

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

**CRM-A-2224-MA of 2017(O&M)
Date of decision: 07.02.2019**

Sandeep

.... Appellant

Versus

State of Haryana and another

....Respondents

**CORAM : HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present : Ms. Aashna Gill, Advocate
for the applicant/appellant.

ARUN KUMAR TYAGI, J

CRM-32653 of 2017

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **334 days** in filing the appeal.

For the reasons stated in the application which is supported by an affidavit, the delay of **334 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No.2224-MA of 2017

1. The appellant has filed the present application under Section 378(3) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to file appeal against judgment dated 21.10.2016 passed by the learned Additional Sessions Judge, Rohtak in Sessions Case No.89 of 2014 titled as 'State Vs. Indal and another' whereby respondent No.2-

Birmati has been acquitted of the charges under Sections 498-A and 304-B of the Indian Penal Code (for short 'the IPC') framed against her.

2. Briefly stated the facts giving rise to filing of the present application are that on 21.06.2014 P/SI Sunil Kumar, on receipt of telephonic information regarding death of a lady in Rajendra Colony Rohtak from Police Station Shivaji Colony Rohtak, reached the spot where dead body of deceased-Shiksha was lying on the bed. Sandeep, brother of the deceased, submitted application to P/SI Sunil Kumar.

3. In the application Sandeep alleged that they were five brothers and sisters. His all three sisters were married while he and his brother were unmarried. They performed the marriage of his sister Shiksha about 2-3 years back as per Hindu rites and ceremonies. After marriage her husband Indal, mother-in-law Birmati and brother-in-law Sandeep alias Vicky used to give her beatings. They also took panchayat consisting of 5-7 members 1-2 times and got the matter patched up. However, later on they started demanding motorcycle and cash from his sister. He along with his father, brother Pardeep and uncle Rajpal went to the matrimonial home of Shiksha about 20 days prior to her death. At that time they found that Shiksha had been beaten and had marks of injuries on her body. They tried to make the accused understand and settle the matrimonial life of their sister but the accused did not mend and continued to make dowry demands. On that day, on receipt of telephonic information regarding death of Shiksha he along with his family members reached the matrimonial house of Shiksha where they found her dead body lying with injuries on her person besides a ligature mark around her neck. Sandeep accordingly prayed in the application that

the above said accused had murdered his sister and action may be taken against them.

4. As the application revealed commission of offences punishable under sections 498-A and 304-B of the IPC, FIR was registered. The police investigated the case, recovered pieces of rope from the spot, got post-mortem examination conducted on the dead body and on finding evidence to be sufficient arrested accused-Indal on 21.06.2014, who made disclosure statement and got one stick recovered and thereafter arrested accused-Birmati but found accused-Sandeep alias Vicky to be innocent. On completion of investigation S.H.O. Police Station Shivaji Colony Rohtak filed report under section 173 (2) of the Cr.P.C. against accused-Indal and Birmati.

5. The case was committed to the Court of Additional Sessions Judge, Rohtak. On finding prima facie case, charges under Sections 304-B and 498-A of the IPC were framed against the accused to which the accused pleaded not guilty and claimed trial.

6. To prove its case, the prosecution examined PW-1 HC Sumit Kumar; PW-2 Dr. Saroj Dahiya; PW-3 Dr. Gulshan; PW-4 ASI Ashwani Kumar; PW-5 Sandeep; PW-6 Pardeep; PW-7 Kamla; PW-8 Har Narain; PW-9 Constable Devender Kumar; PW-10 HC Sunil Kumar and PW-11 SI Sunil Kumar and produced documents exhibited on record.

7. On closing of the prosecution evidence by the learned Additional Public Prosecutor for the State, statements of accused under Section 313 of the Cr.P.C. were recorded wherein the accused denied commission of alleged offences and pleaded false implication. The accused examined DW-1 Narender Kumar; DW-2 Kartar Singh; DW-3 Kuldeep

Sangwan; DW-4 Jagrup; DW-5 Harish Kumar; DW-6 Dr. Gopal Krishan in their defence and produced documents exhibited on record.

8. On conclusion of the trial, learned Additional Sessions Judge, Rohtak convicted and sentenced accused-Indal under Sections 498-A and 304-B of the IPC but acquitted accused-Birmati of the charges framed against her.

9. Feeling aggrieved, the applicant-complainant has filed the present application.

10. We have heard learned Counsel for the applicant and have gone through the record.

11. Ms.Aashna Gill, learned Counsel for the applicant-complainant has argued that by testimony of PW-5 Sandeep which is corroborated by testimony of PW-6 Pardeep and PW-7 Kamla making of dowry demands by the accused is proved. There were injury marks on the body of the deceased-Shiksha which proved the maltreatment and cruelty meted out to her by the accused. The deceased-Shiksha was married to Indal on 27.08.2010 and died on 21.06.2014 within 7 years of her marriage. The ingredients of Sections 498-A and 304-B of the IPC were satisfied. The Court was required to raise presumption under Section 113-B of the Indian Evidence Act, 1872. The learned Additional Sessions Judge, Rohtak convicted accused-Indal under Sections 498-A and 304-B of the IPC but on same facts, circumstances and evidence had acquitted accused-Birmati. By the oral and documentary evidence, the prosecution had proved the guilt of both the accused beyond reasonable doubt. The learned Additional Sessions Judge, Rohtak has not properly appreciated the evidence and has wrongly acquitted accused-

Birmati of the charges framed against her resulting in miscarriage of justice.

Therefore, leave to appeal against the impugned judgment may be granted.

12. While appreciating evidence in a case under Sections 498-A, 406 and 304-B of the IPC, the Court has to keep in mind and guard against potential misuse of the above-said provisions by false implication of relatives of the husband. **(See Sushil Kumar Sharma v. Union of India, 2005(3) R.C.R. (Criminal) 745 : (2005) 6 SCC 281, Preeti Gupta v. State of Jharkhand, 2010 (4) R.C.R. (Criminal) 45 : 2010(4) Recent Apex Judgments (R.A.J.) 612 : (2010) 7 SCC 667 and Savitri Devi v. Ramesh Chand, 2003(3) R.C.R. (Criminal) 823 : ILR (2003) I Delhi 484).** The relatives of the husband cannot be involved in cases, relating to demand of dowry, merely on the basis of conjectures/general and vague allegations unless an overt act is attributed to them. Reference in this regard may be made to **Kans Raj v. State of Punjab and others, 2000(2) R.C.R.(Criminal) 695 : AIR 2000 Supreme Court 2324 and Salamat Ali and another v. State of Bihar, AIR 1995 Supreme Court 1863.**

13. In the present case, general allegations were made by complainant-Sandeep, brother of deceased-Shiksha, in written application submitted to P/SI Sunil Kumar and by PW-5 Sandeep and PW-6 Pardeep brothers and PW-7 Kamla mother of deceased Shiksha in their statements made before learned Additional Sessions Judge, Rohtak regarding making of dowry demands of motorcycle and cash and beating of deceased-Shiksha by accused-Indal and Birmati. However, no specific allegations with attribution of specific overt acts were levelled against accused-Birmati either by complainant-Sandeep brother of the deceased-Shiksha in the written application submitted to P/SI Sunil Kumar or by PW-5 Sandeep and PW-6

Pardeep brother and PW-7 Kamla mother of deceased Shiksha in their statements made before learned Additional Sessions Judge, Rohtak, regarding making of dowry demands and maltreatment of Shiksha by accused-Birmati with relevant particulars. Further, PW-5 Sandeep has admitted in his statement that deceased-Shiksha was residing on the first floor of the house with her husband accused-Indal separately from accused-Birmati. DW-4 Jagrup, mediator of the second marriage of Shiksha with accused-Indal, has also testified that deceased-Shiksha was separately residing on the first floor of the house with her husband accused-Indal and they had separate kitchen. Since, accused-Birmati was admittedly residing separately from deceased-Shiksha and her husband accused-Indal, accused-Birmati would not have been benefited in any manner by the demands of motorcycle or cash and there would be no reason for her to make any such dowry demand and maltreat deceased-Shiksha or give beating to her for not meeting her dowry demands. In these facts and circumstances of the case, testimony of PW-5 Sandeep and PW-6 Pardeep brothers and PW-7 Kamla mother of deceased-Shiksha, which is intrinsically untrustworthy, could not be relied upon and accused-Birmati could not be said to have made any dowry demand and to have treated the deceased with cruelty for not meeting her dowry demands.

14. The learned Additional Sessions Judge, Rohtak has properly appreciated the prosecution evidence qua accused-Birmati and has rightly held that the prosecution has failed to prove commission of offences punishable under Sections 498-A and 304-B of the IPC by accused-Birmati. Therefore, the learned Additional Sessions Judge, Rohtak cannot be said to

have wrongly acquitted accused-Birmati of the charges under Section 498-A and 304-B of the IPC framed against her.

15. Consequently, the application fails to make out any arguable case for grant of leave to appeal. Accordingly, the application, being devoid of any merit, is dismissed and leave to appeal is declined.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

07.02.2019
kothiyal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No