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

**CRA-AD-162-2020 (O&M)
Date of Decision : 16.11.2022**

Kailash

..... Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Sandeep Parkash Chahar, Advocate
for the appellant.

VIKRAM AGGARWAL, J

CRM-12790-2020

Through this application, prayer has been made for condonation of delay of 02 days in filing the appeal.

Heard. For the reasons, mentioned in the application, the same is allowed. Delay of 02 days in filing the appeal is condoned.

CRA-AD-162-2020

This appeal, filed by complainant Kailash, assails the judgment dated 27.11.2019, passed by the learned Addl. Sessions Judge, Rohtak vide which respondents No.2 and 3 were convicted and sentenced to undergo rigorous imprisonment for a period of 03 years and 06 months each and to pay a fine of Rs.2,000/- each under Section 306 read with Section 34 IPC. However, no offence under Sections 498-A, 304-B, 406 and 302 IPC was proved to have been committed. The appellant-complainant demands their

conviction under Sections 304-B, 498-A, 406 read with Section 34 and 506 IPC or alternatively under Section 302 IPC and seeks imprisonment for life for them.

The facts, as emanating from the record, are that on a complaint having been submitted by the present appellant Kailash, FIR No.127 was registered on 02.03.2018 at Police Station Meham, District Rohtak, under Sections 304-B, 34, 406, 498-A IPC. The allegation was that the marriage of the daughter of complainant namely Riya was solemnized with respondent No.2 Harwinder on 10.11.2016 according to Hindu rites and ceremonies. Despite sufficient dowry articles having been given by them beyond their capacity, mother-in-law Pushpa (respondent No.3) and sister-in-law Suman of his daughter Riya kept on taunting her. Specific demands were made at regular intervals out of which a demand of Rs.50,000/- was fulfilled by them on one occasion. However, the harassment continued. On 01.03.2018, Harwinder (husband of the deceased) informed the complainant that Riya had expired on account of a heart attack but when the complainant party reached the General Hospital Meham, they found marks on her neck. After making verification, the complainant moved a complaint to the police on the basis of which FIR was registered. After investigation, the respondents were put to trial.

As mentioned earlier, the trial court found that neither the offence under Section 304-B or Section 302 IPC had been committed nor there was any proof of harassment for dowry. Under the circumstances, the judgment of conviction and order of sentence under Section 306 read with Section 34 IPC was passed.

Learned counsel for the appellant has contended that there were

specific instances of harassment for dowry and since the daughter of the appellant had expired less than 02 years after her marriage and the case had been proved by the prosecution beyond reasonable doubt, the learned trial Court gravely erred in convicting respondents No.2 and 3 under Section 306 read with Section 34 IPC. He has submitted that the appeal filed by the accused is also pending adjudication and the present appeal be also heard alongwith the said appeal.

We have gone through the judgment of the trial court and have also considered the arguments raised by learned counsel for the appellant.

It is unfortunate that a young girl expired in less than 02 years after her marriage and that too by suicide. The mental state of the father can very well be imagined. However, this alone would not be sufficient to put the blame on respondents No.2 and 3 and to fasten criminal liability, the prosecution would be required to prove its case against them beyond reasonable doubt. The testimonies of complainant Kailash and his son Kushal who appeared as PW3 and PW6 respectively could not withstand the test of cross examination and it came out that no complaint was ever made to any authority with regard to the torture being meted out to Riya, no Panchayat was ever convened and no other step was taken. They also feigned ignorance about her medical condition which was disclosed by DW1 Dr. Shweta Jain, as per whom Riya remained admitted in hospital till 27.07.2018 on account of pregnancy in her fallopian tube for which she had to undergo surgery. It has also come on record that the expenses for the surgery were borne by respondent No.3 and his family. The learned trial Court, therefore, rightly came to the conclusion that the ingredients of Sections 304-B or 302 IPC and even those of Sections 406 and 498-A IPC

did not stand fulfilled.

We do not find any perversity in the view taken by the trial Court either on facts or on law and the impugned judgment is well reasoned.

It is now well settled that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of "caution" was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the facts of each case. As stated above, in the present case, there is no perversity on facts or law. Still further, in the case of **State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Criminal) 01**, the Hon'ble Apex Court laid few parameters to be kept in mind while entertaining appeals against judgments of acquittal. It was held that the Appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the Appellate Court may be the more probable one. It was held that while dealing with a

judgment of acquittal, the Appellate Court has to consider the entire evidence on record so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters presumption of his innocence. The part of the Judgment dealing with this issue is reproduced here-in-below:-

“9. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality.”

This view was also taken by the Hon'ble Apex Court in a case

State of Rajasthan Vs. Madan alias Madaniya, 2019 CrI.L.R. (S.C.) 09.

It was held by the Hon'ble Apex Court that in an appeal against acquittal,

the Appellate Court would only interfere where there exists perversity of facts and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the Judgment in the case of **Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2) SCC 490**.

In view of the aforesaid, we do not find any merit in the present appeal and the same is hereby dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

16.11. 2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No