

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

CRR-613-2012 (O&M)

Date of decision: 11.10.2017

Satish Kumar

...Petitioner

Versus

Yash Pal and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.JS Cooner, Advocate for the applicant

Ms.Santosh, Advocate for

Mr.Pratap Singh, Advocate for respondent no.1.

Ms.Mahima Yashpal, AAG, Haryana

JITENDRA CHAUHAN, J.

The instant revision petition has been filed by the complainant-petitioner, impugning judgment dated 12.2.2011 passed by learned Sessions Judge, Kaithal whereby respondent No.1 was acquitted in First Information Report No.61 dated 8.7.2009, registered under Sections 498A, 304-B and 302 of the Indian Penal Code at Police Station Rajound.

The brief facts of the case leading to the registration of present FIR are that Sushil, since deceased, was married with respondent No.1 as per Hindu Rites on 12.2.2009. Sufficient dowry was given to the family of the said respondent at the time of marriage but they were not happy with the dowry given and started harassing her. About seven days

prior to her death, the deceased stayed in her parental home from 20.6.2009 to 30.6.2009. On 1.7.2009, respondent No.1 telephonically told the complainant (brother of the deceased) that she (deceased) should be sent to Rajound. On this, he sent his sister to her matrimonial home, where respondent No.1 and his mother were residing in a rented premises. The complainant further alleged that during her stay in the matrimonial home, she was asked by respondent No.1 that her father was having two houses at Sonapat and out of them, one should be transferred in his name. She further stated that respondent No.1 had also asked her to give the amount received by her from her earlier husband on account of divorce. She was also asked to bring jewellery from her parental home. She further stated to the complainant that in case she did not bring all those items and transfer the house in his name, she would be done to death. The complainant came to know on 8.7.2009 that the respondent and his mother Sukhdai had poisoned Sushil to death when their demand of dowry was not fulfilled. After registration of the case, investigation was conducted and the challan was presented in the Court.

The accused-husband was charge-sheeted vide order dated 29.09.2009, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 Dr.Sanjeev Garg, PW2 ASI Ram Phal, PW3 EHC Krishan Lal, PW4 MHC Sunil Kumar, PW5 Rishi Pal, Draftsman, PW6 Parvesh Kumar, PW7 Satish Kumar, complainant, PW8 Dr.Suman Lata, PW9 Ram Phal, father of deceased Sushil, PW10 Ishwar Singh, Senior Scientific Officer,

PW11 SI Gheesa Ram and closed its evidence.

When examined under Section 313 Cr.P.C., the accused pleaded innocence. In defence, he examined DW1 Vijender Singh and DW2 Braham Parkash.

After hearing learned counsel for the parties and perusing the evidence brought on record, learned trial Court acquitted the accused of the charges framed against them.

Feeling aggrieved, the complainant/petitioner filed the present revision petition. The State did not opt to file any revision/appeal against the judgment of acquittal.

Hence the present revision petition.

Learned counsel for the petitioner -complainant refers to Sections 498-A and 304 B IPC and submits that the prosecution case is fully proved from the evidence led because the the unnatural and suspicious death of Sushil took place in the matrimonial home of the deceased and it was within one year of the marriage. The learned trial Court erred in not appreciating the statements of PW7 -complainant and PW9 Ramphal, which clearly proved that deceased Sushil was continuously harassed by her husband, respondent No.1 and Sukhdai, mother-in-law for coercing her to bring more dowry as well as transferring the property in her husband's name. The petitioner has produced relevant evidence in support of his case which has been corroborated by way of medical evidence by examining PW-8, Dr. Suman Lata, who was one of the members of the medical board, which

had conducted postmortem examination on the dead body of Sushil and opined that cause of death was consumption of aluminium phosphide poisoning. He further argues that during investigation, it was found that the room, in which the dead body was lying, was bolted from inside and one window 'Jaali' was found cut and the same might have been used by the accused for coming out of the room after putting the dead body inside, which insinuates fabrication of the evidence as well as tampering of the crime scene.

On the other hand, learned counsel appearing on behalf of respondent No.1 submits that there was sufficient evidence on record to prove the innocence of respondent No.1 and learned trial Court after appreciating the every aspect of the matter, has rightly acquitted respondent No.1.

Heard and perused the record.

In the instant case, it is admitted fact that the marriage between respondent No.1 and deceased Sushil was solemnized on 12.2.2009, as per Hindu rites and ceremonies. Sushil had committed suicide on 8.7.2009 after consuming aluminium phosphide. The petitioner alleged that the net (Jaali) of the window was found cut, PW11 SI Gheesa Ram deposed that PW10 SI Ishwar Singh advised him to make an entry through the side window after making a hole in the 'Jaali' fitted on it for entering a person. One of the officials then cut the 'Jaali' and entered the room through that window and opened that door after unbolting the same from inside. In his deposition, he admitted that the

'Jaali' was not found cut with any cutting instrument. Thus, it was Sushil alone, who would have bolted the door of the room from inside for the obvious reason that she wanted to committed suicide by consuming aluminium phosphide.

Learned trial Court while acquitting the accused has observed as under:-

“43. Satish Kumar (PW7) stated that deceased Sushil was operated upon 1½ -2 months prior to her death. According to him some stone was removed from her urinary bladder. He further deposed that the operation was conducted in Saxena Hospital, Sonapat. It was also admitted by him that at the time of operation the accused accompanied by his sister's son had also gone there. That again shows that the accused had been caring for the health of the deceased upto the end. At no point of time the deceased filed any complaint against his conduct. She could ventilate her grievance against the accused, if she had, by way of approaching the concerned authority. The accused was also not that mighty, a man, as is evident from his physique that the deceased might not have been able to check him. He was also not an educated person employed as a school lecturer. From all these circumstances, it looks that the deceased found herself unable to adjust herself in the new environment, may be in the alleged rented accommodation. She was also suffering from ailment for which she had undergone an operation. She had already been divorced by two persons. She had recently returned from her parental house after having

stayed there in the company of PW7 and PW9 for ten days. As stated by Satish Kumar (PW7) she had returned to the marital home all alone by bus. That shows that till then everything was going on very well in the marital home. It looks that something transpired between the deceased and these two PWs, and may be with deceased's mother, during her stay with them for ten days. It was not to the liking of the deceased. Having found herself not been able to compromise with the situation she seemed to have taken this drastic step to end her life by committing suicide by consuming aluminium phosphide. Even she did not bother to leave a written note behind her before committing suicide. Had she been an aggrieved lady against the conduct of this accused she must have left some written note highlighting the cruelty she was, if any, subjected to by the accused. She was a well educated lady. When no such written note was left behind her that clearly shows that at least she had no grievance against the accused. In case she was tortured by the accused and a threat was given to her life by the accused as highlighted in Ex.PD by Satish Kumar (PW7) she could very well refuse to return to the marital fold stating that she was apprehending danger to her life in the company of the accused. But she happily and voluntarily returned to the marital fold all alone by bus. After having returned from there when she is not shown to have been subjected to any cruelty for or in connection with demand of dowry it cannot be taken that soon before her death she was subjected to cruelty for or in connection with demand of dowry by the accused. In such a situation

presumption under Section 113-B of the Indian Evidence Act cannot be drawn.

44. As a result of my foregoing discussion what emerges on file is that the prosecution has miserably failed in establishing the charges under Sections 498-A and 304-B IPC by leading cogent and convincing evidence. The testimony of interested witnesses Satish Kumar (PW7) and Ram Phal (PW9), who were real brother and father of deceased Sushil, does not inspire confidence for the reasons recorded hereinabove and also the law laid down by the apex court as referred to hereinabove. In the absence of any other circumstance having brought to fore as could bring the accused within the ambit of the above charge, I am of the considered view that the accused deserved to be acquitted of the above charges after extending him the benefit of doubt.”

In State of Rajasthan vs Shera Ram @ Vishnu Dutta, (2012) 1 SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court.

However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal

jurisprudence.”

It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption of innocence; and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In the present case, the prosecution has failed to prove its case against accused / respondent No.1 or positively highlight any just conclusion of any guilt of the accused to merit any interference by the Court.

Accordingly, finding no merit in the instant revision petition, the same is hereby dismissed.

11.10.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No