

CRM-A-1097-MA-2010

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

**CRM-A-1097-MA-2010 (O & M)
Date of Decision: 14.02.2017**

Suresh Kumar

... Applicant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. K.S.Nalwa, Advocate for
the applicant.

Mr. P.K.Aggarwal, DAG, Haryana.

Mr. D.S.Bali, Sr. Advocate with
Mr. U.K.Agnihotri, Advocate,
for respondent Nos.2 and 3.

INDERJIT SINGH, J.

CRM-50688-2010

This is an application seeking condonation of delay of 150 days in filing the application for leave to appeal.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 150 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Suresh Kumar has filed this application against respondents-State of Haryana, Sushil Kumar and Sanjana under Section

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401 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.'), challenging the judgment dated 14.09.2009 passed by learned Additional Sessions Judge, Kurukshetra in FIR No.23 dated 24.03.2006, under Section 306 of the Indian Penal Code (for brevity, 'IPC'), Police Station Babain, vide which respondent Nos.2 and 3-accused were accused.

Learned counsel for the applicant as well as learned senior counsel for respondent Nos.2 and 3 admitted that appeal against acquittal is not maintainable, as amendment in Cr.P.C. by adding provision to Section 372 Cr.P.C., has been made after passing of the impugned judgment, therefore, that amendment will not apply to this case.

Learned senior counsel for respondent No.2 argued that appeal is not maintainable and only revision lies.

Learned counsel for the parties requested that this appeal be treated as revision.

In view of the above, this appeal is treated as revision by this Court.

I have heard learned counsel for the parties and perused the record including the impugned judgment.

From the record, I find that challan was presented against respondent Nos.2 and 3 by the police of Police Station Babain, in FIR No.23 dated 24.03.2006. The brief facts of the case, as noted down in the judgment passed by learned Additional Sessions Judge, Kurukshetra, are as under:

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“2. Prosecution case is that on 24.03.2006, Suresh Kumar (PW 13) (father of deceased Ashwani Kumar) made his statement Ex.P22 to the police to the effect that he is a resident of village Jandola, Police Station Babain, and was aged about 51 years and that he is an agriculturist by profession. He further stated that he had two sons and a daughter. The elder son was Ashwani Kumar, aged about 27 years (since deceased), who was married to accused Sanjana about three years back. The complainant further stated that his son Ashwani Kumar had one daughter, namely; Vashika aged about two years. The complainant further stated that after 4/5 months of the marriage, accused Sanjana (wife of deceased Ashwani Kumar) and her brother Sushil (accused) started building pressure upon deceased Ashwani Kumar to follow their command and, in case, he did anything against their wish, he would be implicated in a false case of demand of dowry or any other criminal case. The complainant further stated that from that very time, his son (Ashwani Kumar deceased) started remaining under mental tension. About six months back, Ashwani Kumar (deceased) started living separately, with his wife Sanjana (accused), in the village itself. The deceased Ashwani Kumar and his wife Sanjana (accused) had strained relations between them and often, accused Sanjana and her brother Sushil Kumar (accused) used to extend threats to Ashwani Kumar. The complainant further stated that on 5.3.2006, there was a quarrel between deceased Ashwani Kumar and his wife Sanjana (accused), on the same issue, and on that very day, accused Sanjana's brother Sushil Kumar (accused)

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had come alongwith 3-4 persons and given threat to Ashwani Kumar deceased by saying that he shall take back his sister (Sanjana accused) to his home and that he would register a dowry case against him (Ashwani Kumar deceased). After that, Ashwani Kumar made many phone calls but his wife Sanjana (accused) did not return. Thereafter, after one week, Sneh Lata, wife of complainant Suresh Kumar and Sudesh Rani, sister of complainant Suresh Kumar went to village Badheri to bring back Sanjana (accused), but she was not sent. Even thereafter, deceased Ashwani Kumar kept on making telephone calls to Sanjana accused (his wife), and on the previous day also (i.e. on 23.3.2006), they had some telephonic conversation. The complainant further stated that on that day i.e. on 24.03.2006, his son Ashwani Kumar had gone to the fields and there, he had consumed some poisonous substance and committed suicide. The complainant further stated that he suspected that his son Ashwani Kumar had committed suicide by being fed up from his wife Sanjana (accused) and her brother Sushil Kumar (accused).”

On finding a *prima facie* case, the accused were charge-sheeted under Section 306 IPC, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined 17 witnesses and thereafter prosecution evidence was closed by learned Public Prosecutor.

PW 1 HC Rajiv Kumar is a formal witness. PW 2 HC

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Pardeep Kumar tendered his affidavit Ex.P2 in evidence. PW 3 Constable Sushil Kumar is also a formal witness of taking case property to the chemical examiner, Karnal. PW 4 HC Suresh Kumar is also a formal witness who took special reports to the superior officers. PW 5 Dr. Lajja Ram is the medical officer, LNJP Hospital, Kurukshetra, who conducted post mortem on the dead body of deceased-Ashwani Kumar. PW 6 Parveen Kumar, Patwari proved the scaled site plan of the place of occurrence. PW 7 Harsh Vardhan is Senior Scientific Officer (Documents) FSL, Madhuban, who compared the handwriting and signatures on the suicide note with the standard handwriting of deceased-Ashwani Kumar. PW 8 HC Raj Pal is a formal witness, who sent the suicide note and notebook etc. to FSL Madhuban for the purpose of comparison. PW 9 ASI Satpal Singh mainly deposed in respect of recording formal FIR etc. PW 10 Rajinder Pal Singh is the Manager of Oriental Bank of Commerce, who produced before the police a card of specimen signatures pertaining to deceased-Ashwani Kumar, from the bank record. PW 11 SI Hukam Chand deposed regarding forwarding of report under Section 173 Cr.P.C. PW 12 Dharam Pal is the photographer, who proved the photographs and its negatives. PW 13 complainant-Suresh Kumar mainly deposed same facts as stated in the FIR. PW 14 Sudesh Rani is the sister of the complainant. PW 15 Bhupinder is the brother of deceased-Ashwani Kumar. He mainly deposed regarding the factum that he was acquainted with the handwriting of his brother,

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deceased-Ashwani Kumar. He also produced one diary and pass-book of the deceased to the police. PW 16 ASI Hans Raj is a formal witness of taking the diary, envelope and one paper for depositing in FSL Madhuban. PW 17 Inspector Desh Raj is the investigation officer. He deposed about the investigation conducted by him.

The suicide note (Ex.P6), after translation, as mentioned in the impugned judgment, reads as under:

“I, Ashwani Kumar, am upset with my wife and in-law. Sometimes, they demand money from me. Sometimes, Sanjana and Sushil threaten me that they would file a dowry case against me. Sometimes, they threaten to kill me. I tried to make my wife Sanjana understand but she does not listen to me. Sushil and Sanjana also speak bad about my mother and father and they insulted them. They have made life of my family difficult. Sushil and Sanjana shall be the reason of my death. Be getting fed up from them, I am committing suicide. My property and money should not go to Sanjana. Sanjana is out of my saying, out of my saying.”

Statements of the accused under Section 313 Cr.P.C. were recorded in which they pleaded false implication and claimed innocence. Their defence plea is that deceased-Ashwani Kumar, his parents and brother-Bhupinder used to harass accused-Sanjana for demand of dowry since the very beginning and they did not allow accused Sanjana to live a peaceful life and she was often beaten up by deceased-Ashwani Kumar etc. It is also the defence of the accused that accused-Sanjana was

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forced to leave her matrimonial home on many occasions after giving her a beating and her life was made miserable. Their further plea is that accused-Sanjana had decided to snap all ties with deceased-Ashwani Kumar. The further defence plea is that deceased-Ashwani Kumar was reprimanded by his relatives for his misdeeds. The further defence plea is that a false story was concocted and a suicide note was prepared and the accused were falsely implicated.

Learned Additional Sessions Judge, Kurukshetra, after appreciating the evidence, acquitted respondent Nos.2 and 3-accused vide impugned judgment dated 14.09.2009.

Aggrieved from the above said judgment, the present revision has been filed.

The trial Court has held that ingredients of abetment, as defined under Section 107 IPC, have not been proved by the prosecution beyond doubt. Perusal of the findings recorded by the trial Court shows that the same have been given on the basis of evidence and as per law. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out by learned counsel for the petitioner as to which material evidence has been misread and which material evidence has not been considered by the learned Court below.

From the record, I find that in the suicide note, it is mentioned by the deceased that sometimes, the accused demanded money from him, sometimes they threatened him that they would file a

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dowry case against him and sometimes they threatened to kill him. Qua these facts, learned trial Court has held that wife has a right to ask for the money and the allegation that the accused demanded money from him and gave threat to him, are not specific one.

From the record, I find that there is no cogent evidence for what purpose, as to when and in whose presence, the money was demanded. Similarly, there is nothing on record that on which date or year, the accused threatened to file a dowry case against the deceased. Even, there is also nothing when the accused gave a threat to kill the deceased. Similarly, there are other allegations in the suicide note that the accused also spoke bad about the parents of deceased and they insulted them, but no specific particulars have been given and these allegations have not been corroborated with any cogent documentary evidence. Accused-Sanjana left deceased-Ashwani Kumar on 05.03.2006. It is in the evidence that Ashwani Kumar and his father approached Sanjana to come back to matrimonial home which further supports the fact that Sanjana had not treated her husband with cruelty to that extent which compelled him to end his life. If it would have been the case, then why the complainant's side will approach Sanjana to come back to the matrimonial home. Otherwise also, it is the case of the prosecution that Ashwani and Sanjana were residing separately. When Ashwani Kumar committed suicide on 24.03.2006, Sanjana and her brother, Sushil were not present there. There is no evidence that the accused had given any threat to the deceased immediately before the

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occurrence. Even if it is taken that Sanjana had said something on 05.03.2006 to the deceased, then it is not the cause to commit suicide. Perusal of the evidence on record shows that the accused had not created any such circumstance against deceased-Ashwani Kumar so that he may end his life. The evidence does not show that they have abetted deceased-Ashwani Kumar to commit suicide.

From the above discussion, I find that the trial Court has appreciated the evidence in right perspective. The findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present revision, the same is dismissed.

14.02.2017

parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No