

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-154-MA-2016

Date of Decision:- 16.01.2017

Sat Pal

....Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Arora, Advocate, for the applicant.

RITU BAHRI, J. (Oral)

Present petition has been filed by the applicant-complainant against judgment dated 06.11.2015, passed by the Additional Sessions Judge, Gurdaspur whereby respondent No.2-accused has been acquitted in a trial under Sections 306 and 511 IPC.

Briefly, the prosecution case is that, SI Surinder Singh, Police Station, Dhariwal, on getting the information that Shinder Pal wife of late Narinder Masih was admitted in the hospital, therefore, he proceeded to record her statement by going to Kakkar Hospital, Amritsar. After obtaining the opinion from doctor, SI Surinder Singh, moved an application to the learned CJM, Amritsar, for recording the statement of deceased. The learned CJM, Amritsar marked the application to Sh. Balwinder Singh, learned JMJC, Amritsar, for recording the statement of Shinder Pal (deceased). The statement of Shinder Pal (deceased) is as below: -

Department and he expired in the year 1997. The husband of deceased and accused were friends. The accused used to come to the house of complainant. In 2000, deceased got Job in the police department on compassionate ground. On 07.05.2009, the accused had come to the house of the deceased and he told her not wear dirty suits. The deceased went to the kitchen, for the preparation of tea, for the accused, and there she doused kerosene oil and set her ablaze, on being harassed.”

Thereafter, on the basis of statement, formal FIR was got registered against the accused. The accused was arrested. After presentation of the challan, learned Magistrate committed the case to the Court of Sessions, vide commitment order dated 11.02.2010.

In order to prove the charges against the accused, the prosecution has examined Rohit as PW-1, Jaspal Masih as PW-2, Satpal as PW-3, SI Kuldip Singh as PW-4, HC Gurbachan Singh as PW-5, ASI Victor Masih as PW-6, HC Harbans Singh as PW-7, HC Ranjit Singh as PW-8, Dr. Chetan Nanda as PW-9, SI Surinder Singh as PW-10, ASI Jasbir Singh as PW-11, Dr. Dalbir Singh as PW-12. Thereafter the evidence of the prosecution was closed by order.

The statement of the accused under Section 313 Cr.P.C. was recorded, wherein the allegations made by prosecution were denied and pleaded false implication.

The trial Court, after going through the entire evidence, has acquitted the accused on the ground that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. The prosecution has not proved the mens rea of accused necessary concomitant of instigation, which compelled the deceased to take an extreme step to end her life. In these circumstances, the trial Court after considering the prosecution

acquitted him, vide judgment of acquittal dated 06.11.2015.

After hearing the learned counsel for the parties, going through the contents of the judgments, in the facts of the present case the dying declaration recorded by JMIC, Amritsar was not placed on record by the prosecution despite granting of number of opportunities. A photocopy of the same in itself could not be made basis to proceed against the accused under Section 63 of the Evidence Act. Moreover, there was no evidence led that the accused had taken loan of ₹2 lacs from the deceased and even as per photocopy of dying declaration of deceased Shinder Pal, on 07.05.2009 accused had come to her house and told her not to wear dirty suits. Both the above-said two incidents would not amount to instigating the deceased to commit suicide. The essential ingredients of Section 107 IPC are not made out.

Recently, the Supreme Court in case titled **State of Kerala and others Vs. S. Unnikrishnan Nair and others** in **Crl. Appeal No.2086 of 2014**, decided on 13.08.2015, has examined the case where one Haridath had committed suicide on 15.03.2012 and he left behind suicide note that Rajan and Unnikrishnan (CBI TVPM) are responsible for his situation. In paragraph 18, the Supreme Court, has held as under: -

“18. Coming to the case at hand, as we have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, we are disposed to think that the High Court is justified in quashing the proceeding, for it is an accepted position in law that where no prima facie case is made out against the accused, then the High Court is obliged in law to exercise the jurisdiction under Section 482 of the Code and quash the proceedings. [See V.P. Shrivastava v. Indian Explosives Limited and Others[6]”

Consequently, in the facts of the present case the accused was in visiting terms and in the absence of any direct evidence of instigation, coupled with mens rea, the accused has been rightly acquitted by the trial Court by extending the benefit of doubt. Learned counsel for the applicant-complainant has miserably failed to produce any cogent evidence on record to prove the charges against the accused. Therefore, no interference is warranted in the impugned judgment dated 06.11.2015, passed by the Additional Sessions Judge, Gurdaspur. Such judgment, containing valid reasons, cannot possibly be interfered with by this Court, in exercise of limited jurisdiction of this Court under Section 378(4) Cr.P.C., unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the applicant-complainant, so, the impugned judgment deserves to be and is hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant petition to leave to appeal is hereby dismissed as such.

January 16, 2017
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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No