

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

Crl. Appeal No.S-386-SB of 2015  
Date of Decision : 5.5.2015

Rohtash

.....Appellant

Vs.

State of Haryana and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Ashok Kaushik, Advocate for the appellant.

...

1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Instant appeal is directed against the impugned judgement of acquittal dated 3.11.2014, passed by the learned Additional Sessions Judge, Faridabad, whereby all the three accused-respondents no.2 to 4 were acquitted of the charges framed against them.

Brief facts of the case, as noticed by the learned trial court in paras 2 and 3 of the impugned judgement, are that the complainant-appellant Rohtash S/o Sumera R/o village Samaypur gave his statement to the police that his wife Bimla Devi was working as sweeper in Government High School of their village. He is having three sons namely Jitender, Joginder and Narender and all of them are married. Joginder was married in the year 2010 with Savita d/o Rishi Pal, r/o village Baswa and he has one son namely Vansh aged about 1 and half year from this marriage. Savita w/o Joginder along with her father Rishi Pal and her uncle

Sanjay used to pressurize his son Joginder for bringing money. They were unable to satisfy their demand but Savita, Rishi Pal and Sanjay used to pressurise his son Joginder for bringing Rs.5 lac and one gold ring. They also kept his wife Savita at her parental home and did not send her due to which his son Joginder committed suicide in the intervening night of 29/30.9.2012 in the room of Govt. High School, Samaypur. He also wrote a suicide note on his vest in which he has blamed his wife Savita, her father Rishi Pal and her uncle Sanjay, for pressurising him for bringing Rs.5 lac cash and one gold chain, due to which he was forced to commit suicide. Action was sought against accused persons.

On the basis of this complaint formal FIR under Section 306 IPC read with Section 34 IPC was registered, the investigation was carried. Postmortem examination on the dead body of Joginder was got conducted. Inquest proceedings were carried out by ASI Vijay Singh. During investigation, place of occurrence was inspected and rough site plan of the place of occurrence was prepared, relevant documents were obtained, accused were arrested, their disclosure statements were recorded and statements of witnesses u/s 161 Cr.P.C. were recorded. After completion of usual formalities of investigation, challan report u/s 173 Cr.P.C., was filed in the court.

The police report under Section 173 Cr.P.C., having been presented to the court, copies thereof alongwith documents attached therewith were supplied to the accused, as per the requirement of law. The charges were framed against the accused under Section 306/34 IPC. They pleaded not guilty and claimed trial.

With a view to prove its case, the prosecution led its evidence as under :-

“1. PW-1 S.I. Jai Pal Singh

2. PW-2 ASI Anoj Kumar
3. PW-3 EASI Harbhoj Khan
4. PW-4 Sanjay Tiwari
5. PW-5 Ct.Ajeet Singh
6. PW-6 Inder Pal Sharma
7. PW-7 Braham Dutt Tyagi
8. PW-8 Ct. Asaf Khan
9. PW-9 Smt. Bimla
10. PW-10 Rohtash
11. PW-11 ASI Vijay Singh
12. PW-12 Jitender

Ex.PA Asal Tehrir/Application

Ex.PA/1 FIR

Ex.PB Scaled Site Plan

Ex/PC-C4 Photographs of deceased

Ex.PD Recovery memo of bank card

Ex.PE Application to Bank Manager

Ex.PF Specimen signature card

Ex.PG Recover memo of suicide note

Ex.PG/1 Suicide note

Ex.PH Recovery memo of chunni

Ex.P1 Recovery memo of motor cycle

Ex.PJ Rought site plan

Ex.PK Inquest proceedings/Death Report

Ex.PL,L1 Application to M.O. & Report

Ex.PM Statement of Jitender

Ex.D1 Panchayati Faisla/Rajinama

Ex.D2 FSL Report.”

After closing the prosecution evidence, statements of the accused under Section 313 Cr.P.C., were recorded. All the incriminating evidence brought on record was put to the accused. They denied the same and pleaded false implication. They opted to lead defence evidence, however, they did not lead any evidence in their defence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the prosecution has failed to prove its case. Accordingly, giving benefit of doubt to the accused, they were acquitted of the charges framed against them, vide impugned judgement of acquittal dated 3.11.2014. Hence this appeal against acquittal.

Learned counsel for the appellant submits that the prosecution has duly proved its case by bringing on record cogent evidence, which was sufficient to record conviction of the accused-respondents. However, since the learned trial court misdirected itself, while not appreciating the true facts of the case as well as the evidence brought on the record in the correct perspective, the impugned judgement has resulted in miscarriage of justice and the same is liable to be set aside. He prays for allowing the present appeal.

Having heard the learned counsel for the appellant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the peculiar and given fact situation of the present case, no interference is warranted, at the hands of this court, against the impugned judgement of

acquittal. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned judgement would show that the learned trial court has rightly considered and appreciated true facts of the case as well as the evidence brought on record, in the correct perspective. Before arriving at a just conclusion, the learned trial court has considered each and every relevant aspect of the matter. The prosecution was rightly held to have been failed to prove its case beyond reasonable shadow of doubt, which was the requirement of law for convicting the accused person. Having said that, this court feels no hesitation to conclude that the learned trial court committed no error of law, while passing the impugned judgement and the same deserves to be upheld.

Before arriving at a judicious conclusion, the learned trial court recorded its cogent and well convincing findings in paras 25 to 28 of the impugned judgement, which deserve to be referred here and the same, read as under :-

“ In the present case the allegations against the accused are only that accused Rishi Pal and Sanjay did not send accused Savita to her matrimonial house to join the company of deceased. These allegations do not fall in the definition of illegal omissions. To prove abetment by illegal omission, it is necessary to show that the accused intentionally aided the commission of the offence by his non-interference and the omission involved a breach of legal obligation. In the present case there is no legal obligation on the accused to send the accused Savita with/to deceased. The deceased had not

obtained any decree for restitution of conjugal rights. On the other hand, there was enough ground for accused to live separately from deceased. The same was duly proved even during the deposition and cross-examination of material witnesses i.e. PW-9, PW-10 and PW-12.

The prosecution failed to explain the active and direct role of accused to establish their instigation for deceased to commit suicide. Admittedly, the accused met deceased two days before suicide and that too in a panchayat. No public witness was joined by the Investigating Officer to corroborate the proceedings of panchayat and thus prosecution failed to scribe a more active role to be described as instigating or aiding the doing of a thing as required for the offence punishable under Section 306 of the Indian Penal Code.

In the present case prosecution failed to establish any act or series of act of accused that instigate the deceased to commit suicide. As there is no instigation on behalf of the accused to the deceased who had committed suicide by hanging himself and in these circumstances it cannot be remotely said that he has committed suicide in view of abetment from the accused. It has been observed by our Hon'ble Supreme Court of India in case titled Kishangiri Mangalgiri Goswami Versus State of Gujrat reported as 2009 (1) RCR Criminal 947 wherein it has been observed that :

“Abetment of suicide-allegation that accused  
(husband) sent letters to in laws demanding Rs.40,000/-

for purchase of house-allegation of torture and harassment to wife demand dowry-defence evidence showed that accused had purchased valuable silver ornaments for the deceased and in his insurance policy, the deceased was shown to be his nominee-accused himself had taken the deceased to the hospital-letters were unsigned. Accused acquitted under Section 306 IPC, but convicted under Section 498-A IPC and Section 3 of Dowry Prohibition Act.

Further I find strength from another case titled State of West Bengal Vs. Orihlal Jaiswal 1994(3) RCR Criminal 186; AIR 1994 SC 1418 it has been observed that :

“the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had infact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

Moreover in case titled Kishori Lal Vs. State of M.P. 2007(3) RCR

(Criminal) 385, 2007(3) RAJ 613; 2007(10) SCC 797, Randhir Singh and another Vs. State of Punjab 2004(4) RCR (Criminal) 740; 2004(3) Apex Criminal 683; 2004(13) SCC 129 and Criminal Appeal No.1464 of 2007 (Sohan Raj Sharma Vs. State of Haryana, 2008(2) RCR (Criminal) 810; 2008(2) RAJ 272. It has been held that prior instigation/abetment is required to bring home the guilt of the accused under Section 306 IPC. In view of my finding and submissions on foregoing paras the prosecution has been failed to discharge his onus to prove that accused has abetted deceased Joginder, hence accused are liable to be acquitted under Section 306 IPC.

As a totality of my foregoing discussion and findings, no direct or indirect evidence has been brought by the prosecution on the file to bring the accused within the ambit of charges. Hence, while extending the benefit of doubt to accused, he is acquitted of the charges framed against them.”

It is the settled principle of law that whenever two views are possible, the view which goes in faour of acquittal is to be adopted by the courts. Once the view taken by the learned trial court, has been found, as a matter of fact, to be one of the possible views and the findings recorded have not been found to be perverse, hardly any scope is left for this court to interfere. In these circumstances, it can be safely concluded that the impugned judgement does not suffer from any illegality and the same deserves to be upheld, for this reason also.

The above said view taken by this court also finds support from the judgement of the Hon'ble Court in **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr.** 2009(4) RCR (Crl.) 638. The law laid down by

the Hon'ble Supreme Court in the case of Arulvelu (supra), has been reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Crl. Appeal No. 2174 of 2009 decided on 28.4.2015)**. The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment

of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.   Xxx xxx xxx xxx xxx

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.” (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on Page 15 15 the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the

appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

(Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be Page 16  
16 considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court’s revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, “that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation

of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view.” This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, it is unhesitatingly held that since the impugned judgement has not been found to be suffering from any illegality, the same deserves to be upheld.

During the course of hearing, learned counsel for the appellant failed to point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgement of acquittal, so as to convince this court to take a different view than the one taken by the learned trial court. Thus, the impugned judgement deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, instant application stands dismissed, however, with no order as to costs.

5.5.2015  
GS

(RAMESHWAR SINGH MALIK)  
JUDGE