

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

Crl. Appeal No.S-877-SBA of 2005

Date of Decision : 11.03.2015

State of Haryana

..... Appellant

Versus

Anup Singh and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Mukesh Kaushik, Advocate
learned Deputy Advocate General,
for the State of Haryana.

Mr. Sunil Saharan, Advocate
for the respondents.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes**
2. **To be referred to the Reporters or not?Yes**
3. **Whether the judgment should be reported in the Digest?Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred by the appellant State of Haryana against the judgement of acquittal dated 5.5.2004 passed by the then learned Additional Sessions Judge, Hisar vide which the respondents were acquitted for the offence punishable under Sections 306/34 of the Indian Penal Code (hereinafter

called 'the IPC').

2. The brief facts of the prosecution case are that complainant-Rattan Singh had got four daughters and two sons. About 9/10 years prior to the occurrence, he had married his daughters Bhateri and Tripta with Dalbir and respondent-Anup Singh respectively sons of Bala Ram, resident of Balsamand. His daughter Tripta was harassed by her husband Anup Singh and her mother-in-law Shanti Devi. Anup Singh used to beat her after taking liquor and Shanti Devi used to instigate Anup Singh for beating her. This act was disclosed by his daughter Bhateri on 2.5.2002. Bhateri had also disclosed that Tripta had told her that due to the harassment given by Anup Singh and Shanti Devi, she was fed up and it is better to die than to live in such a situation. On 3.5.2002, he received a telephone call at about 5:30 PM from Azad Singh, resident of Balsamand to the effect that Tripta has died and then he along with his son Mahender Singh and brother Beer Singh went to Balsamand at the house of Tripta and found that she was lying dead on the cot. She was having a ligature mark around her neck. He had satisfied himself that she has committed suicide due to harassment given by her husband and mother-in-law. The statement of complainant- Rattan Singh Ex.P16 was recorded by SI Kartar Singh, SHO Police Station Adampur

on the basis of which formal FIR Ex. P17 was registered and investigation was started.

3. SI Kartar Singh along with other police officials inspected the spot. He got the spot photographed. Inquest proceedings under Section 174 Cr.P.C were conducted. The Investigating Officer also prepared the site plan of the place of occurrence. The rope which was used as ligature was taken into possession vide memo Ex.P28. The dead body was sent for post-mortem examination through ASI Des Raj and Constable Jagdish. The post-mortem examination was conducted at Civil Hospital, Hisar on 4.5.2002. After the post-mortem examination, the doctor handed over the belongings of the deceased in a sealed parcel which was taken into possession by the Investigating Officer vide memo Ex.P26. Accused were arrested on 4.5.2002. The leaf of Bahi Ex.P29 was taken into possession vide memo Ex. P30.

4. On completion of the formalities of the investigation, the report under Section 173 Cr.P.C was presented in the Court.

5. The accused respondents were charge-sheeted for the offences punishable under Sections 306 and 498-A of the IPC by the learned trial Court vide order dated 27.8.2002 to which the accused pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as eight witnesses.

7. When examined under Section 313 Cr.P.C, the accused respondents pleaded false implication and innocence. It was further pleaded that Bal Kishan, the father-in-law of the deceased, had executed a Will in February 2001 bequeathing his land in favour of her grandson Sumit (son of accused Anup Singh) and also the son of Dalbir Singh, the brother of respondent-Anup Singh. The said Will was cancelled by Bal Kishan on 14.12.2001. The deceased was not happy and she asked her father-in-law to deposit the money in the name of her son which he did not, due to this reason, she committed suicide. The father of the deceased had got registered a false case to pressurise them so that his father may transfer the land to Sumit and Sunil. On 27.2.2003, Bal Kishan under the pressure of complainant-Rattan Singh made a release deed in favour of the son of the deceased and in favour of Sunil son of Dalbir Singh. Rattan Singh also got the possession of the said land because Sumit and Sunil were minors. Accused Shanti Devi was leaving separate.

8. In the defence evidence, accused examined DW-1 Om Parkash, AWBN, office of Tehsildar, Hisar, who proved the documents Exs. DB, DC and DD. The accused also

tendered in evidence copy of report under Section 173 Cr.P.C Ex. DE, copy of statement of Rattan Singh Ex. DF, copy of statement of Bhateri Ex.DG and closed the defence evidence.

9. After appreciating the evidence on record and contentions raised by the learned counsel for the parties, the learned trial Court vide impugned judgement acquitted both the respondents.

10. Aggrieved from the aforesaid judgement of acquittal, the present appeal has been preferred by the State of Haryana which was admitted vide order dated 7.5.2005.

11. I have heard Mr. Mukesh Kaushik, learned DAG, Haryana for the appellant-State, Mr. Sunil Saharan, Advocate, learned counsel for the respondents and have gone through the file carefully.

12. Initiating the arguments learned counsel for the appellant-State contended that the learned trial Court has wrongly acquitted the respondents. There are specific allegations against the respondents. PW-8 Bhateri was also married with the brother of the respondent accused Anup Singh. From the statements of PW-7 complainant Rattan Singh and PW-8 Bhateri, it is established that the deceased was constantly harassed and tortured by the accused. There

are specific allegations that the husband of the deceased used to give beatings to the deceased after taking liquor and respondent-Shanti Devi, her mother-in-law, used to instigate him. From the statement of PW-8 Bhateri, it comes out that the deceased was fed up with the said behaviour of the accused as a result of which she committed suicide. So, the abetment to commit suicide on the part of the respondents is clearly establishes and the learned trial Court has not appreciated the evidence in the right perspective and wrongly recorded the acquittal.

13. On the other hand, learned counsel for the respondents contended that there was no suicide note written by the deceased. It was a case of hanging as per the medical evidence. There was no specific allegations against the accused. The marriage had taken place 9/10 years prior to the occurrence. There were no allegations in the FIR that any demand of dowry was ever raised or the deceased was harassed on account of the demand of dowry but in their statements, the prosecution witnesses have made material improvements and alleged the demand of dowry.

14. He further contended that the allegation that the deceased was subjected to beating was only levelled against respondent No.1-Anup Singh, who has already died on 14.11.2013. There was no specific allegation against the

accused particularly against respondent No.2-Shanti Devi, the mother-in-law. The only allegation against her was that she used to instigate her son Anup Singh. Those allegations are only vague and indefinite. It is not mentioned on what occasion the deceased was given beatings by her husband Anup Singh on the instigation of respondent No.2-Shanti Devi. He further contended that PW-8 Bhateri was in her parental house at the time of the occurrence, so there is no evidence to establish as to what happened and what was the immediate cause for committing suicide by deceased Tripta. He contended that in order to attract Section 306, there should be the direct nexus between suicide and the act committed by the accused. But that evidence is totally lacking in this case. So, the respondents have been rightly acquitted by the learned trial Court. To support his contentions, he relied upon case **Hans Raj versus State of Haryana 2004 (2) RCR (Criminal) 58.**

15. He further contended that the High Court should not interfere in acquittal simply on the ground that on the basis of the evidence available on record, another view would have been possible. The exercise of the power under Section 378 of Cr.P.C can only be exercised if there is failure of justice. These conditions are not fulfilled in the present case and the appeal is not maintainable. To support his

contentions, he relied upon case **Basappa versus State of Karnataka 2014 (2) RCR (Criminal) 144.**

16. I have duly considered the aforesaid contentions.

17. At the very outset, it is pertinent to mention that the present appeal was filed by the appellant-State of Haryana against Anup Singh, the husband of the deceased and Smt. Shanti Devi, the mother-in-law of the deceased. During the pendency of the present appeal, Anup Singh has died on 14.11.2013 and the appeal qua him stands abated as per the provisions of Section 394 (1) Code of Criminal Procedure. So, now we are to confine in this appeal only qua respondent no. 2 Smt. Shanti Devi, the mother-in-law of the deceased Tripta.

18. The present appeal is an appeal against acquittal. The law is well settled that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is fully reinforced, reaffirmed and strengthened by the trial Court. It is further settled principle of law that the Appellate Court can only interfere with the

conclusion of acquittal arrived at by the trial Court if the said conclusion is palpably wrong or based on erroneous view of law or if such conclusion is allowed to stand it is likely to result in grave injustice. Merely, because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, the evenly balanced view of the evidence must not result in interference by the appellate Court in the judgment of the trial Court. If two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the learned trial Court. To support the aforesaid view reference can be made to cases **C.K. Dasegowda @ Ors. Vs. State of Karnataka 2014(3) R.C.R (Criminal) 696, Muralidhar @ Gidda & Anr. Vs. State of Karnataka 2014(2) R.C.R (Criminal) 507 and A.P Raju Vs. State of Orissa 1995 S.C.C. (Criminal) 675.**

19. The same ratio of law has been reiterated by the Hon'ble Apex Court in Case **Basappa Vs. State of Karnataka (Supra)** relied upon by learned counsel for the respondent. So, we are to adjudicate upon the present appeal in view of the aforesaid ratio of law laid down by the Hon'ble Apex Court.

20. The entire case of the prosecution is based on the statements of PW-7 complainant, Rattan Singh, the father of the deceased and PW-8 Smt. Bhateri, the sister of the deceased. Ex.P-16 is the statement of complainant Rattan Singh recorded by the police. On the basis of which the formal FIR has been registered. In this statement the complainant has mentioned that he has married his two daughters namely Bhateri and Tripta with Dalbir and Anup Singh son of Bala Ram resident of Balsamand respectively about 9-10 years back. His daughter Tripta was used to be harassed by her husband Anup Singh and mother-in-law Shanti Devi. Anup Singh use to give beatings to his daughter Tripta after consuming liquor. On 2.5.2002, his daughter Bhateri, came to his house at Gokul Pura from Balsamand and she told that Anup Singh and his mother Shanti Devi even now harass Tripta. Tripta is fed up of both of them and had asked that it is better to die than the life of this type. Thereafter, he deposed that on the date of making statement i.e. 3.5.2002, at about 5.30 p.m., he received a telephonic information from Azad Singh resident of Balsamand that Tripta had died. He has further stated that he has satisfied himself that his daughter Tripta has committed suicide by hanging being fed up with her husband and mother-in-law and legal action be taken

against both of them. So, in the statement Ex.P-16, which formed the basis for the registration of the case, complainant Rattan Singh has alleged that the husband and mother-in-law of the deceased use to harass her. Anup Singh, the husband of the deceased use to beat her after taking the liquor. Tripta was fed up with the behaviour of the respondents and on account of that she committed suicide by hanging. In this statement, the complainant had not levelled any allegations against the respondents for the demand of dowry and harassment of the deceased on account of the said demand.

21. Rattan Singh has stepped into the witness box as PW-7 and deposed that Bhateri his daughter was married with Dalbir. Tripta was married with Anup Singh. Marriage was solemnized about ten years ago. His elder daughter had gone to the matrimonial home after one year of the marriage and younger one had gone to the matrimonial home after four years of her marriage. When his daughter Tripta visited his house, she use to tell him that Anup Singh accused and her mother-in-law Shanti Devi had been harassing her for bringing more dowry. A Panchayat of brotherhood was conveyed thrice. The matter was settled and he sent his daughter Tripta to her matrimonial house. Thereafter, also the accused repeated the same demand. He further deposed

that on 2.5.2003 his elder daughter Bhateri came to his house and told that accused present in the Court used to harass his daughter Tripta and they have also given beatings to her. She told that it is better to die than live such a life and thereafter, he deposed about the telephonic information received by him on 3.5.02 at 5.30.p.m about the death of Tripta from Azad Singh. So, in his Court statement, PW-7 Rattan Singh has made the material improvements and stated that the husband and mother-in-law of the deceased use to harass her for bringing more dowry. He even deposed that the Panchayat of brotherhood was conveyed thrice and matter was settled in the Panchayat only then he sent his daughter to the matrimonial home. Even, thereafter the accused repeated the same demands. These are very vital improvements made by PW-7 Rattan Singh for the first time while making the statement in the Court.

22. PW-8 Bhateri, the other star witness of the prosecution is the sister of the deceased married to another son of Shanti Devi respondent no. 2. She deposed that accused present in the Court used to give beatings to her sister Tripta. Accused Anup Singh while under the influence of liquor use to give beatings to her. Both the accused had demanded money from her sister. On 2.5.2002, he had gone

to her parental house before the death of her sister Tripta. Tripta had told her that accused present in the Court use to give beatings to her and narrate this fact to her parents. She told her that it is better to die then to live such a life. Accused had demanded Cooler and money from her sister Tripta. She narrated these facts to her parents. On 3.5.2002 a telephonic message was received from Balsamand that her sister Tripta has died. She further deposed that the accused use to harass her sister Tripta since the time of her marriage till her death.

23. The version of both these witnesses that the deceased was used to be harassed by the respondents on account of the demand of dowry does not inspire any confidence. As no such allegation is mentioned by complainant Rattan Singh, father of the deceased in his statement Ex.P-16 on the basis of which the formal FIR has been registered. These allegations have been introduced by the complainant by making improvement in his statement for the first time at the time of trial. Complainant Rattan Singh has alleged that the Panchayats were conveyed thrice and he had even moved a complaint to the Nodal Cell against the accused. No member of that Panchayat has been produced in the witness box nor any copy of the said application/complaint moved to the Nodal Cell has been

brought on record. Thus, the vital evidence has been withheld by the prosecution. Even this fact is not mentioned by complainant Rattan Singh as to when the Panchayats were held and on which date, month or year he had moved the complaint to the Nodal Cell. There is absolutely no reference of any previous complaint or holding of the Panchayats in the statement Ex.P-16 of complainant Rattan Singh recorded by the police. These vital improvements made by complainant Rattan Singh in his testimony had virtually render him an unreliable witness.

24. PW-8 Bhateri, the sister of the deceased, who was married to the real brother of Anup Singh, the husband of Tripta and son of respondent no. 2 Shanti Devi, has also levelled the general allegations in his statement. She has not stated specifically as to when the demand of money and Cooler was raised and on what occasion beatings was given to the deceased. Moreover, Bhateri is also married in the same family. She was the elder sister and had even gone to the matrimonial house prior to Tripta. She has not stated anywhere that she was also harassed for the demand of dowry/money by her in-laws. So, it is not believable that only Tripta would have been harassed by her husband and mother-in-law for the demand of money and cooler. PW-8 was the elder sister of the deceased. If the husband of the

deceased used to give beatings to the deceased after taking the liquor, it must be in her knowledge, but she has not taken any action to protect her younger sister. As per the writing Ex.P-29, the marriage between deceased and accused Anup Singh has taken place on 25.3.1990. The occurrence has taken place on 3.5.2002 i.e. after more than twelve years. It is not believable that after such a lapse of time from the marriage, the demand of the articles like cooler would have been raised. Moreover, the allegations levelled by them are of general in nature. They have not deposed on what occasion the said demands were raised and on which occasion the beatings were given to the deceased. In these circumstances, the allegations levelled by PW-7 Rattan Singh and PW-8 Bhateri with respect to the harassment of the deceased on account of the demand of dowry does not inspire any confidence.

25. In order to constitute the offence punishable under Section 306 IPC, the prosecution has to establish that accused had abetted the suicide. The abetment has been defined in Section 107 IPC. The essential ingredients of the abetment as per Section 107 IPC are that a person, abets the doing of a thing when he instigates any person to do that thing or 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. The word instigate literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment can be by instigation, conspiracy or intentional aid as provided in the 3rd Clause of Section 107 IPC. In order to make out the offence of abetment to commit suicide, there must be proof of direct or indirect acts of incitement to the commission of the suicide. The prosecution has to show the nexus between the act of the accused and the commission of suicide. But, in the instant case, the prosecution case is entirely lacking on this point.

26. There is absolutely no evidence on record to show as to what actually happened on the fateful date i.e. 3.5.2002, when the extreme step was taken by deceased Tripta to commit suicide. The testimonies of PW-7 Rattan Singh and PW-8 Bhateri that on 2.5.2002, the deceased had told Bhateri that she was fed up with the conduct of the accused and it will be better to die than to live such a life did not inspire any confidence, because if the situation was so grave on 2.5.2002, it is not expected that Bhateri, the real elder sister of the deceased married in the same family will leave her alone in the house. It appears that this version introduced to show the harassment of the deceased

immediately prior to the occurrence.

27. The allegations against respondent no. 2 Shanti Devi, the mother of the deceased are that she used to give beatings to the deceased and harassed her. In the evidence, it has also been alleged that the said harassment was for the demand of dowry i.e. money and cooler. As already mentioned, these allegations are of general nature. No specific occasion of demand and beating has been mentioned by the prosecution witnesses. It is not known as to what harassment the deceased was subjected to by the accused particularly respondent no. 2, her mother-in-law immediately prior to the occurrence.

28. In case **Mahendra Singh and another Gayatri Bai Vs. State of M.P., 1995 Supp (3) Supreme Court Cases 731**, the deceased has made the dying declaration that her mother-in-law, husband and sister-in-law harassed her. They beat and abuse her. Her husband wants to marry a second time. He had illicit relations with his sister-in-law. Because of these reasons and being harassed he wanted to die by burning. The Hon'ble Supreme Court held that none of the ingredients of the abetment are attracted on the statement of the deceased. The conviction of the appellants under Section 306 IPC merely on the allegation of harassment to the deceased is not sustainable. The facts of

this authority are fully applicable to the case in hand. The Hon'ble Supreme Court in case **Bhagwan Das Vs. Kartar Singh and others 2007(3) RCR (Criminal) 87**, has laid down that mere harassment of the wife by the husband due to differences *per se* does not attract Section 306 read with Section 107 IPC, if the wife commit suicide. In case **Randhir Singh and another Vs. State of Punjab 2004(4) RCR (Criminal) 740**, the Hon'ble Supreme Court has laid down that more active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC. In case **Kishori Lal Vs. State of M.P 2007(3) RCR (Criminal) 385**, the Hon'ble Apex Court has laid down that mere fact that husband treated the deceased wife with cruelty is not enough. There must be proof of direct or indirect act of incitement to the commission of the suicide. Again in case **Kishangiri Mangalgi Goswami Vs. State of Gujarat 2009(1) RCR (Criminal) 947**, the Hon'ble Apex Court laid down that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Mere this fact that the husband treated the deceased wife with cruelty is not enough. More active role which can be described as instigating or aiding the doing of a thing is required before a

person can be said to be abetting the commission of the offence under Section 306 IPC. In case **Mankamma Vs. State of Kerela, AIR 2010, Supreme Court 499**, the mother-in-law was convicted by holding that deceased committed suicide due to her ill-treatment. The Hon'ble Apex Court set side the conviction by observing that what was the ill-treatment, how often she was ill-treated by the mother-in-law, had remained a mystery and has not been brought out in evidence by any of the witnesses, in the instant case also, it is a mystery as to what happened immediately before the occurrence, which led the deceased to take the extreme step. The allegations regarding the harassment against respondent no.2 Shanti Devi are merely of general nature.

29. In case **Gangula Mohan Reddy Vs. State of Andhra Pradesh 2010, Criminal Law Journal 2110**, the Hon'ble Supreme Court has laid down that there has to be a clear *mens rea* to commit the offence. There should be 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. But, in the instance case, no such evidence has been led by the prosecution to establish any active or direct act on the part of the respondents

particularly respondent no.2, which pushed the deceased into such a situation as she had no option but to commit suicide. Again in case **S.S.Cheena Vs. Vijay Kumar Mahajan and another 2010(4) RCR (Criminal) 66**, Hon'ble Apex Court held that conviction merely on the basis of allegation of harassment of the deceased is unsustainable in law without a positive act on the part of accused to instigate or aid in committing the suicide, the act of the accused must have been intended to push the deceased into such a position that he commit a suicide. In the instant case only general type of allegations have been levelled against the respondents, which could not establish that they subjected the deceased to cruelty of such a nature as was likely to derive the deceased to commit suicide. In view of the ratio of laid down in the cases referred above, the prosecution has not been able to establish that respondents had abetted the suicide by deceased Tripta. No doubt, it is very unfortunate that Tripta, the mother of two children had ended her life by suicide, but in the absence of any legal evidence to establish the abetment of the suicide by deceased Tripta, the respondent can not be held guilty simply on the ground that there must be something wrong, otherwise, there was no reason for her to commit suicide. In order to fasten the criminal liability, the ingredients of the offence should be

established beyond shadow of reasonable doubt. A person can not be convicted merely on the basis of inferences and presumptions. So, the prosecution has not been able to establish beyond shadow of reasonable doubt that the respondents have abetted the suicide by deceased Tripta.

30. As already discussed, testimonies of PW-7 and PW-8 does not inspire confidence as they have made the vital improvements. Moreover, the allegations levelled by these witnesses are of general nature. No allegation regarding the harassment of the deceased on account of the demand of dowry has been mentioned in the FIR. PW-8 Bhateri was also married with the real brother of the husband of deceased and son of respondent no.2. When she was not harassed and tortured by her husband and respondent no.2, who also happens to be her mother-in-law, it is not probable that deceased alone would have been subjected to cruelty. The day to day discords in the matrimonial life does not amount to cruelty. The occurrence has taken place after more than 12 years of the marriage. If the deceased would have been subjected to cruelty, it is not believable that the marital relations could have gone for such a long time. So, the prosecution allegations with respect to the cruelty and harassment of the deceased by the respondents are also not proved to attract Section 498-A

of IPC beyond shadow of reasonable doubt.

31. Thus, keeping in view my aforesaid discussion, I do not find that the conclusion arrived at by the learned trial Court is palpably wrong or based on erroneous view of law or is perverse and does not invite any interference by this Court.

32. Consequently the present appeal has no merits and the same is hereby dismissed.

March 11, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**