

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

Crl. Misc. No. A-1191-MA of 2016

Date of decision : 22.10.2016

State of Punjab

...Applicant-appellant

versus

Seema Joshi and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Manpreet Dhaliwal, AAG, Punjab,
for the applicant-appellant.

RITU BAHRI, J.

CRM-19229-2016

For the reasons mentioned in the application, same is allowed and delay of 141 days in filing of the appeal is condoned.

Crl. Misc. No. A-1191-MA of 2016

Challenge is to the judgment dated 29.09.2015 passed by the Special Court, Hoshiarpur, vide which all the accused (respondent Nos.1 to 10) have been acquitted of the offence under Section 306 IPC.

In brief, facts of the case are that FIR No.100 dated 14.08.2012, under Section 306 IPC was registered at Police Station, City Hoshiarpur, on the basis of statement made by complainant-Suresh Kumar son of Bihari Lal to the effect that he had been retired from Judicial Department as Bailiff and had purchased a plot measuring 12 Marlas in the name of his wife. He had constructed a small boundary wall around the plot and had kept bricks in the same. Veena wife of Sham Lal, Kewal Krishan son of Dwarka Dass, Asha wife of Surinder Kumar @ Shinda and Veena (respondents) wanted to

construct temple in their plot forcibly by collecting other neighbours. In that regard, his wife filed a civil suit, wherein the Court had granted stay in their favour. The said case is pending. Some time back, aforementioned ladies tried to construct temple in the aforesaid plot forcibly and had also quarreled with them, regarding which, a case was filed in the Court and accused were convicted. Dispute with regard to construction of temple was going on between the parties for the last 5/6 years. As per complainant, the Court had restrained the opposite party from interfering in their possession. But, in spite of that on 14.08.2012, Krishana Devi wife of Mohinder Singh started paying obeisance in the temple constructed in their plot. Chander Kanta, wife of complainant, told her not to do so, but Krishana Devi started quarreling with Chander Kanta and hit her with *Chimta*. She also pulled her hair. Krishna Devi called Seema Joshi, Veena, Asha, Veena, Renu Bala and other ladies at the spot, who at the instigation of Kewal Krishan started beating Chander Kanta. Thereafter, the complainant along with his son Amit Kumar tried to rescue his wife, however all the ladies manhandled him and twisted his arms. Seema Joshi had thrown bricks towards the complainant party. A number of people gathered there, which included her daughter-in-law Rajni and Ishan son of Ashok Kumar. By that time, someone had called the police at the spot. The police asked both the parties to come to the Police Station along with documentary evidence regarding ownership. Her wife Chander Kanta was shifted to Civil Hospital. In the Police Station with the intervention of respectable from both the sides, the matter was compromised and they (complainant party) had agreed to give 03 Marlas of land for construction of temple. At the time of compromise, his wife also came there.

However, when both the parties were going to the spot for demarcation of

land for temple, the aforementioned ladies passed irritating comments on the wife of complainant and told her that they would construct the temple at the spot where she was stopping them to do so. They also insulted her wife on the way. When the complainant reached his house, he found that his wife had set herself on fire near the temple being harassed by aforementioned ladies. He along with other persons diffused the fire and after arranging a vehicle, took his wife to Civil Hospital, Hoshiarpur, but keeping in view her serious condition, she was referred to CMC, Ludhiana, where her treatment was going on. Ultimately, she died on 19.08.2012. As per complainant, the accused had mentally tortured and harassed his wife, due to which, she committed suicide. After completion of investigation, challan was presented in the Court of the Illaqa Magistrate, who further committed the case to the Court of Sessions.

Charge under Section 306 IPC was framed against the accused-respondents, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Dr. Gurbax Singh (PW-1), Dr. Jasbir Singh (PW-2), Suresh Kumar-complainant (PW-3), Rajni (PW-4), Hardeep Singh, Draftsman (PW-5), ASI Satwinder Singh (PW-6), ASI Satwinder Singh, Investigating Officer (PW-7), Inder Pal, Clerk (PW-8), Dr. Sona Adia (PW-9) and Prem Saroop (PW-10). On conclusion of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C, wherein entire incriminating evidence was put to them. But, the accused denied the same and pleaded false implication. Defence taken by all the accused-respondents was that on the date of occurrence, the deceased along with her son-in-law started demolishing the temple in dispute. In this regard, photographs were provided as Mark D1 to D7. Thereafter, the matter

was reported to the police by Krishna Kumar, upon which, the police had called them in police station and rebuked them. Due to fear of the police, the deceased had committed suicide.

Trial Court examined the entire evidence led by the parties. Dying declaration of the deceased was proved before the trial Court. Suresh Kumar-complainant (PW-3) was husband of the deceased and he had supported the version of the prosecution. He deposed that all the accused had tortured the deceased and due to this reason, she had committed suicide. Dr. Gurbax Singh, Medical Officer, was examined as PW-1 and he deposed that after examining Chander Kanta-deceased, he found following injuries on her person:-

- “1. C/o pain on right shoulder. No injury mark was seen.
2. C/o pain on right forearm. No injury mark was seen.
3. C/o pain on left index finger. No injury mark was seen.
4. C/o pain on abdomen. No injury mark was seen.”

As per the opinion of PW-1, all the injuries were simple in nature. Copy of MLR was proved as Ex.P2 and pictorial diagram as Ex.P4. As per medical jurisprudence, complaint of pain is no injury. Dr. Jasbir Singh (PW-2) deposed that Chander Kanta was admitted in CMC, Ludhiana on 14.08.2012 and it was a case of 95% deep flame burns with respiratory burns. He further deposed that ASI Satwinder Singh had recorded the statement of Chander Kanta and he made his endorsement, Ex.P7, declaring the patient as fit to make a statement. The dying declaration was made in his presence. Patient Chander Kanta was declared dead on 19.08.2012, at about 08:20 A.M. Suresh Kumar (complainant), husband of the deceased (PW-3) and Rajni (PW-4), daughter-in-law of the complainant, had corroborated the

version of the prosecution as recorded in the FIR. Both of them admitted that it was orally agreed that they would release land measuring 03 Marlas for temple and demarcation would be carried out in the presence of respectable persons.

Trial Court, after going through the evidence, concluded that the dying declaration has not been recorded by any Judicial Magistrate, although the patient had been admitted in the hospital on 14.08.2012. Even the contents of the dying declaration did not make out a case of abetment to commit suicide. In the dying declaration, it has not been stated that it was read over to the deceased. Dr. Jasbir Singh (PW-2), in his cross-examination, had admitted that there was enough time with the police to get the statement recorded before the Magistrate. ASI Satwinder Singh (PW-7) had admitted that from 16.08.2012 till 19.08.2012 when the patient had died, he did not get her statement recorded from any Magistrate. Moreover, there was cutting on the date below the signatures of Dr. Jasbir Singh on the dying declaration and the same had not been initialled. Thus, the same cast a doubt with regard to the fact that the statement of deceased was recorded on 16.08.2012. The dying declaration of the deceased was not relied upon.

From the deposition of Suresh Kumar-complainant (PW-3), it was observed that the deceased was a sensitive lady and she was not happy with the compromise arrived at between the parties. Moreover, when she committed suicide, only her daughter-in-law (Rajni) was present there. Hence, no offence of abetment, as contemplated under Section 107 IPC, was made out and ultimately, by giving the benefit of doubt, all the accused-respondents have been acquitted of the charge framed against them.

In *State of Kerala and others Vs. S. Unnikrishnan Nair and*

others, 2015 (4) RCR (Criminal) 241, Hon'ble the Supreme Court was examining a case with regard to the offence under Section 306 IPC. In this case, one Haridath had committed suicide while he was the Chief Investigating Officer. In his suicide note, he gave the names of two persons namely Rajan and Unnikrishnan (CBI TVPM), who were responsible for the suicide. The Hon'ble Supreme Court held that no doubt, he was under pressure on account of investigation, but at the same time, this fear would not amount to abetment to commit suicide. It would, at best, be a sense of defeat. Feeling of fear would be a sense of defeat that corrodes the inner soul and destroys the will power and forces one to abandon one's own responsibility. In para 19 of the judgment, it has been observed as under:-

“19. Before parting with the case, we are impelled to say something. Mr. Bhushan, learned counsel appearing for the respondent No.1 and 2 has drawn our attention to a facet of earlier judgment of the High Court wherein, it has been mentioned that at one time the deceased was pressurised by some superior officers. We have independently considered the material brought on record and arrived at our conclusion. But, regard being had to the suicide note and other concomitant facts that have been unfurled, we are compelled to recapitulate the saying that suicide reflects a “species of fear.” It is a sense of defeat that corrodes the inner soul and destroys the will power and forces one to abandon one's own responsibility. To think of self-annihilation because of something which is disagreeable or intolerable or unbearable, especially in a situation where one is required to perform public duty, has to be regarded as a non-valiant attitude that is scared of the immediate calamity or self-perceived consequence. We may hasten to add that our submission has nothing to do when a case under Section 306 IPC is registered in aid of Section 113A of the Evidence Act, 1872.”

Ratio of this judgment is directly applicable to the facts of the present case. In the facts of the present case, there was a dispute the parties for the last 5/6 years regarding construction of temple. It was agreed that 03 Marlas of land would be given for construction of temple. At the time of

spot inspection, some ladies passed irritating comments to Chander Kanta (deceased) wife of the complainant and told her that they would construct the temple at the spot where she was stopping them. Due to this, she suffered a set back and after going home, set her on fire. The deceased was a sensitive lady as deposed by Suresh Kumar-complainant (PW-3) and a feeling of defeat took over her mind while spot inspection was to be carried out and the women from the neighbourhood insulted and taunted her. Moreover, she was in the hospital from 16.08.2012 to 19.08.2012 and during this time, no attempt was made by the police to get her dying declaration recorded by the Magistrate. In this background, the dying declaration has been rightly disbelieved by the trial Court and by giving benefit of doubt, the accused-respondents have been acquitted of the charge framed against them.

Having examined the impugned judgment, no illegality, much less perversity, has been found therein warranting interference by this Court. The evidence has been appreciated in the right perspective.

Dismissed

(RITU BAHRI)
JUDGE

22.10.2016
ajp

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>