

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

CRM-A-630-MA-2012

Date of decision:-21.9.2017

Chaman Lal

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gautam Thapar, Advocate
for the applicant.

Mr.K.S. Aulakh, DAG, Punjab.

H.S. MADAAN, J.

Applicant – Chaman Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents challenging the impugned judgment dated 16.5.2012 passed by learned Additional Sessions Judge, (Fast Track Court), Jalandhar vide which he had acquitted the accused of the charge framed against him.

The applicant prays that such judgment passed by the learned Additional Sessions Judge, (Fast Track Court), Jalandhar be set aside by way of acceptance of the appeal and accused be convicted and sentenced in accordance with law.

Briefly stated, facts of the case are that on 25.7.2007, a police party from Police Station Adampur headed by ASI Avtar Singh (hereinafter referred to as Investigating Officer/IO) was present at T-point

of village Adampur, where complainant Chaman Lal came across the police party and got his statement recorded with ASI Avtar Singh contending therein that he is resident of village Kadiana, Police Station Adampur having two sons and a daughter; that on 30.4.2007 Som Nath son of Tirath (nephew of Davinder Kumar) took his daughter Sunita Devi first to Chintpurni Mandir, then to Shimla under threats since he was in possession of some objectionable pictures of Sunita Devi; that he kept her at various places committing sexual intercourse with her repeatedly by administering her some intoxicant; that Som Nath also called his brother-in-law Kulwinder Singh and cousin Gagan to Shimla, where all three of them kept threatening her; that Davinder Kumar, Sarpanch also threatened Sunita Devi telephonically asking her to follow the instructions; that thereafter Sunita Devi was brought to Jalandhar, where she was kept under intoxication at Deol Nagar; that thereafter they took her to Ludhiana and performed her marriage under influence of intoxicant taking photographs besides getting prepared of a video movie of the marriage; that thereafter she was brought back to Jalandhar; that on 24.5.2007, Sunita Devi managed to escape; that she got her statement recorded with the police, which formed basis for registration of FIR No.103 dated 25.5.2007, under Sections 376, 342, 506, 511, 366 and 120-B IPC, Police Station Adampur against accused Som Nath, Kulwinder Singh @ Banti, Gagan, Davinder Kumar, Sarpanch, Vijay Walia and 3-4 other persons; that Davinder Kumar accused in order to blackmail Sunita Devi distributed in public CDs of her marriage besides getting published news in the magazine; that Sunita Devi could not tolerate such

humiliation, as such she committed suicide on 25.7.2007 at about 3:00 p.m. by consuming some poisonous substance; that before death she also left behind a hand written suicide note, explaining the circumstances under which she had taken the extreme step. The complainant had also produced suicide note before the police. After Sunita Devi had consumed poisonous substance, she had been taken to Miglani Hospital, Adampur but she was declared brought dead.

After registration of formal FIR, the case was investigated. Post-mortem examination was got conducted on the dead body of Sunita Devi on 26.7.2007, viscera was sent to the office of Chemical Examiner, Punjab at Kharar, report therefrom was received showing that aluminum phosphide insecticide was detected in the viscera. As such, cause of death was declared as poisoning, which is sufficient to cause death in the ordinary course of nature. The suicide note was sent to FSL along with her standard handwriting and report therefrom was received that the person who wrote the standard writing also wrote the questioned writing and signatures. Accused Davinder Kumar was arrested in this case.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Jalandhar.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Jalandhar, she supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 306 IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Jalandhar vide

her order dated 12.8.2008 committed the case to the Court of learned Sessions Judge, Jalandhar, from where it was entrusted to the Court of learned Additional Sessions Judge, Jalandhar

Learned Additional Sessions Judge, Jalandhar finding that charge for offence under Section 306 IPC was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution had examined as many as nine witnesses, namely, Dr.Namit Ghai as PW1, Chaman, complainant as PW2, Constable Bikkar Singh as PW3, Dr.Pawan Miglani as PW4, ASI Avtar Singh as PW5, C1 Vijay Kumar as PW6, HC Hardev Singh as PW7, HC Dilbagh Singh as PW8, Surinder Singh as PW9 and thereafter closed the evidence after tendering report of handwriting expert as Ex.PX.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him submitted that he was innocent and had been falsely involved in the case.

In defence evidence, accused examined Chamal Lal, Clerk Guru Nanak Khalsa College as DW1 and Harpal Singh Rai, Bank Manager as DW2.

After hearing arguments, the learned trial Court had acquitted the accused of the charge framed against him, which left the complainant aggrieved and he has approached this Court seeking special leave to

appeal.

I have heard the learned counsel for the parties besides going through the records.

A perusal of the judgment passed by the trial Court goes to show that the trial Court had formulated two points for determination which are as under:

- (1) Whether the accused has committed the offence punishable under Section 306 of the IPC?
- (2) Whether the accused is liable to be convicted?

The grounds for acquittal have been mentioned in the judgment, which concisely put are as under:

- (i) Acquittal of accused Som Nath, Kulwinder Singh @ Banti, Gagan, Davinder Kumar, Sarpanch (present accused) and other persons in a case registered vide FIR No.103 dated 25.5.2007, under Sections 376, 342, 506, 511, 366 and 120-B IPC, Police Station Adampur by Sessions Judge, Jalandhar vide judgment dated 23.9.2010. In the said judgment, it had been observed that prosecutrix had gone to accused Som Nath in jail on 19.7.2007 and at that time, she was accompanied by her mother suggesting that they had love affair between them. It had further been observed that the prosecutrix had appeared in her examination of B.A. Part-II in the college, during this period, she remained

absent from home and she also went to withdraw the amount of cheque of her scholarship, in that way there was ample opportunity with her to raise hue and cry, if she had been forcibly taken away, which created a doubt over the prosecution version and the defence plea appeared to be plausible one that she had gone with him (Som Nath) as consenting party and later performed marriage with him. Furthermore, the prosecutrix had not appeared before the trial Court since she had committed suicide. Thereafter, the instant FIR had been lodged against Davinder Kumar, Sarpanch, who happens to be uncle of Som Nath.

(ii) Non-production of evidence to show that Davinder Kumar accused had played video of marriage between Sunita Devi and Som Nath anywhere besides distributing and publishing her marriage photographs in magazines and newspapers, leading to drawing of an adverse inference against the prosecution since best evidence available was withheld.

(iii) Learned Sessions Judge vide judgment dated 23.9.2010 disbelieving the version that Som Nath forcibly taken away Sunita Devi to various places under the influence of intoxicants forcing her to marry while Davinder Kumar, Sarpanch and other accused had threatened her, rather observing that Sunita Devi

was a consenting party and no such incident as narrated in the complaint had taken place.

(iv) Admission of complainant in his cross-examination that his daughter (Sunita Devi) had gone to meet Som Nath in jail after two months of the incident along with her mother after lodging of FIR.

(v) DW1 and DW2 proving that the period, she was allegedly abducted by the accused, she had appeared in her examination in Guru Nanak Khalsa College and had visited the bank for encashing of cheque which she received as scholarship.

(vi) Failure of the police to collect evidence regarding visit of Sunita Devi and Som Nath at Chintpurni, Shimla and various other places besides their stay in hotel or sarai (inn).

(vii) Non-proof of suicide note by Sunita Devi mentioning therein that she had committed suicide due to atrocities of Davinder Kumar, accused. The prosecution could not establish that suicide note was in handwriting of the deceased since writing therein was not duly compared with admitted/standard handwriting and signatures. The prosecution could not establish that the writing and signatures which were sent for comparison were of the deceased and to prove further that those could be treated as standard handwriting and

signatures.

(viii) Admission by the Investigating Officer that he had not prepared any recovery memo while taking the note book and separate writing into possession. Absence of evidence on record to show that who had produced the writing and note book to the police and from whose custody the writing and note book had come on record.

(ix) The prosecution having failed to examine any witness to prove that writing and note-book had been written by deceased only.

(x) Absence of evidence that standard signatures and handwriting were in hand of deceased, therefore comparison if made with of that handwriting with handwriting of suicide note would not be of any use and it could not be held that prosecution had proved this fact that the handwriting and signatures of suicide note were of deceased.

(xi) Absence of evidence that the deceased was defamed in the village for any of the reasons mentioned by the complainant.

(xii) Meeting of deceased with Som Nath in jail in company of her mother showing that FIR was got lodged by her on her return to her home at the instance of her parents whereas she herself went with Som Nath to marry him.

(xiii)The suicide note does not disclose any such offence being committed by Davinder Kumar under Section 306 IPC.

(xiv)The doctor who had conducted post-mortem examination of the deceased had found injuries i.e. fracture of two ribs, which had not been explained by complainant or the prosecution. This fact assuming significance in view of allegations put forward by the defence that she was beaten by her parents mercilessly to death, though such allegations are not proved but those caused considerable doubt in the mind of the Court.

After hearing learned counsel for the parties, I find that the judgment passed by the Court below is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The judgment is certainly not perverse and it cannot be said that it has been passed ignoring the settled principles for adjudication of a criminal case.

Under the circumstances, the application seeking permission for leave to appeal does not have any merit and is dismissed accordingly.

21.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No