

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

Crl. Appeal-S No.1103-SB of 2004 (O&M)

Date of Decision: July 08, 2015.

Zora Singh alias Jaswant Singh

.....**APPELLANT(s).**

VERSUS

State of Punjab

.....**RESPONDENT(s).**

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.S. Sodhi, Advocate
for the appellant (s).

Mr. Amrit Pal Singh Gill, Asstt. A.G., Punjab.

SURINDER GUPTA, J.

This appeal has been preferred against the judgment dated 02.04.2004 passed by Additional Sessions Judge, Faridkot in case bearing FIR No.85 dated 27.12.2000 registered at Police Station Badhni Kalan for the offence punishable under Section 306 of Indian Penal Code (IPC-for short), wherein the appellant was convicted and sentenced to undergo rigorous imprisonment for seven years; to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.

Prosecution case, as is contained in the statement of complainant Dhani Ram (Ex.PA), is that Charanjit Kaur, sister of complainant, was married to the appellant ten years before the occurrence and had got five children from his marriage. There used to remain dispute between the sister of complainant and appellant for the last about 2/2½ years, as a result of which appellant had been giving beatings to Charanjit Kaur. The matter was not reported to the police. Father of appellant had died about four years back and a *Panchayat* was held at that time. The complainant had given a sum of

₹10,000/- to the appellant after taking this amount from his employer Shamsheer Singh. The complainant had been visiting the appellant and tried to persuade him not to give beatings to his sister but in vain.

On 25.12.2000, appellant came to the complainant at about 11.30 a.m. and told him that on the intervening night of 24th and 25th of December, 2000 he had a quarrel with his wife Charanjit Kaur at which he tied her hands and gave her beatings. He also put a lock on the iron chain with which he had tied her. However, she left the house after getting herself relieved. Thereafter, the appellant took the complainant to different relations pretending to be searching for his wife. On 26.12.2000, a person related to the appellant told the complainant that the dead body of his sister had been found in a drain. The complainant checked the water level in the drain which was only upto knee level. On 27.12.2000, the complainant accompanied by Dharamdev Singh Municipal Councillor Ward No.32, Ludhiana, Shamsheer Singh son of Vichittar Singh, Dilbag Singh son of Sewa Singh, both residents of Dugri along with several other villagers reported the matter to the police vide his statement Ex.PA recorded by ASI Gurdeep Singh of Police Station Badhni Kalan, whereupon formal FIR Ex.PA/1 was recorded on the same day.

It is to be noted that before the registration of the FIR, an information was received at Police Station Baghapurana (Moga) through Mahla Singh, Sarpanch of village Gill about the dead body lying under the bridge near a 'burji' of Canal minor. The police reached the spot and took out the dead body, which could not be identified. The proceedings under Section 174 Code of Criminal Procedure (for short-Cr.P.C.) were conducted and the dead body was sent for post-mortem examination to Civil Hospital, Moga. After the post-mortem examination, the doctor opined that the cause

of death was due to drowning. The relatives of deceased reached there, identified the dead body as that of Charanjit Kaur and vide receipt (Ex.PG), the dead body was handed over to Gurdev Singh son of Sardara Singh and Manjit Kaur wife of Darshan Singh, both residents of village Badhni Kalan.

The dead body of Charanjit Kaur was taken to Harijan Dharamshala, Badhni Kalan. ASI Gurdeep Singh, Investigating Officer reached there and called Rajinder Singh, Photographer to take the photographs of the dead body. He took the photographs Ex.P1 to Ex.P12, which were prepared from negatives Ex.P13 to Ex.P24 and the same were taken into possession vide recovery memo Ex.PJ.

The appellant was produced before the police by MC Ajmer Singh on 27.02.2001 and he was arrested vide memo Ex.PN. After completion of investigation, challan was prepared and presented before the Court.

As the offence under Section 306 IPC was disclosed against the appellant, learned Chief Judicial Magistrate, Moga vide order dated 19.04.2001 committed the case for trial to the Court of Sessions.

The appellant was charge-sheeted for the offence punishable under Section 306 IPC by Additional Sessions Judge, Moga to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Dhani Ram as PW5, Shamsheer Singh, a witness who had stated that there remained a quarrel between the appellant and his wife and that the appellant was consuming intoxicants and used to beat his wife, as PW7. Investigating Officer of this case ASI Gurdeep Singh appeared as PW8. Dr.S.P. Bansal, SMO, Civil Hospital, Moga appeared as PW9 to prove post-mortem report (Ex.PL). He has stated that post-mortem was conducted by Dr. Kundan Lal,

who had died. ASI Ajit Singh, who conducted the initial proceedings on the recovery of dead body of Charanjit Kaur from a drain, appeared as PW2. Mahla Ram, Sarpanch, who had intimated the police that a dead body of an unidentified female was found near the bridge of canal near '*burji*' in his village, appeared as PW3. SI Jagjit Singh, who recorded the FIR (Ex.PA/1) on receipt of ruqa (Ex.PA) appeared as PW1. Photographer Rajinder Singh, who had taken the photographs of the dead body of Charanjit Kaur, appeared as PW4 and Dharamdev son of Sucha Singh appeared as PW6.

On completion of prosecution evidence, statement of appellant under Section 313 Cr.P.C. was recorded, wherein he denied the allegations levelled against him and pleaded his innocence. He has stated in his defence as follows:-

“I am innocent and have been involved falsely in the case. I have (sic had) cordial relations with my wife Charanjit Kaur and 5 children have been (sic were) born out of our marriage and they are residing with me.”

Sukhmandar Singh son of Karnail Singh, resident of Badhni Kalan was examined as DW1 to depose that the appellant did not take any intoxicant or liquor; had good relations with his wife and never gave beatings to her.

Learned trial Court after appraisal of the evidence reached the conclusion that Charanjit Kaur wife of appellant had committed suicide and it was the appellant, who had abetted the commission of suicide by her.

I have heard learned counsel for the appellant, learned State counsel and have perused the trial Court's record with their assistance.

First argument of learned counsel for the appellant is that the dead body recovered from the drain was not in an identifiable condition.

PW2 ASI Ajit Singh of Police Station Baghapurana reached the spot after receiving information from PW3 Mahla Ram, Sarpanch of village Gill, has stated that the dead body was in unidentifiable condition. Similar statement has been made by PW3 Mahla Ram, Sarpanch. The prosecution, thus, has failed to prove that the dead body recovered from the drain was that of Charanjit Kaur and this shatters the entire prosecution case.

The above argument of learned counsel for the appellant, on the face of it, appears to have no basis. The doctor has given the time of death as between 12 to 36 hours before the post-mortem. The post-mortem was conducted on 26.12.2000 and in the post-mortem report, there is nothing that the skin of the dead body had peeled off or it was having swelling or was in such a condition that it could not be identified, rather all the body organs were found healthy. Photographs Ex.P1 to Ex.P12 taken by PW4 Rajinder Singh further refute the contention of learned counsel for the appellant. On perusal of the photographs, I find that the dead body was of a healthy young lady, which could be easily identified. Even in his statement Ex.PB, PW3 Mahla Singh Sarpanch of village Gill has stated that the dead body was of a lady, who could not be identified. He has nowhere stated that dead body was in unidentifiable condition. Statement of Bhag Singh, a member *Panchayat* of village Gill Ex.PC and that of Harbans Singh, Chowkidar of village Gill Ex.PD were also recorded. The dead body was not identified by the people who gathered there. They have never stated that the dead body was in unidentifiable condition. But the PMR (Ex.PL) and photographs of dead body leave not an iota of doubt that the dead body was in a healthy state and could be easily identified.

Dhani Ram, complainant while appearing as PW5 has stated that

he had seen the dead body of his sister and also identified the photographs

Ex.P1 to P12 as that of his sister. He has nowhere been suggested in the cross-examination that photographs Ex.P1 to P12 are not of his sister or the dead body recovered in this case was in an unidentifiable condition. Shamsheer Singh PW7 has also stated that on receipt of information of committing suicide by Charanjit Kaur, they reached Dharamshala of village Badhni Kalan, where the dead body of Charanjit Kaur was lying. He was also not suggested that the dead body lying in Dharamshala was not of Charanjit Kaur. Even to Investigating Officer PW8, it was not suggested that the dead body recovered in this case was in a condition that it could not be identified. In these circumstances, testimony of ASI Ajit Singh Mahla Singh that the dead body was not in an identifiable condition, appears to be a mistake on their part while stating a fact or while recording their testimonies.

The matter regarding identity of dead body does not end here. The appellant also admits that his wife had committed suicide. Suggestion was given to the complainant when he appeared as PW5 that deceased was found in a compromising position with one Gopi, a worker in the workshop near the residence of the appellant and on being caught, she committed suicide out of shame. This suggests that the appellant do not deny that his wife committed suicide.

PW6 Dharam Dev has though not supported the case of complainant but categorically stated that on reaching Dharamshala of village Badhni Kalan, he found dead body of Charanjit Kaur, lying on a cot. His statement is also unrebutted. Taking all the above facts and circumstances into consideration, learned trial Court has rightly reached the conclusion that the wife of appellant had committed suicide. The submission made by learned counsel for the appellant that the dead body recovered in this case was in an unidentifiable condition, has no basis and is discarded.

The next question which arises for consideration is as to whether it is proved that appellant had abetted the commission of suicide by his wife. Learned counsel for the appellant has argued that the appellant was married with Charanjit Kaur ten year before the occurrence. He had five children from this marriage. There is no eyewitness of his dispute with the deceased. None of the children was examined by the prosecution to prove that the appellant had been giving beatings to his wife. The complainant, in fact, had cordial relations with his wife and this fact has also been stated by DW1 Sukhmander Singh son of Karnail Singh. He has also stated that being a follower of Radha Soami sect, the appellant had not been taking intoxicants. The story propounded by the complainant that the appellant came to him, intimidated him about giving of beatings and putting his wife in shackles etc. is just a cooked up story having no basis.

The charge against the appellant is of abetting the commission of suicide by his wife. It is not disputed that the marriage of appellant with deceased had taken place about ten years prior to the occurrence and they have five issues from this marriage. From the facts, circumstances and the evidence on record, it is to be seen as to whether the appellant had abetted the commission of suicide by his wife.

‘Abetment to suicide’ is constituted by :-

- (i) instigating a person for commission of suicide; or
- (ii) engaging in a conspiracy to commit it; or
- (iii) intentionally aiding a person to commit it.

To make out the offence of abetment, the prosecution is required to prove:

- (a) that the accused aided, abetted, counselled or procured the commission of the principal offence;

- (b) that the principal offence was in fact committed; and
- (c) that he had the intent to aid or encourage its commission.

The prosecution is required to lead direct evidence (if available) or circumstantial evidence to prove the complicity of the accused which led to the actual commission of the crime. While reaching the conclusion regarding commission of offence, the conduct of the accused just before and after the commission of offence, is a very material fact.

The complainant while appearing as PW5 has categorically stated that the appellant had been giving beatings to the deceased. On the day of occurrence, he (appellant) had tied her with iron chain, however, she got herself relieved and had left her matrimonial home. The above fact was disclosed to complainant by appellant himself. Thereafter, the complainant along with the appellant searched for Charanjit Kaur here and there and on 26.12.2000, they came to know that her dead body had been recovered from canal minor in the area of village Gill. This version given by the complainant has gone un rebutted. However, in defence, the appellant came up with another story for Charanjit Kaur to commit suicide. Firstly, it was suggested that some days before the occurrence she (Charanjit Kaur) was left in the house of parental aunt (father's sister) of appellant at village Dhudhike, as she was characterless and not obeying the appellant. She was thrashed by the aunt of appellant for her activities. Another suggestion was given for the commission of suicide by Charanjit Kaur in the cross-examination of complainant is as follows:-

“Workshop of Manjit Singh is in front of Sidhu Petrol Pump which is near to Chubara where accused and my sister were residing. I do not know how many workers were working in workshop of Manjit Singh. I do not know whether Gopi son of Puran Singh was a worker in that

workshop. It is wrong to suggest that my sister had extra-marital relations with such Gopi. It is further wrong to suggest that accused Zora Singh complained to my 'Bhua' and to me about such extramarital relation of my sister with Gopi. It is wrong to suggest that Gopi and my sister were found in compromising position and when they were so sighted, Gopi ran away and my sister committed suicide out of shame."

Shamsher Singh PW7 was also suggested that the deceased had illicit relations with Gopi and the appellant had been asking her to desist from such relations. However, in defence when the statement of appellant under Section 313 Cr.P.C. was recorded, he stated that he had cordial relations with his wife Charanjit Kaur and tried to corroborate this fact by examining Sukhmandar Singh DW1, who had gone to the extent of saying that the appellant never suspected the character of his wife. From the facts and circumstances discussed above and the evidence that has come on file, following facts have not been explained by the appellant:-

- (i) If he had very cordial relations with his wife, in that case, why he did not come forward to identify the dead body of his wife in Civil Hospital, Moga?
- (ii) Why he did not come forward to take the dead body of his wife from the police?
- (iii) Why the dead body of his wife after being taken to her matrimonial village, was kept in a Dharamshala instead of being taken to the house of appellant?
- (iv) Why the appellant did not perform the cremation and last rites of his wife?
- (v) Where the appellant remained upto 27.02.2001 i.e. for a period of about two months after the unnatural death of his wife.

All the above facts and circumstances, coupled with the testimony of complainant (PW5), Shamsher Singh (PW7) and the plea set up

by the appellant, trying to explain the reason for suicide by the deceased, strongly indicate that it was the appellant, who had abetted the commission of suicide by his wife. The testimony of complainant (PW5) Dhani Ram giving the narration of circumstances before the death of his sister, remained unrebutted and prove that the appellant abetted the commission of suicide by his wife Charanjit Kaur. The appellant had levelled very serious allegations about the character of the deceased and these uncorroborated allegations against the character of a lady fall in the category of abetment to her to take the extreme step of commission of suicide. Learned trial Court has rightly pondered over all the facts before reaching the conclusion that the ingredients of offence under Section 306 IPC are duly proved against the appellant.

The submission of learned counsel for the appellant that the marriage was 10 years old and children of appellant have not been examined to prove that he had been giving beatings to the deceased, are without any basis. After the death of mother, children of appellant, who were quite young/infant at that juncture and later on dependent on their father, if not examined, create no dent in the prosecution case. They had lost their mother and could not defy their father. If the toddlers could not be associated by the police to depose against their father, it has saved their meal and shelter.

As a result of my above discussion, the judgment of the trial Court and the conviction of the appellant for the offence punishable under Section 306 IPC is upheld.

Learned counsel for the appellant has prayed for lenient view regarding the quantum of sentence, submitting that a period of 15 years has passed after the occurrence. Five children of the appellant have grown up, out of them four including one daughter are unmarried. There is no other person to look after them in the family. The appellant is the only earning

member. In view of the above facts, he has argued that the sentence of appellant, who has already undergone one year eight months and three days of imprisonment, be reduced to the period of imprisonment already undergone by him.

I have given a careful thought to the submissions made by learned counsel for the appellant.

It is proved on file that the life of wife of appellant and the mother of five children was lost due to the conduct of the appellant. However, keeping in view that a period of 15 years has elapsed after the occurrence and the factors as submitted by learned counsel for the appellant, discussed above, the sentence of the appellant is modified and reduced from rigorous imprisonment for seven years to rigorous imprisonment for five years. However, the sentence of fine shall remain intact. The appellant, who is on bail, be taken into custody and sent to jail. Bail bond and surety bond of the appellant furnished as per order dated 11.07.2005, whereby his sentence was suspended, are cancelled.

Copy of this judgment be sent to the Chief Judicial Magistrate, Faridkot for further necessary action.

July 08, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether refer to Reporters? Yes/No