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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1986-2019 (O&M)
Date of Decision: 16.12.2019.

State of Haryana

... Applicant/Appellant

Versus

Rajesh

... Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI

Present : Mr. Vivek Saini, D.A.G., Haryana
for the applicant/appellant.

JITENDRA CHAUHAN.J.(ORAL)

This is application under Section 378(3) of Code of Criminal Procedure for grant of leave against the judgment of acquittal dated 03.12.2018, passed by Learned Additional Sessions Judge, Faridabad vide which the respondent was acquitted of the charge in case FIR No.222 dated 27.04.2016 registered under Section 304-B IPC at Police Station SGM Nagar, Faridabad.

Brief facts of the present case as noticed in paragraph No.2 of the impugned judgment are as under:-

“Briefly stated the facts of the present case that on 27.4.2016 the complainant Hetram came in the police station SGM Nagar, Faridabad and presented a complaint to the effect that his daughter Rajni Bala was married with

Rajesh son of Lal Singh, resident of Sanjay Colony 7th February, 2016 according to Hindu rites and ceremonies. That after marriage her husband Rajesh, his father Lal Singh and mother Krishna had started harassing his daughter Rajni Bala and to give beatings to her and pressurised her to bring dowry. As per complainant his daughter told about this on telephone and they had tried their best to save the matrimonial life of his daughter by making the accused understand but they did not mend their ways and kept on harassing his daughter on account of dowry. That on 13.4.2016 they had received a telephonic message that Rajni Bala has died due to strangulation. That on 14.4.2016 they reached the matrimonial house of his daughter where her in-laws asked the complainant to settle the matter and as he was in a state of shock they had performed the last rite ceremonies of his deceased daughter. As per complainant after he returned back to his house then his elder daughter Manju @ Machho told him that one or two days before her death, Rajni told to her on telephone that her in-laws have harassed her and gave severe beatings to her. That in view of the information given by his daughter Manju, the complainant is sure that either his daughter Rajni Bala had been killed by her husband and her father-in-law or they have abetted commission of suicide by her. He has thus prayed for taking legal action against them”.

After appraisal of the evidence, the learned trial Court vide judgment dated 03.12.2018, acquitted the respondent of the charges framed against him.

Hence the instant application.

It is contended that the impugned judgment is against the facts and evidence on record. The learned trial Court has erred in not considering

the fact that the accused Rajesh used to treat the deceased with cruelty and very often would beat her on account of demand of dowry and the same was repeated soon before her death. Consequently, the prosecution has established the guilt of the accused beyond shadow of doubt by leading cogent evidence in prosecution.

Heard.

This Court has perused the entire case file and finds that the Court below while returning a finding of acquittal has noted that the death in the present case occurred on 13.04.2016. The family of the victim reached the matrimonial home on 14.04.2016 and performed the last rites. The FIR was registered on 27.04.2016 after an unexplained and inordinate delay of 14 days. Further in the complaint Exhibit P-A, the complainant has levelled allegations against the accused-husband, Rajesh and his parents, that all the three had been harassing the deceased for demand of dowry. Admittedly, after investigation the parents of the accused husband were found innocent and challan was presented only against the husband. It is also to be noted that in the complaint Ex.PA the complainant has only mentioned that the in-laws of the deceased gave her beatings and he did not state that she was being given beatings on account of demand of dowry.

It has also come in the evidence of the prosecution witnesses that the marriage was solemnized by performing only the 'Chunni' ceremony which goes to prove that it was a simple marriage. PW-2 Manju Bala, younger sister of the deceased has specifically stated in her testimony that no dowry articles were given in her marriage. This fact has also been admitted by PW-3 Satpal, brother-in-law of the deceased and PW-10 Sharda, mother of the deceased. Mahabir Singh, a neighbour of the accused

who was examined as DW-1, has deposed that the parents of the deceased had told the parents of the accused-husband, Rajesh, that they are not in a capacity to give any dowry and thus, the marriage was solemnized in a simple manner. It has come in the evidence of DW-1 that this was the second marriage of the deceased, which fact was kept concealed at the time of her marriage with the accused. She had two children from the first marriage and used to miss them.

In view of the above, learned trial Court has rightly held that the essential ingredients for bringing home guilt to the accused under Section 304 B IPC are missing in the prosecution version. The prosecution has failed to establish the factum of harassment for demand of dowry soon before death.

Even otherwise, it is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Similarly, in '***Anil Kumar Gupta Vs. State of U.P.***, 2011 AIR (SC) (Criminal) 922, Hon'ble the Supreme Court has held as under:-

“8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of

the High Court is completely contrary to the decision of this Court in 'Ramesh Babulal Doshi v. State of Gujarat, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225' which was followed by this Court in 'Dwarka Das & Ors. v. State of Haryana, 2002(4) R.C.R.(Criminal) 794 : (2003) 1 SCC 204' The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In Ramesh Babulal Doshi, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

11. In Dwarka Das, this Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".

12. In Chandrappa & Ors. v. State of Karnataka, 2007 (2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and

even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon which the order of acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court."

Moreover, there is delay of 65 days in filing the instant application for leave to appeal. No cogent reasons have been put forth for condoning the delay.

In view of the above, the instant application is dismissed on the ground of delay as well as on merits.

Leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

16.12.2019

ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No