

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-395-SB of 2004

Date of Decision : September 04, 2015

Balwinder Kaur alias Rani

....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Narinder Singh, Advocate
for the appellant.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

Balwinder Kaur @ Rani and Sukmander Singh @ Mander Singh were tried for committing offences punishable under Section 306 IPC. Vide impugned judgment and order dated 17.1.2004, the Additional Sessions Judge, Bathinda convicted both the accused for the aforementioned offence and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months.

In brief, the case of the prosecution is that Karamjit Singh, since deceased, was married to accused Balwinder Kaur @ Rani. Two sons were born from their marriage. Accused Sukhmander Singh @ Mander Singh had been visiting the house of Karamjit Singh and, accordingly, he developed illicit relations with Balwinder Kaur @ Rani. This had been going on for one year. On 22.8.2002, Sukhmander Singh @ Mander Singh took Balwinder Kaur @ Rani to his house with her consent. However, both of

them were apprehended on the charge of vagrancy and were produced in the Court. Balwinder Kaur @ Rani, after putting in appearance in the Court, accompanied Sukhmander Singh @ Mander Singh to his village. On account thereof, Karamjit Singh went into depression and started asking people to help him in bringing his wife back as his sons were missing her. On 26.8.2002 at 6.00 p.m., Karamjit Singh returned home and stated to his father Darshan Singh that being fed up, he had consumed spray and this was on account of his wife Balwinder Kaur @ Rani going and staying in the house of Sukhmander Singh @ Mander Singh. Darshan Singh told his son Karamjit Singh that he had done a bad thing. However, he took him to Sukhmani Hospital, Mandi Goniana for treatment from where he was referred to Government Hospital, Goniana but on reaching there, he was declared dead. Darshan Singh also stated that his son was fed up on account of behaviour of Sukhmander Singh @ Mander Singh and Balwinder Kaur @ Rani.

Further case of the prosecution is that Darshan Singh got recorded his statement with the police and on its basis, FIR No.79 dated 26.8.2002 under Sections 306/34 IPC was registered at Police Station Nahianwala, District Bathinda. During the investigation of the case, inquest was drawn on the dead body of Karamjit Singh. The dead body was, thereafter, sent for post-mortem. The viscera of the deceased was sent to the Chemical Examiner and after receipt of the report, the doctor declared cause of death to be on account of chloro-compound, a group of insecticides. Both the accused, namely, Sukhmander Singh @ Mander Singh and Balwinder Kaur @ Rani were arrested. After completion of the investigation, final report under Section 173 Cr.P.C. was submitted in the

Court of Ilaga Magistrate. The case was, thereafter, committed to the Court of Sessions where both the accused were charged for the aforementioned offence, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Darshan Singh-complainant, PW2 Sewak Singh, PW3 HC Bhura Singh, PW4 Dr.Balwinder Singh Gill and PW5 ASI Sukhdev Singh.

When examined under Section 313 Cr.P.C., both the accused denied the prosecution allegations and claimed false implication. Accused Balwinder Kaur @ Rani also stated that she did not have illicit relations with her co-accused, rather there was a dispute between her and her in-laws in connection with dowry. Her husband was habitual of drinking and taking intoxicants.

In defence, the accused examined DW1 Jaimal Singh.

After hearing learned counsel for the parties and going through the impugned judgment as well as the record, the trial Court believed the prosecution version and convicted and sentenced the two accused, as mentioned above.

Aggrieved of her conviction and sentence, Balwinder Kaur @ Rani filed the present appeal i.e. Criminal Appeal No.S-395-SB of 2004 while Sukhmander Singh @ Mander Singh filed Criminal Appeal No.S-341-SB of 2004. As both the appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

This Court has heard learned counsel for the parties and perused the evidence minutely with their able assistance.

While appearing before the trial Court as PW1, complainant Darshan Singh testified about appellant Sukhmander Singh @ Mander Singh taking along appellant Balwinder Kaur @ Rani, wife of his son Karamjit Singh and both of them being arrested for vagrancy. He further stated that after appearing in the Court, Balwinder Kaur @ Rani accompanied Sukhmander Singh @ Mander Singh to his village and on account of illicit relations of Balwinder Kaur @ Rani with Sukhmander Singh @ Mander Singh, Karamjit Singh started remaining under depression/mental stress. He also stated that on 26.8.2002 at 6.00 p.m, Karamjit Singh disclosed him that being fed up with the act of the appellants he had consumed spray. The testimony of PW1 Darshan Singh is corroborated by PW2 Sewak Singh, who is none-else but the first cousin of deceased Karamjit Singh. He testified that appellant Sukhmander Singh @ Mander Singh had been visiting the house of Karamjit Singh and developed illicit relations with Balwinder Kaur @ Rani. He also stated about appellant Sukhmander Singh @ Mander Singh taking Balwinder Kaur @ Rani with him on 22.8.2002 and both of them being arrested in Goniana Mandi on the charge of vagrancy. He also testified that after appearing in the Court Balwinder Kaur @ Rani went with Sukhmander Singh @ Mander Singh to his village. As a result, Karamjit Singh went into depression and he had been stating that his wife be brought back as his children were facing difficulty and were unhappy. On 26.8.2002 Karamjit Singh, after taking spray fell in front of his father at about 5.30 p.m. and told him that being fed up with his wife and children, he had taken spray. Karamjit Singh was first taken to the Sukhmani Hospital and, thereafter, to Government Hospital, Goniana where the doctor declared him dead.

PW3 HC Bhura Singh deposed that on 26.8.2002, ASI Sukhdev Singh conducted inquest on the dead body of Karamjit Singh and, thereafter, entrusted the dead body to him and Constable Ajit Singh for post-mortem.

PW4 Dr. Balwinder Singh Gill deposed that on 27.8.2002, he conducted post-mortem on the dead body of Karamjit Singh and observed as under :-

“Length of the body was 5' 8” and was well built, well nourished, wearing a shirt, pant, kachha. Rigor mortis was present. Post mortem staining present on back, sparing bony prominences. Eyes were semi open, mouth closed. Clotted blood was seen in both the nostrils. No external mark of injury was seen. Pleurae, larynx and trachea, right lung, left lung, brain and spinal cord were congested. Stomach and contents containing fluid irritating smell. Small intestine contained liquid with irritative smell. Liver, spleen and kidneys were congested. All other organs were healthy.”

The aforementioned doctor also testified that on receipt of report of Chemical-Examiner, he opined that the cause of death was due to chloro-compound, a group of insecticides.

PW5 ASI Sukhdev Singh testified about various steps taken by him during the investigation of the case. He also stated that he had arrested the two appellants on 28.8.2002 and the grounds of arrest intimated to them.

DW1 Jaimal Singh, whom appellant Balwinder Kaur @ Rani examined in her defence, testified that he was ex-Member Panchayat of

village Poohla and knew Balwinder Kaur @ Rani, who was married to Karamjit Singh of village Nahianwala. He also stated that about one year and nine months back, he had gone to Nahianwala with father of Balwinder Kaur @ Rani as Darshan Singh, father of Karamjit Singh was demanding money for running a workshop. Father of Balwinder Kaur @ Rani stated that he was not in a position to pay the money. At that time, Karamjit Singh was present there who stated that he had no dispute with his wife but his father was harassing Balwinder Kaur @ Rani. Further, Balwinder Kaur @ Rani bore good moral character.

In order to make out commission of offence under Section 306 IPC, the prosecution is required to prove the ingredients of abetment as contained in Section 107 IPC, which defines 'abetment' as under :-

"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.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to

facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

From the facts and circumstances of the prosecution case, it appears that deceased Karamjit Singh was unable to control his wife, who had developed illicit relations with Sukhmander Singh @ Mander Singh, out of frustration, he committed suicide. The conduct of appellant Balwinder Kaur @ Rani though may be conduct of a bad wife but that is not sufficient to conclude that by indulging in extra-marital relations Balwinder Kaur @ Rani and for that matter Sukhmander Singh @ Mander Singh also instigated the deceased to commit suicide. Reliance in this regard can be placed upon Shri Ram Vs. The State of U.P., AIR 1975 Supreme Court 175; Balbir Singh Vs. The State of Punjab, 1987(1) Crimes 76; Wazir Chand and another Vs. The State of Haryana, 1989(1) RCR (Criminal) 109; State of Punjab Vs. Kamaljit Kaur, 2008(2) RCR(Criminal) 562; State of Haryana Vs. Babu Ram and another, 1991(3) RCR (Criminal) 392 and Deepak Vs. State of M.P., 1994 CrI. L.J. 767.

The husband or wife are expected to remain faithful to each other. However, if one of them fails to live a life of virtue and not coming up to the expectations of the other spouse, the said conduct of the erring spouse cannot be considered as an act of abetment which could impel the other spouse to commit suicide.

In the present case also, appellant Balwinder Kaur @ Rani, by developing illicit relations with appellant Sukhmander Singh @ Mander Singh became unfaithful towards her husband. Both Balwinder Kaur @ Rani

and Sukhmander Singh @ Mander Singh were booked for vagrancy. This was followed by appellant Balwinder Kaur @ Rani accompanying appellant Sukhmander Singh @ Mander Singh to his house instead of returning to her matrimonial home. The conduct of both the appellants cannot be held to be an act of abetment as defined under Section 107 IPC and, thus, their conviction under Section 306 IPC on the charge of abetment to commission of suicide cannot be upheld.

Resultantly, the impugned judgment of conviction and sentence passed by trial Court is set aside and both the appellants, namely, Balwinder Kaur @ Rani and Sukhmander Singh @ Mander Singh are acquitted of the charge against them.

Both the appeals, i.e. Criminal Appeal No. S-395-SB of 2004 filed by Balwinder Kaur @ Rani and Criminal Appeal No. S-341-SB of 2004 filed by Sukhmander Singh @ Mander Singh are allowed. The amount of fine, if deposited by the appellants, be refunded to them. Both the appellants are on bail. Their personal bonds and surety bonds are hereby discharged.

September 04, 2015
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(T.P.S. MANN)
JUDGE