

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

CRM-A-3049-2019 (O&M)
Date of Decision: 24.02.2020

State of HaryanaApplicant/Appellant
VS.

Tarun and anotherRespondents

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Ms. Justice Archana Puri.**

Present : Mr. Sukhdeep Parmar, DAG Haryana,
for the appellant-State.

JITENDRA CHAUHAN.J.

This is an application for leave to appeal against the judgment dated 29.01.2019 passed by Additional Sessions Judge, Karnal, vide which the accused/respondents were acquitted of the charge in FIR No.559 dated 31.08.2016 registered under Sections 304-B and 323 read with Section 34 IPC, at Police Station Assandh, Karnal.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. Briefly stated, in the night of 31.08.2016, a ruqa was received in the Police Station, Assandh from GH Assandh to the effect that Balwinder Kaur @ Vandana, wife of Tarun, r/o Assandh had been 'brought dead' in the hospital. The Investigating Officer reached GH Assandh, where Pritam Singh (father of the deceased) suffered his statement before him to the effect that he had solemnized the marriage of his daughter Balwinder Kaur @ Babbu @ Vandana with Tarun @ Rinku on 29.01.2016 as per Hindu rites and ceremonies and had given sufficient dowry to her family members as per his financial capacity. However, after a few days of the

marriage, her husband (Rinku @ Tarun) and mother-in-law (Pushpa) started harassing Balwinder Kaur on account of their dowry demands and they raised a demand of ₹ one lakh from the complainant. They also extended the threat if their above said dowry demand is not met with, they would kill Balwinder Kaur. The complainant tried to get the matter reconciled by convening the social meetings, but of no avail and they kept on harassing Balwinder Kaur. On 31.8.2016, i.e. on the fateful day, Tarun (husband of Balwinder Kaur) telephonically informed complainant at about 1:30 AM that Balwinder Kaur had met with an accident and he himself had also sustained the injuries and she was admitted in GH Assandh in a serious condition. Pushpa (mother-in-law of Balwinder Kaur) also telephonically apprised the wife of the complainant in this regard. The complainant alongwith his wife Harbans Kaur and neighbours, Ravi Kumar and Jetha Singh reached GH Assandh and found that Balwinder Kaur had already died. Some bluish scratch marks were observed by the complainant around her neck and feet and as such, the complainant raised suspicion on his son-in-law (Tarun) and his mother (Pushpa) for committing the dowry death of his daughter Balwinder Kaur as their dowry demand of ₹ one lakh could not be met with by them. With these facts, the matter was requested to be registered and investigated. On the basis of the aforesaid complaint, FIR of this case for the offences punishable u/ss 323, 304-B/34 of IPC was registered and the matter was investigated. Circumstantial evidence was lifted from the spot at the instance of Scene of Crime Team. Inquest proceedings were conducted. Dead Body of Balwinder @ Vandana @ Babbu was subjected to the post mortem. Accused Tarun was arrested on 1.9.2016, who got recovered a lathi at his instance, apart from a motor cycle bearing registration No. HR-40E-0133 (which were used by him in committing the crime in question) in pursuance of his disclosure statement. His mother Pushpa was arrested on 2.9.2016. The medical opinion was sought regarding possibility of sustaining the injuries in question by the deceased with the lathi got recovered by accused Tarun. After completion of investigation, final report u/s 173 Cr.P.C. was prepared against the accused and submitted before the Court.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 304-B IPC was exclusively triable by Court of Session, the case was committed to the said Court.

Charges under Sections 304-B and 323 read with Section 34 IPC and alternate charge under Section 302 read with section 34 IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Pritam Singh, PW-2 Ravinder @ Ravi, PW-3 EASI Vir Shakti Singh, Draftsman, PW-4 ASI Ram Mehar, PW-5 Sonu, PW-6 ASI Satyawan, PW-7 ASI Gurdayal Singh, PW-8 C.Jitender, PW-9 SI Jagbir Singh, Investigating Officer, PW-10 L/C Sushila, PW-11 Dr.Beera Ram, PW-12 Captain AP Singh. and closed the evidence.

The statements of accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In defence evidence, DW-1 Satnam Singh, DW-2 Dr.Mohinder Singh and DW-3 Dr.Vivek were examined.

After appraisal of evidence, the learned trial Court vide impugned judgment dated 29.01.2019, acquitted accused/respondents of the charges framed against them.

Feeling dissatisfied with the impugned judgment, the

present appeal has been filed by the State of Haryana.

It is contended by the learned State counsel that the learned trial Court has failed to appreciate the testimony of the witnesses in right perspective. The demand of dowry, harassment at the hands of the accused was proved by PW-1, Pritam Singh, complainant. It is further contended that the deceased, Balwinder Kaur @ Vandana died within seven years of her marriage and the death occurred in an unnatural way, that is, by way of head injury. It is also established on record that there was demand of dowry soon before her death, therefore, the trial Court ought to have invoked presumption under Section 113-B of the Indian Evidence Act against the accused.

It is further contended that the stand of the accused/ respondents taken in the statements recorded under Section 313 Cr.P.C. is that the deceased had received injuries due to fall on the ground from the staircase in the house and while both the accused were rushing her to a hospital, their motorcycle slipped on the road as a result, they fell down and the deceased received multiple head injuries and other injuries on her body. In this regard, it is contended by the learned State counsel that as per the testimony of DW-2 Dr. Mohinder Singh, there was no external injury on the body of the accused. Thus the stand taken by the accused is nothing but a cock and bull story.

We have heard the learned State counsel and have gone through the case file very carefully.

The learned trial Court has acquitted the respondent on the

following grounds:-

1. *The star witness of the case, PW-1, Pritam Singh, father of the deceased, has made general allegations with regard to cruelty upon the deceased.*
2. *As per the material placed on record, it was proved that it was a simple marriage. The father of the deceased had never visited the house of the deceased after her marriage. In case, there was any demand of dowry or harassment to the deceased, the father of the deceased must have visited her house to prevail upon the accused.*
3. *The deceased was shifted to the hospital by the accused themselves. Though this factum was denied by the complainant but the statement of PW-9 S.I. Jagbir Singh, the Investigating Officer of the case and the testimony of PW-2 Ravinder @ Ravi has proved that the deceased was shifted to the hospital by the accused themselves.*
4. *PW-5, Sonu had proved that his motorcycle was borrowed by the accused for going to the hospital.*
5. *As per the scene of the crime report Ex-P-19 there was no mark of struggle on the gate of the bedroom or the storeroom which was adjacent to the bedroom of the deceased.*
6. *The accused had examined Dr.Mohinder Singh, Medical Officer, GH Assandh as DW-2 who had stated that on 2.9.2016 he had medically examined the accused and as per his affidavit (Ex.DW2/A) coupled with his report (Ex.D2), accused Tarun had given a history of fall from motorcycle four days back prior to the occurrence, and a diffused bluishness on the anterior aspect of his right arm with swelling was noticed and he was facing difficulty in moving the right shoulder joint and he was advised for x-ray and ortho opinion.*
7. *Further DW-3 Dr.Vivek, Medical Officer, Pt.B.D.Sharma, PGIMS had proved on record the treatment of accused Tarun for his fracture in the right shoulder and that Tarun remained under treatment as an indoor patient from 22.9.2016 to 30.9.2016 and he was also operated upon for the*

same.

We have gone through the case file carefully and find that the judgment of acquittal has been rightly passed in the given set of facts. The crucial witness, PW-1 Pritam Singh, complainant/ father of the deceased had raised general allegations of demand of dowry. The allegations lack in specificity. Though, the presumption under Section 113-B of Indian Evidence Act was pressed into service by the learned State counsel, the same is a rebuttable presumption of law which stands rebutted in the present case in view of the facts and circumstances proved by the accused that the deceased had suffered head injury by fall from the staircase and while she was being shifted to the hospital, the motorcycle on which they were going had slipped and as a result, she got head injuries as well as other injury on her person. The factum of injuries having been received by the accused has been proved by DW-2 Dr.Mohinder Singh, Medical Officer, GH Assandh and DW-3 Dr.Vivek, Medical Officer, Pt.B.D.Sharma, PGIMS, Rohtak. Thus, the presumption under Section 113-B of Indian Evidence Act stands displaced. Otherwise also, the presumptions are like bats in the twilight, they disappear in the presence of sunshine.

In this case, the presumption has been duly rebutted by the accused by examining witnesses in their defence evidence. There is no reason to differ from the view taken by the learned trial Court.

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 unless the judgment suffers from any perversity. 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.

In Anil Kumar Gupta vs. State of U.P. 2001(2) RCR

(Criminal) 292 SC it was held as under:-

“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".

(emphasis supplied)

11. 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".

In the instant case, the findings recorded by the learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality.

The instant application for leave to appeal also suffers from delay of 220 days which has not been sufficiently explained.

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

Leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ARCHNA PURI)
JUDGE

24.02.2020.

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