

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-184-2022 O&M)
Date of decision: 27.02.2023

State of Haryana

..... Applicant

Vs.

Krishan and another

..... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Pawan Girdhar, Addl. A.G. Haryana.

Manisha Batra, J.

The instant application under Section 378(3) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been moved by applicant with a prayer for grant of leave to file appeal against judgment of acquittal dated 24.08.2021 passed by learned Additional Sessions Judge, Jhajjar, in criminal case No.S.C-78 of 2017/2018 titled as ***State Vs. Krishan and another***, whereby respondents had been acquitted of charges of offences punishable under Sections 304B/302 read with Section 34 and Section 201 of IPC.

2. Broad contours of the case as set up by the prosecution are that on 22.06.2017 on receipt of a telephonic information regarding death of the victim Suman wife of accused Krishan and her dead body being brought back from Oscar Hospital, Jhajjar to her matrimonial

home, a police party headed by SI Satbir Singh rushed at the spot wherein the deadbody of the victim was found lying on a cot. FSL team had also reached at the spot. On the same day, PW-1 Amit Yadav, brother of the victim submitted a written complaint alleging therein that the victim Suman got married with accused Krishan Yadav on 05.12.2012. Ever since the very inception of their marriage, his sister was being harassed on account of demand of dowry. Accused Krishan used to extend beatings to her under the influence of liquor and she was mentally as well as physically harassed. The mother-in-law of the victim, namely, Premwati also used to harass her on account of demand of dowry and extended threats to snatch children of the victim from her. She was even harassed by her brother-in-law Kirpal. On 22.06.2017, he had received telephonic information from the accused Krishan that something had happened to Suman and on insistence, he firstly disclosed that she had become unconscious and further that she had died due to heart attack. He again changed his version and disclosed that the victim had hanged herself to death. The complainant alleged that the victim had telephonically called at his house on the same morning in a normal condition and there were no chances of her hanging herself. He raised suspicion that she had been killed by the accused Krishan, Premwati and her brother-in-law Kirpal. On his complaint, a case under Section 304-B read with Section 34 of IPC was registered. Investigation proceedings were initiated. Postmortem examination of dead body of the victim was conducted as per which, it was a case of strangulation by ligature.

Offences under Sections 302 and 201 of IPC were added. The accused Krishan was arrested. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime and demarcated the place of occurrence and also got recovered his mobile. The accused Premwati was arrested on 17.08.2017. She too suffered disclosure statement admitting her involvement in the murder of the victim. The brother-in-law of the victim namely, Kirpal was found to be innocent and he was not challaned and his name was kept under column No.2 of the challan report.

3. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused. Copies of challan were supplied to the accused free of costs. The case had been committed to the Court of Sessions.

4. On finding a prima facie case for commission of offences punishable under Sections 302, 304-B and 201 read with Section 34 of IPC, the accused had been chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined 17 witnesses in all besides placing reliance upon certain documents. Statements of accused were recorded under Section 313 Cr.P.C. They pleaded false implication and stated that the victim wanted to settle down in Delhi and was upset on account of being residing at village Sulodha, which was the native village of the accused and had committed suicide by hanging herself due to that reason. It was also

stated that they were not present at their house when the victim had hanged herself.

6. In defence evidence, they examined three witnesses, namely, Takdir DW-1, Madan Lal DW-2 and Premwati DW-3.

7. Learned trial Court acquitted vide judgment dated 24.08.2021 both the accused of the charges as levelled against them by holding that the prosecution had failed to bring home the guilt of the accused beyond doubt.

8. Feeling aggrieved, the appellant-State has filed the instant application under Section 378(3) of Cr.P.C. for grant of leave to file appeal against the impugned judgment of acquittal.

9. It is submitted by learned State counsel for the applicant that the impugned judgment is liable to be set aside as the findings given therein are not sustainable in the eyes of law and are based on conjectures and surmises. The learned trial Court did not apply its judicious mind and failed to appreciate the evidence produced on record by the prosecution in a proper prospective. There was overwhelming medical evidence on record to prove that the victim had died a homicidal death. It also stood proved that she had died within 7 years of her marriage with the accused Krishan. The evidence led by the prosecution in the form of testimonies of PW-1 Amit Yadav, PW-4 Rajiv Yadav and PW-3 Kamlesh Yadav proved that the victim had been harassed mentally as well as physically on account of demand of dowry. The death of victim had occurred at her matrimonial house. The burden lied heavily upon the respondents

-accused to prove as to how the same had occurred but they had failed to discharge the said burden. The proximate link between the death and the cruelty based on dowry demand as inflicted upon the victim stood proved and the presumption under Section 113-B of the Indian Evidence Act, 1872 (for short 'Evidence Act') stood fully established. The learned trial Court had failed to take all these circumstances into consideration and committed a grave error in recording findings of acquittal of the respondents-accused. Therefore, it was urged that the application deserved to be allowed and the applicant deserved to be permitted to file and contest appeal against the impugned judgment of acquittal of the respondents.

10. We have heard learned State counsel for the applicant at considerable length and have gone through the evidence placed on record of the trial Court carefully.

11. We have given due deliberations to the contentions as raised by learned counsel for the applicant and have scrutinized the material available on record minutely. Before advertng to the merits of the case and the contentions raised by the applicant, it would be appropriate to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is 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. The Hon'ble Apex Court further culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

Reference can also be made to **Atley v. State of U.P.**, AIR

1955 SC 807; **Aher Raja Khima v. State of Saurashtra**, AIR 1956

SC 217; **Ramesh Babulal Doshi v. State of Gujarat**, 1996 SCC (CrI.) 972; **Sadhu Saran Singh v. State of U.P. and others**, 2016 (2) RCR (Criminal) 319 & **State of Maharashtra v. Fazal Rehman Abdul**, 2014 (7) SCC (Criminal) 01, wherein similar proposition of law had been laid down and it was observed that while entertaining appeal against judgment of acquittal, the Appellate Court was required to seek an answer to the question whether the findings of the trial Court were culpably wrong, manifestly erroneous and demonstrably unsustainable. It was held that the Appellate Court should not ordinarily set aside the judgment of acquittal in a case where two views are possible, though the view of the Appellate Court may be the more probable one and further that in an appeal against acquittal, the Appellate Court would interfere only when there exists perversity of facts and law. On applying the above enunciated principles of law to the peculiar facts and circumstances of the present case, on hearing learned counsel for the applicant at length and on having perused the material placed on record of learned trial Court, we are of the considered opinion that the present application does not deserve to be allowed and no case has been made out for grant of leave to the applicant-complainant due to the reasons to be discussed hereinafter.

12. Keeping the above discussed position of law in mind, let us consider as to whether the application filed by the applicant-State for granting leave to file the appeal against judgment of acquittal of the respondents deserves to be allowed or not. The respondents had been chargesheeted for commission of offences punishable under Sections

304-B, 302 and 201 read with Section 34 of IPC on the allegations that they had subjected the victim Suman to cruelty/harassment in connection with demand of dowry and caused her death. The victim Suman had died on 22.06.2017. As per the prosecution version, it was a case of homicidal death by way of strangulation whereas according to the respondents she had committed suicide by hanging herself.

13. Let us firstly deal with the charge under Section 304 B of IPC which reads as under:-

“304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.”

At this stage, it is also desirable to go through the provisions of Section 113-B of the Evidence Act, which read as under:-

“113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.”

14. A conjoint reading of both the sections referred above makes it apparent that presumption arising under Section 113-B of the Evidence Act, will be operative if the prosecution is able to establish the circumstances as such detailed in Section 304-B of IPC. The ingredients necessary for the application of Section 304-B of IPC are as follows:-

- (i) *that the death of a woman is caused by burns or bodily injuries or occurs otherwise than under normal circumstances*
- (ii) *that such death occurs within seven years of marriage;*
- (iii) *that it is shown that soon after her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry.*

15. So far as the second ingredient is concerned, it is the case of the applicant that the victim Suman got married with the respondent, accused Krishan on 05.12.2012. Though, the respondents-accused had taken plea before the learned trial Court that the marriage between the victim and respondent Krishan was solemnized on 02.01.2010 and as on the date of her death, a period of 7 years had expired but the same had not been accepted by the learned trial Court. The observations made by the trial Court to that effect had not been challenged by the respondents. Even otherwise, the statements of PW-1 and PW-4 to the effect that the victim got married on 05.12.2012 have remained unshattered on that point and therefore, the same can be acted and

relied upon and to prove that the victim got married on 05.12.2012 and since she had died on 22.06.2017, therefore, her death had certainly occurred within a period of 7 years of her marriage with the respondent-accused, Krishan.

16. So far as the first ingredient is concerned, it also stands proved that the victim had not died a natural death. The postmortem examination of deadbody of the victim was conducted on 23.06.2017 and as per the testimony of PW12, Dr. Luv Sharma and postmortem report Ex.PW12/B, the cause of death was strangulation by ligature. The learned trial Court had however not believed the medical evidence on record and had held that it was proved to be a case of hanging and not strangulation. We will consider this question in the subsequent paras of this order. Suffice at this stage to say that the death of the victim whether took place by way of hanging or by strangulation but had obviously not occurred under normal circumstances. Therefore, the first ingredient also stands proved.

17. Further, it was for the prosecution to prove that the victim had been subjected to cruelty or harassment by the respondents soon before her death on account of demand of dowry. So far as the expression 'soon before the death' as appearing under Section 304-B of IPC is concerned, it is well settled that the same is an elastic turn. It can refer to a period either immediately before the death of the victim or within a few days or few weeks before her death. There can be no fixed period of time in this regard and whether or not cruelty or harassment meted out to the victim for or in connection with demand

of dowry was soon before death and proximate cause of her death under abnormal circumstances would depend upon the fact of each case. However, the demand and harassment must be proximately close for the purpose of drawing inference against the accused persons. There must be some proximate and live link between the fact of cruelty based on demand and concerned death.

18. Keeping in view this position of law in mind, it is to be seen as to whether the prosecution had proved that the respondents-accused subjected the victim to cruelty or harassment on account of any demand of dowry soon before her death. The allegations of prosecution qua demand of dowry and subjecting the victim to cruelty are based on the evidence led by the statements of PW-1 Amit Yadav, PW-3 Kamlesh Yadav and PW-4 Rajiv Yadav. The learned trial Court had observed that there were vague and general allegations with regard to harassment of the victim on account of demand of dowry and the same could not be believed for the purpose of recording conviction of the respondents under Section 304-B of IPC.

19. On a careful perusal of the statements of these witnesses, we are also of the considered opinion that the prosecution had failed to produce any cogent, convincing and reliable evidence on record to prove that the victim had been subjected to any harassment and cruelty by the respondents in connection with any demand of dowry. No doubt, in his complaint Ex.PW1/A, the complainant PW-1, Amit Yadav had alleged that his sister was harassed on account of demand of dowry by the respondents. However, no particular instance of any

such demand had been quoted by either of the above named three witnesses. PW-4 Rajiv Yadav, brother of the victim, deposed that the respondent, Krishan Kumar, mentally and physically harassed the victim for financial matters and his relatives and himself were demanding a house at Delhi. During cross-examination, it was admitted by him that while recording his statement before the police, he had not disclosed that any house was demanded by the relatives of the respondent, Krishan Kumar. He stated that house was demanded just 20-25 days prior to the death of the victim and that the respondent Krishan also demanded car since the day of his marriage. It was, however, again admitted by him that this fact had not been disclosed by him to the police. PW-3 Kamlesh Yadav, Aunt of the victim stated that the respondent had demanded a house in Delhi. She was confronted with statement Ex.D-2 as recorded before the police, wherein these facts had not been mentioned by her. Rather, she stated that it was correct that the real dispute between the victim and the respondent Krishan was that the former wanted to settle in Delhi whereas the latter was not settling her there. PW1-Amit Yadav, deposed that the respondents used to beat the victim and torture her regarding demand of dowry. However, what that demand was had not been deposed to by this witness. Rather, during cross-examination, it was admitted by him that there was no demand of dowry from the side of the respondents at the time of marriage. Though, he subsequently changed his version and stated that a car was demanded by the respondent-Krishan. He did not utter even a single word to the effect

that the respondent-Krishan had ever raised demand of any house from the victim. It was also admitted by him that the victim and they themselves used to ask the respondent-Krishan to shift to Delhi and to purchase some car for livelihood of the family. He stated that the respondents expected a car from them. It was not stated by this witness as to on which particular day, month and year, demand of car was raised by the respondent-Krishan. Neither PW-3 and PW-4 could quote any such specific instance when the demand of dowry was raised by either of the respondents. Both PW1 and PW4 admitted that no complaint was ever filed to the police or any other public authority against act of the respondents of harassing/torturing the victim. No panchayat meeting had ever been convened. No independent witness has come forward to corroborate the stand of these witnesses qua demand of dowry by the respondents. The statements of these witnesses with regard to raising demand of dowry are contradictory as PW1 and PW2 did not utter even a single word that the respondent Krishan had ever raised demand of a house. No definite evidence of illtreatment having immediate proximity to the death of the victim could be brought by the prosecution on record. The evidence produced on record in the form of testimonies of these witnesses is also not conclusive and definite to show that the victim had been harassed on account of demand of dowry. What kind of harassment was given to her had not been explained by these witnesses. It was also not their version that the victim was harassed on account of those demands or due to non-fulfilment of those demands. These

circumstances, clearly show that the allegations regarding demand of dowry and cruelty as alleged to be inflicted upon the deceased on account of non-fulfilment of those demands are vague and no specific and clear evidence had come on record to prove this fact including the fact that soon before her death, the victim had been harassed on account of any such demand.

20. Under these circumstances, in our opinion, it comes out that the prosecution had failed to prove the most material ingredient of the offence punishable under Section 304-B of IPC and hence no presumption could be drawn to say that the death of the victim was a dowry death. As such, the order passed by learned trial Court as to acquittal of the respondents under the afore mentioned section cannot be stated to be perverse or unsustainable in the eyes of law. Therefore, it is held that learned trial Court had rightly observed that the charge under 304-B of IPC had not been established against the respondents-accused.

21. Now coming to the charge under Section 302 of IPC. PW-12 Dr. Luv Sharma, who was one of the members of the Board, who had conducted postmortem examination of the deadbody of the victim and who proved postmortem report Ex.PW12/B, deposed that it was a case of strangulation. Learned trial Court had observed that it was proved to be a case of hanging and not strangulation. On a collective perusal of contents of post mortem report PW12/B and the testimony of PW12, it is revealed that no injury, scratches, abrasions, bruises on the muscle of neck of the deadbody of the victim or other parts of the

same were found to be present. PW12 admitted that there were no marks of resistance over the deadbody. As per Modi's Medical Jurisprudence and Toxicology, 23rd Edition in case of hanging, the scratches, abrasions and bruises on face, neck and other parts of the body are usually not present whereas in case of strangulation, scratches, abrasions, bruises on the face and neck and other parts of the body are usually present. In case of hanging, there is no evidence of sexual assault whereas same is sometimes found in cases of strangulation. No injuries to the muscles of the neck are found in case of hanging. Similarly bleeding from nose, mouth and ear is rare in case of hanging whereas it is found in case of strangulation. External signs of asphyxia, are usually not well marked whereas the same are well marked in case of strangulation. Further, ligature marks are oblique, non-continuous placed high up in the neck between the chin and the larynx whereas in case of strangulation they are low down in the neck below the thyroid and are transverse of horizontal. In the present case, PW12 admitted that no abrasions/ecchymoses were found about the edges of the ligature mark. There were no injuries to the muscles. There was no fracture on larynx and trachea and there were no scratches, abrasions bruises etc. on face, neck and other parts of the deadbody of the deceased. Face of the deceased was also not found to be pale and petechiae was not present in the neck which as in the case of suicidal hanging. No fracture on thyroid cartilage was found. The ligature mark was also below the chin in anterior midline. The ligature mark found on the deadbody did not completely encircle

the neck. In such circumstances, in our opinion, learned trial Court had rightly held that it was not proved to be a case of homicidal death and was rather proved to be a case of suicidal death.

22. Proceeding further, the respondents had set up a plea in their defence to the effect that the victim, after her marriage wanted to get settled in Delhi whereas respondent-Krishan was not making her settled there and had rather shifted to his native village Sulodha due to which, there used to be disputes amongst themselves and out of that frustration, the victim had committed suicide. On perusal of statements of PW1, PW3 and PW4, this plea stands proved as it was admitted by PW1 and PW4 that the victim as well as her family members wanted to get her settled in Delhi whereas the respondent -Krishan had refused to settle there. PW-1 even stated that at the time of marriage between the victim and the respondent-Krishan, it was assured by the latter that he would be settling her at Delhi. PW-3, even stated that the real dispute between the respondent Krishan and victim was that she wanted to stay and settle in Delhi whereas the respondent-Krishan was not doing so. In view of the admissions so made by these witnesses with regard to this fact, it can be reasonably presumed that the victim had resorted to the extreme step of causing her death by hanging feeling frustrated due to the reason that her husband had shifted her to his native village and not at Delhi.

23. It was also the plea taken by the respondents that the victim had committed suicide on 20.06.2015 when they were not present at their home and her deadbody was found hanging inside a room, the

bolt of which was broken in the presence of DW1 Takdir. This witness gave a categoric account of the version that on 22.06.2017 at about 4:00 p.m. on hearing the alarm raised by the respondent-Krishan that his wife had hanged herself, he had rushed to his house and saw through the window of the room of first floor of the house that the victim had hanged herself with a chunni from ceiling fan. He deposed that they had tried to open the door which was bolted from inside and then the inner bolt had been uprooted and door was opened. He stated that the respondent-Krishan had taken the victim in his lap after entering the room and he himself had unlocked the chunni from ceiling fan. He stated that saliva was coming from the mouth of the victim at that time and they had taken her to hospital. Nothing could be extracted from the testimony of this witness on the basis of which it could be stated that he was deposing falsely. It is well settled proposition of law that the evidence of defence witnesses has to be treated at par with that of the prosecution witnesses. The court should not proceed in premises that it is tainted one. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. Reference in this regard can be made to ***Munshi Prasad and others Versus State of Bihar***, (2002) 1 SCC 351. Reliance can also be placed upon ***SJ Chaudhary Versus CBI***, 2009 (159) DLT 673, wherein it was observed that there is no presumption that defence witnesses tell lies as the credibility of every witness and the evidentiary worth of the

testimony of a witness has to be evaluated on the recognized principle of evaluation of evidence, be it a witness of prosecution or the defence. There evidence has to be discussed and analyzed on the same process of reasonsing which is adopted to discuss and analyse the testimony of witness of the prosecution. Since the testimony of DW-1 has remained unshaken therefore, in our opinion, the same can certainly be acted and relied upon to prove that he had seen the victim who was hanging with a ceiling fan by the help of a dupatta and had removed dupatta from her person and had taken her to hospital wherein she had been declared to be brought dead. His statement is further fortified by the admission made by PW6 Inspector Satbir, Investigating Officer to the effect that some attempt had been made by someone to break open the bolt from inside the room from where the deadbody of the victim had been recovered and also admitted that there were some marks on the bolt regarding making of such attempt. As such, it emerges that the defence plea as put forward by the respondent that it was a case of hanging by the victim stood established. The prosecution is also not shown to have produced any such evidence on record which proved that the respondents caused or attempted to cause disappearance of offence of alleged murder of the victim or any other offence. The learned trial Court on a careful appraisal of evidence produced on record had observed that it was a case of suicidal hanging and not of causing homicidal death of the victim by the respondents. The findings as given by learned trial Court cannot be stated to be perverse occasioning to miscarriage of justice,

rather the same are well reasoned and therefore, in the absence of any illegality in the same, no ground has been made out to interfere with the same. Therefore, in our opinion, no ground has been made out to allow the application for grant of leave to file and pursue the appeal against the judgment of acquittal of the respondents.

24. Consequently, the application is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

27.02.2023
pooja saini

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No