

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

CRM-A-870-MA-2016 (O&M)

Date of decision : 04.07.2016

Gaurav and another

...Applicant-Appellants

Versus

Neeraj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rahul Vats, Advocate
for the applicant-appellants.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 09.03.2016, passed by learned Additional Sessions Judge, Panipat whereby the accused-respondent Nos.1 and 2 were acquitted of the charges framed against them under Section 306 of the Indian Penal Code (for short 'the IPC').

The learned counsel for the applicant-appellants contends that the deceased, Ravit had committed suicide due to the harassment of his wife, Ranjeeta and his in-laws, which is duly proved from the testimonies of PW2-Gaurav, brother of the deceased-Ravit and PW3-Parveen, maternal uncle of the deceased. He refers to SMS, which PW3 had received on his mobile phone from the deceased on the date of incident. Lastly, he submits that on 08.07.2012 respondent Nos.1 and 2 along with their relatives gave

severe beatings to the deceased due to which he suffered fracture. The learned trial Court has ignored these material facts which otherwise clearly establish the offence against respondent Nos.1 and 2 under Section 306 of the IPC.

I have heard the learned counsel and carefully perused the entire record on file.

The case of the applicant-appellants is that the deceased-Ravit had died due to the pressure and harassment of respondent Nos.1 & 2 and to prove their case they have referred to the testimonies of PW2, PW3 and to the alleged SMS. The alleged SMS wherein it was written '*Mama mai apni wife se jyada hi pareshan aa chukka hu aur mai ja raha hu*' received by PW3 on his mobile phone on 23.04.2014 at about 8.18 a.m., but he never tried to inform about the same to any of his relatives and at about 10.00/10.30 a.m. he got the information from PW2 that the deceased had ended his life by jumping before the running train. Thereafter, he met PW2 at 1.00 p.m. and PW2 had moved the complaint at 5.00 p.m., but they did not reveal the factum of SMS therein. Further, there is no MLR brought on record by them as they alleged that the deceased had suffered fracture due to the beatings given by respondent Nos.1 and 2.

Abetment has been explained by this Court in **Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh 2002 (2) RCR (Criminal) 687**, wherein it is observed that Section 107 I.P.C defines the abetment to mean that a person abets the doing of a thing if he firstly, 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. Reference, in this regard, may further be made to **Sohan Raj Sharma Vs. State of Haryana 2008(2) RCR (Criminal) 810**, wherein Hon'ble Apex Court has observed at page 811 that the offence of abetment is committed when the person abetting instigates any person to do that thing; (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) Intentionally aids, by act or illegal omission, the doing of that thing. Further, in **Labh Singh and others Vs. State of Punjab 2013(4) RCR (Criminal) 1016**, it has been held by this Court that in order to attract the penal provisions of Section 306 IPC, there should be a positive evidence on record that appellants have intentionally hatched a conspiracy or actually/actively aided and abetted in such a manner, leaving no option for victim to commit suicide, while holding further that each person's sensitivity and sociability pattern is different from the others and each person has his own idea of self esteem and self respect. Without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. There has to be a clear *mens rea*, active participation or direct act and intention to provoke, incite or encourage to do an act by the accused, which led the deceased to commit suicide.

In view of above discussed settled proposition of law, if we go through the case in hand, there is no evidence, worth the name, which may prove that the accused persons, at any point of time, instigated the deceased to commit suicide or conspired for such suicide by the deceased or aided the deceased intentionally in committing suicide.

Reference, in this regard, may be made to **Cyriac and another Vs. The S.I. of Police 2005(4) RCR (Criminal) 525** wherein it is observed that '*mens rea*' has to be established on record to prove that the accused had abetted the suicide.

Reference is further made to **Ramesh Kumar Vs. State of Chhatisgarh 2001(4) RCR (Criminal) 537**, wherein it has been held that the ill treated at the hands of the accused/husband and even beating his wife on one occasion at odd hours of night may amount to cruelty under Section 498A IPC but does not amount to abetment of suicide under Section 306 IPC, if the wife ends her life. It is observed that it is very material for the purpose of recording finding on the question of abetment, to ascertain as to what happened on the date of the occurrence. In **Ravinder Pal Singh Vs. The State of Punjab 2008(2) RCR (Criminal) 47**, it is observed that to prove the abetment for commission of suicide, it is to be proved that the words of gestures used by the accused so as to bring the person abetted, to such a stage and under such circumstances that he could think nothing more except to end his life and compelled by the circumstances to such an extent that he could do nothing else but to end his life.

Hon'ble Supreme Court, in **Bhagwan Dass Vs. Kartar Singh and others 2007(1) RCR (Criminal) 87**, has observed that mere harassment of wife by husband due to differences per se does not attract Section 306 IPC read with Section 107 IPC, if the wife commits suicide. Where there is no *mens rea* and the husband actually does not want the wife to end her life, her abetment to commit suicide is not made out.

In **State of Haryana Vs. Anup Singh 2015(4) RCR (Criminal) 53**, where wife had committed suicide, it has been held by this Court that in order to prove the abetment of suicide, the act of the accused must have been intended to push the deceased into such a position that he commit suicide. The respondent cannot 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 cannot be convicted merely on the basis of inferences and presumptions.

To bring home the guilt to respondent Nos.1 and 2 under Section 306 IPC, the applicant-appellants were required to lead some cogent and convincing evidence, but they failed to do so. Therefore, without any positive act on the part of respondent Nos.1 and 2 to instigate or aid in committing suicide, they cannot be convicted. In such circumstances, this Court on re-appreciation of the evidence and having regard to the language of Section 306, IPC came to the conclusion that the prosecution evidence

did not establish the ingredients of the section, and that there was no evidence to show that any of the accused-respondent Nos.1 and 2 were guilty of abetment.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Keeping in view the above, the finding of acquittal recorded by the trial court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial court for acquitting respondent Nos.1 and 2, this Court feels that learned Additional Sessions Judge, Panipat, has passed the impugned judgment dated 09.03.2016, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the special leave to appeal is declined.

Dismissed.

04.07.2016

ashok

(JITENDRA CHAUHAN)
JUDGE