

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

CRM-A-3011-2019 (O&M)

Date of Decision: 20.02.2020

State of Haryana

.....Applicant/Appellant

VS.

Manish Kumar

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice Jasgurpreet Singh Puri.**

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

JITENDRA CHAUHAN.J.

CRM No. 40979 of 2019

For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 37 days in filing the appeal is condoned and the application is allowed as prayed for.

Main case

This is an application for leave to appeal against the judgment dated 02.08.2019 passed by Additional Sessions Judge, Kurukshetra, vide which the accused/respondent was acquitted of the charge in FIR No.300 dated 19.06.2018 registered under Section 304-B IPC, at Police Station Sadar Thanesar, District Kurukshetra.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph Nos. 2 & 3 are reproduced as under:-

“2. Briefly stated the facts of the case are that on 19.06.2018, PW-14

Inspector Nirmal Kumar posted as SHO in Police Station Sadar Thanesar received the information from Police Post, Sector 5, Kurukshetra that Renu wife of Manish Kumar was admitted in Aarogyam Hospital, Kurukshetra on 18.06.2018 as a poison case and she had expired. Upon that information, he went to Aarogyam Hospital, Kurukshetra, where PW-3 Sona Devi complainant/mother of deceased moved the complaint Ex.P6, whereon PW-14 Inspector Nirmal Kumar made his endorsement Ex.P-25 and sent the same to Police Station for registration of case. PW-10 SI Raj Kumar posted in Police Station Sadar Thanesar on receipt of written intimation, recorded the FIR Ex.P-17 and made his endorsement Ex.P-18 on the written intimation.

3. The prosecution case as disclosed from the complaint Ex.P-6, moved by PW-3 Sona Devi complainant/mother of deceased in brief is that her daughter Renu was married with accused Manish Kumar on 14.10.2015, from which wedlock, a son was born, who is 1 ½ years old but after some days of the marriage, the in-laws of Renu started giving beatings to her for demand of more dowry and she used to disclose in this regard whenever, she visited to her. According to her, Pala Ram, father-in-law of Renu also had an evil eye upon her; and that about 2-3 days back also, Renu telephonically informed them that her husband Manish Kumar, her father-in-law Pala Ram and sister-in-law Nisha Devi had given severe beatings to her but she told her daughter Renu that her maternal house was her actual house and she must live there; and that on 18.06.2018, her son-in-law Manish Kumar telephonically informed her that Renu had consumed poison and on this information, she along with her relatives came to Maharaja Aggarsain Hospital, Sector-7, Kurukshetra and on enquiry, accused Manish Kumar told them that they had an altercation on some point in the morning. As per complainant, due to serious condition of her daughter, she was referred to Aarogyam Hospital, where she had died and therefore, action may be taken against the accused.”

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 498-A and alternate charge under Section 302 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 SI Mukesh Kumar, PW-2 Constable Ajay Kumar, PW-3 Sona Devi, PW-4 Ram Singh, PW-5 Rameshwar Dass, PW-6 Phool Singh, PW-7 Krishna Devi, PW-8 Dr. Anita, Medical Officer, PW-9 ASI Jeet Singh, PW-10 SI Raj Kumar, PW-11 Dr. Parmod Singla, PW-12 Krishan Kumar, PW-13 ASI Rajesh Kumar, PW-14 Inspector Nirmal Kumar, PW-15 Dr. Anurag Kaushal and closed the evidence.

The statement of accused Manish Kumar under Section 313 Cr.P.C was 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.

No evidence in defence was led by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment dated 02.08.2019, acquitted accused/respondent of the charges framed against him.

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 take into consideration the fact that marriage of deceased Renu with accused was solemnized on 14.10.2015 and she died in the house of her in-laws due to consumption of poison within a period of three years of her marriage in an unnatural death. An adverse inference was required to be drawn against the accused in the given

circumstances. Learned trial Court has failed to appreciate the evidence of other official witnesses who have supported the case of the prosecution.

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. PW-3 Sona Devi complainant/mother of deceased Renu had deposed that there was no dispute between her daughter and her son-in-law and his family members and they never raised any demand of dowry or maltreated her daughter. She had also stated that they had never given beatings to her daughter for want of dowry and that they are innocent. Thus, she was declared a hostile witness.*
- 2. PW-4 Ram Singh, father of the deceased had also turned hostile and had stated that there was no dispute between his daughter and his son-in-law and his family members and that they never raised any demand of dowry.*
- 3. Similarly, PW-5 Rameshwar Dass, uncle and PW-6 Phool Singh another uncle, PW-7 Krishna Devi aunt of deceased Renu had turned hostile.*

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 witnesses i.e. PW-3 Sona Devi, complainant/mother, PW-4 Ram Singh, father, PW-5 Rameshwar Dass, uncle, PW-6 Phool Singh, another uncle, and PW-7 Krishna Devi, aunt of the deceased had not supported the case of the prosecution. They were declared hostile witnesses by the Court. Nothing beneficial to prosecution could

be elicited during their lengthy cross-examination by the learned Public Prosecutor. Benefit of presumption under Section 113-B of the Indian Evidence Act cannot be extended to the prosecution particularly in the absence of evidence of harassment on account of demand of dowry soon before the death of the bride. Apart from their testimonies, the evidence on record which consists of testimonies of official witnesses, is insufficient to bring home the guilt of the accused. 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.

Thus, the application seeking leave to appeal is hereby dismissed.

(JITENDRA CHAUHAN) (JASGURPREET SINGH PURI)
JUDGE JUDGE

20.02.2020.

SN

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