

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-449-MA-2016 (O&M)

Date of decision: 03.05.2016

State of Haryana

..... Applicant

Versus

Sunil Kumar 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. Praveen Bhadu, AAG, Haryana
for the applicant-State.

RAMENDRA JAIN, J.

CRM-7519-2016

Heard.

Sufficient cause has been shown to condone the delay in applying for leave to appeal. The application is, therefore, accepted. The delay of 185 days in applying for leave to appeal is condoned.

CRM-A-449-MA-2016

The State of Haryana has filed the present application under Section 378 (5) Cr.P.C. seeking leave to file the accompanying appeal against the judgment dated 27.05.2015, rendered by the learned

Additional Sessions Judge (Exclusive Court), Jhajjar, whereby the respondents were acquitted of the charges under Sections 498-A and 304-B of the Indian Penal Code (IPC).

2. Smt. Suhana died on 09.08.2014, on account of burn injuries received on 03.07.2014. She was shifted to Mission Hospital, Bahadurgarh by her husband-respondent No. 1. On the same day, Suhana was referred to Safdarjung Hospital, Delhi, therefore, a telephonic information was given to police-post Safdarjung Enclave, Delhi about her admission there. Consequently, SI Balbir Singh of the said police-post along with Tehsildar/Executive Magistrate, Delhi, reached at Safdarjung Hospital, Delhi and got recorded the statement of Suhana to the effect that she was a household lady and hailed from Nepal. Her marriage was solemnized with respondent No. 1 by an NGO. Just after two months of marriage, both the respondents started beating her on trivial issues. They used to threaten to kick her out from the matrimonial home. On 03.07.2014, respondent No. 2 her mother-in-law had given several slaps to her on a very small issue in the presence of her husband, who remained as a silent spectator. He did not come to rescue her. Being fed up with his attitude, she poured kerosene and set herself ablaze. On hearing her screams, her family members came at the spot and doused the fire. Thereafter, they shifted her to private hospital and her mother-in-law and husband were responsible for her condition.

3. On the basis of above statement, formal FIR under Sections 306 and 511 read with Section 34 IPC was registered. Investigation was carried out. On 06.07.2014, supplementary statement of Suhana was

recorded at Safdurjung Hospital. On 18.07.2014, the respondents were arrested. However, on 09.08.2014 during investigation Suhana died. Consequently, Section 304-B IPC was added while deleting Sections 306 and 511 IPC. Post-mortem examination on the dead body of Suhana was got conducted. The cause of death was opined to be “due to septicemia as a result of infected ante-mortem thermal burn injuries involving about 60% of total body surface area”. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against both the respondents.

4. Thereafter, by filing supplementary challan Section 498-A IPC was also added on the basis of application moved by Roma Debabrata, Managing Trustee and President of the NGO.

5. After commitment of the case, the respondents were charge-sheeted under Sections 498-A and 304-B IPC, to which they pleaded not guilty and claimed trial.

6. The prosecution in support of its case examined as many as 17 witnesses besides tendering the FSL report. PW-1 Neetu, SSA/SOC had simply prepared the crime scene report Ex. PW-1/A at the instance of Investigating Officer. PW-3 ASI Jai Chand, had prepared the scaled site plan on the pointing of the Investigating Officer. PW-4 Constable Hoshiyar Singh, has testified about depositing of case property with him by the Investigating Officer and further sending the same to FSL, Madhuban. PW-5 Constable Pardeep had delivered the Special Report to Illaqa Magistrate and Senior Police Officers. PW-6 SI Baljeet Singh had registered the formal FIR Ex. PW-6/A. PW-7 Ashok Kumar, SHO, had

prepared the final report under Section 173 Cr.P.C., after completion of investigation. PW-8 Ashok Chakravarti, had identified the dead body of Suhana. PW-10 Constable Jasbir Singh and PW-12 Lady Head Constable Sunita remained associated in the investigation. PW-13 Dr. Bhaskaranand had referred Suhana (deceased) to Safdarjung Hospital, Delhi after primary management on 03.07.2014. PW-14 Dr. Amol had medico-legally examined Suhana at Safdarjung Hospital, Delhi on 03.07.2014 and had prepared her death summary on 09.08.2014. PW-16 Dr. Charak Sangwan, had conducted the post-mortem. The testimonies of these witnesses are formal in nature.

7. Rest of the witnesses, who remained to be discussed are PW-2 Rajeev Kumar, Tehsildar/Executive Magistrate, Delhi, who had recorded the dying declaration of deceased-Suhana; PW-9 Roma Debabrata, Managing Trustee and President of RBC Trust and STOP (Stop Trafficking and Oppression of Children and Women) Movement, Delhi (NGO); PW-11 SI Balbir Singh; PW-15 SI Sandeep Kumar (Investigating Officer) and PW-16 Dr. Akangsha Sharma, who had opined that Suhana was conscious and fit before PW-2 Rajeev Kumar, Tehsildar/Executive Magistrate while recording her statement. (The prosecution case has to be appreciated in the light of the depositions of above witnesses.)

8. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself in favour of the prosecution story and thus, acquitted both the respondents vide impugned judgment dated

27.05.2015.

9. Learned State counsel contended that the impugned judgment is based on surmises and conjectures. The trial Court has erred in not believing the dying declaration of deceased-Suhana recorded by PW-2 Rajeev Kumar, Tehsildar/Executive Magistrate, Delhi. The testimonies of the prosecution witnesses were corroborative to each other proving the guilt of the respondents and hence, their acquittal is wrong and illegal.

10. After giving our thoughtful consideration to the submissions made by the learned State counsel, we find no merit in the instant application for the reasons to follow.

11. Admittedly, marriage between respondent No. 1-Sunil Kumar and Suhana (deceased) was solemnized by an NGO on 28.03.2013. PW-9 Roma Debabrata, Managing Trustee and President of the NGO has testified that ₹ 2000/- were given to Suhana at the time of her marriage, while ₹ 2000/- were paid to her on the occasion of marriage of another girl Rupa. Besides above, ₹ 18,000/- in cash and other customary gifts including one cell phone were given to Suhana on 23.04.2014. Prior to 09.01.2014, Suhana never made any complaint against the respondents nor she visited them after her marriage. On 09.01.2014, she came to them in a bad condition and told them about the torture and harassment at the hands of respondents. About 15 days thereafter, both the respondents visited them and told that they wanted Suhana back in her matrimonial home. Respondent No. 1-Sunil Kumar remained in touch with Suhana on her mobile phone after they refused to

send her back. Suhana had asked her to give a last chance to her husband-respondent No. 1. Consequently, on 23.04.2014, Suhana was sent back with the respondents to her matrimonial home after executing a '*razinama*' in writing assuring therein that they would not torture Suhana in future and in case, anything happens, they solely would be responsible. She further testified that during the last week, prior to the death of Suhana, none from the NGO had visited her due to busy schedule. On 03.07.2014, respondent No. 1 had contacted one of the officers at the NGO around 08.30 A.M. and asked them to take back Suhana from their house or otherwise, he would drop her at their office. Thereafter, they received a telephonic information of the doctor about the admission of Suhana at Bahadurgarh Hospital with 90% burn injuries and further that she was referred to Burn Unit of Safdarjung Hospital, Delhi. Both PW-11 SI Balbir Singh and PW-15 SI Sandeep Kumar (Investigating Officers) have testified about the steps taken by them during the investigation.

12. On appraisal of entire prosecution evidence, it can safely be inferred that the prosecution has miserably failed to prove the guilt of respondents, because as per dying declaration made by Suhana (deceased) before PW-2 Rajeev Kumar, Tehsildar/Executive Magistrate, Delhi that after two months of marriage, the respondents had started beating her on trivial issues. They used to threaten and to throw her out from her matrimonial home and thus, on 03.07.2014, she set herself ablaze after pouring kerosene because her mother-in-law had slapped her several times on a very small matter in the presence of her husband-respondent

No. 1. There is not a single whisper by Suhana in her above statement that she was ill-treated or harassed on account of demand of additional dowry. She even did not say that she took the extreme step of setting herself ablaze, because of insistence by any of the respondents for demand of dowry. Hence, it is evident that demand of dowry was not the driving force to commit suicide.

13. PW-2 Rajeev Kumar, Tehsildar/Executive Magistrate, Delhi has testified that he had reduced everything into writing whatever was told by Suhana to him. She did not say anything more or less what was mentioned by him in her dying declaration Ex. PW-2/B. This witness has further stated that at the time of recording the above statement of Suhana, she was in normal condition. Hence, from the testimony of PW-2, it is crystal clear that no allegation of torture or harassment was levelled by Suhana against the respondents on account of any demand of dowry.

14. As per deposition of PW-9 Roma Debabrata, Managing Trustee of the NGO, the respondents have contacted them on 07.01.2014 in the afternoon and asked about Suhana. Thereafter, she and the respondents continued to search her till she came to the NGO on 09.01.2014, meaning thereby Suhana (deceased) had met this witness on 09.01.2014. However, she made a contradictory statement by testifying that a friend of Suhana with whom she was living after leaving her matrimonial home on 07.01.2014 had contacted them on 08.01.2014, therefore, it is apparent that this witness had come to know about Suhana on 08.01.2014, but no effort was made to contact her till 09.01.2014. Even PW-9 or their NGO did not make any effort to move any complaint

for about 15 days, when respondent No. 1 allegedly contacted them. From the entire deposition of PW-9, it is evident that till 09.01.2014 or till the death of Suhana, she never made any complaint against the respondents. Hence, the story put forth by the prosecution that dowry demand was raised by the respondents two months immediately before the death of Suhana has become preposterous.

15. Now, it has to be seen whether the alleged beating of Suhana by respondent No. 2 and presence of her husband-respondent No. 1 as a mute spectator had abetted her to commit suicide. From the evidence on record, it can safely be inferred that respondent No. 1 never ill-treated the deceased-Suhana mentally or physically. She was living happily with the respondents in her matrimonial home till the date she committed suicide. The prosecution has not been able to prove that respondents had ever instigated or abetted her to commit suicide, because even if it is believed that respondent No. 2 had slapped her without any cause on 03.07.2014 in the presence of her husband-respondent No. 1, the same cannot be taken as contribution towards abetment, more particularly, when there is no indication of any physical assault or torture by the respondents to Suhana in her dying declaration. Her dying declaration does not speak that the respondents were not satisfied, because of less dowry or had ever expressed their unhappiness on this account. It is needless to mention here that in routine, quarrels take place in between spouses on trivial matters, but the same are not sufficient to term as an abetment to commission of suicide by anyone. More so, according to PW-2 Rajeev Kumar, Tehsildar/Executive Magistrate, Delhi, Suhana had admitted

before him that respondents have made an attempt to extinguish her fire which ruins the prosecution story about abetment to commit suicide.

16. We have carefully gone through the impugned judgment and found no illegality or perversity in the same.

17. The instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 03, 2016
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