

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1981-MA of 2015 (O&M)
DATE OF DECISION: January 14,2016

State of Haryana

...Applicant

versus

Mewa Singh and another

...Respondents

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

Present: Mr.Parveen Bhadu, AAG, Haryana.

RAMENDRA JAIN, J.

CRM No.39990 of 2015

The prayer made in the application is to condone the
delay of 111 days in filing the present application under section
378(3) CrPC.

Sufficient grounds have been shown in the
application for the condonation of delay. Hence, the delay is
condoned.

CRM-A-1981-MA of 2015

The State of Haryana, through the present application under section 378(3) CrPC, has sought leave to appeal against the judgment of acquittal dated 14.5.2014 passed by the Additional Sessions Judge, Sirsa.

Briefly stated, on 11.10.2013, on receipt of a telephonic message from Ganga Hospital regarding admission of Manpreet Kaur with burn injuries, a police party reached there and obtained the opinion of the doctor, who declared her unfit to make the statement. On the same day, at around 5.50 p.m. when the Duty Magistrate tried to record her statement, her condition deteriorated. Since her brother was away to make arrangement of money for the treatment, none else was present to make the statement to the police. However, around 6.25 a.m, on 12.10.2013, an information was received by the police about the death of Manpreet Kuar. Whereupon, the police party reached the Hospital and met Nirmal, younger brother of the deceased, who got recorded his statement that he along with his sister (deceased) was living with maternal uncle Gurmail in village Thiraj since childhood. Even the marriage of his sister was solemnized by his maternal uncle on 17.2.2008 with respondent no.1. The dowry articles were given beyond their capacity. Two children had born. However, the respondents were not satisfied with the dowry. They gave her beatings for

more dowry and a diesel car. On several occasions, she apprised her woeful story and despicable wanting. The panchayats were convened to make understand the respondents. On the fateful day i.e. 11.10.2013, a telephonic call was received that they were harassing her for dowry. At around 9.00 a.m. while he was entering the house, he saw that his sister was pulled up by her hair. Respondent No.1 sprinkled kerosene oil on her and setting her ablaze. Her clothes started burning. Respondent No.2 threw water upon her from a bucket. He along with father-in-law of his sister arranged conveyance to take her to the hospital. She succumbed to her burn injuries. Upon this statement, formal FIR was registered. Investigation was commenced. The respondents were arrested. On completion of investigation, challan was presented.

Finding a prima facie case, the respondents were charge sheeted under Sections 498-A, 304-B, 302 read with section 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as eleven witnesses.

The entire incriminating evidence was put to the respondents under Section 313 CrPC. They pleaded their false implication.

On appraisal of evidence, the trial Court found that evidence available on record does not prove the guilt of the respondents. Accordingly, it acquitted them.

Learned State counsel submitted that the prosecution witnesses, namely, PW3 Gurmail Singh and PW4 Balwinder Singh have duly proved that the deceased was subjected to cruelty for dowry. The deceased died within seven years of her marriage in the matrimonial home. She succumbed to her burn injuries. The learned trial Court did not appreciate the evidence available on record in a proper perspective. Thus, the acquittal of the respondents is liable to be set aside. They are liable to be convicted and sentenced.

We have given our thoughtful consideration to the above submissions of learned Assistant Advocate General, appearing for the State of Haryana.

The marriage between Manpreet Kaur and respondent No.1 had taken place on 17.2.2008. Manpreet Kaur had suffered burn injuries on 11.10.2013, within seven years of marriage. She succumbed to her burn injuries.

The author of FIR, namely, Nirmal Singh, was examined by the prosecution as PW6. This witness retracted from his earlier version, Ex.PQ made to the police. He specifically deposed that his sister Manpreet Kaur was not set on fire by pouring kerosene oil by respondent No.1. This witness

even deposed that his sister (deceased) was leading a happy life in the matrimonial home. The entire evidence of this witness suggests that the deceased was not murdered. The source of information of PW2 Gurmail Singh and PW3 Balwinder Singh was PW6 Nirmal Singh. These two witnesses were not the eye witnesses of the alleged incident. They were only hearsay witnesses. Their depositions were discarded by the learned trial Court on the premise that since the author of FIR denied the allegations of pouring any kerosene oil on the deceased, therefore, no reliance could be placed on the depositions of both these witnesses. The trial Court also did not find the evidence of PW2 Gurmail Singh and PW3 Balwinder Singh as credible and reliable, because they and PW6 Nirmal Singh were very much present on 11.10.2013 in the hospital, but they did not make any complaint to the police on the very same day. The factum of their not making any complaint on the same very day was recorded by PW8 ASI Ram Singh in DDR No.27 dated 11.10.2013. The DDR further shows that PW6 Nirmal Singh and PW2 Gurmail Singh had met PW8, but they refused to make any statement with the rider that they would make the statement on the next morning. Even the deposition of PW8 ASI Ram Singh clearly shows that PW2 Gurmail Singh had refused to make any statement on the ground that he had no knowledge about the occurrence and it is only PW6 Nirmal

Singh, who could narrate the same. PW7 Ashok Kumar had endorsed the version recorded in the aforesaid DDR by PW8 Ram Singh ASI. The medical evidence available on record suggests that the deceased died due to burn injuries. In case, the medical evidence and ocular version are taken together, it is apparent on the face of it that the prosecution has failed to prove that she was torched by the respondents.

Further more, the plastic can, recovered from the spot was not sent to the FSL Madhuban, nor any opinion of the doctor was sought as to whether the injuries were caused with kerosene oil. Thus, the prosecution has failed to prove that kerosene oil was used in the alleged incident.

In the entirety of the aforesaid evidence, it can be said that charge under Section 302 IPC has not been proved, which has rightly been concluded by the trial Court.

Coming to the point that the deceased had died within seven years of marriage, the necessary ingredients of dowry death are that "soon before the death", the woman was subjected to cruelty or harassment by her husband or any relative of her husband for and in connection with any demand of dowry. In the present case, there is lack of evidence that any demand of dowry was ever made by the respondents. Even PW2 and PW3 in order to prove that there was demand of dowry had made an attempt to show that the deceased was

subjected to cruelty for or in connection with any demand of dowry, but could not succeed, because there are major variations in their depositions which casts doubt in the prosecution story. More so, during investigation, ASP, Sirsa found respondent No.2 as innocent. However, without any cogent reasons, the Investigating Officer presented challan against respondent No.2, inasmuch as, he himself admitted that during investigation he could not reach the conclusion that whether respondent no.2 was innocent or guilty. The defence version could not be rebutted by the prosecution, which itself shows that there was no demand of dowry and that the deceased was never subjected to cruelty and harassed for such demand. If the aforesaid evidence of PW6 Nirmal Singh, brother of the deceased, is read in its entirety that the deceased was leading a happy life, in that eventuality, it cannot be inferred by any stretch of imagination that there was any demand of dowry or that the deceased was subjected to any cruelty for or in connection with such demand. The conclusion arrived at by the trial Court that no offence under sections 304-B, 498-A IPC is made out does not require any interference, which is based on appreciation of evidence.

In view of the aforesaid discussion, we find no merit in the present application. Accordingly, the application seeking grant of leave to appeal against the judgment of acquittal dated

14.5.2014 passed by the Additional Sessions Judge, Sirsa is dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 14,2016
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