

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

CRM-A-683-MA-2016 (O&M)

Date of decision : 25.07.2017

Sukhdev Singh

...Applicant-Appellant

Versus

State of Punjab and and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjeev Pandit, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 19.01.2016, passed by learned Additional Sessions Judge, Rupnagar, whereby accused-respondent Nos.2 and 3 were acquitted of the charges framed against them under Section 306 read with Section 34 IPC.

The learned counsel for the applicant-appellant contends that deceased, Nishu @ Nisha daughter of the applicant-appellant had committed suicide due to the harassment and beatings of respondent Nos.2 and 3, which she herself disclosed to the applicant-appellant that she had consumed a poisonous substance had been administered to her by respondent Nos.2 and 3 while she was being taken to PGI, Chandigarh. Son of the deceased, namely, Shubham made a statement under Section 161 Cr.P.C. that respondent Nos.2 and 3 had given beatings to his mother

(deceased-Nishu @ Nisha). The learned trial Court did not decide the application moved by the prosecution under Section 311 Cr.P.C. for summoning son of the deceased and Dr. Deepti, who was on duty at the relevant time. The husband of the deceased had moved an application for cancellation of present FIR. However, after thorough enquiry, SP (Investigation), District Rupnagar found the said application to be false. The learned trial Court has ignored these material facts which otherwise clearly establish the offence against respondent Nos.2 and 3 under Section 306 of IPC.

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

As per the allegations respondent Nos.2 and 3 allegedly harassed the daughter of the applicant-appellant, namely, Nishu @ Nisha (deceased) and gave beatings to her and due to the said act of respondent Nos.2 and 3, the deceased had consumed the poisonous substance. In this way, respondent Nos.2 and 3 had instigated the deceased to commit suicide. However, as per the statement of PW-5 Dr. S. Valliappan, the deceased suffered sudden cardiac arrest. Further the report of the Chemical examiner Ex.PW-6/L reveals that no poison was detected in the body of the deceased.

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 this Court 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-treatment 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.2 and 3 under Section 306 IPC, the applicant-appellant was required to lead some cogent and convincing evidence, but he failed to do so. Therefore, without any positive act on the part of respondent Nos.2 and 3 to instigate or aid in committing suicide; and in view of the report of the chemical examiner, 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.2 and 3 were guilty of abetment.

In **Chandrappa and Ors. v. State of Karnataka, 2007 (4) SCC 415**, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

- “(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
- (3) Various expressions, such as, "substantial and compelling reasons," "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused*

having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

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.2 and 3, this Court feels that learned Additional Sessions Judge, Rupnagar, has passed the impugned judgment dated 19.01.2016, 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.

25.07.2017

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No