

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

Crl. Appeal No.S-4311-SB of 2013 (O&M)

Date of Decision: July 09, 2018

Naresh Kumar

...Appellant

VERSUS

Muskan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Khurana, Advocate
for the appellant.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant Naresh Kumar against Muskan and other respondents, challenging the judgment dated 12.09.2013 passed by learned Sessions Judge, Ferozepur, whereby the accused-respondents were acquitted of the charges framed against them.

The brief facts of the prosecution case as noted down in the judgment passed by learned Sessions Judge, Ferozepur, are as under:-

“2. The case has been registered on the basis of the statement made to the police by Naresh Kumar complainant, who is the brother of the deceased, alleging that he is working as an employee on a shop and they are three brothers. His father had died long time back and his mother is alive. His brother Ashwani Kumar was the eldest amongst them and his marriage was solemnized about four years ago with Muskan. The deceased is also having a son namely Sagar, who was aged about three years at the time of occurrence. Muskan had been frequently entering into quarrel with Ashwani Kumar deceased. She had been taking all the earnings of the deceased and giving the same to her parental family. Ashwani Kumar

had been asking her to keep away from doing so. On 26.06.2011, in the evening hours, Muskan and Ashwani Kumar had a quarrel and Ashwani Kumar was also given beatings. The complainant persuaded both of them and after providing meals, both of them slept. Muskan had frequently been going to her parental house after picking up quarrel with Ashwani Kumar and after convening panchayat, she was being brought back. On 27.06.2011, Muskan accused on the pretext of attending her duties in Juneja Hospital, went to the house of Anil Kumar, her maternal uncle at Talwandi Bhai. She exaggerated the version with regard to her dispute with her husband Ashwani Kumar and accordingly, Anil Kumar accused made a telephonic call to Ashwani Kumar and threatened him. Anil Kumar told Ashwani Kumar that Mustan had visited his house at Talwandi Bhai and the deceased was maltreating her and he will be killed. After the conversation, the deceased got perplexed and entered in the room and lied down by putting a cloth over her face. The complainant returned back to his house and asked Ashwani Kumar about the matter. Ashwani Kumar told him that he is too much harassed and Anil Kumar accused had threatened to kill him. After some time, Sanjiv Kumar @ Sanju brother and Kanta Rani maternal grand mother of Muskan came to the house of the deceased and threatened to kill him. They were persuaded. Thereafter, Sanjiv Kumar @ Sanju and Kanta Rani had given an application against the family members of the complainant in the police station. On 27.06.2011, in the evening hours, being in disturbed state of mind, the deceased left the house at about 6 PM. Ashwani Kumar rang up from his mobile phone No.84378-76220 at his house and told that he was present at the bridge of Jhamke-Pandhri and is fed up from his wife Muskan, brother in law Sanjiv Kumar @ Sanju, maternal uncle of his wife namely Anil Kumar and maternal grand mother Kanta Rani. He further stated that he had kept his T-shirt and mobile phone at the Burji of the bridge and being fed up from the accused, he is committing suicide by jumping in the Sirhind canal and his family members should not make efforts to locate him. The complainant along with Ram Lubhaya came to the spot and T-shirt and mobile phone of the deceased were found on the Burji. They had been trying to locate for the deceased with the hope that Ashwani Kumar may be found alive. On 29.06.2011, the complainant along with his other relatives and Harjit Singh diver while tracing out the deceased found the dead body in the canal in the area of village Mohala. With the help of Harjit Singh, the dead body was tied with a rope. Sanjiv Kumar and other relatives were left near the dead body and the complainant along with Varinder Kumar went to report the matter to the police. On the basis of the statement of Naresh Kumar complainant, the case was registered on 29.06.2011.”

On presentation of challan against accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-sheeted under Section 306 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined 5 witnesses. At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. They denied the correctness of the evidence and pleaded themselves as innocent. In defence, accused produced some documents.

Learned trial Court, after appreciating the evidence acquitted the accused-respondents.

I have learned counsel for the appellant and have gone through the record.

The perusal of the findings given by learned Sessions Judge shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by learned trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The perusal of the findings shows that learned Sessions Judge has appreciated the evidence in right perspective.

There is only statement of PW-4 Naresh Kumar, brother of the deceased. There is no suicide note in the present case. As per statement of

ranged up and told him that he is going to commit suicide but no information was given to the police immediately. Rather, after recovery of the dead body, the matter was informed to the police. Secondly, there is also allegation that earlier Ashwani Kumar deceased had called Naresh Kumar and told that he had been receiving threats of being killed by the maternal uncle, brother etc. of his wife. The mobile phones have been taken into police possession during investigation but the Investigating Officer has not obtained/collected any call details nor these have been proved on record, which means that this version of PW-4 Naresh Kumar that he received call from Ashwani Kumar before committing suicide and on earlier occasion also, he told him regarding threats given to him by Anil Kumar, maternal uncle etc., is not corroborated by any evidence. No cogent explanation has been given as to why the call details have not been proved. Even, it is the case of prosecution that Anil Kumar gave threat to kill Ashwani Kumar on phone, but even the call details of mobile phones of Anil Kumar and deceased Ashwani Kumar are not produced on record. Admittedly, on the day, when Ashwani Kumar committed suicide, his wife was living with her maternal uncle etc. and not in the matrimonial house.

The perusal of the evidence on record nowhere proves abetment by the accused to commit suicide. Even if, it is taken that there is some matrimonial dispute between the parties, it amounts to natural wear and tear of matrimonial life. The perusal of the record shows that accused have not abetted the deceased to commit suicide nor there are any such type of circumstances, which compelled the deceased to commit suicide.

All these facts show that prosecution has failed to prove the

12.09.2013 passed by learned Sessions Judge, Ferozepur, is correct, as per evidence and law and does not require any interference from this Court.

Though, no application has been filed for seeking leave to file appeal but at the time of arguments, learned counsel for the appellant argued that leave to appeal be granted. From the above discussion, I find that findings given by learned trial Court are correct and as per law, therefore, no ground is made out for grant of leave in this case.

Resultantly, finding no merit in the present appeal, the same is dismissed.

July 09, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No