

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1198-MA of 2016 (O&M)

Date of decision : 20.11.2017

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Jaswinder Kaur

.....Appellant

vs.

State of Punjab and another

.....Respondents

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

Present: Mr. Gurcharan Dass, Advocate for the appellant

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H. S. Madaan, J.

Accused - Bhagwan Dass was tried by Sessions Judge, Ludhiana, for offence under Section 306 IPC read with Section 34 IPC and vide judgment dated 9.3.2016, he was acquitted of the charge framed against him.

Briefly stated, the facts of the case, as per prosecution version are that on 25.10.2013 a police party headed by ASI Mohinder Singh, from Police Station Ladhowal, Ludhiana, was present in the area of Chowk Ladhowal, where complainant Jaswinder Kaur r/o Mohalla Harkrishan Vihar, Ludhiana, came and got her statement recorded stating therein that they are two sisters and one brother and her brother is residing in America for the last 17-18 years; that her father Harnam Singh owned a house in street No.

11, Bal Singh Nagar, Ludhiana; that since her mother Gurmeet Kaur had predeceased her father, the house in question had been rented out by her father to Bhagwan Dass and Nirmal Kaur; that as both the tenants were not paying rent to her father and were in illegal possession of the portion of the house and her father asked them to vacate the house, but they refused to do so, rather Nirmal Kaur and Bhagwan Dass did not allow Harnam Singh to enter the house; that as and when Harnam Singh tried to enter the house, tenants used to beat him and throw him out of the house in question; that Harnam Singh used to remain upset for being meted out such treatment by Nirmal Kaur and Bhagwan Dass; that Harnam Singh used to visit the house of complainant occasionally and at that time he would tell her that both the tenants were harassing him and they had made him homeless; that on 22.10.2013 Harnam Singh came to the complainant and informed her that even on that date he was not allowed by Nirmal Kaur and Bhagwan Dass to enter the house and they had warned him that in future if he tried to enter the house, they would break his legs; that after taking meals, Harnam Singh went to his home. At about 11.00 A.M. on 25.10.2013 Tarlok Chand s/o Pritam Singh r/o Hazuri Bagh Colony, Ludhiana, came to the house of the complainant and informed her that Harnam Singh had come to his house at about 8.00 P.M. on 24.10.2013 and after taking dinner, Harnam Singh went to sleep in the outer room of Tarlok Chand's house and after that Tarlok Chand went to attend his duties and on the next morning when he returned to his house, his wife told him that she knocked at the door of the room of Harnam Singh to provide

him tea in the morning, but he did not respond; that then Tarlok Singh also knocked at the door of the room in which Harnam Singh was sleeping but there was no response from inside the room; that thereafter Tarlok Chand had gone to the house of the complainant to inform her, as such the complainant alongwith her son Navjot Singh accompanied Tarlok Chand to his house and on reaching there saw through the mesh door that dead body of Harnam Singh was hanging from the ceiling fan of the room; that the complainant accordingly informed her sister and brother telephonically and thereafter, complainant accompanied by her son and Tarlok Chand were going to police station to report regarding the incident, on the way they came across the police party headed by ASI Mohinder Singh, where complainant got her statement recorded. The statement was signed by the complainant. The Investigating Officer had put his endorsement below such statement sending *ruqa* to the police station, on the basis of which formal FIR for offence under Section 306/34 IPC was registered against Nirmal Kaur and Bhagwan Dass.

The police party accompanied by complainant went to the place of occurrence, where dead body of Harnam Singh was found hanging from ceiling fan. Photographs of dead body were got taken. Thereafter, the dead body was lowered down. Personal search of the dead body was conducted and a suicide note was recovered from there, which was taken into possession by the police vide recovery memo. Inquest proceedings qua unnatural death of Harnam Singh were got conducted and an inquest report in that regard was prepared. Post mortem examination on the dead body was got conducted. One

damaged Nokia mobile phone and some visiting cards of advocates were recovered from the spot, which were taken into possession vide separate memo. Rough site plan of the place of occurrence was prepared. The post mortem examination of the dead body was conducted in Civil Hospital, Ludhiana, on 26.10.2013 and after post mortem examination, the dead body was handed over to the relatives of the deceased. Whereas clothes of the deceased and rope were taken into possession by the police vide separate memo. Accused Bhagwan Dass was arrested in this case on 26.10.2013. However, Nirmal Kaur could not be arrested.

After completion of investigation and other formalities, challan against accused Bhagwan Dass accused was prepared and filed in the Court of Illaqa Magistrate. Copies of documents relied thereupon were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. and then finding that offence under Section 306 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, vide its commitment order dated 2.1.2014, committed the case to the Court of Sessions.

When the case was received in the Court of learned Sessions Judge, Ludhiana, then finding that prima facie charge for offence under Sections 306 IPC was disclosed against the accused, he was charge sheeted accordingly, to which he pleaded not guilty and claimed trial.

The case was fixed for evidence of prosecution, during the course of which, the prosecution examined PW-1 Tarlok chand, PW-2 Dr. Ramandeep Kaur, Medical officer, Civil Hospital,

Ludhiana, PW-3 Jaswinder Kaur – complainant, PW-4 Avtar Singh, Draftsman, PW-5 Navjot Singh son of the complainant, PW-6 HC Surinder Singh, PW-7 Davinder Singh, PW-8 ASI Mohinder Singh, Investigating Officer, PW-9 HC Baljit Singh, posted as MHC at Police Station, Ladhowal, on 25.10.2013. With that the prosecution evidence got concluded.

Statement of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against accused was put to him, but he denied the allegations and pleaded innocence contending that he has been falsely implicated in this case. He further stated that he filed civil suit against Harnam Singh and Navjot Singh in the year 2011 and that on 23.7.2011, Harnam Singh and other persons forcibly entered his house and threw his house hold articles in the street on which he called police and FIR No. 74 dated 23.7.2011 was registered against Harnam Singh, Jaswinder Kaur and Navjot Singh regarding that incident and the said criminal case is pending in the Court of JMIC Ludhiana. The accused further stated that in the above said civil suit, the court had given direction to restore his possession and restrained Harnam Singh and Navjot Singh from dispossessing him from the remaining portion of the house and the said civil suit is still pending. He further stated that after 2011 he never met the deceased and even deceased never visited his house after registration of FIR No. 74 dated 23.7.2011.

During his defence evidence, accused examined DW-1 Harinder Ram, Ahlmad in the court of JMIC, Ludhiana, who

produced the summoned file of criminal case titled State vs. Harnam Singh, bearing FIR No. 74 dated 23.7.2011, Police Station Division No. 4, Ludhiana, proving copy of said FIR as Exhibit DW 1/A, stating that the case was fixed for prosecution evidence.

DW-2 Jang Singh clerk, record room, Ludhiana, produced the summoned file of Misc. Civil Appeal No. 72 dated 28.9.2011, titled as Harnam Singh vs. Bhagwan Dass, which had been dismissed in default by the Court of ADJ, Ludhiana, on 5.12.2012. He had also produced summoned file of Misc. application No. 49 titled as Harnam Singh vs. Bhagwan Dass, which was filed on 11.12.2012 and was dismissed in default by the Court of ADJ, Ludhiana, on 18.11.2013.

Accused tendered in evidence certified copy of stay order dated 16.9.2011 as Exhibit DB, certified copy of zimni order dated 16.9.2011 as Exhibit DC and certified copy of zimni order dated 28.5.2015 as Exhibit DD, all passed by the Court of Civil Judge (Junior Division) Ludhiana, in civil suit No. 213 dated 6.5.2011 titled Bhagwan Dass vs. Harnam Singh and others. He further tendered copy of FIR No. 116 dated 10.9.2010 Police Station Division No.4, under Sections 376/380/506 IPC, as Exhibit DA

With that the defence evidence was closed.

After hearing arguments, the trial Court acquitted the accused of the charge framed against him. The relevant part giving the reasons for acquittal of the accused are as under:-

“24. It is the case of prosecution that both the accused took the house on rent from Harnam

Singh and thereafter they refused to pay its rent and they also restrained him from entering into the said house and used to beat Harnam Singh as and when he used to visit the said house to demand rent from both the accused and that lastly on 22.10.2013 both the accused threatened Harnam Singh that they will break his legs if in future he tried to enter the said house. In the case in hand no document has been placed on record by the prosecution in order to prove that Harnam Singh or complainant ever lodged complaint with the police or in any court against the accused prior to the present occurrence, regarding the alleged ill-treatment being given to Harnam Singh by the accused. Even no complaint was ever lodged by Harnam Singh or complainant prior to registration of the present case, regarding the alleged beatings given by the accused to the deceased. Also in this case no documents has been placed on the record by the prosecution to establish that the deceased filed any rent petition against the accused on account of non-payment of rent of the house. PW1, PW3 and PW5 have no where stated in the court that the accused gave beatings to Harnam Singh in their presence or that the accused refused to pay the rent to the deceased in their presence.

Also in this case no injury report of Harnam Singh is produced by the prosecution to prove that he was assaulted by the accused at any point of time. PW1, PW3 and PW5 admitted in their testimonies that suit for permanent injunction was filed by accused Bhagwan Dass against the deceased and other members of his family. From the perusal of certified copy of order Ex.DB it is evident that on 6.5.2011 accused Bhagwan Dass filed suit for permanent injunction against Harnam Singh and PW5 Navjot Singh to protect his possession over the tenanted premises and in the said civil suit, the civil court passed restraint order dated 16.9.2011 in favour of accused Bhagwan Das. From the perusal of FIR Ex.DW1/A it appears that during the pendency of the said suit, Harnam Singh alongwith PW3 and PW5 tried to take forcible possession of the tenanted premises from accused Bhagwan Dass on 23.7.2011 and the matter was reported to the police and consequently FIR No. 74 dated 23.7.2011 under section 506/452/427 / 323/148/149 IPC was registered against Harnam Singh and other persons. From the perusal of the testimony of DW2 coupled with the record produced by him, it is evident that the appeal filed by Harnam Singh against order Ex.DB dated

16.9.2011 was dismissed in default by the Appellate Court on 5.12.2012 and the application moved for restoration of the said appeal was also dismissed in default on 18.11.2013 by the Appellate Court. In these circumstances, it appears on the record the Harnam Singh during his life time tried to interfere into peaceful possession of accused Bhagwan Dass over the tenanted premises and thus compelled the said accused to file suit for permanent injunction on 6.5.2011 and even thereafter the deceased tried to throw the house hold articles of the accused from tenanted premises and consequently FIR Ex.DW1/A was registered against him. PW3 and PW5 while appearing in the witness box admitted that accused Nirmal Kaur also got registered one rape case against Harnam Singh. The copy of the FIR of said case is Ex.DA which is tendered into evidence by accused Bhagwan Dass. So it is evident that one FIR under Section 376/380/506 IPC was registered against Harnam Singh in PS Div. No.4, Ludhiana on 10.9.2010 on the basis of the complaint lodged by Nirmal Kaur. The said FIR was not lodged at the instance of accused Bhagwan Dass. The above said criminal cases and civil suit were lodged against Harnam Singh

in the year 2010-11 by the accused person. The deceased committed suicide in October, 2013. So, committing of suicide by Harnam Singh was not proximate to the act of filing of civil suit and criminal cases. There is nothing on record to prove that the said criminal cases and civil suit were false and frivolous. This court is of the view that merely because accused Bhagwan Dass took recourse to the legal remedy by filing civil suit or by lodging FIR, does not mean that the said acts of the accused compelled Harnam Singh to end his life. Accused Bhagwan Dass had simply exercised his legal right by filing suit for permanent injunction to protect his possession over the tenanted premises. It also appears that Bhagwan Dass lodged complaint with the police when Harnam Singh tried to trespass into his house. This court is of the view that availing of a legal remedy available to a person cannot be termed as instigation or conspiracy for doing an act or illegal omission or intentionally aiding by an act or illegal omission. In this case prosecution has also relied upon alleged suicide note Ex.PE to fasten the liability of accused Bhagwan Dass. As per prosecution version, the said suicide note was recovered from the clothes which the deceased

was wearing at the time of his death. In the case in hand, the alleged handwriting and signatures of Harnam Singh on the said suicide note were not compared with his admitted handwriting and signatures by the prosecution from any handwriting and document expert for the reasons best known to it. PW3 and PW5 while appearing in the witness box tried to prove suicide note Ex.PE by stating that the same was written and signed by the deceased. However, PW3 and PW5 are not handwriting experts and even otherwise they have nowhere stated that they used to see Harnam Singh writing and signing different documents and that they are conversant with his handwriting and signatures. Even otherwise it is settled law that the science of identification of handwriting and signatures is not an exact science. In these circumstances much reliance cannot be placed on the testimonies of PW3 and PW5 regarding the identification of alleged handwriting and signatures of Harnam Singh on suicide note Ex.PE. So the prosecution has failed to prove that the said suicide note was written and signed by Harnam Singh. The case law which has been referred by the prosecution is distinguishable from the facts of the present case as in the said

case, it was the wife who committed suicide being persistently harassed by her husband.”

Thus concluding that prosecution has failed to prove its case beyond a shadow of reasonable doubt, accused had been given a clean chit.

Feeling aggrieved, the complainant has knocked at the door of this Court moving an application under Section 378 (4) Cr.P.C. for grant of leave to appeal.

Lower Court record has been summoned.

I have heard counsel for the appellant and I find that the judgment passed by the trial Court is well reasoned one, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The trial Court has categorically observed that abetment on the part of accused was not made under the circumstances of the case. It was further observed that prosecution had failed to establish that suicide note was written and signed by Harnam Singh.

Thus in my considered view, no ground to grant leave to appeal is made out. Therefore, the application so filed in that regard, is found to be without merit and is dismissed accordingly.

(H.S. Madaan)
Judge

20.11.2017

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Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No