

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1227-MA-2017

Date of Decision: 08.11.2019

Puneet

.....Applicant

Versus

U.T., Chandigarh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Gautam Bhardwaj, Advocate, for the applicant.

Ms. Ashima Mor, APP,
for respondent No.1-U.T., Chandigarh.

Mr. Sushil Jain, Advocate,
for respondent Nos. 2, 4 and 5.

Respondent No.3-dead.

HARNARESH SINGH GILL, J.

1. This application is filed by complainant-Puneet under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 27.03.2017 passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh, vide which in case FIR No. 313 dated 17.06.2015 under Sections 304-B, 306, 120-B IPC registered at Police Station, Manimajra (Ex.P.17), Chandigarh, the respondents, namely, Anoop Kataria (father-in-law), Mahender Kaur (mother-in-law), Chanchal Kataria (brother-in-law) and Kavita Kataria (sister-in-law) were acquitted of the charges framed against them under Sections 120-B, 304

IPC read with Section 120-B IPC and in alternate under Section 306 IPC read with Section 120-B IPC.

2. As per complainant-Puneet (PW1) (brother of deceased sister 'N'), marriage of his sister 'N' was performed with Balwinder Kataria on 29.4.2015. She was being given beatings right after a few days of her marriage. Her husband-Balwinder asked to bring 3 lacs, as he had to go to Italy and mother-in-law and father-in-law used to taunt that they had offers for the marriage of their son from well to do families, but by marrying her, their lives had been ruined. Even Chanchal – respondent No.4 demanded a car and Kavita, respondent No.5 asked for a gold set. Regarding this 'N' told them many a time and when the complainant (PW.1) went to visit her, she used to weep, but 'N' was told to settle in her matrimonial home. Accordingly FIR (Ex. P.17) was registered under Section 304-B, 120-B IPC, 304-B IPC.

3. After investigation, charges were framed against the accused-respondents under Sections 120-B IPC, 304-B IPC read with Section 120-B IPC and in alternate under Section 306 read with Section 120-B IPC to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution had examined as many as 10 witnesses.

5. PW-1 Puneet Kumar (brother of the deceased) stepped into the witness box and brought on record that the marriage of 'N' was solemnized with Balwinder Kataria on 29.4.2015 and after marriage, Balwinder Kataria along with respondents No. 2 to 5 had started harassing his sister 'N' for bringing insufficient dowry. They also asked her to bring big vehicle and gold set and occasionally said that their son

was offered better matrimonial alliance but 'N' had ruined their lives and she was given beatings by respondents No. 4 and 5. It was further stated that at the time of marriage, 'N' was 26/27 years of age and before committing suicide on 17.6.2015, she wrote her suicide notes Ex. P3 and Ex. P4. During cross-examination, complainant (PW-1) admitted that his sister got married to one Rajesh son of Mahipal but denied if it was a runaway marriage and in the year 2014, the marriage with Rajesh was dissolved by way of divorce. He further denied that ultrasound was conducted when she was not well and was 08 weeks' pregnant when she got married to Balwinder Kataria i.e. on 29.4.2015.

6. On similar footings, PW-2 Baby (mother of the deceased) stated regarding marriage of her daughter with Balwinder Kataria. She stated that her daughter had been ill-treated by the respondents right from the day of marriage but to this effect, no complaint/application had been given to local police despite the fact that she had narrated all when her daughter had come to her parental house on 5.6.2015 and went back on 14.6.2015. In cross-examination, this witness denied the marriage of 'N' with Rajesh, but admitted that a civil suit was filed by the deceased for declaring the marriage with Rajesh as null and void but Baby (mother) denied that during the period of marriage with Rajesh, 'N' became pregnant twice and both the time, the pregnancy was terminated.

7. This witness also admitted that she had taken her daughter 'N' (deceased) to Civil Hospital for getting her medically examined and later to Mirchias Diagnostic and Path Lab and ultrasound was conducted at the instance of respondent No. 3-Mahender Kaur (died during the

pendency of the present application) but when Baby (PW-2) was confronted with the ultrasound report dated 5.6.2015, wherein it was mentioned that pregnancy was of 8+1 weeks, she denied the said fact.

8. Regarding marriage with Rajesh, Baby (PW-2) gave a typical story that her daughter was called by Rajesh to give skin medicine and when she went to him, he gave some other medicine in tea and as a result, her daughter 'N' (deceased) became unconscious and Rajesh solemnized marriage with her without her consent.

9. It is denied by PW-2 Baby that on 17.6.2015, Mehak (cousin of 'N') along with Monti and Mohit went to the matrimonial home of her daughter and in fact Puneet visited her on 16.6.2015. Rather Satya Devi (sister of PW-2) called her from Shimla on 17.6.2015 at 3.30 P.M. regarding death of her daughter 'N' as her relatives were residing in the locality of her daughter's in-laws. This witness (Baby) along with her son went to the in-laws house of 'N' on Activa scooter, where respondent No. 3 informed that their daughter had been hanging on the first floor of the house, where the doors were found locked from inside. They did not try to break the door and called the police.

10. This witness further stated that Balwinder Kataria and her daughter 'N' (deceased) used to meet each other before marriage from January 2015 itself and had physical relations as a result whereof, her daughter became pregnant as engagement of the two had taken place on 27.2.2015.

11. PW-3 Lady Constable Sharmila stated that after receiving the information of death, she along with Sub Inspector Rohit and other

police officials had gone to the place of occurrence and Sub Inspector Rohit had informed the SDM, East who had also reached the spot. The Forensic Team of Chandigarh Police clicked the photographs and during inspection of the dead body, two suicide notes Ex. P3 and Ex. P4 along with a hanky were found which were taken in possession.

12. Sub Inspector Rohit Kumar, Investigating Officer, appeared as PW-6 and stated that on the statement of Puneet, brother of 'N', FIR (Ex. P-17) had been registered. He deposed that SDM, East, namely, Danish Ashraf had conducted the inquest proceedings (Ex. P-14) and respondents No. 1 and 2 had been arrested. He further deposed that the post-mortem had been conducted on 18.6.2015 and, subsequently, respondents No. 3 and 4 had been arrested but accused Balwinder Kataria had been at large and declared proclaimed offender.

13. Dr. Vimukti Chauhan, Senior Scientific Officer Toxicology appeared as PW-7 and deposed that after various tests, no poison had been detected in Exhibits 1 to 5.

14. PW-9 Dr. Ajay Kumar, Associate Professor deposed that on 18.6.2015, he along with Dr. Satyam Tyagi and Dr. Kamalpreet Kaur had conducted the post-mortem on the dead body of 'N' (deceased) and as per their opinion, the cause of death was Asphyxia due to ante mortem hanging and at the time of post-mortem, the deceased had been found approximately 8 to 10 weeks' pregnant.

15. Constable Foola Singh, Police Photographer, Chandigarh appeared as PW-10. He had clicked photographs of the spot from different angles and the same were Ex. P-24 to Ex. P-42.

16. Respondents in their statements under Section 313 Cr.P.C. pleaded innocence and claimed that they had been falsely implicated in this case and after two days of marriage, their daughter-in-law went to her parental home and remained there upto 14.6.2015 and on 17.6.2015, her cousin Mehak (daughter of maternal uncle of the deceased) along with other cousins, namely, Monti and Mohit came and remained there till lunch and after some quarrel between them, 'N' went upstairs to her room and subsequently, they came to know that she had committed suicide.

17. The respondents further stated in their separate statements that while at parental house, 'N' had suffered some pain and an ultrasound had been conducted on 5.6.2015 at Mirchia Diagnostic Centre, Manimajra and as per the report, she had been pregnant of 08 weeks (+ 1 week) and this fact had not been disclosed to them by 'N' or her mother.

18. It was further stated that 'N' had run away with one Rajesh Kumar son of Mahipal and performed marriage with him. Later 'N' filed a suit for declaration to the effect that marriage certificate issued by Arya Samaj Mandir was a forged document. In that case, Rajesh Kumar had filed written statement and a compromise was effected between them and on the 'No objection' of Rajesh, the suit was decreed on 14.1.2015 by the Civil Judge (Jr. Division), Chandigarh.

19. Thus, 'N' was having a love affair with Rajesh Kumar but due to pressure, she had performed marriage with Balwinder Kataria, without disclosing her earlier marriage. Thus, there was pressure upon her to abort the child. She came back from her parental home on

14.6.2015 and after two days, her cousins came and a quarrel took place between them and she ('N') had committed suicide as she failed to bear the pressure.

20. As all the four respondents were acquitted of the charges framed against them, vide judgment dated 27.3.2017 by Additional Sessions Judge-cum-Judge, Special Court, being not satisfied by the verdict, complainant Puneet has preferred this application.

21. We have heard the learned counsel for the applicant, learned State counsel and counsel for respondents No. 2, 4 and 5 and with their able assistance, we have gone through the record of the trial Court very minutely.

22. As far as two suicide notes written by deceased 'N', which are on record as Ex. P-3 and Ex. P-4, are concerned, there is no allegation of demand of dowry and harassment at the hands of respondents No. 2 to 5. Puneet, brother of 'N', who appeared as PW-1, stated that his sister had been 26/27 years of age at the time of marriage with Balwinder Kataria. He admitted that his sister had got married to Rajesh son of Mahipal but denied it being a runaway marriage. He further stated that the marriage with Rajesh had been dissolved by way of divorce in the year 2014. This witness, being brother of deceased 'N', also admitted that ultrasound was conducted.

23. The stand of the prosecution is that Rajesh called 'N' on the pretext to give her skin medicine, but instead gave some medicine in tea on which 'N' became unconscious and he performed marriage with her.

24. It is also an admitted fact that a civil suit was filed by deceased 'N' to declare her marriage with Rajesh as null and void.

25. PW-2 Baby, mother of 'N' (deceased) admitted that her daughter was pregnant and was medically examined at Civil Hospital, Manimajra and also from Mirchias Diagnostic and Path Lab where ultrasound was conducted. Ultrasound report (Ex. D-9) reveals that 'N' (deceased) was having pregnancy of 8 + 1 weeks.

26. The ultrasound was conducted on 5.6.2015 and it pointed out the pregnancy of 8 + 1 weeks and Balwinder Kataria came from Italy to perform marriage on 18.4.2015 and the marriage was solemnized on 29.4.2015 and Balwinder Kataria again went back to Italy on 28.5.2015. Thus, 'N' (deceased) stayed with her husband for 28 days. If the date of ultrasound is taken into consideration, which was conducted on 5.6.2015 indicating 8 + 1 weeks pregnancy, 'N' became pregnant before marriage with Balwinder Kataria.

27. As argued by the learned counsel for the applicant that Balwinder Kataria had physical relations with 'N' (deceased) after engagement on 27.2.2015, on the asking of the counsel for the applicant, we have perused the coloured copy of the passport of Balwinder Kataria which shows that for the purpose of engagement, he came to India on 13.1.2015 and went back on 3.3.2015. Since the ultrasound was conducted on 5.6.2015 which pointed out pregnancy of 8 + 1 weeks even then the allegations against Balwinder Kataria that he had physical relations with 'N' deceased after engagement, cannot trap him.

28. To our mind, the present case does not fall in a category where 'N' (deceased) was subjected to cruelty and harassment by the husband and his family members i.e. respondents No. 2, 4 and 5. The evidence of PW-1 Puneet (brother of the deceased) and PW-2 Baby (mother of the deceased) are not free from any doubt and worthy of acceptance. Since the evidence does not inspire any confidence of this Court, the judgment under challenge does not suffer from any infirmity as there is no evidence on record to show provocation for the distress to go to the extent of committing suicide nor there is an iota of evidence indicating the husband and his family members having abetted the commission of suicide.

29. Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

30. Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

November 08, 2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No