

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

**Criminal Appeal No.2194-SB of 2003
Date of Decision : 21.02.2015**

Pritam Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Bains, Advocate,
for the appellants.

Mr. Mehardeep Singh, DAG, Punjab.

JITENDRA CHAUHAN, J.

The present appeal has been preferred by the appellants, challenging the judgment and order dated 31.10.2003, passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur, (hereinafter referred to as 'the trial Court'), thereby, convicting the accused-appellants, Pritam Singh and Veero @ Sukhbir Kaur @ Jasbir Kaur, under Section 306 of the Indian Penal Code (for short, 'the IPC') and sentencing them to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.1,000/- each or in default of payment of fine, to further undergo rigorous imprisonment for a period of nine months. Co-accused Kinder @ Kulwinder Kaur, was

acquitted of the charges framed against her.

At the very outset, it has been informed that appellant No.2, Veero @ Sukhbir Kaur @ Jasbir Kaur has since died on 10.12.2010. Accordingly, the appeal qua her abates.

The brief facts of the case in hand, as recorded by the learned trial Court stand reflected in para No.2 of the impugned judgment, are being reproduced hereunder:-

“Briefly stated the fact of the prosecution case are that Smt. Harjinder Kaur since deceased was married to Lakhbir Singh about 10 years back. Lakhbir Singh who was employed as wireless operator in police department, died two years after the marriage leaving behind Harjinder Kaur, his widow and a son. After the death of Lakhbir Singh, Harjinder Kaur was residing with her in laws alongwith the child. However, the accused were harassing her and giving her beatings to leave the matrimonial home and to reside with her parents. Dispute arose many a times in between Harjinder Kaur and her in laws, the accused but was resolved each time at the intervention of panchayat. On 05.12.2000 complainant Sarwan Singh who is brother of deceased Harjinder Kaur and his wife Baljit Kaur visited Harjinder Kaur to see her at

village Malwal Qaadim. At about 4.00 PM they were talking with each other and enquiring the welfare of Harinder Kaur in the matrimonial house. Accused Pritam Singh and his wife Jasbir Kaur started hurling filthy abuses calling upon Harjinder Kaur to leave the matrimonial house. On enquiry by Sarwant Singh from Harjinder Kaur why the accused aforesaid were talking that way, latter disclosed that her in laws had altercation with her, so they should take her with them to parental house as she apprehended danger to her life at the hands of the accused. However, they made her to understand and promised her to come back on the next day with panchayat and would take her after intervention of panchayat. Thereafter, they returned to Fazilka after staying there for 10/15 minutes without taking tea. On the next day that is 06.12.2000 Sarwan Singh again visited Malwal Qadim but received information from Sukha Singh his uncle that Harjinder Kaur had died under suspicious circumstances by strangulation/hanging. Feeling suspicious about her death Sarwan Singh reported the matter to the police for registration of the case against the accused. Sarwan Singh

suspected that Harjinder Kaur had not committed suicide but was murdered by the accused and her dead body was hanged thereafter. On registration of FIR the law was set in motion. Investigating Officer visited the spot, prepared inquest report, recorded statements of PWs and completed other necessary formalities. As per the opinion of the doctor in postmortem report, death of Harjinder Kaur is reported to be due to asphyxia as a result of hanging which is ante mortem and sufficient to cause death in the ordinary course of nature and not by poison. Investigating Officer also prepared visual site plan of the place of occurrence, got photographs of the dead body taken. On completion of investigation, challan against the accused was presented under Section 306/34 of the Indian Penal Code.”

In this background, challan was presented and upon committal of the case to the Court of Sessions, the learned trial Court charged the accused for commission of offence under Section 306 IPC.

In order to substantiate its case, the prosecution examined

PW1 Dr. Pardeep Kumar Aggarwal; PW2 Krishan Pal, Draftsman;

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PW3 Sarwan Singh; PW4 Daljit Kaur; PW5 Sukha Singh; PW6 Chanan Singh; PW7 Dr. M.S. Tinna; PW8 ASI Gurdev Singh; PW9 ASI Sardul Singh; PW10 Mangat Singh; and PW11 Rajan Gupta.

When examined under Section 313 Cr.P.C., the accused-appellants denied all the allegations of the prosecution case and pleaded false implication. It was stated that their son, Lakhbir Singh, who was a Head Constable in the Punjab Police, was kidnapped and killed by ASI Hans Raj and DSP Rajinder Kumar etc. They along with their daughter-in-law, the deceased, filed Habeas Corpus. The enquiry in the matter was entrusted to the District and Sessions Judge, Ferozepur by this Court. Upon receipt of the inquiry report, the investigation was handed over to the Central Bureau of Investigation, which presented challan against ASI Hans Raj and other police officials before the CBI Court, Patiala. Those police officials were pressurizing the appellants and other witnesses to compromise the matter. It was further pleaded that their daughter-in-law, Harjinder Kaur, since deceased, was happily staying with them along with her son. Harjinder Kaur had land measuring 8 kanals 12 marlas near abadi of Ferozepur Cantt. which came to her share after the death of her father. She transferred 19 marlas out of that land through sale deed to her brother Kuldeep Singh, without any consideration. Kuldeep Singh constructed MK Marriage Palace on the said land and thereafter he died. The complainant, Sarwan Singh and his wife, were insisting Harjinder Kaur, to transfer remaining land in their favour.

On 05.12.2000, Sarwan Singh and Daljit Kaur had come to their house at about 4.00-5.00 PM and insisted the deceased, Harjinder Kaur to transfer the land in their name, due to which a quarrel arose among them. Pritam Singh, accused-appellant, went to Sarpanch Mehar Singh and Hardev Singh to inform and to bring them there. However, both Sarwan Singh and Daljit Kaur had left in the meantime. On the next morning, Harjinder Kaur committed suicide. Pritam Singh lodged a report against Sarwan Singh and Daljit Kaur at Police Station Sadar Ferozepur, but no action was taken thereupon, rather they appellants were involved in a false case. DSP Joginder Kumar was the Sub Divisional Incharge as DSP and Police Station Saddar Ferozepur came under his control at the relevant time. Accused Kulwinder Kaur also deposed on the same lines. In defence, appellant Pritam Singh tendered into evidence attested copy of order passed in writ petition as Ex.D1, attested copy of order in writ petition dated 04.07.1997 as Ex.D2, attested copy of the chargesheet Ex.D3 and attested copy of sale deed dated 22.04.1999 Ex.D4. He also examined Mehar Singh as DW1 and closed the defence evidence.

The learned trial Court, after hearing both the parties, framed the following three points for determination:-

1. Whether Harjinder Kaur committed suicide by hanging her;
2. Whether accused abetted the commission of offence by maltreating and beatings to Harjinder Kaur.

After hearing learned counsel for the parties and perusing the evidence on record, the learned trial Court, while acquitting accused Kulwinder Kaur, convicted and sentenced the appellants, as detailed at the outset of this judgment.

Hence, the present appeal by Pritam Singh and Veero @ Sukhbir Kaur @ Jasbir Kaur, which was admitted by this Court on 19.01.2004. As already stated, appellant No.2, Veero @ Sukhbir Kaur @ Jasbir Kaur died during the pendency of the present appeal and thus, appeal qua her abates.

It is contended that the abetment in the instant case is not proved on record. There is no specific instance of any cruelty, harassment or physical torture of the deceased at the hands of the accused. The motive for the accused to instigate the deceased to commit suicide is highly improbable and far to believe. Since the disappearance of the husband of the deceased in the year 1992, the appellants had been looking after the deceased and her minor son. The appellants along with the deceased had been pursuing the matter in this Court against the police officials whom they suspected to be behind the disappearance and alleged murder of the deceased's husband. Therefore, the police officials were inimical towards the appellants and had a motive to falsely implicate them in the present case. Furthermore, there was no reason for the deceased to stay at her matrimonial home against the wishes of the appellants as she had land

in her name which was sufficient to support her and the minor son. The complainant and his wife wanted to grab the land and were pressurizing the deceased to transfer the same in their name. They had visited the matrimonial home of the deceased one day prior to the occurrence and there was exchange of hot words between them. The complainant is still in possession of the land given by the deceased to her another brother, Kuldeep Singh and is enjoying its income. The son of the deceased has been staying with and supported by the appellants' family since his birth.

On the other hand, the learned State counsel submits that the death has occurred in the matrimonial home of the deceased, therefore, it was for the appellants to explain under what circumstances the deceased had committed suicide. There is consistency in the statements of the prosecution witnesses. The deceased was being pressurized to leave the matrimonial home.

I have heard learned counsel for the parties and gone through the record carefully.

What is not in dispute in the present case is that the deceased died due to asphyxia as a result of hanging, which was ante mortem in nature and was sufficient to cause death in the ordinary course of nature. As per the medical record, there was no mark of injury to say that the deceased was given beatings and no poison was detected to show that she had been administered poison. It is also not in dispute that the deceased died at her matrimonial home. In order to

explain the circumstances under which the deceased committed suicide, it has been averred on behalf of the appellants that the complainant and his wife, wanted to grab the land of the deceased which had come to her share after the death of her father. It has come on record that the deceased had given 19 marlas of land out of her share to her elder brother, Kuldeep Singh, who constructed M.K. Palace on the said land. The complainant and his wife were insisting the deceased to transfer the remaining part of the land in their name, to which she was not agreeing. A day before the occurrence, the complainant and his wife visited the matrimonial home of the deceased and an altercation took place on account of their demand of share from the deceased. Since, the deceased was not agreeing, the complainant and his wife got annoyed and left the house without even taking tea. Accused-appellant Pritam Singh had even reported the matter to the Sarpanch, namely, Mehar Singh and one Hardev Singh and also brought them to his house to witness the altercation, however, the complainant and his wife had already left by that time. The deceased was so upset over the unjust demand raised by her brother and sister-in-law, that on the very next morning, she committed suicide. Pritam Singh had also lodged a report with the police in this regard by making a statement, Ex.P6, but instead of registering a case against the complainant and his wife, the appellants were falsely implicated. The motive with the police officials to falsely implicate the appellants has also been explained. The police

officials of the area were inimical towards the appellants due to the fact that the appellants along with the deceased had been pursuing the case regarding disappearance of their son, Head Constable Lakhbir Singh, the husband of the deceased. On the petition moved by them before this Court, the investigation had been transferred to the Central Bureau of Investigation and police officials including ASI Hans Raj and DSP Joginder Kumar were insisting the appellants to compromise the matter. It is a matter of record that the above named police officials were charge-sheeted vide Ex.D3, in this case by the competent Court.

As against this, the prosecution version seems highly improbable. The complainant, Sarwan Singh, appeared as PW-3, and stated that after the disappearance/death of Lakhbir Singh, his sister, since deceased had been staying at her matrimonial home. For the first 3-4 years, behaviour of the in-laws was normal but subsequently, they started maltreating and giving beatings to her as they wanted the deceased to leave the matrimonial home. The complainant took panchayats to their house and the matter used to be compromised. This happened 3-4 times. On 05.12.2000, he along with his wife, Daljit Kaur, had gone to see his sister at about 3.00-4.00 PM. The accused asked them to take the deceased along with them. The deceased also told them that all the accused used to quarrel with her and maltreat her and insisted them to take her back as she apprehended danger to her life. Surprisingly, the complainant did not

do anything on that day and simply returned back. Next day, after 3.00 PM, he along with his brother and wife, gathered panchayat and went to the house of the deceased. On the way, his uncle Sukha Singh met him and informed that his sister had already died. Thus, going by the version of the complainant, the deceased was constrained to end her life on account of the pressure of her in-laws to leave the matrimonial home after eight years of the disappearance of her husband. Had it been so, the deceased could have easily moved out of the matrimonial home on account of the fact that she was owning good amount of land which was sufficient to support her and the minor son. Moreover, during those eight years, the deceased and her minor son were staying with and being supported by the appellants. There was no such complaint by the deceased against the appellants during this period. The assertion of the complainant that panchayats were convened three to four times is not proved by cogent evidence. It has been informed to the Court that the son of the deceased is still staying with his paternal family and pursuing Engineering degree. The version of PW6, Chanan Singh, the Sarpanch of the village of the complainant that the deceased wanted to marry her younger brother-in-law, Harjeet Singh, is also repelled as he was merely 8 years of age at the time of her marriage and about 15-16 years old at the time of her death.

Even if, for the sake of arguments, the version put forth by the prosecution is taken to be true, still the ingredients of Section

306 IPC are not made out in the instant case. Section 306 IPC reads as under:-

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The word 'abetment', has been defined in Section 107 IPC, which reads thus:-

107. Abetment of a thing.—A person abets the doing of a thing, who—

*(First) — Instigates any person to do that thing; or
(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

In ***Sanju @ Sanjay Singh Sengar Vs. State of M.P., AIR 2002 Supreme Court 1998***, it has been held as under:-

“13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged

that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have

been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

In the statement of the complainant, it has nowhere been stated that the accused had harassed or tortured the deceased with some mens rea. Therefore, even if his statement is taken to be a gospel truth, the offence of abetment is not made out against the appellants. The deceased was educated. She could have easily left

behind a suicide note stating that her in-laws constrained her to take such an extreme step. On the contrary, she had been staying with the accused since her marriage in the year 1990. The husband of the deceased went missing in the year 1992. She along with the appellants had been fighting a legal battle against the fellow police officials of her husband and it was for their joint efforts, the investigation of this case was handed over to the Central Bureau of Investigation. An amount of Rupees two lacs was also granted to the son of the deceased as compensation, as by that time, she had also died.

In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has failed to prove the case against the accused-appellants, beyond a reasonable shadow of doubt. Accordingly, the present appeal is allowed; the impugned judgment and order dated 31.10.2003, passed by the learned trial Court, is set aside; and accused-appellant, Pritam Singh, is acquitted of the charge framed against him. The appellant is stated to be on bail. His bail bonds shall stand discharged.

(JITENDRA CHAUHAN)
JUDGE

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Note: Whether to be referred to reporter ? Yes/No