

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

Crl. Revision No. 459 of 2009 (O&M)

Date of Decision: 16.09.2016

Dhurv Kumar

.. Petitioner

Vs.

Naresh Kumar & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?

Yes/No

2. To be referred to the Reporters or not? Yes/No

3. Whether the judgment should be reported in the digest? Yes/No

**Argued by:- Mr. Amrik Singh Kalra, Advocate
for the petitioner.**

**Mr. Ashit Malik, Advocate
for respondents No.1 and 2.**

**Petition qua petitioner No.3 withdrawn
on 16.12.2010.**

Mr. Sharad Kr. Yadav, DAG Haryana.

ANITA CHAUDHRY, J.

The instant revision petition has been preferred by the complainant Dhruv Kumar challenging the judgment dated 18.07.2007 passed by the Addl. Sessions Judge, Karnal vide which respondents No.1 to 3 were acquitted.

The facts of the case necessary for adjudication are noticed first.

On 30.05.2005 complainant Dhruv Kumar gave an application to the police. His niece Veena was married to accused Naresh Kumar 12-13 years ago. Allegations were that sufficient dowry was given. Naresh and his brother Pawan Kumar were not happy. Veena had told them about the

harassment being meted out upon her by the in-laws. Several panchayats were convened and accused Naresh and his family members had asked for pardon.. On 26.05.2005 they received information that Veena was missing. The complainant searched for Veena and later learnt that Naresh and Pawan had taken Veena in a maruti van saying that she was to be taken to a hospital. Thereafter, her whereabouts could not be traced.

While searching, the complainant learnt that a dead body of a lady was lying on the edge of the canal and Hawa Singh had removed the ornaments. Hawa Singh was contacted. He identified the dead body and admitted that he had removed the ornaments and had sold them to a goldsmith.

The body could not be traced. The complainant suspected that Veena had been murdered by Naresh and Pawan as a month earlier, Naresh and Pawan had demanded Rs.2 lacs from Veena's father which was not paid.

FIR No. 150 dated 30.05.2005 was registered and investigated. Some ladies had told the police that they had seen the dead body flowing in the canal.

On 01.06.2005 the dead body was recovered from canal pursuant to the information given by one Chander Parkash. Inquest proceedings were carried out. Autopsy was conducted. Initially, the case was registered under Section 302 IPC, which was deleted and Section 306 IPC was added.

Naresh and Pawan were arrested on 04.06.2005 while accused Hawa Singh was arrested on 05.06.2005 and pursuant to the disclosure statement he got the bangles recovered, which were identified by the complainant as that of the deceased. On completion of investigation, challan

was presented.

Accused Naresh and Pawan were charge-sheeted under Section 306 IPC read with Section 34 IPC, while accused Hawa Singh was charged for the offence under Sections 404 and 201 IPC.

At the trial, the prosecution produced 17 witnesses, including the complainant and the relatives of the deceased. PW1 Dr. Rajat Pankaj had conducted the post-mortem examination, PW2 Dhruv Kumar is complainant, HC Hawa Singh, HC Daya Singh and HC Ram Pal had tendered their respective affidavits, PW6 Sheelu Malik had taken the photographs, PW7 Amit Kumar had identified the body, PW8 Lalit Kumar was the brother of the deceased, PW9 Pawan Parshad deposed that the deceased was working in Mahabir Dal Eye Hospital as a Receptionist from 2000 to 2005, PW10 Chander Parkash, another relative of the deceased deposed about his visit to Naresh's house, PW11 ASI Pawan Kumar had recorded the statement of Chander Parkash and pursuant thereto he went to the place and got the body recovered, PW13 SI Charan Singh recorded the FIR, PW14 SI Pritam Singh was the investigating officer of the case, PW15 SI Vijay Kumar had partly investigated the case, PW16 Const. Veer Shakti prepared the scaled site plan, PW17 Smt. Asha Arora was the sister-in-law of the deceased.

In their statements under Section 313 Cr.P.C., accused Naresh and Pawan denied having demanded any dowry and stated that there was no quarrel between the couple. It was their stand that the deceased was under depression on account of illness of her daughter who was suffering from epilepsy. They even doubted that the body recovered was that of Veena.

Accused Hawa Singh also pleaded false implication. One witness was

examined in defence.

On appraisal of evidence, the trial Court disbelieved the prosecution story and recorded their acquittal.

Dis-satisfied with the same, instant revision petition has been filed by the complainant.

On 16.12.2010, learned counsel for the petitioner had withdrawn the revision petition qua respondent No.3 Hawa Singh against whom the allegations were under Sections 404 and 201 IPC.

I have heard learned counsel for the parties and have gone through the record carefully and of the view that no ground for interference in the acquittal of respondents No.1 and 2 is made out for the reasons given in the paragraphs below.

Veena had died after 12 years of her marriage. PW1 Dr. Rajat Pankaj had conducted post-mortem examination on the dead body and in his opinion the death had occurred due to organo phosphorous.

The prosecution case rests on the testimonies of PW Dhruv Kumar, the complainant, PW8 Lalit Kumar, the brother of the deceased, PW Chander Parkash and PW17 Asha Arora, the sister-in-law of the deceased. A perusal of their testimonies reveal that no specific instance or date of demand of dowry was mentioned therein. Primarily the averment made in their statement was that after the marriage when Veena visited her parental house, she told them about the harassment on account of less dowry and that she was not being given any maintenance. However, there is nothing to show that during all these 12 years any complaint was made to the police. Though, it was claimed that number of panchayats were convened, but no person who had attended the panchayat was examined. The deceased was

missing since 26.05.2005, but the FIR was lodged on 30.05.2005. The complainant had stated that on 26.05.2000 there was an altercation and Veena was taken in a car, in that case the report would have been recorded the same day. The case was reported after an inordinate delay of five days. Their testimonies were thread barely discussed by the trial Court and the exaggerations in the statements were duly noticed. There was no evidence of incitement or abetment by the accused.

PW Dhruv admitted that no demand of money was made in his presence. He failed to state that he had ever accompanied the panchayat and the version given by him regarding demand of Rs. 2 lacs was rightly rejected as hearsay. PW Lalit Kumar also failed to give specific instance regarding the demand of dowry and no date or time was given when the demand of Rs.2 lacs was made by the accused. In the complaint Ex.PG on the basis of which FIR was registered, it was stated that the demand of Rs.2 lacs was made from Lalit as the accused were desirous of changing the business. But Lalit Kumar had stated that the demand was made from his father Kundan Lal. Kundan Lal was not examined by the prosecution. Except the bald statement of Lalit Kumar, no other witness was produced to corroborate the demand of Rs.2 lacs. His testimony is rather suggestive of the fact that the deceased was under depression due to the ill health of her daughter. PW Chander Parkash denied going to the house of the accused with the Panchayat. Likewise, the statement of Smt. Asha Arora, sister-in-law of the deceased was found to be smeared with number of improvements. She made exaggerations in her statement made in the Court to that of the initial version given to the police.

The statements have been perused. There is no direct or indirect

act of incitement/ instigation or aiding by the accused. Their statements mainly revolve around the demand of Rs.2 lacs, which was not proved. Merely because the husband was not giving maintenance would not constitute instigation on their part to drive the deceased to commit suicide. After taking into consideration the statements of aforesaid witnesses, the trial Court concluded as under:-

“30. XXX. In the present case, the marriage has taken place about 12-13 years back, so no presumption under section 113-A can be drawn. Reliance can also be placed on Pritam Singh Vs. The State of Punjab 2003(1) RCR 784 where there was suicide by the bribe by taking poison after eight years of marriage. It was held that presumption under section 113-A of the Evidence Act was not available to the prosecution.

31. In the present case, the prosecution has failed to prove that the accused instigated the deceased to commit suicide. Merely, the accused were not making payment for maintenance and the deceased was getting maintenance from her parents for her children then that does not amount to abetment to commit suicide. Reliance can be placed on the judgment of Hon'ble Supreme Court in case Appasaheb and another Vs. State of M.P. 2007(1) RCR 747 where the husband asked wife to bring Rs.1000/1200/- from parents for domestic expenses as he had no money. It was held that it is not demand of dowry. Wife committed suicide by consuming insecticides. Husband was not held guilty of the offence under sections 304B, 306 and 498A Indian Penal Code. The Hon'ble Supreme Court in case Kishori Lal Vs. State of M.P. 2007(3) RCR(Criminal) 385 observed that abetment may be by instigation, conspiracy or intentional aid. The word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to

do any thing. There is no evidence that the accused instigated the deceased to commit suicide or intentionally aided to commit the suicide. In the said judgment, it was held that mere fact that the husband treated the deceased wife with cruelty is not enough. There must be proof of direct to indirect acts of incitement to the commission of suicide. In a judgment U. Subba Rao Vs. State of Karnataka 2003(3) RCR 403 it was held that husband and his parents thrifty and modest persons and asked the deceased not to attend the kitchen to prevent wastage does not amount to cruelty. The act of the accused is only in the nature of censure or mild reprimand. In a judgment Hans Raj Vs. State of Haryana 2004(2) RCR(Criminal) 58 it was held that suicide by a woman within 7 years of marriage due to cruelty by husband this fact alone does not automatically give rise to the presumption that suicide had been betted by her husband. The court should find out that cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury to danger to life, limb or health of the woman.

32. *As discussed above, there is no evidence of cruelty and the abetment by the accused. In the present case, the deceased committed suicide by taking poison and later on her dead body was recovered from the canal, so possibly the deceased after consuming poison jumped in the canal. Since the allegations of the prosecution are that the deceased committed suicide so, this court is also required to find out the probable reasons for the deceased to commit suicide. The statement of Lalit Kumar proves that the daughter of Veena deceased used to have fits of epilepsy since the last 3-4 years and Veena was quite worried on account of ill health of her daughter and she had a slight tension on that account. The statement of Chander Parkash*

PW10 also proves that the daughter of Veena was suffering of epilepsy. The statement of Asha Arora (Bhabhi) of the deceased also proves that the daughter of the deceased was suffering from epilepsy and because of the epilepsy the deceased was perturbed. The statement of DW1 Ragshinder Kaur Dhillon, Cler, Tagore Senior Secondary School, Sandhir where the deceased was working earlier proves that Veena lastly met her and did not share with hr domestic problem. She also admitted that she used to remain worried on account of ill health of her daughter. So, it is proved that the daughter of the deceased was suffering from epilepsy and due to her health condition she was perturbed and worried. As such, the prosecution has also failed to prove that the accused abetted the commission of suicide by the deceased.”

The aforesaid findings leave no doubt that the same are based on correction appreciation of the evidence.

Cases of **Naveen Kumar Vs. State of Haryana, 1998(2) RCR (Crl.) 564** and **Ran Singh Vs. State of Haryana, 2004(4) RCR(Criminal) 580**, relied upon by the petitioner are of no help. In those cases the deceased had committed suicide within seven years of marriage and it was duly proved that there was nexus between the alleged act of abetment and the death, which is not the position in the present case.

The High Court ought not to interfere with the order of acquittal unless the judgment of acquittal is perverse or highly unreasonable as held in **Vimal Singh Vs. Khuman Singh, 1998(4) RCR(Crl.) 423**. In the instant case, the judgment of acquittal rendered by the Court below is neither perverse nor unreasonable and it cannot be said that the court based

its findings on irrelevant or inadmissible evidence. In the circumstances, the instant revision petition is dismissed.

September 16, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No