

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

**CRM-A No. 2631-MA of 2018 (O&M)
Date of Decision: 10.07.2019**

Shri Niwas

..... Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Amarjit Singh Ahluwalia, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

CRM No. 42798 of 2018

Prayer in the present application under Section 482 Cr.P.C., duly supported by the affidavit of the applicant, is for exemption from filing true typed copy of judgment dated 17.08.2018 passed by learned Additional Sessions Judge-cum-Special Court for the case of Heinous Crime against Women, Karnal.

Application is allowed, as prayed for.

CRM-A No. 2631-MA of 2018

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to file the Appeal against the judgment of acquittal dated 17.08.2018 passed by learned Additional Sessions Judge-cum-Special Court for the cases of Heinous Crime against Women, Karnal, whereby accused (respondent Nos. 2 & 3 herein) have been acquitted of charges for commission of offences under ***Section 304-B read with Section 34 of IPC*** ***(in alternative under Section 306/34 of IPC).***

2. Briefly the facts of the prosecution case are that on 26.02.2017, an information was received by the local police regarding committing of suicide by hanging by **Sangeeta wife of Arun Kumar** resident of Bazida Jattan, Madhuban, District Karnal. On receiving this information, SI Mahabir Singh alongwith EHC Rupesh and Constable Sonu went to the place of incident and where **complainant-Shri Niwas** presented a written application to the police by stating that deceased-Sangeeta was married with Arun on 26.12.2015 according to Hindu rites and ceremonies and in the marriage, he gave a sufficient dowry as per his financial status. But after sometime from the performance of the marriage of his daughter, his daughter was subjected to cruelty, harassment and ill-treatment at the hands of in-laws as they were raising demand of dowry. About six months back from the date of occurrence, deceased was taken to her parental home by him where she stayed for about three months. Thereafter, accused-Arun took her with him alongwith her one year old son and she remained thereafter in her matrimonial home till her death. On 26.02.2017, deceased-Sangeeta had a telephonic call with her brother-Amit that she might would pay visit to her parental house and she also requested her brother to visit her matrimonial home. On 26.02.2017 at about 5.00 p.m., Mahender (father-in-law of deceased-Sangeeta) had a telephonic call with the complainant and he told the complainant to advise the deceased as she was going beyond the control. However, after 15 minutes from the receiving of her call, he was informed that his daughter had committed suicide by hanging herself. On receiving this information, complainant alongwith co-villagers went to the matrimonial home and they found that the dead body of the deceased-Sangeeta was lying on the bed. He suspected that his daughter was

instigated to commit suicide by her husband (Arun), mother-in-law (Anita) and brother-in-law/*devar* (Jony). On the basis of these allegations, an F.I.R. under Sections 304-B/34 of IPC was registered and investigation was commenced. Inquest proceedings were also conducted. The post-mortem of the dead body was conducted. Accused were arrested.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Illaqa Magistrate by the prosecution against the respondents/accused. Copies of challan as envisaged under Section 207 Cr.P.C. were supplied to the accused free of cost. Finding a *prima facie* case, the accused were charge-sheeted by the Court for commission of offences under Sections ***304-B read with Section 34 of IPC (in alternative they were charge-sheeted for the commission of offences under Sections 306/34 of IPC).***

To prove its case against the respondents-accused, the prosecution has examined as many as **eleven (11)** witnesses, which are as under:-

“ ASI Hari Kishan as PW-1, EASI Vir Shakti Singh, Draftsman as PW-2, ASI Rameshwar, the then MM of PS Madhuban as PW-3, Dr. Kamlesh Gill as PW-4, Shree Niwas, complainant of this case as well as father of deceased Sangeeta as PW-5, ASI Ram Mehar as PW-6, L/C Poonam as PW-7, Constable Sonu as PW-8, SI Mahabir Singh, Investigating Officer as PW-9, Dr. Rajnish Garg, SMO, DCH, Karnal as PW-10 and HC Rupesh as PW-11.

On completion of prosecution evidence, the statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing by way of evidence of prosecution

against the respondents-accused were put to them and they pleaded their innocence and false implication. No defence evidence was produced.

On the basis of weak evidence led by the prosecution, the Court of Additional Sessions Judge has acquitted the respondents for the commission of offences for which they have been charge-sheeted.

3. We have heard the learned counsel for the applicant-appellant and have also gone through the paper book very carefully.

On the careful examination of the statement of complainant and Investigating Officer, it transpires that deceased-Sangeeta was not subjected to any harassment or cruelty at the hands of the accused which could be termed as sufficient to abet her commit to suicide. During cross-examination of complainant and Investigating Officer, it is established that on the date of incident, Sangeeta (deceased) was not subjected to any harassment rather complainant was requesting accused-Arun to return his amount of ₹ 15,000/- which was borrowed by accused-Arun from him in January, 2017. In the entire statement of the complainant-Shree Niwas (PW-5), he has totally failed to mention the exact date, month and year for demanding of dowry by the accused from him and the deceased. It appears that he has levelled the vague allegations against the accused regarding demand of dowry from his daughter. The prosecution has built up its case that deceased was sharing every kind of information with her brother-Amit but the non-examination of Amit as a prosecution witness is a fatal to the case of the prosecution. No person of the brotherhood community could dare to say that Sangeeta was subjected to cruelty or harassment at the hands of her husband or any relative of her husband in connection with demand of dowry. As

IPC are missing in the case of the prosecution.

At this juncture, it is apposite to quote the observation of the Hon'ble Apex Court in case of ***Ramesh Kumar Vs. State of Chhattisgarh, 2001 (4) R.C.R. (Criminal) 537***. The Hon'ble Supreme Court of India in Paragraph 20 and 21 has laid down as under:-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In State of West Bangal v. Orilal Jaiswal and Anr., [1994(3)R.C.R.(Criminal) 186: (1994) 1 SCC 73], this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

In the instant case also, on the meticulous examination of the prosecution witnesses, there is nothing on the record to prove that deceased was subjected to such a mental torture at the hands of her in-laws which abets her commission of suicide. As such, the trial Court has right in its opinion that prosecution has miserably failed to prove its case beyond shadow of reasonable doubt against the accused.

4. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding.

If the order of acquittal is to be reversed, the Appellate Court must examine

and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

5. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondents beyond any reasonable doubt. Thus, no case for any interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

The **application** is without any merit and, therefore, **dismissed**.

Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

July 10, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>