

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

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**CRM-A-400-MA-2016 (O&M)
Date of Decision : 22.01.2019**

State of Haryana

... Appellant

Versus

Sonu and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Vivek Saini, DAG, Haryana.

Mr. Veer Pal Singh, Advocate for the respondents.

HARNARESH SINGH GILL, J.**CRM-6524-2016**

This is an application for condonation of delay of 117 days in filing the appeal. Heard. In view of the reasons mentioned in the application and affidavit, same is allowed.

Delay of 117 days in filing the appeal is condoned.

Main case

In the present case, State has preferred an appeal against order/judgment dated 28.07.2015 passed by Additional Sessions Judge (Exclusive Courts), Jhajjar vide which Sonu son of Jai Singh and Kamla wife of Jai Singh have been acquitted in case FIR No. 136 dated 25.10.2014 registered under Sections 498-A/304-B/34 IPC, Police Station Line Par, Bahadurgarh.

Brief facts of the case are that on 25.10.2014, Anu wife of Sonu had been hospitalized due to consuming some poisonous substance where she was declared dead. The family members of the deceased were informed

by the police. Neelam, mother and Aashish-brother of deceased were produced before Tehsildar/Executive Magistrate who recorded their statements under Section 164 Cr.P.C. and are Ex.PW6/A and Ex.PW14/A. Inquest report proceedings were completed vide report Ex.PW15/A-1. The mother of the deceased put blame of her death on the husband and in-laws of the deceased Anu for want of dowry as they used to harass her daughter. Mother of Anu stated that her daughter had been killed by administering poison to her by her husband and her in-laws. Investigating Officer has recorded statements of the witnesses and after completing the investigation, challan was presented in the court, against the accused.

Finding a prima facie case, charge under Sections 498-A/304-B read with Section 34 IPC with alternative charge under Section 302 read with Section 34 IPC against both the accused were framed to which they pleaded not guilty and claimed trial.

Section 498-A IPC read as follows:-

"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

In order to prove its case, prosecution examined as many as 15 witnesses. Statements of the accused were recorded under Section 313 Cr.P.C. wherein incriminating circumstances appearing in prosecution evidence were put to them. Accused denied the allegations and pleaded false implication. No defence evidence was lead by the accused persons.

After hearing learned counsel for the parties and the appreciation of evidence, trial court held that there was no cogent and material evidence on record to show that deceased-Anu was either treated with cruelty or harassed with the demand of dowry during the period between her marriage and her death. There is also no evidence against the accused Sonu which drove deceased-Anu to commit suicide. However, prosecution failed to prove that Anu-deceased was subjected to cruelty or harassment in her in-laws house. Consequently, both the accused persons were acquitted by the trial court/Addl. Sessions Judge (Exclusive Court) Jhajjar vide order/judgment dated 28.07.2015.

Now State of Haryana, being aggrieved against the aforesaid judgment of acquittal has preferred the present appeal praying for setting aside the judgment dated 28.07.2015, passed by Additional Sessions Judge being against law and facts. Acquittal of accused has resulted in grave miscarriage of justice and the same will give wrong signal to the public.

Learned State counsel has argued that it is an established fact that deceased-Anu was subjected to cruelty in relation to demand of dowry by the accused being husband and mother in law after marriage till her death. Death of Anu took place within 5 years of her marriage. She was constantly harassed for dowry. After getting fed up with constant harassment, she committed suicide.

Accused-respondents faced trial for commission of offence under Sections 498A and 304 -B IPC. Section 498-A IPC provides harassment and cruelty to a woman for failure to fulfill unlawful demand of dowry. For establishing offence under Section 304-B IPC it is mandatory that married woman had died otherwise than under normal circumstances, such death was within 7 years of her marriage and victim was subjected to cruelty of her husband for or in connection with demand of dowry soon before her death.

In case of fulfilling of the aforesaid ingredients, the court shall presume that such a person has caused dowry death by drawing presumption under Section 113-B of the Indian Evidence Act.

Evidence of the prosecution needs to be appreciated in the light of the ingredients of Section 498A, 304-B IPC and 113-B of Indian Evidence Act.

PW8- Dr. Munish Kumar who medico-legally examined Anu on 25.10.2014 and deposed that she was brought with the alleged history of ingestion of unknown poisoning substance. On examination, it was preserved that on that time she was very sick. She was semi-conscious and died about 2.24 am.

Dr. Munish Wadhawan-PW10 conducted post mortem examination on the dead body of Anu @ Devi. He deposed that on examination, it was noticed that "Built was average. Cornea was Hazy. Conjunctiva was pale. Hypostasis was present over the back of body. Decomposition changes were nil. No external injury was present. All internal organs were congested." On the basis of postmortem findings and FSL report Exhibit PX, he was of the opinion that Organophosphorous

pesticide was detected in Exhibit 1a, 1b and 1c (viscera) meaning thereby the cause of death was Organophosphorous pesticide poisoning.

Investigating Officers PW-9 and PW-15 deposed regarding steps of investigation carried out by them but during cross-examination PW9 admitted that he did not see patient-Anu during hospitalization till her death. PW15-SI Rambhaj admitted that it was correct that statement of witnesses were firstly recorded by ASI Ranvir Singh (PW9) at the time of inquest proceeding and it was further correct that in the statement, so recorded by him, there was no allegations of dowry demand. He admitted that he could not get any proof regarding demand of any dowry and regarding loan allegedly to be taken by Neelam, mother of Anu, from anyone to fulfill the dowry demands. Thus prosecution has not been able to discharge its initial burden in proving all the main ingredients attracting Section 304-B of IPC. No doubt, Anu had died an unnatural death after about 5 years of her marriage which otherwise comes within the period of 7 years but the case of the prosecution failed on a very material aspect namely that there is no specific and convincing evidence to the effect that deceased-Anu was regularly subjected to cruelty or harassment by the accused in connection with any demand for dowry. In the absence of the said ingredient of dowry demand, death of Anu caused otherwise than in ordinary circumstances is not proved. Therefore, presumption provided by Section 113-B of the Indian Evidence Act would not come into play to the effect that husband and mother-in-law were responsible for the death of Anu.

In the case titled as *Arvind Singh versus State of Bihar* reported in 2001(2) RCR (CrL.) 631 (SC), the Hon'ble Supreme Court held that while

dealing with the case of Section 304-B IPC that "no doubt, the in-laws are supposed to explain circumstances of death but initial burden remains on the prosecution to prove the guilt beyond reasonable doubt and unless the initial burden is discharged, the conviction is unsustainable." Relevant extract of **Arvind Singh's** case cited supra is reproduced hereunder:-

"24. Coming back to Section 498A the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. The word 'cruelty' in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing. The same would be within the meaning of the Section. In the instant case there is no evidence whatsoever. It is on this score Mr. Verma contended that there is no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. No outside person has been called to give evidence and even the witnesses being in the category of interested witnesses also restricted their version to sufferings of burn injury and the purported dying declarations to the matter as noticed herein before - apart therefrom nothing more is available on record to attribute any act or acts on the part of the husband or on the part of husband's relatives - is that evidence sufficient to bring home the charge under Section 498-A ? The answer obviously cannot be in the affirmative having regard to the non-availability of any evidence in the matter.

25. Significantly, however, upon recording of the fact of no dowry demand prior to the date of occurrence the High Court thought it fit to record that charge under

Section 498A stands proved and as such passed the sentence. We are however unable to record our concurrence therewith - torture is a question of fact - there must be proper effort to prove that aspect of the matter, but unfortunately not even an attempt has been made nor any evidence tendered to suggest the same excepting the bold interpolated allegations which stand disbelieved and ignored by the High Court, and in our view rightly."

In the present case, it is clear that prosecution has failed to prove essential ingredients i.e. Section 304-B IPC. As regards Section 498-A, prosecution evidence has not been found to be cogent and convincing that Anu was subjected to cruelty in connection with demand of dowry. Prosecution had not been able to produce any list of dowry articles allegedly given before or after marriage or found during investigation. Thus, prosecution has failed to prove ingredients of Section 498-A IPC also.

Thus it has been rightly noted by the trial court that there is no evidence regarding any demand of dowry. The judgment passed by trial court is well reasoned.

Hon'ble Supreme Court has laid down principles regarding powers of the appellate court while dealing with the appeal against the order of acquittal in the case of ***Chandrappa versus State of Karnataka***, reported in 2007(2) R.C.R. (Criminal) 92. Relevant extract of the judgment reads as under:-

"35. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) [The Code](#) of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed

to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

Similar view has been taken by Hon'ble Supreme Court in the case of ***Nepal Singh versus State of Haryana*** reported in 2009(3) R.C.R. (Criminal) 418. Para 42 of the judgment reads as under:

"42. *As was rightly noted by the trial court there was no evidence towards the claim regarding any demand of dowry. That being so the High Court ought not to have interfered with the well reasoned judgment of the trial court directing acquittal. The reasoning of the High Court that something must have happened and otherwise deceased would not have committed suicide is clearly indefensible. That certainly could not have been a reason to set aside the trial Court's judgment of acquittal."*

Perusal of record shows that the trial court has acquitted the accused after appreciating the evidence in the correct perspective. In no way, the findings of the trial court can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material

evidence has been misread and which material evidence has not been considered by the trial court.

In view of the above discussion, we find that the impugned judgment dated 28.07.2015 passed by Additional Sessions Judge (Exclusive Courts), Jhajjar vide which Sonu son of Jai Singh and Kamla wife of Jai Singh have been acquitted in case FIR No. 136 dated 25.10.2014 registered under Sections 498-A/304-B/34 IPC, Police Station Line Par, Bahadurgarh is correct, as per evidence and law and does not require any interference from this court.

ORDER

- (i) CRM-A-400-MA-2016 stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

22.01.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No