

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No. 1056-MA of 2010 (O&M)

Date of decision : 12.01.2015.

Vinod Kumar

.....Appellant

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Navneet Singh, Advocate
for the petitioner.

Mr. Gaurav Goel, DAG, Haryana.

LISA GILL, J.

The applicant-appellant Vinod Kumar prays for leave to appeal against judgment 10.04.2010 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon whereby respondents – Sanjay, Santosh and Om Parkash have been acquitted of the charges under Sections 306, 34 IPC against them.

As per the prosecution version, a telephonic message was received on 01.11.2008 at Police Station City Gurgaon that dead body of an unknown person was lying on the service road NH-8 under pass. Head Constable Subhash Chand proceeded to the spot. Dead body was brought to the General Hospital, Gurgaon. It was subjected to post mortem examination. Post mortem was conducted by PW12 Dr. Ravi Bala Sharma. As per Post Mortem Report

(Ex. PW12/A), cause of death could be ascertained only after receiving the report of Chemical Examiner. No external mark of injury was found on the body. No identification being available with only a sticker on the trouser of the deceased "Jaipur Tailor Pillani" being discovered. Constable Sunil Kumar was sent to Pillani to inquire about the tailor at Jaipur along with the photograph of the deceased. The tailor of the shop could not recognize or identify the owner of the trouser. On reaching Police Station Pillani, photograph of the deceased was shown to Constable Sunil Pathak, who identified it to be that of Ram Avtar, who was brother of his friend Vinod Kumar. Vinod and his cousin were called by the Constable to the police station. They then came to Gurgaon and dead body of Ram Avtar was identified by them. Deceased Ram Avtar was stated to be the elder brother of Vinod Kumar (PW10). Report was lodged by Vinod Kumar to the effect that they are six brothers including him. He was the youngest. His elder brother Ram Avtar aged about 35 years was married with respondent Santosh on 23.01.2006 but they could not carry on together after about 1½ years of marriage. Three months prior to the lodging of the report, a decree of divorce by mutual consent was passed dissolving the marriage of Ram Avtar and Santosh. Allegedly Santosh started residing with Ram Avtar after about one month of divorce in a rented house at Gurgaon. Approximately, 1¼ month prior to the occurrence deceased Ram Avtar came to Pillani and told the complainant and his brother Budh Ram that respondents Santosh, her father Om Parkash and his brother-in-law Sanjay are pressurizing him to transfer a plot

measuring 25 sq. yards. in the name of Santosh. They were alleged to be asking for deposit of ₹ 3 lakhs in the alternate. Deceased Ram Avtar expressed his inability on which he was beaten by the accused. Suicide note, Ex. PW8/A was allegedly recovered.

Rajender Singh, Inspector (PW9) on inspection of the rented room of the deceased recovered suicide note Ex.PW8/A. One Aluminum lunch box containing various medicines was also taken in possession (Ex. PW9/A). It is the case of the prosecution that the accused persons compelled Ram Avtar to commit suicide.

Report under Section 173 Cr.P.C. was filed. Charge was framed against the respondents under Section 306 IPC read with Section 34 IPC on 04.02.2009. Accused pleaded innocence and claimed trial.

Prosecution examined as many as 13 witnesses to prove its case.

Statements of accused under Section 313 Cr.P.C. were recorded. They pleaded innocence and denied all the allegations against them. While pleading false implication, it is stated that the deceased's brother Vinod Kumar (PW10) wanted to extract money from them. A sum of ₹ 60,000/- had been paid to Santosh at the time of settlement of divorce on account of permanent alimony and the deceased's brother merely wanted to get back this amount. FIR was registered after a delay of few days with the sole motive to extract this money. It is denied that Santosh ever resided with the deceased after divorce. Furthermore, the deceased's brother wanted to take custody of minor child, who is with the respondents. In defence, one

witness Smt. Dhanni was examined.

Learned trial Court after going through the entire facts and circumstances and the evidence on record held that the prosecution has failed to prove the case against the respondents beyond reasonable doubt thereby acquitting them of the charges against them while giving them benefit of doubt.

Applicant-appellant has impugned the above said judgment dated 10.04.2010 acquitting respondents No. 2 to 4 of the charges against them.

Learned counsel for the applicant-appellant vehemently contends that it is proved beyond the shadow of doubt that all the accused persons were responsible for driving deceased Ram Avtar to commit suicide. Reference is made to the statement of Vinod Kumar (PW10) i.e. brother of the deceased, to suggest that the deceased and respondent Santosh were in fact residing together yet again after the divorce. Reference is made to cross examination of Inspector, Rajender Singh (PW9) as well cross examination of SI/SHO Jaswant Singh (PW13) to suggest that the deceased Ram Avtar and Santosh were living together at the time of occurrence.

It is vehemently contended that the suicide note (Ex.PW8/A) has been wrongly ignored by the trial Court. It clearly implicates the accused persons and proves that they are guilty of the offence punishable under Section 306 IPC read with Section 34 IPC. It is submitted that the learned trial Court has wrongly relied upon the defence version projected by the accused persons. In view of the above, learned counsel for the applicant submits that the accused

persons have wrongly been acquitted and they deserve to be punished for the offence punishable under Section 306, 34 IPC.

I have heard learned counsel for the applicant-appellant and gone through the file as well as the record available with the learned counsel. Photocopies of the statements of PW1 to PW13 produced in Court are taken on record subject to just exceptions.

It emerges that the entire prosecution case rests upon the version that the accused Santosh and deceased Ram Avtar were living together after the passing of decree of divorce (EX. PW10/B). The deceased was being pressurized to get a plot measuring 25 sq. yards transferred in the name of Santosh or in the alternate transfer of ₹ 3 lakhs in the name of accused Santosh. When he expressed his inability to do the same, he was beaten by the accused. These circumstances ultimately are stated to have led to him committing suicide.

A perusal of the record shows that divorce was admittedly granted on the basis of an application by the parties under Section 13-B of the Hindu Marriage Act. Permanent alimony had been granted to the accused Santosh. Except the bald statement of Vinod Kumar (PW10), the brother of the accused, there is nothing on record to show that Santosh and deceased Ram Avtar were living together. Rajender Singh, Inspector (PW9) as well as SI/SHO Jaswant Singh (PW13) have not stated in their examination-in-chief that the deceased and accused Santosh were living together. It is only in response to a suggestion put to them that they have stated that they were living together at the time of occurrence. The alleged

landlord of the deceased Ram Avtar i.e. Rattan Singh has not been examined to prove the factum of the deceased living with Santosh. He would have been the most natural and probable witness to prove this fact.

Furthermore, there is nothing on record to show that there was indeed a plot measuring 25 sq. yards available with the deceased, which could be transferred in the name of Santosh.

Much stress has been laid on the alleged suicide note (Ex.PW8/A) recovered from the rented room of the deceased. Testimony of Gulshan Rai (PW8) from the Forensic Science Laboratory, Madhuban can be of no avail to the prosecution for the simple reason that the alleged suicide note has been compared with the so called standard writing marked A1 to A17. So called standard writing A1 to A17 itself is not proved to be the hand writing of the deceased Ram Avtar. It is the writing in the notebook itself in which the suicide note was found that has been treated to be standard writing of the deceased Ram Avtar. Except the statement of Vinod Kumar, there is not even an iota of evidence on record to prove that this notebook indeed belong to the deceased and was scribed by him. There is no other standard signature/hand writing, which has been proved on record, which can conclusively be stated to be in the hand of the deceased Ram Avtar.

The alleged suicide note in the note book reads as under:-

“ *I Ram Avtar without any pressure and in full senses declare that my divorced wife Santosh D/o*

Om Parkash, her father Om Parkash and her brother Sanjay are responsible for his death and after his death they be given severe punishment.”

There is nothing on record, which indicates that the accused persons ever instigated or abetted committing of suicide by the deceased. The essential ingredients to prove the commission of offence punishable under Section 306 IPC are conspicuous by their absence. The intention on the part of the accused persons to aid, instigate or abet the deceased to have committed suicide is clearly missing.

Keeping in view the entire facts and circumstances of the case, it is apparent that the prosecution has miserably failed to prove the commission of offence punishable under Section 306, 34 IPC qua the accused persons. I do not find any illegality or perversity in the findings returned by the learned trial Court, which would warrant interference by this Court. The accused respondents have been rightly acquitted by affording them the benefit of doubt.

Consequently, leave to appeal is declined.

Present appeal is, accordingly, dismissed.

January 12, 2015
rts

(LISA GILL)
JUDGE