

**CRA-S-3743-SB-2014****1****212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRA-S-3743-SB-2014 (O&M)
Date of decision: 29th July, 2024****Saroj Bala****...Appellant****Versus****State of Haryana and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Neeraj Goel, Advocate
for the appellant.****Ms. Geeta Sharma, DAG Haryana.****Mr. R.S. Malik, Advocate
for respondents No. 3 to 8.***********HARPREET SINGH BRAR, J. (ORAL)****CRM-28230-2014**

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 49 days in filing of the present appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 49 days is condoned.

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1. The present appeal is preferred against judgment of acquittal dated 31.03.2014 passed by learned Additional Sessions Judge, Sonapat in FIR, bearing no. 109 dated 01.05.2010 registered under Sections 302, 307 and 309 of the IPC at Police Station Sadar, Sonapat.

2. The facts, tersely put are that on 01.05.2010, the complainant, namely, Sahab Singh moved a complaint before the police wherein it was alleged

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that his eldest sister, namely, Kaushalya alias Sarla was married to one Baljeet alias Ballu about 8-10 years ago. The brother of Baljeet, namely Suren, was married to the appellant-Saroj. Complainant's sister was blessed with two sons, while the appellant had three children. The relations between the complainant's sister and her in-laws were strained. On 01.05.2010, the complainant was informed that his sister, Kaushalya alias Sarla and the appellant along with their five children have jumped into a canal due to unending taunts from their in-laws and have died by suicide. At the spot of the occurrence, the passers by only managed to save the appellant and the nephew of the complainant, namely Lalit alias Bholu. Four dead bodies were extracted from the canal and brought to the mortuary, Civil Hospital, Sonipat. Unfortunately, the mortal remains of a girl child could not be traced.

3. Initially, a case under Sections 306 and 309 IPC read with Section 34 IPC was registered against respondents-accused. Investigation was conducted and upon recording the statement of the appellant, Section 498-A of IPC was also added. The Final Report was presented under Section 173 of Cr.P.C. against the respondents-accused for the commission of offence punishable under Sections 306, 498-A IPC read with Section 34 IPC. However, on the statement of Lalit, a supplementary Final Report was filed on 13.12.2010, with the addition of offences punishable under Sections 307 and 302 IPC against the respondents.

4. The prosecution examined as many as 26 witnesses to prove its case. The statement of the respondents-accused under Section 313 of the Cr.P.C. was recorded, wherein they pleaded false implication, however, no witness was examined by them in their defence. After taking into account all the material available on record, the respondents-accused were acquitted by the learned trial



Court vide judgment dated 05.10.2016.

5. Learned counsel for the appellant assails the impugned judgment of acquittal on the ground that the learned trial Court has mechanically decided the case without due application of mind. PW-2, namely, Sanjiv Kumar, who is the brother of the deceased, has clearly deposed in support of the prosecution version to the effect that the respondents-accused harassed his sister in connection with demand of dowry. Further, PW-10-Dr. V.K. Gupta, Medical Officer, testified that on 30.06.2015, he examined the deceased, who had sustained 90-95% burn injuries and proved the MLR (Ex. 21) in this regard. The dying declaration of the victim was duly recorded by PW-11-the then learned Chief Judicial Magistrate-cum-Secretary, DLSA, Narnaul, which clearly establishes the complicity of the respondents-accused. As such, they ought to have been held guilty by the learned trial Court on this ground alone. The brother and the father of the deceased have given cogent reasons as to why the victim died by suicide. Moreover, there is no reasonable explanation rendered by the respondents-accused either in their respective statements recorded under Section 313 Cr.P.C. or in their defence. The learned trial Court below completely disregarded the fact that the charges of offences punishable under Sections 498-A, 323 and 306 IPC, has been clearly and unimpeachably proved, thus leading to material irregularity and perversity.

6. Learned counsel for the respondents-accused submits that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, and therefore, no interference is warranted by this Court in the instant appeal.

7. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that the sister-in-law,

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her son Mandip @ Montu as well as all three children of the appellant namely Kiran, Ritu and Ankur died as a result of drowning in the Rohat canal. The narrative put forward by the prosecution indicates that Kaushalya alias Sarla as well as the appellant were facing cruelty at the hands of the respondents-accused i.e. their in-laws, which caused them to jump into the canal along with their children. However, the surviving child of Kaushalya alias Sarla namely Lalit @ Bholu(PW6) stated that the appellant i.e. his aunt (*tai*) pushed the children and his mother into the canal. A passerby PW5- Suraj submitted that he saw one lady pushing the other and identified the appellant as the lady who had pushed the other lady and the children into the canal. PW6-Lalit also stated that he narrated the entire tale to his maternal grandmother Jainwati, who appeared as PW13, but did not reaffirm his stance.

8. Further, even the complainant- PW4- Sahab Singh did not support the case of the prosecution and pleaded ignorance qua the mode of death of Kaushalya alias Sarla and the children. Moreover, from the statements of PW15- Virender, PW17- SI Balraj and PW21- Inspector Laxmi Devi, Investigating Officer, it is evident that the clothes of the deceased were lying outside the canal. As such, it does not appear to be the case that the deceased abruptly jumped into the canal out of fear of the respondents-accused chasing them.

9. In order to hold a person guilt under Section 306 IPC, there has to be clear *mens rea* to instigate and aid the victim to take such a drastic step before a person can be said to be abetting. There ought to be an active or direct act leading the deceased to die by suicide. In the present case, *mens rea* was conspicuously absent. Nothing has been brought on record by the prosecution to establish a nexus between the act(s) of the respondents-accused and the extreme step taken by the



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deceased. Moreover, nothing substantial has been brought on the record to indicate that the deceased and the appellant were being harassed by the respondents-accused in lieu of dowry. The allegations qua the same are vague and omnibus and as such, does not inspire confidence of this Court.

10. A two Judge bench of the Hon'ble Supreme Court in ***Gangula Mohan Reddy vs. State of Andhra Pradesh (2010) 1 SCC 750***, speaking through Justice Dalveer Bhandari, held as follows:

"19. This court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009(4) RCR (Criminal) 196 : 2009(5) RAJ 278 : 2009(11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 Indian Penal Code there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide"

Recently, a two Judge bench of the Hon'ble Supreme Court in ***Mohit Singhal and Another vs. State of Uttarakhand and others (2024) 1 SCC 417***, speaking through Justice Abhay S. Oka, made the following observations:

"9...Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the



deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide.”

11. A two Judge bench of the Hon’ble Supreme Court in ***Girdhar Shankar Tawde vs. State of Maharashtra (2002) 5 SCC 177***, speaking through Justice Umesh C. Banerjee, opined as follows:

“18... In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under section 498-A and not de hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under section 498-A. The legislative intent is clear enough to indicate in particular reference to Explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (b). The letters by themselves though may depict a reprehensible conduct, would not, however, bring home the charge of section 498-A against the accused. Acquittal of a charge under section 306, as noticed hereinbefore, though not by itself a ground for acquittal under section 498-A, but some cogent evidence is required to bring home the charge of section 498-A as well, without which the charge cannot be said to be maintained...”

12. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other

pointing towards his guilt. (*See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*). A Division bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* in *CRM-A No.3 of 2022 decided on 06.07.2023* has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

13. In view of the facts and circumstances of the case, this Court finds that learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present appeal and the same stands dismissed.

14. Pending miscellaneous application(s) if any, stand disposed off.

(HARPREET SINGH BRAR)

JUDGE

29.07.2024

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No