

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

CRM-A-71-MA-2016 (O&M)

Date of decision : 15.05.2017

Chiranji Lal

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 17.03.2015, passed by learned Additional Sessions Judge, Hisar, whereby accused-respondent No.2 was acquitted of the charges framed against him under Section 306 IPC.

It has been averred in the present special leave to appeal that deceased, Devinder Singh had committed suicide due to the harassment by respondent No.2, which is duly proved from his suicide note Ex.PJ, scribed by the deceased. The suicide note contains the name of respondent No.2. As per the pleadings, the learned trial Court has ignored these material facts which otherwise clearly establish the offence against respondent No.2 under Section 306 IPC.

Perused.

The case of the applicant-appellant is that deceased-Devinder Singh had died due to the harassment meted out to him at the hands of respondent No.2 and in order to prove the case, the suicide note (Ex.PJ) of deceased Devinder Singh has been referred to. The foundation of the case rests on the said suicide note. However, the alleged suicide note pertains to the year 2005, while the deceased was posted at Sirsa Jail whereas, he died in the year 2006. Further, there is no mention of date and month in the suicide note. The deceased and respondent No.2 worked together till July, 2005 and thereafter, both were posted at different stations. From July, 2005 till the date of death i.e. 15.04.2006, there is no evidence of harassment or abetment against respondent No.2. The suicide note in question was not recovered by the IO but was recovered from the clothes of the dead body when it was taken to house of deceased from the hospital. The most relevant fact in this case is the statement of DW2-Dr. Sajjan Singh, Life Line Hospital, Hisar, the treating doctor of the deceased, wherein he has stated that it was a case of Cardio Vascular Collapse and not a case of suspected poisoning as alleged.

Abetment has been explained by Hon'ble the Supreme 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 abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; 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; and thirdly, intentionally aids, by any 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 provisions of Section 306 IPC, there should be a positive evidence on record that the accused have intentionally hatched a conspiracy or actually/actively aided or abetted in such a manner which leaves no option for victim but to commit suicide, while holding further that each person's sensitivity and sociability pattern is different from others and each person has his/her 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.

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.

In view of above discussed settled proposition of law, if we go through the case in hand, there is no evidence, worth the name, which may prove that the petitioner, at any point of time, instigated, abetted or aided the deceased intentionally in committing suicide.

To bring home the guilt to respondent No.2 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 No.2 to instigate or aid the deceased in committing suicide, he cannot be convicted. In such circumstances, this Court on re-appreciation of the evidence and having regard to the language of Section 306 IPC, has come to the conclusion that the evidence led by the applicant-appellant does not establish the ingredients of the section, and that there was no evidence to show that accused-respondent No.2 was 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 No.2, this Court feels that learned Additional Sessions Judge, Hisar , has passed the impugned judgment dated 17.03.2015, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly, the present special leave to appeal is declined.

The instant application for grant of special leave to appeal also suffers from inordinate delay of 205 days in filing the present special leave to appeal. The Court feels that the explanation rendered for the delay is not convincing and accordingly, the delay application i.e. CRM-1604-2016 is hereby dismissed and the instant special leave to appeal is dismissed on that score also.

Dismissed on merits as well as being time barred.

15.05.2017

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No