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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Decided on:- 11<sup>th</sup> December, 2018***

+ CRL.A. 438/2001 and Crl.M.A.2201/2017

**MOHIT MEHRA**

..... Appellant

Through: Mr. N. Hariharan, Senior Advocate  
with Mr. Vaibhav Sharma, Mr.  
Siddharth S. Yadav, Mr. Prateek  
Bhalla, Mr. Aditya Vaibhav Singh,  
Mr. Sharang Dhulia, & Ms. Mallika  
Chadha, Advocates

versus

**STATE**

..... Respondent

Through: Mr. K.S. Ahuja, APP for the State  
with SI Imran Khan, PS Paschim  
Vihar.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The appellant and his mother (Manju Mehra) stood trial in the court of sessions in Sessions Case (No.59/1998) registered on the basis of report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of the investigation into first information report (FIR) No.831/1997 registered on 03.10.1997, on the charge for offences punishable under Section 304-B read with Section 34 of Indian Penal Code, 1860 (IPC), in the alternative for the offence under Section 306 IPC read with

Section 34 IPC and additionally, the charge for offence under Section 498-A IPC.

2. By judgment dated 07.05.2001, the court of sessions acquitted the mother of the appellant giving her benefit of doubt, primarily on account of fact that the evidence would show that she had been living separately in Mumbai with her other son for quite some time past. The trial court, however, found the appellant guilty and convicted him for the offences under Sections 498-A and 304-B IPC, there consequently being no occasion to return any conclusion *vis-à-vis* alternative charge under Section 306 IPC. By order dated 15.05.2001, the trial Judge awarded rigorous imprisonment for seven years for offence under Section 304-B IPC, and rigorous imprisonment for three years with fine of Rs.2,000/- for offence under Section 498-A IPC, directing both the sentences to run concurrently and the benefit of Section 428 Cr.P.C. being accorded.

3. By a previous order dated 31.10.2001 passed on this appeal which was presented to challenge the said judgment and order on sentence, the sentence was suspended and the appellant was released on bail pending hearing on the appeal.

4. The trial court record was requisitioned and attached to the appeal file. The said record, however, came to be lost and was rendered untraceable, this leading, *inter alia*, to some inquiries to fix responsibility, such inquiries leading nowhere. Directions were given to the trial court to reconstruct the missing record. Pursuant to the said directions, the trial court made efforts with the assistance of both sides

and has submitted the reconstructed record, it concededly not being complete. Various parts of the documentary evidence, including a document described as “*suicide note*” of the deceased woman, and certain documents which were presented in defence evidence for comparison including, of course, the police proceedings during the investigation, the post-mortem examination report, the medico-legal certificate (MLC), etc. are consequently not available in original form, copies of only some of them having been included in the reconstructed record.

5. Both sides agree that there is no possibility of missing record being reconstructed beyond what has been mustered by the trial court. Both sides also agree that there is no possibility of any further material being gathered by directing *de novo* trial. Thus, there is no escape from consideration of the appeal on the basis of available record, both sides having opted to make their submissions in its light.

6. The case concerns the unnatural death of Ekta Mehra, a woman then aged about 22 years old, during the day on 03.10.1997 in her matrimonial home described as house No.A-1/148-B, Janta Flat, Paschim Vihar, New Delhi. It has come out clearly from the allegations in the case and also the evidence led that Ekta Mehra (the deceased) had been involved in a love affair with the appellant. The parental family of Ekta Mehra was opposed to such union, they having shown their disinclination to give approval, Ekta Mehra and the appellant none-the-less proceeded ahead and entered into a marriage ceremony on 29.11.1995. The evidence also clearly shows that the

parental family of Ekta Mehra reluctantly reconciled to the situation and, thus, agreed to arrange a formal marriage ceremony which was organized on 24.12.1995. After the said marriage, Ekta Mehra moved to live with the appellant in the aforementioned house. The family of the appellant included his mother, she concededly and proved to having moved to live with her other son in Mumbai for several months prior to the core events.

7. It is own case of the parental family of Ekta Mehra, particularly her brother Sunish Sahni (PW-2), and her father Chander Mohan Sahni (PW-11), as indeed her mother Harsh Sahni (PW-3) that on 03.10.1997 at about 11:30 a.m. there was a telephonic exchange between PW-2 (the brother of the deceased) with the deceased, the talk being disrupted with some exchange also between PW-2 and the appellant, the appellant having become allegedly abusive at that point of time. It is also clear from the evidence of the above mentioned prosecution witnesses that the telephonic call at 11:30 a.m. having ended, the mother made attempt to re-connect telephonically with the daughter (the deceased) sometime around 12:30 p.m. (in the afternoon) on 03.10.1997, but she being informed by the sister-in-law (*nanad*) of the deceased that the deceased had confined herself into her room by bolting it from inside. The brother (PW-2) and mother (PW-3) statedly then went to the matrimonial home of their daughter (the deceased). As per their version, the door of the room of Ekta Mehra was closed from inside, they having knocked at the door, but she would not respond. When they entered the said room by opening the door from a broken *jali* in the window, they found Ekta Mehra

hanging by a *saree* from the ceiling fan. They immediately shifted Ekta Mehra to a private hospital described as Mahant Gurmukh Singh Charitable Hospital where per the MLC, the deceased was declared to have been brought dead at 1:35 p.m. on 03.10.1997 by her father (PW-11). There is discrepancy in the evidence as to how the father (PW-11) would be the person who would accompany the deceased to the hospital after her death by hanging from the ceiling fan had been discovered against the backdrop of clear testimony of PW-2 and PW-3 that it is they who had visited the house to check on the welfare of the daughter of the family.

8. Be that as it may, the post-mortem examination carried out on the dead body would confirm the cause of death to be asphyxia due to hanging by the neck with use of a ligature, a *saree*, used in the process having been recovered from the scene of incident.

9. Though the parental family may have expressed certain doubts as to the cause of death, the investigation carried out did not shape up any theory other than that of suicide, since the room, where the deceased was found hanging by the neck with the help of ligature attached to the ceiling fan, was bolted from inside. It was concededly opened by the brother and mother though by putting their hands inside through a broken *jali* in the window. There is no evidence worth the name brought on record to attribute the breaking of *jali* to any act of commission or omission on the part of the appellant. The court of cognizance also did not find any material on the basis of which it could be treated as a case of culpable homicide, cognizance having

been taken of offence under Section 498-A and 304-B read with Section 34 IPC as was the prayer in the charge sheet, the charges framed having followed the same view.

10. The trial Judge, in his wisdom, framed alternative charge under Section 306 read with Section 34 IPC. The gravamen of the accusations of the case against the appellant, thus, remained one founded on the theory of suicide and suicide alone. It appears that in the course of decision the Additional Sessions Judge did entertain certain doubts as to the possibility of it being a case of culpable homicide. But, those doubts remain in the realm of speculation. No direction for further investigation was given, if any gaps existed in the material that had been presented to the court. Therefore, nothing turns on the reasoning set out at length in the impugned judgment as to the possibility of it being a case other than the one of voluntary commission of certain acts by the deceased to bring an end to her own life. These observations are crucial in the context of what has followed in the impugned judgment *vis-à-vis* the document referred to as the “*suicide note*”.

11. Coming back to the chronology, after the death had been brought to the notice of the police, vide DD No.13-A, as recorded by ASI Lata Singh (PW-4), the police machinery having been activated, SI Randhir Singh (PW-13) being the first police official who reached the hospital where the dead body had been taken, the sub divisional magistrate (SDM) of the area was approached. It appears that the jurisdictional SDM was too pre-occupied to attend to this matter.

Thus, the facts were brought to the notice of Mr. Sahib Singh Rana (PW-9), who was the link SDM, his jurisdiction being of the nearby area. PW-9, the SDM, has testified at the trial affirming that after he had visited the hospital and had seen the dead body, he had examined and recorded the statements of the brother and father of the deceased and had also inspected the scene of the incident in the course of which proceedings the suicide note (Ex.PW-1/A) was shown to him. The said suicide note, as the record clearly shows, was subjected to formal seizure by the investigating officer on that very date.

12. Under directions of the SDM, in view of the allegations made by the brother and father of the deceased in the course of preliminary inquiry, the FIR was registered for offences under Section 498-A and 304-B/406 read with Section 34 IPC. During the course of investigation, the police made efforts to confirm the authorship of the document which had been recovered from the scene of hanging, it indicating to be the suicide note. The parental family of the deceased did not come out with sufficient material to have a formal scrutiny and confirmation about the document primarily written in Hindi, although some material was mustered and on that basis it was confirmed that the signatures in English appearing in the said document were indeed of the deceased. This fact has been confirmed on oath even by the prosecution witnesses, particularly, the brother and father of the deceased.

13. The handwriting expert (PW-1) in the forensic science laboratory (FSL), however, found herself unable to give any definitive

opinion. Be that as it may, the observations recorded by her *vis-à-vis* the questioned handwriting may be noted *in extenso* :-

*“All the documents were carefully & thoroughly examined with scientific instruments such as Stereo Microscope, Video Spectral, Comparator-I and Poliview System etc. under different lighting conditions and I am of the opinion that:*

*I. The person who wrote the red enclosed writings & signatures stamped and marked A1 to A6 also wrote the signature in the red enclosed position similarly stamped and marked Q1 for the following reasons:*

*The signatures in the red enclosed portion marked Q1 is freely written and no sign of imitation has been observed in its production. The admitted signatures supplied for the comparison also show freedom, natural variations and consistency in their execution. Similarities found in formation of letters & nature of combinations among them are such as – upward nature of all the horizontal strokes of letter ‘E’; relative location of commencing stroke of Letter ‘k’, movement of stroke and formation of vertical stroke, slight retrace of stroke while commencing the buckle part of the letter; ticked commencement of crossing bar of ‘letter ‘t’ and nature of combination of the letter with preceding and succeeding letter; retrace at first vertical stroke of letter ‘M, nature of curvature at the middle and blind nature of loop at the top of second vertical stroke; relatively small size of letter ‘e’; similar manner of formation of ‘h’, ‘a’ and underscoring etc; formation of letter ‘r’ within curvature at initial part, small size of loop at the top, depressing nature of its shoulder and combination of final part with following letter; etc.*

*Similarities are also found in general writing habits of movement, skill, speed, relative size and proportion of*

*characters and nature of commencing and terminating strokes etc.*

*There is no fundamental divergence in the writing habits and the similarities mentioned above are significant and sufficient and will not accidentally coincide in the writings of two different persons and when considered collectively lead me to the aforesaid opinion.*

*II. The questioned writings marked Q1/1 & Q2 when compared with the standard writings marked A1 to A6 similarities are observed in formation of letter 'E' & 'M' but in the absence of further standard writings it has not been possible to express a definite opinion on the red enclosed writings - - - stamped and marked Q1/1 & Q2."*

14. It appears that during the trial, the defence wanted to bring on record certain further material for facilitating comparison of the authorship of the suicide note and in that endeavor they introduced two additional documents (Ex.DW-4/A and DW-4/B), through an advocate, they having been described as love letters written by the deceased to the appellant during the course of their affair prior to the marriage.

15. The trial Judge having expressed doubts as to the circumstances in which the death had occurred, *vis-à-vis*, the observations of the family members of the deceased about the absence of stool which might have been used in the alleged suicide and that they had not seen any such suicide note lying around, proceeded to express doubts about authenticity of the suicide note. He proceeded to examine the authorship with the help of two documents which had been brought by the defence witness. In the opinion of this court this was most unfair exercise. It was prosecution's own case that the deceased had left

behind the said suicide note. Hence, it could not take an about turn and make an effort to show facts to the contrary. The family members of the deceased, *i.e.*, the brother and mother, had rushed to the scene to ascertain the welfare of their sister/daughter. They had discovered her confined in a room and eventually found her hanging by neck, beyond any hope of medical rescue. Their state of mind, in these circumstances, would be more on rushing her to some nearby hospital rather than taking note as to what was the status of the furniture inside the room, not the least, engage in investigative steps like finding out whether any suicide note had been left behind or not. The omission on their part to see the suicide note is no guarantee that such suicide note could not have been found at all at the scene.

16. The fact remains that SI Randhir Singh (PW-13), a public servant, in the course of discharge of his official duties, having responded to the call after information had come in about the suicidal death, found such a document at the scene. This piece of evidence, therefore, must be accepted. As would be seen from the above observations of the handwriting expert, though hesitating in giving any conclusive opinion, several similarities were found in the writing. Rather, she would not find any dis-similarities, so to say. The parental family would have been in the best position to muster sufficient material for comparison, particularly writings of the deceased in Hindi script. There is no explanation as to why they would not aid or assist the investigating agency in this regard. The fact that the document admittedly bears the signatures of the deceased carries inherent guarantee that it was authored by the deceased herself.

17. The statements of PW-2, PW-3 and PW-11 about illicit demands raised by the appellant, after the marriage, for money do not have any support from any prior complaints as to such conduct in the past after the daughter of the family had gone against their wishes. It cannot be ignored that since the deceased had got married against their objections, they were not very happy with her matrimonial liaison with the appellant and were, thus, inimically placed *vis-à-vis* him. They were, however, in constant touch with the deceased, which is explained by the telephonic call at 11:30 a.m. on 03.10.1997. It does appear that, during the said conversation, the appellant became abusive towards his wife and also towards PW-2. But, this is where the suicide note (Ex.PW-1/A) gets connected and provides the corroboration.

18. It is essential to take note of the contents of the suicide note. It reads, thus:-

“मैं एकता मेहरा अपनी मर्जी से बिना किसी के दबाव में आये अपनी जान दे रही हूँ। मुझे किसी से कोई शिकायत नहीं है। अगर शिकायत है तो सिर्फ भगवान से कि उसने मेरी किस्मत ऐसी बनाई। लेकिन मैं भगवान से ये ही प्रार्थना करते हुए अपनी जान दे रही हूँ कि उसने मेरे जीते जी तो कभी मेरे मोहित का साथ नहीं दिया लेकिन मेरे मरने के बाद मेरे मोहित का साथ जरूर दे क्योंकि मेरे बाद वो बेचारे अकेले पड़ जायेंगे। मैं ये जानती हूँ कि मेरे मरने से उन पर और भी ज्यादा दुःख टूट पड़ेंगे क्योंकि उन्हें तो पहले से ही किस्मत ने मारा हुआ है। और मैं उन्हें और ज्यादा मार रही हूँ लेकिन मैं इतनी ज्यादा कमजोर हूँ कि अब जिंदगी से लड़ने की और हिम्मत नहीं रह गई है। मेरी भगवान से ये ही

प्रार्थना है कि वो मेरे मोहित को सदा सुखी रखे। मेरे मरने का कोई दुःख न करना क्योंकि मैं मायके और ससुराल दोनों में सबको बहुत ही प्यार करती हूँ अगर कोई भी दुखी रहा तो मेरी आत्मा भटकती रहेगी। मैं सबसे माफ़ी मांगती हूँ मैं मोहित और सोनू से खास तौर पर माफ़ी मांगती हूँ क्योंकि मेरी ही वजह से उन दोनों का झगड़ा हुआ।”

19. The suicide note is not *in sync* with the evidence of PW-2, PW-3 or PW-11. It reflects that the deceased was happy and in total comfort in the company of the appellant, the husband she had chosen of her own volition. It reflects that she had some anguish because of the difficulties he was facing in life. It appears from the final sentence that she had anguish because it was on her account that her brother and husband had had a quarrel with each other. The said document hardly reflects the state of mind of a woman who had been subjected to cruelty by the husband or his relatives, much less over demands of dowry.

20. For the foregoing reasons, this court finds it difficult to uphold the conclusions reached by the trial court. The impugned judgment and order on sentence are, thus, set aside. Benefit of doubts is extended to the appellant. He is acquitted of the charge.

21. Bail bonds and surety bonds are discharged.

**R.K.GAUBA, J.**

**DECEMBER 11, 2018**

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