

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

CRA-S-923-SB of 2004 (O&M)
Date of decision: 30.09.2015

Ashok Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Harshit Sethi, Advocate
for the appellant.

Mr. Mehardeep Singh, DAG, Punjab
for the State.

Jitendra Chauhan, J.

The convict, Ashok Kumar son of Harbans Lal Sharma has filed this criminal appeal assailing his conviction and sentence ordered by learned Addl. Sessions Judge (Ad hoc) Amritsar, vide judgment of conviction and order of sentence dated 21.04.2004. The appellant was convicted under Section 306 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for 07 years and fine of Rs.1000/-, in default of payment of fine, to further undergo rigorous imprisonment for one month. The

other co-accused of the appellant, namely Ninder Kaur was acquitted of the charge framed against her.

The case of the prosecution, as culled out from the judgment of the Trial Court, is as under:-

“The allegations of the prosecution against the accused are that Vijay Kumari, sister of Ashwani Kumar was married with Ashok Kumar, accused before her death and out of their wedlock, two male children and one female child was born. Ashok Kumar, often used to beat and maltreat Vijay Kumari, deceased. The deceased used to complain her brothers. Her brothers continued to encourage her to bear all these as in due course, he could properly behave with her. They also requested Ashok Kumar, so many times not to harass Vijay Kumari. Ashok Kumar was characterless as he had developed illicit relation with Ninder Kaur. On 06.05.2002, Ashwani Kumar received telephone message about the death of their sister, Vijay Kumari. Anil Kumar, brother of Ashwani Kumar and other relatives went to the house of the accused. Police conducted inquest proceedings on the dead body of Vijay Kumari. Post mortem on the dead body was also got conducted. Later on the dead body of Vijay Kumari was cremated. On 08.05.2003, they received letter of Vijay Kumari by post in which it was found stated by her that her husband Ashok Kumar and Ninder Kaur had

been harassing her and on so many occasions, she had suggested her to die by taking poison, and she had made up her mind to commit suicide and that was her last letter written to them and thus they suspected that fed up of maltreatment in the hands of Ashok Kumar and Ninder Kaur, accused and because of their illicit relations suicide was committed by her. On 15.05.2002, Ashwani Kumar met SHO Piara Singh at the Adda of Amarkot where his statement Ex.PC was recorded on the basis of which, FIR Ex.PC/1 was got registered. Letter was also taken into possession by SHO, who made verification from the Sub Post Master, Amarkot about the despatch of the letter. He has also joined in the investigation Renu Arora, teacher of Jyoti Model School, Amarkot. He went to the place of the occurrence and prepared site plan Ex.PG. Accused were arrested. After the completion of the investigation, challan was presented in the Court of Illaqa Magistrate.”

On presentation of challan, the trial Court finding a prima facie evidence against accused-appellant, framed charge for the offence punishable under Section 306 IPC. The accused pleaded 'not guilty' and claimed trial.

In support of its case, the prosecution examined the following witnesses:-

PW-1, Ashwani Kumar, the complainant, narrated the whole prosecution story and stated regarding the circumstances due to which the deceased committed suicide;

PW-2, Ram Lubhaya, brother of the deceased, had also corroborated the sequence of investigation and toe the lines as stated by PW-1, Ashwani Kumar;

PW-3, LC Daljit Singh, deposed regarding depositing of parcel in the office of chemical examiner, Patiala.

PW-4, LC Swaran Singh, had also deposed regarding depositing of sealed parcel containing heart of deceased Vijay Kumari, in the office of chemical examiner, Amritsar.

PW-5, ASI Charan Singh, had prepared the inquest report Ex.PC and taken into possession the clothes of the deceased, vide memo Ex.PD;

PW-6, ASI Davinder Singh, deposed regarding arrest of accused Ninder Kaur (already acquitted) and Ashok Kumar, the present appellant;

PW-7, Dr. Gurkirat Singh, had conducted the post mortem examination of Vijay Kumari, wife of the appellant. The dead body was brought by Tarsem Lal and LC Bhupinder Singh. As per his opinion, the

probable time between death and post mortem was 6 to 24 hours and on the basis of chemical examiner report Ex.PF, the cause of death was given as consuming of aluminum phosphide pesticide.

PW-8, Chanan Singh, Prop., of Bhullar Medical Store, stated that about 1½ years before, Asha Rani had come to him and he was told by her that her daughter in law, Vijay Kumari was not keeping well and she was having loose motion and vomiting. He went to her house and gave her injection.

PW-9, SI Piara Singh, testified the sequence of investigation being carried out by him;

PW-10, HC Ajmer Singh, tendered into evidence his duly sworn affidavit Ex. PW10/A;

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence, alleged false implication and had stated that the deceased used to live under depression. However, he did not led any evidence in his defence.

After hearing the Public Prosecutor for the State, the counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant as stated hereinbefore.

Feeling aggrieved, against the judgment of conviction and sentence ordered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 30.04.2004. The sentence of the appellant was suspended on 28.02.2006.

The learned counsel for the appellant has contended that the learned trial Court has grossly erred on the material facts while convicting the appellant/accused. The appellant/accused has been falsely implicated in the present case. The occurrence in this case took place on 06.05.2002, whereas, the FIR was registered after a delay of nine days on 15.05.2002. As per the testimony of star witnesses/brothers of the deceased, Vijay Kumari, i.e. PW-1, Ashwani Kumar, the complainant and PW-2, Ram Lubhaya, they received a letter by post on 08.05.2002, which was written by Vijay Kumari, however, they reported the matter to the police on 15.05.2002, after a delay of seven days of receiving a letter. The learned counsel further referred to the testimony of PW-2, Ram Lubhaya, wherein he has categorically stated that they used to receive letters from the deceased before receipt of Ex.PA, however, no letter has been produced on record. In this regard, the learned counsel has placed reliance on the decision of

the Hon'ble Supreme Court in **Dilawar Singh vs. State of Delhi (2007) 12 SCC 641; 2007 (4) R.C.R (Criminal) 115.**

The learned counsel has further submitted that the letter Ex.PA, allegedly written by the deceased before her death, was received by post by the brother of the deceased, however, authenticity of the same remained doubtful, as no hand writing expert was examined by the prosecution. The deceased Vijay Kumari was a matriculate and employed in a private school at Amarkot but no person from the school acquainted with the writing of the deceased was examined to substantiate that the letter Ex.PA, was in the hand of the deceased. Furthermore, the letter was received through post, however, no witness was examined from the postal authorities.

The learned counsel has further argued that had it been a case of suicide, the complainant and other brothers of the deceased would have reported the matter immediately to the police but they remain mum for nine days. There was no previous history of maltreatment by the appellant to the deceased. There is no direct evidence to connect the present appellant with the commission of crime. The appellant was not present at

home at the time of occurrence. No allegation was made by the brothers of the deceased during the inquest proceedings under Section 174 Cr.P.C. All the relatives of deceased were present during inquest proceedings, but nobody raised any grievance or doubt over the death of the deceased, Vijay Kumari.

The learned counsel has further argued that the basic ingredients of Section 306 IPC are not made out against the appellant. There is no overt or covert act attributed to the appellant which would constitute an offence under Section 306 IPC. No role has been attributed to the appellant that he in any manner instigated, provoked or actively participated in the commission of suicide by the deceased. In support of his contention, the learned counsel has relied upon **Chitresh Kumar Chopra vs State (Govt of N.C.T of Delhi) 2009 (4) R.C.R (Criminal) 196; (2009) 16 SCC 605.**

The learned counsel has further submitted that the prosecution has miserably failed to prove the purported 'Suicide Letter' (Ex.PA) in the envelope (Ex.PB) has been written by the deceased Vijay Kumari. No admitted document is in the actual handwriting of the deceased was produced so as to compare the

admitted handwriting of the deceased with the handwriting on the alleged 'Suicide Letter' (Ex.PA). He further argued that basis of the prosecution case was that the appellant abetted the commission of suicide of deceased Vijay Kumari as he was having illicit relations with his co-accused Ninder Kaur. However, the prosecution could not prove its case against Ninder Kaur beyond a reasonable doubt and she was acquitted by the Learned Trial Court for an offence under Section 306/34 IPC. The conviction of the appellant was not at all warranted in the event of acquittal of his co-accused Ninder Kaur with whom he was stated to have developed illicit relationship.

The learned counsel for the appellant has further contended that there is no credible evidence against the appellant, rather the facts on record go to establish the false implication of the accused in the instant case.

The learned counsel has relied upon **S.S. Chheena** Vs. **Vijay Kumar Mahajan and another**, 2010 (12) SCC 190, **Pinakin Mahipatray Rawal** Vs. **State of Gujarat**, 2013(4) RCR (Criminal) 271, **Ghusabhai Raisangbhai Chorasiya and others** Vs. **State of Gujarat**, 2015(2) Recent Apex Judgments 13, **Sohan**

Raj Sharma Vs. **State of Haryana**, 2008(2) RCR (Criminal) 810, **Gangula Mohan Reddy** Vs. **State of Andhra Pradesh**, 2010(1) SCC 750 and **Amalendu Pal @ Jhantu** Vs. **State of West Bengal**, 2010(1) SCC 707.

On the other hand, the learned State counsel contended that the case of the prosecution has been duly proved beyond a reasonable doubt. He laid stress on the chemical examiner report Ex.PF, wherein the cause of death was given as aluminium phosphide pesticide. He further referred to Ex.PA, written by the deceased before her death, wherein it has been specifically mentioned that she had committed suicide by taking poison on account of maltreatment meted out to her at the hands of the appellant and further on account of illicit relationship with Ninder Kaur. Learned State counsel has further contended that the delay in registration of FIR, if any, do not materially affect the case of the prosecution, therefore, this is not a case where any benefit could be given to the accused. The deceased had died an unnatural death at her matrimonial home, therefore, learned State counsel prays for the dismissal of the present appeal.

I have heard learned counsel for the parties and with their able assistance, have gone through the

evidence on record minutely and carefully.

Admittedly, the appellant Ashok Kumar was married to the deceased, Vijay Kumari for almost 15 years before the alleged occurrence on 06.05.2002. Three children were born out of the wedlock. On 08.05.2002, a letter Ex.PA was received through post at the parental address of the deceased and on the basis of the same, the FIR in the instant case was registered on 15.05.2002. The star witnesses of the prosecution i.e. PW-1, Ashwani Kumar, the complainant and PW-2, Ram Lubhaya, brothers of the deceased, have categorically stated that the deceased, Vijay Kumari used to write letters to them. The deceased was matriculate and employed in a private school. However, the prosecution has failed to bring on record any letter written by the deceased or any specimen hand writing of the deceased on record to prove this fact. As per the version of both these witnesses, the appellant after taking liquor used to indulge in bad activities and also used to give beatings to the deceased, however none of them had stated before the police regarding the ill activities of the appellant, during inquest proceedings which is a material improvement and has to be ignored.

The prosecution story solely rests upon the

letter Ex.PA, stated to be written by the deceased Vijay Kumari, which was received on 08.05.2003 at the parental address of the deceased. However, no credible evidence has come on record to substantiate the fact that the letter Ex.PA was actually in the hand writing of the deceased. The deceased was employed in a private school, however, none of the official from the said school was examined as witness to prove that the letter Ex.PA is the hand writing of the deceased. No official from the postal authorities was examined to prove the posting of the alleged envelope Ex.PB, containing letter Ex.PA. Although the Investigating Officer claims to have 'verified' the alleged suicide letter from the post office, however, the same carries no evidentiary value due to non examination of the concerned official from the Postal Department, rather, Harbhajan Singh, Sub-Post Master was given up by the prosecution as 'unnecessary' on 6.8.2003. The hand writing expert was also not examined to prove the handing writing of deceased Vijay Kumari on letter Ex.PA.

Section 306 of the Indian Penal Code 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.

Section 107 of the Indian Penal Code defines the '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 willful misrepresentation, or by willful 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.”

As per the prosecution story, the deceased was abetted to commit suicide on account of maltreatment of accused and illicit relation of the appellant with co-accused Ninder Kaur (already acquitted). However, there is nothing on record to show that the appellant was having illicit relation with Ninder Kaur. No satisfactory evidence has been produced by the prosecution to prove

the abetment on the part of the accused/appellant. As per the testimony of PW-1, Ashwani Kumar, the complainant and PW-2, Ram Lubhaya, the deceased was maltreated by her husband and she used to tell them that she was not happy but no relative or neighbourer from the locality was examined to justify that the appellant had ever treated the deceased with cruelty. The marriage between the parties was 15 years old, however no evidence has come on record that the deceased was ever treated with cruelty. The said Ninder Kaur has already been acquitted by the trial Court. The story of illicit relation of the appellant has already been disbelieved by the trial Court. The appellant was held guilty on the basis of letter Ex.PA.

In the absence of any documentary evidence i.e., the hand writing specimen or hand writing expert, it cannot be held that the contents of letter Ex.PA and address on Ex.PB were written by the deceased, Vijay Kumari herself.

PW-1, Ashwani Kumar, in the opening lines of his cross examination stated that “at the time of death of deceased, the youngest child was 8 years old and the eldest was 13 years. All the three children were living with Vijay Kumari”. But none of her children was

produced to prove the cruel treatment meted out to the deceased at the hands of the present appellant. The children were the best witnesses who could have given the true picture of the behaviour of their father, the accused/appellant towards their mother Vijay Kumari. The eldest child could have even deposed with regard to the hand writing of her deceased mother. The brothers of the deceased were immediately called after the death. The prosecution has not explained the reasons for withholding these two material witnesses i.e., the children of couple who could have thrown definite light on the genesis of the crime, which certainly would have ensured truth to come on the surface. In the circumstances, this Court is compelled to draw an adverse inference against the prosecution. The benefit of all these lapses of the prosecution deserved to be given to the accused/appellant.

For the reasons recorded above, it is held that the prosecution has failed to prove its case against the accused/appellant beyond a reasonable shadow of doubt. The benefit of doubt is extended to the appellant.

Accordingly, the present appeal is accepted, the judgment of conviction and order of sentence dated 21.04.2004, passed upon the accused/appellant Ashok

Kumar, are set aside. He stands acquitted of the charges leveled against him by giving him the benefit of doubt. The appellant is on bail. His bail bond stands discharged. Original Lower Court record be sent back. The appeal stands allowed.

30.09.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No