

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA-S-1363-SB of 2004 (O&M)
Date of decision : 29.9.2017

...

Surjit Singh and another

.....Appellants

vs.

State of Punjab

.....Respondent

2) CRA-S-1170-SB of 2004 (O&M)

...

Surmukh Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Narinder Singh, Advocate for the appellants in
CRA-S-1363-SB-2004

Mr. V.K. Jindal, Advocate for the appellant in
CRA-S-1170-SB-2004

Ms. Jaspreet Kaur, Assistant Advocate General, Punjab.

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H. S. Madaan, J.

Vide this judgment, I propose to dispose of two appeals i.e. CRA-S-1363-SB-2004 filed by accused Surjit Singh and Mohinder Singh and CRA-S-1170-SB-2004 filed by accused Surmukh Singh, who were tried and convicted for offences under Sections 147/306 and 149 IPC by the Court of Additional Sessions Judge-cum-Fast Track Court, Bathinda vide judgment and order dated 24.5.2004.

Briefly stated, the prosecution story is that Naresh Kumar – deceased had been running a Karyana shop at Naruana Road, Bathinda. On 13.1.1999, at about 9.30 P.M. while he was present at his shop, one Haneef running a shop nearby, came to him telling that accused Abdul Gaphoor Shah, had called him at his house. Thereafter, Naresh Kumar alongwith Haneef went to the house of Abdul Gaphoor Shah. While Naresh Kumar stopped in the street, Haneef knocked at the door of house of Abdul Gaphoor Shah. Abdul Gaphoor Shah came out of his house and started giving beatings to Naresh Kumar. He was joined by the other accused. Naresh Kumar told Haneef that he had been brought there to have talk with Abdul Gaphoor Shah but Abdul Gaphoor Shah had started beating him up. Thereafter, Naresh Kumar returned home, consumed liquor and retired to bed. As a result of incident he remained tense throughout the night. On the next day, he went to his shop at about 8.00 A.M. in the morning, closed the shutter, poured kerosene oil upon himself and set himself ablaze. Thereafter he opened the shutter and tried to put

off the fire, in the process he fell down on the ground. The neighbours came there, who poured water upon him with the result the fire was extinguished. However, Naresh Kumar had become unconscious. He was removed to the Civil Hospital, Bathinda.

On coming to know about the incident, on 14.1.1999, at about 9.45 A.M., while Suresh Kumar, brother of Naresh Kumar, was present in his office, Suresh Kumar went to Civil Hospital, Bathinda. Naresh Kumar was admitted in the emergency ward of said hospital. Suresh Kumar went to him and asked from him as to why he had set himself on fire to which he replied that he was to take money from Abdul Gaphoor Shah, Surmukh Singh, Jathedar Mohinder Singh, Surjit Singh and Munni Bai, who resided in Amarpura Basti, Bathinda and whenever he went to them asking for payment of money, those persons threatened him refusing to make any payment and those persons were saying that they would kill him and his family members and that on 13.1.1999, he alongwith Haneef had gone to the house of Abdul Gaphoor Shah to have talk about the said matter of return of his money, where Abdul Gaphoor Shah had beaten him up as such he felt insulted and remained upset throughout the night. On the next day in the morning he had gone to his shop and set himself on fire.

On receipt of information that Naresh Kumar was admitted in the Civil Hospital, Bathinda, in a burnt condition, ASI Jagsir Singh alongwith HC Devinder Singh and Constable Harpal Singh went to Police Post, Civil Lines and collected *ruqa* from there.

Since it was a holiday, he went to the residence of Sh. K.S. Dhaliwal, Duty Magistrate, Bathinda, and submitted a written request Exhibit PG for recording statement of Naresh Kumar. The Magistrate appended his endorsement Exhibit PG/3 on it. Thereafter, the Magistrate went to Civil Hospital, Bathinda. ASI Jagsir Singh alongwith HC Davinder Singh also proceeded to that place. On reaching Civil Hospital, Bathinda, he moved application Ex.PF to find out as to whether Naresh Kumar was fit to make the statement. The attending doctor vide endorsement Exhibit PF/1 declared him fit to make statement. The Duty Magistrate also obtained fitness certificate from the doctor. Thereafter he recorded statement of Naresh Kumar Exhibit PG/5. The Investigating officer had also recorded statement of Naresh Kumar as Exhibit PJ which was thumb marked by him in token of its correctness. The Investigating Officer appended his endorsement Exhibit PJ/2, below it sending *ruqa* to police station for registration of case through Constable Harpal Singh on the basis of which FIR No. 15 dated 14.1.1999 Exhibit PG/3 was recorded. The Investigating Officer went to the spot and carried out necessary investigation on 15.1.1999. The matter was investigated. Naresh Kumar had succumbed to the burn injuries. Inquest proceedings regarding his unnatural death were carried out. Post mortem examination on his dead body was got performed. The accused were arrested in this case.

After completion of investigation and other formalities, challan against accused Abdul Gaphoor Shah, Surmukh Singh, Surjit

Singh, Mohinder Singh, Munni Bai @ Munni Devi was prepared and filed in the Court of Chief Judicial Magistrate, Bathinda. Learned Chief Judicial Magistrate, Bathinda, supplied copies of documents relied thereupon on the challan to the accused, free of cost, as provided under Section 207 Cr.P.C. and then observing that offence under Section 306 IPC is exclusively triable by the Court of Sessions, vide his detailed commitment order dated 16.7.1999 committed the case to the Court of Sessions. Finding a prima facie case, charge for offence under Sections 147, 306/149 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

The case was fixed for evidence of prosecution, during the course of which, the prosecution examined Suresh Kumar, brother of Naresh Kumar – deceased, as PW-1, Sandesh Kumar son of deceased Naresh Kumar as PW-2, Dr. R.P. Singh, Medical Officer, Civil Hospital, Bathinda as PW-3, Dr. M.R. Gupta, Medical Officer, Civil Hospital, Bathinda, as PW-4, Sh. K.S. Dhaliwal, JMIC, Rajpura, as PW-5 and ASI Jagsir Singh as PW-6. With that the prosecution evidence stood concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused was put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case. During their defence evidence, accused examined DW1 HC Dalbir Singh, Assistant Complaint Clerk, SSP Office, Bathinda, who had brought the summoned complaint Exhibit

DW 1/A, which was marked to SHO, Kotwali, Bathinda. The witness deposed that SHO Kotwali, SI Dinesh Kumar marked the application for enquiry to Incharge PP Vardhman, vide his endorsement Exhibit DW 1/B. He identified endorsement of HC Kapur Chand as Exhibit DW 1/C and signatures of SI Dinesh Kumar on endorsement Exhibit DW 1/D. He added that this complaint was filed alongwith compromise Exhibit DW 1/E. He identified signatures of HC Kapur Chand on compromise Exhibit DW 1/E. With that the defence evidence was closed.

After hearing arguments, the trial Court convicted and sentenced the accused as under:-

<i>Name of convict</i>	<i>U/s</i>	<i>Rigorous imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine, imprisonment for</i>
Abdul Gaphoor Shah	147 IPC	1 year	Rs.300/-	RI for two months
	306/149 IPC	6 years	Rs.3,000/-	RI for three months
Surmukh Singh	147 IPC	1 year	Rs.200/-	RI for one month
	306/149 IPC	4 years	Rs.1,000/-	RI for two months
Surjit Singh	147 IPC	1 year	Rs.200/-	RI for one month
	306/149 IPC	4 years	Rs.1,000/-	RI for two months
Mohinder Singh	147 IPC	1 year	Rs.200/-	RI for one month
	306/149 IPC	4 years	Rs.1,000/-	RI for two months
Muni Bai @ Muni Devi	147 IPC	1 year	Rs.200/-	RI for one month
	306/149 IPC	3 years	Rs.1,000/-	RI for two months

Both the sentences were ordered to run concurrently.

Feeling aggrieved, accused Surjit Singh and Mohinder

Singh have filed CRA-S-1363-SB-2004 and Surmukh Singh has filed CRA-S-1170-SB-2004. These appeals were admitted and notice thereof was given to the State. On separate applications having been filed, sentence of the accused convicts was suspended.

Accused Munni Bai has since expired. Therefore, separate appeal filed by her has been disposed of having been abated, vide order dated 19.9.2017.

Accused - Abdul Gaphoor Shah has since expired. Therefore, separate appeal filed by him has been disposed of having been abated, vide order of even date.

I have heard learned counsel for the appellant- convicts, learned State counsel, besides going through the record and I find that the impugned judgment cannot stand judicial scrutiny and is bound to be set aside by way of acceptance of appeals.

It is not disputed that deceased Naresh Kumar had committed suicide by pouring kerosene oil upon him and then setting himself ablaze in the process suffering severe burn injuries to which he had succumbed.

Now the crucial question to be seen is that as to whether the appellants had abetted such suicide of Naresh Kumar. To determine that we have to see as to what abetment actually means. Section 107 of the Indian Penal Code deals with abetment. For ready reference, the provision is reproduced as under :-

“107. Abetment of a thing.—A person abets the
doing of a thing, who—

(First) — 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.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission

thereof, is said to aid the doing of that act.”

The alleged act and conduct on the part of the appellants do not come within the mischief of abetment. The sine qua non of abetment is instigation, which means to goad, urge, forward or to provoke, incite urge or encourage to do an act. As per prosecution version, Abdul Gaphoor Shah, Surmukh Singh Jathedar, Mohinder Singh, Surjit Singh and Muni Bai, owed money to deceased and whenever, deceased went to them for demanding his money, those persons threatened to kill him and his family and did not return his money and that on 13.1.1999, when he had gone to the house of Abdul Gaphoor Shah in connection with money matter, Abdul Gaphoor Shah had beaten him up. None of such acts alleged could constitute instigation to commit suicide.

Learned counsel for the appellants had referred to various judgments in support of their contention that the appellants are not guilty of abetment of suicide by Naresh Kumar, first of such judgment being **Kishori Lal vs. State of M.P. 2007 (3) RCR (Criminal) 385,** by the Apex Court, which dealt with the offence under Section 306 IPC and interpreting Section 107 IPC. It was observed that abetment may be by instigation, conspiracy or intentional aid and that the word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do any thing. Dealing with offence under Section 306 IPC, it was observed that :-

- (i) Mere fact that the husband treated the deceased-
wife with cruelty is not enough.

(ii) There must be proof of direct or indirect acts of incitement to the commission of suicide.

(iii) Deceased was disturbed because she had not given birth to any child.

The next judgment pressed into service was *Swamy Prahaladdas vs. State of M.P. and another 1995 SCC (Cri) 943*, by the Apex Court, which also deals with a case under Section 306 IPC. As per facts of the case there was sexual jealousy between the appellant and the deceased and during quarrel appellant had remarked the deceased to go and die. The deceased had gone home and committed suicide. It was observed that suicide was not direct result of the words uttered by the appellant, which were casual in nature and are often employed in the heat of the moment between quarreling people and nothing serious is expected to follow thereafter. It was held that the said act does not reflect the requisite mens rea on the assumption that those words would be carried out in all events.

Learned counsel for the appellants further relied upon *Madan Mohan Singh vs. State of Gujarat and another 2011 AIR (SC) (Cri) 806*, by the Apex Court. It was a case where an employee had committed suicide due to harassment and insult by his boss. It was observed that boss was not guilty of abetment of suicide. In that case deceased was working as a driver, who before committing suicide left a suicide note running into 15 pages stating the accused who was his boss was angry with and insulted him a number of times before staff and he felt depressed and was committing suicide. That

suicide note was taken to be an anguish expression by the deceased, observing that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC and rather it should be seen whether accused intended or engineered the suicide by his acts and words.

There is nothing on record to show that deceased had advanced any money to the persons so named by him or they had in fact threatened him refusing to repay the money or had physically assaulted him. No intimation to police in that regard is shown to have been given. Further more, even if such assertions are taken to be true, the deceased had an option to effect recovery in accordance with law by going to the Court and for that matter approaching the law enforcement agencies. Similarly, if he had been beaten up by Abdul Gaphoor Shah or any other accused, he could very well have set the criminal machinery in motion against him/them by reporting the matter to the police. Ending ones life for such like reasons is nothing but an act of hyper sensitive person and not a man of normal prudence. The accused cannot be held guilty of abetment under the circumstances. The judgment passed by the trial Court cannot stand judicial scrutiny, rather it shows non-application of mind. The evidence adduced had not been properly appreciated and appraised and the law has not been properly interpreted. The trial Court has convicted the accused for offences under Section 147 IPC, which

provides punishment for rioting, when there were neither any allegations of unlawful assembly or use of force or violation, nor the same having common object, similarly no evidence was there to prove such assertions.

On the same footing was offence under Section 149 IPC, which provides that every member of unlawful assembly is guilty of offence committed in prosecution of common object. One wonders that without there being any precise allegations of accused getting together having weapons, with a common object forming unlawful assembly and committing any offence in prosecution of that common object, how could the trial Court convict the accused for such offences, with evidence to substantiate such allegations being clearly lacking. Accused could not possibly be convicted for any of the offences for which they had been charged. The statement made by the injured with regard to the circumstances touching his death, such injured dying soon thereafter, may be taken as dying declaration, but such dying declaration though admissible in evidence, needs to be analyzed whether the assertions made therein constitute any offence or not. Merely because a human being has died an unnatural death, for that reason alone, the other persons named by him cannot be convicted for any offence, if the necessary ingredients of the offence are not proved. Therefore, the judgment passed by the trial Court is set aside by way of acceptance of the appeals.

Resultantly, both the appeals are allowed. The appellants are acquitted of the charge framed against them. Their surety bonds

etc. stand discharged accordingly.

(H.S. Madaan)
Judge

29.9.2017

chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No