution case are that on 07.09.2013, on receipt of a VT message from control room, Jhajjar regarding hospitalization of Kamlesh W/o Ashok-respondent No. 2 in General Hospital, Jhajjar due to consuming of some poisonous substance and her further referral to PGIMS, Rohtak, ASI Satish Kumar along with Lady Constable Mukesh Lata, after collecting the medical ruqa Ex. PW-11/B, went to PGIMS, Rohtak. He moved application Ex. PW-11/C before the Medical Officer to record the statement of the patient, whereupon she was declared unfit to make statement. Since, no one from the family of patient was present in the hospital, so, no statement could be recorded. On the next day i.e. 08.09.2013, on receipt of a telephonic message regarding death of Kamlesh through police post PGIMS, Rohtak, ASI Satish Kumar along with other officials again visited PGIMS, Rohtak. Parvesh S/o Balbir (appellant herein) met him and moved an application before him with the allegations that his two sisters, namely; Kamlesh (since deceased) and Suman were married with Ashok-respondent No. 2 and Vinod sons of Lekh Ram, respectively resident of Silani on 26.11.2001. His sister Suman, was ousted from her matrimonial home out of greed of more dowry, though they had given sufficient dowry at the time of their marriage. They have received a phone call from

Kamlesh (deceased) about 2-4 days earlier to the incident asking them to make payment of ₹ 3 lacs to her in-laws or else she would be killed. On 07.09.2013, his nephew and niece had also telephonically informed about beatings given to their mother-Kamlesh by their father Ashok-respondent No. 2, uncle Vinod, grand-father Lekh Ram and grand-mother Karanvati and forcible administering of some poisonous substance to her and, thereafter, taking her to the hospital. Upon receipt of this information, they had reached PGIMS, Rohtak, where Kamlesh (since deceased) was asking them that her aforesaid in-laws be hanged as they have administered her poison after giving beatings. Thereafter, she lost consciousness and died around 5.00 A.M. on 08.09.2013. She had been killed by her husband and his family members by giving poison on account of demand of more dowry.

3. On the basis of aforementioned complaint Ex. PW-1/A, formal FIR Ex. PW-9/C was registered under Sections 498-A/304-B read with Section 34 of the Indian Penal Code (IPC). The inquest proceedings were conducted and inquest report Ex. PW-9/A under Section 174 Cr.P.C. was prepared. Post-mortem examination of the dead body of Kamlesh was got conducted vide police request Ex. PW-9/F at PGIMS, Rohtak. The cause of death was kept pending till the receipt of viscera report from Chemical Examiner. Vomit material, sulphas powder and empty packet of sulphas were lifted from the spot and were taken into possession vide recovery memo Ex. PW-2/B, after converting the same into sealed parcels. Rough site plan of the place of occurrence Ex. PW-9/G was also prepared. FSL and Crime Scene Teams also visited the

spot and prepared report Ex. PW-14/A. Case property was deposited with MHC, for sending the same to Forensic Science Laboratory (FSL), Madhuban. On 10.09.2013, further investigation was conducted by SI Ram Tirath, who after seeking legal advice from District Attorney, Jhajjar, deleted Section 304-B IPC and added Sections 302/328 IPC. Respondent No. 2 was arrested. Scaled site plan Ex. PW-7/A of the place of occurrence was prepared on 03.10.2013 by EHC Jai Chand. On 05.10.2013, statements of minor children of Kamlesh deceased and respondent No. 2, namely; Aman and Manisha, aged about 9 and 11 years, respectively were got recorded under Section 164 Cr.P.C. before the Illaqa Magistrate. After completion of investigation, final report under Section 173 Cr.P.C. was filed in the Court of learned Area Magistrate by placing the names of Vinod, Lekh Ram and Karanvati in its column No. 2 as innocent.

4. The learned Area Magistrate, after complying with the provisions of Section 207 Cr.P.C., committed the case for trial to the Court of Session, as the offences punishable under Sections 302/328 IPC were exclusively triable by the Court of Session.

5. The learned Additional Sessions Judge (Exclusive Court), Jhajjar, upon finding a *prima facie* case under Sections 498-A/302 IPC charge-sheeted respondent No. 2 accordingly vide order dated 09.01.2014 to which he pleaded not guilty and claimed trial.

6. The prosecution in support of its case examined as many as 16 witnesses.

7. PW-1 Parvesh, appellant-complainant while proving his

complaint Ex. PW-1/A fully supported the prosecution case.

8. PW-2 Lady Constable Mukesh Lata, has stated that on 08.09.2013, she was joined in the investigation by ASI Satish Kumar. She had witnessed the recovery of two sealed parcels of viscera and gastric lavage of deceased Kamlesh vide recovery memo Ex. PW-2/A, handed over by the attending doctor after autopsy. She further testified about the recovery of vomit material, powder of sulphas and empty packet of sulphas vide recovery memo Ex. PW-2/B.

9. PW-3 Balbir Singh, father of deceased Kamlesh and PW-4 Ram Niwas, cousin of deceased have supported the prosecution story by corroborating the statement of PW-1 Parvesh (complainant).

10. PW-5 and PW-6, namely; Aman and Manisha, son and daughter of Kamlesh (deceased) have turned hostile. They deposed that their father respondent No. 2-Ashok never gave beatings to their deceased mother. He used to keep her with love and affection. At the time, when their mother consumed some poisonous tablet, their father was in the fields. Their grand-parents were living separately from them at the time of death of their mother. They in unequivocal terms deposed that their father-respondent No. 2 did not give any tablet of poison to their mother.

11. PW-7 ASI Jai Chand, had stated that on 03.10.2013, after visiting the spot at village Silani Kesho, he prepared the scaled site plan Ex. PW-7/A. Thus, he is a formal witness.

12. PW-8 Constable Rohtash, deposed that he had delivered the special report to Illaqa Magistrate and Senior Police Officers.

13. PW-9 ASI Satish Kumar, is the Investigating Officer. He deposed about the steps taken by him during investigation. He stated that on 08.09.2013 he met the appellant-complainant and received complaint Ex. PW-1/A from him. He got registered formal FIR Ex. PW-9/C and conducted the inquest proceedings vide report Ex. PW-9/E. He got autopsy conducted vide application Ex. PW-9/F. After post-mortem, the doctors handed over two sealed parcels of viscera and gastric lavage along with sample seals vide memo Ex. PW-2/A. Thereafter, he went to the spot and lifted vomit material of deceased Kamlesh, sulphas powder and empty packet of sulphas vide memo Ex. PW-2/B after converting the same into sealed parcels with seal bearing impressions 'JS'. He further stated that he prepared rough site plan Ex. PW-9/G. On return to the police station, he deposited the case property with the MHC.

14. PW-10 ASI Kuldeep Singh has testified about depositing of two sealed parcels of viscera and gastric lavage with him by ASI Satish Kumar, Investigating Officer on 08.09.2013. He further stated that on the same day, the Investigating Officer, had also deposited with him the sealed parcels of empty sulphas packet, vomit material and sulphas powder on a piece of cloth. He further testified that the entire case property was delivered to FSL, Madhuban vide RC No. 307 dated 19.09.2013 through Constable Somvir, who after doing the needful handed over the receipt to him.

15. PW-16 Constable Somvir, through his duly sworn-in affidavit Ex. PW-16/A testified the above fact.

16. PW-11 Dr. Pardeep Kumar, tendered his duly sworn-in

affidavit Ex. PW-11/C and proved copy of MLR Ex. PW-11/A and ruqa Ex. PW-11/B.

17. PW-12 Dr. Varun Garg, testified that on 08.09.2013 he had conducted the post-mortem examination on the dead body of Kamlesh brought by ASI Satish Kumar.

18. PW-13 SI Ram Tirath, partial Investigating Officer of this case testified about arrest of respondent No. 2 and preparation of scaled site plan Ex. PW-7/A from ASI Jai Chand. He had also deposed about recording of statements of witnesses under Section 161 Cr.P.C. and that of Aman and Manisha under Section 164 Cr.P.C. by producing them before the Illaqa Magistrate.

19. PW-14 Neetu, has proved her Crime Scene Report Ex. PW-14/A after spot inspection on 08.09.2013.

20. PW-15 Dr. Vikas by way of his affidavit has proved medical ruqa Ex. PW-15/A sent to him by Dr. Mandal Manish.

21. After closure of the prosecution evidence, the statement of respondents No. 2 under Section 313 Cr.P.C. was recorded, putting entire incriminating evidence brought on record against him to which he denied and pleaded his false implication.

22. Initially, he opted to lead evidence in defence, but later on did not lead any.

23. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondent No. 2 of the charges framed against him under Sections 498-A/302 IPC by giving him the benefit of doubt vide the impugned

judgment.

24. Aggrieved with the same, the appellant-complainant has preferred the instant appeal.

25. Learned counsel for the appellant-complainant contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has erred in relying upon the statements of minor children of Kamlesh (deceased) and respondent No. 2, namely; Aman (PW-5) and Manisha (PW-6), who remained in the custody of respondent No. 2 and for that reason they had deposed falsely under his undue influence and pressure. The learned trial Court has failed to appreciate that there was continuous harassment to deceased-Kamlesh on account of demand of more dowry by respondent No. 2 and his family members due to which the another sister of appellant-complainant, namely Suman had taken divorce from her husband, who is none else, but the real brother of respondent No. 2. The statement of the appellant-complainant was without any blemish despite lengthy cross-examination. The learned trial Court has erred in not taking into consideration the same while acquitting respondent No. 2.

26. We have given our thoughtful consideration to the submissions made by learned counsel for the appellant-complainant and find that the instant appeal is completely devoid of any merit for the reasons to follow:-

- (i) Undisputedly, PW-5 and PW-6 children of the deceased were living with her at the time of her death.

They both in unequivocal terms deposed in Court that

their father respondent No. 2 was keeping their deceased mother with full love and affection. Their mother was never maltreated by their father on account of alleged dowry demand. No instance of any undue influence of respondent No. 2 upon them has been brought by the prosecution on the record. Hence, it cannot be presumed that they had deposed before the Court under undue influence and pressure of respondent No. 2.

- (ii) The marriage of deceased-Kamlesh with respondent No. 2 took place on 26.11.2001. Kamlesh died on 08.09.2013, after the alleged incident that took place on 07.09.2013 i.e. after about 12 years of the marriage. Two children i.e. one son and one daughter were born from their wedlock. At the time of death of Kamlesh, the age of PW-5 Aman and PW-6 Manisha was 9 and 11 years, respectively. If there would have any demand of dowry from the side of respondent No. 2 and his family members, in that event, their marriage would have gone into rough weather immediately after their marriage in 2001. Giving birth to two children by Kamlesh (deceased) itself speaks volumes about the conduct of respondent No. 2 and cordiality of relations in between her and respondent No. 2. Had it not been so, two children would not have taken birth out of

their wedlock. This circumstance is enough to prove innocence of respondent No. 2.

- (iii) PW-5 Aman and PW-6 Manisha at the time of occurrence and their deposition in Court were minors. It cannot be expected from minor children that they could depose falsely in Court, more particularly, if their mother was killed by their father (respondent No. 2). A minor is always considered as an innocent person being totally uninfluenced by worldly cleverness. Both the above witnesses were cross-examined at length but nothing favourable to the prosecution could be elicited from their mouth. Had they been tutored by respondent No. 2 or his family members as alleged by learned counsel for the appellant-complainant, in that event, it was very easy for the learned Public Prosecutor to extract truth from their mouth being innocent.
- (iv) The previous litigation with regard to matrimonial dispute, if any, in between respondent No. 2 and his brother on one hand with deceased-Kamlesh and her sister Suman has no impact on the present case, more particularly, when as per own case of the appellant-complainant, a settlement had arrived at between them in which Suman and Kamlesh became ready to live with their husbands and children. Resultantly, the

aforesaid litigation was withdrawn. Thereafter, deceased-Kamlesh and Suman had started living in their matrimonial home at Jhajjar.

(v) PW-1 the appellant-complainant in his cross-examination has admitted that his sister Kamlesh had visited them five days earlier to her death. His this deposition is contrary to complaint Ex. PW-1/A, where he has mentioned that his deceased sister had telephonically contacted him prior to her death. The appellant-complainant in his cross-examination could not tell the exact dates of harassment and beatings given to his sister by respondent No. 2. He has also admitted that his sister Kamlesh was admitted by her in-laws in the hospital on 07.09.2013, after the occurrence. In case, respondent No. 2 and his family members would have killed Kamlesh, they would not have brought her to hospital, rather they might have run away from the spot or would waited for her death so that she may not tell the truth to anyone inviting their involvement in a criminal case.

(vi) As per prosecution story and according to PW-1 Parvesh and PW-4 Ram Niwas cousin of Kamlesh (deceased), respondent No. 2 and his family members started harassing Kamlesh, for more dowry immediately after marriage. However, it is quite

un-natural that despite coming to know of this fact PW-1 Parvesh and PW-3 Balbir father of deceased never lodged any protest in this regard. Even they did not convene any Panchayat in a span of 12 years. The prosecution story is quite improbable from the fact that if the deceased had telephoned the complainant party 4-5 days earlier to her death and asked them to arrange ₹ 3 lacs to be paid to respondent No. 2 and his family members, in that event, the complainant party would not have kept mum, rather would have visited the matrimonial home of Kamlesh to pacify respondent No. 2 and his family members. Their inaction in this regard shows that they have concocted a false story to falsely implicate respondent No. 2.

27. No other point was urged before us.

28. From the above discussion, it can safely be said that the prosecution has failed to prove its case beyond any shadow of doubt against respondent No. 2 and he has been rightly acquitted by the learned trial Court. The instant appeal is completely devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 18, 2016

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