

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : February 10th, 2017

+ CRL.A. No.592/2000

MOOL CHAND & ANR. Appellant

Through: Mr.S.S. Haider, Advocate.

versus

STATE

..... Respondent

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State with
Inspector Rajeev Yadav, Police
Station Inderpuri, Delhi.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 12.09.2000 passed by the learned Additional Sessions Judge, Delhi convicting the appellants, namely, Mool Chand and Amrik Singh for the offence punishable under Section 323/34 and 306/34 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 12.09.2000, whereby the appellants have been sentenced to undergo simple imprisonment for six months for the offence under Section 323/34 IPC and rigorous imprisonment for a period of five years and fine of Rs.5,000/- for the offence under Section 306/34 IPC and in default of payment of fine the appellants were to further undergo

simple imprisonment for a period of five months, the present appeal has been filed by the appellants.

2. Factual matrix emerging from the record is that the present case was registered on the basis of statement of Smt.Sarvani Devi (PW2). In her statement made to the police, Smt.Sarvani Devi had stated that on 02.02.1992, her father-in-law Hardev Ram and his sons Amrik Singh and Mool Chand along with Prem had a quarrel with the husband of the complainant, namely, Suraj. Earlier also, all the accused persons had quarrels with the husband of the complainant. They had been harassing the husband of the complainant with intention to grab his house. On 02.02.1992, all the accused persons gave beatings to the husband of the complainant. The complainant rushed to the police to inform about the same. When she returned to her house, she saw her husband in flames. The complainant had taken her husband to RML Hospital where he died on the same day. The complainant held all the four accused persons responsible for the death of her husband.

3. On the basis of statement of the complainant, FIR of the instant case was registered. During investigation, three accused persons, Hardev, Mool Chand and Amrik Singh were arrested. MLC of the deceased was collected from the hospital on which the doctor observed that he sustained 60% burns. Dead body of the deceased was sent to the mortuary where post mortem on his dead body was conducted. Fourth accused Prem Singh could not be arrested as he fled away. After completion of investigation, charge sheet was filed

in the Court.

4. Charges under Sections 332/34 and 306/34 IPC were framed against the accused persons including the appellants to which they pleaded not guilty.

5. Accused Prem Singh was declared Proclaimed Offender vide order dated 17.09.1997.

6. In support of its case, prosecution examined ten witnesses i.e. Constable Babu Ram (PW-1); Sarvani Devi (PW-2); Dr.Kulbhushan Goyal (PW-3); Dr.Rajesh Gupta (PW-4); Head Constable Krishan Dutt (PW-5), ASI Bhagwati Prasad (PW-6); Mangey Ram (PW-7); Mange Lal (PW-8), Narain Dass (PW-9) and SI Ram Mehar (PW-10).

7. After conclusion of prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. in which they denied the entire case of prosecution and claimed innocence.

8. During the pendency of the present appeal, the appellant no.2- Amrik Singh expired and the appeal qua him stood abated vide order dated 11.07.2011.

9. The appellant has filed the instant appeal challenging the aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 11.12.2000.

10. The main ground challenging the impugned judgment on

conviction is that there was no allegation of abetment to commit suicide on the part of the appellant. Three public witnesses (PW7 to PW9) have not supported the case of prosecution. There is only one witness who supported the case of prosecution i.e. PW2 Sarvani Devi who is the wife of the deceased. PW2 is the interested witness and her testimony has not been corroborated by any other evidence or material. Apart from the testimony of PW2, there is no other evidence on record to hold the appellant guilty.

11. Per contra, learned Additional Public Prosecutor for the State has vehemently argued that the wife of the deceased fully supported the case of prosecution and had stated that the appellant along with co-accused gave beatings to the deceased. Earlier also the accused persons had quarrels with the deceased to grab his house which led to the taking of extreme step of committing suicide by the deceased. There is sufficient evidence on record to convict the appellant and no ground is made out to set aside the judgment of conviction and order on sentence.

12. Arguments advanced by the learned counsel for the appellant as well as learned APP for the State were heard.

13. Sarvani Devi (PW2) in her testimony had deposed that her father-in-law and his sons along with Prem, son of Mange Ram, who was cousin of her husband, used to quarrel with her husband in respect of House No.B-159, J.J. Colony, Inderpuri. On 02.02.1992, all the accused persons gave beatings to her husband at about 08.30 a.m.

They wanted to evict them from the said house. When all the accused gave beatings to her husband, she rushed to the police booth but her report was not lodged nor any action was taken. Upon returning she found her husband in a burnt condition. She along with her friend took her husband to R.M.L. hospital where he died on the same day at 5 p.m. The case was registered against the accused persons on 12.03.1992 on her statement Ex.PW2/A. She further stated that all the four accused were responsible for the death of her husband. On 12.03.1992, police took photographs of the spot in the presence of her children as she was not at home. During cross-examination, PW2 stated that she was illiterate. The said house belonged to Sona Devi, grand mother of her husband. She denied that she wrongly possessed the house of Sona Devi. On 02.02.1992, she went to the police but she was not heard. When her husband was beaten by the accused persons he might have received hidden injuries but she did not know as to where he received the said injuries. She returned from the police post within 5-10 minutes and found her husband in a burnt condition. At that time, he was alive and he was taken to the hospital with the help of her friend. She was told nothing by her husband regarding the incident.

14. Apart from the witness PW2 who is wife of the deceased, the prosecution had also examined three more public witnesses to prove its case i.e. PW7 Mangey Ram, PW8 Mange Lal and PW9 Narain Dass. PW7 in his testimony had deposed that accused Hardev Ram, Mool Chand and Amrik Singh were his neighbours. Suraj was son of

accused Amrik Singh. He did not know about the behavior of accused persons with deceased Suraj. He did not enter the house as many public persons were standing outside the house of Suraj and seeing the fire he stood outside. This witness was declared hostile by the prosecution and during cross-examination by the APP for the State, he denied the entire case of prosecution.

15. PW8 Mange Lal had deposed that accused Hardev Ram, Mool Chand and Amrik Singh were his neighbours. Deceased Suraj was son of accused Hardev Ram. In the year 1992, a quarrel took place between deceased Suraj and accused persons over a drain. Abuses were hurled by both the parties and they pushed each other but no beating was given by any of the accused to Suraj. PW8 being neighbor separated them from the quarrel. Suraj went to his room and his wife was not at home at that time. Suraj bolted the door from inside and set himself on fire which they noticed after some time when they heard the screams and saw smoke. In the meantime, wife of Suraj came and took him to the hospital. This witness was also declared hostile and during cross-examination by the APP, he denied the entire case of prosecution.

16. Similar is the position with regard to PW9 Narain Dass. He had deposed that all the accused persons were residing in front of his house. Deceased Suraj was son of accused Hardev Ram. On 2nd month of 1992, a quarrel was going on between deceased and all the accused persons. He and some neighbours pacified the matter and sent Suraj and accused persons to their houses. Thereafter, PW9 went

to ease himself and when he returned, he found that Suraj had bolted the room from inside and smoke was coming out of that room. Two persons were passing from there raised alarm and PW9 along with Mange Lal and some other persons broke open the door and saw Suraj on fire. They tried to extinguish the fire. By that time, wife of Suraj came and took him to hospital. This witness was also declared hostile by the prosecution and during cross-examination by the APP for the State, he denied the entire case of the prosecution.

17. In cases of abetment of suicide, the prosecution is duty bound to prove direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of giving of beatings for grabbing of house which compelled the person to commit suicide, conviction under Section 306 IPC is not sustainable. In ***Randhir Singh v. State of Punjab (2004) 13 SCC 129***, the Hon'ble Apex Court observed as under :

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In *State of W.B. v. Orilal Jaiswal*, this Court has observed that the Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted

out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

18. The case put up by the prosecution against the appellant is that he along with other accused persons abetted the commission of suicide by the deceased. It is alleged against the appellant that he along with others gave beatings to the deceased on the fateful day as they wanted to grab the house of the deceased which led to the commission of suicide by the deceased. To prove its case, the prosecution has examined four public witnesses. PW2 Sarwani Devi is the wife of the deceased who has deposed that her deceased husband was beaten up by the accused persons including the appellant on that day as they wanted to grab their house which led to the commission of suicide by her deceased husband. The other public witnesses examined by the prosecution are PW7 to PW9, but all these witnesses have not supported the case of prosecution to the effect that on the day of incident any beating was given by the appellant and his associates to the deceased. They have not stated anything with regard to reason behind the quarrel between the accused persons and the deceased. They have not stated anything that the accused persons wanted to grab

the house of the deceased and that was the reason for committing suicide by the deceased. Even PW8 and PW9 have disputed the presence of PW2 at the time of alleged incident of beating by the accused persons to the deceased. Both these witnesses have stated that the wife of the deceased i.e. PW2 was not present at the time when deceased locked himself inside the room as she came at a later stage. They have not stated anything to the effect that PW2 was even present when a quarrel between the accused persons and deceased had taken place. Both these witnesses put a doubt about the genuineness of the testimony of the wife of the deceased with regard to giving of beatings to him by the accused persons or abetting his suicide. This fact cannot lose sight of that PW7 to PW9 are the neighbours of the deceased and there is no reason to believe that they were not aware of any such alleged ill-will of the accused persons in wanting to grab the house of the deceased and giving of beatings to him which led to commission of suicide by him.

19. Apart from the testimony of PW2, there is no other material or evidence on record to show that the accused persons were trying to grab the house of the deceased and that was the reason of giving him beatings on the day of incident. Testimony of the wife of the deceased has not been corroborated by any other material or evidence. Her testimony does not inspire confidence of this Court as the same is uncorroborated and even her presence at the spot at the time of alleged incident has been disputed by other public witnesses, PW8 and PW9. Therefore, the testimony of PW2 cannot be said to be trustworthy and

credible to hold the appellant guilty.

20. In view of the above mentioned discussion and the law laid down in the case of **Randhir Singh's** case (supra), this Court is of the considered opinion that to bring a case within the four corners of Section 306 IPC, the prosecution is bound to prove beyond reasonable doubt that the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. There is also no convincing evidence on the record to prove the guilt of the appellant under Section 323 IPC that he had caused simple hurt to the deceased.

21. Consequently, from the totality of evidence adduced and discussion made above, the conviction and sentence of the appellant under Section 323/34 and 306/34 IPC are hereby set aside.

22. The appellant is on bail. Bail bond and surety bonds furnished by the appellant are hereby discharged.

23. With the above observations, the present appeal stands disposed of. Pending application, if any, is also disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 10, 2017
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