

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA-S-4070-SB-2015 (O&M)

Date of decision : 27.4.2018

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Pardeep Kumar

.....Appellant

vs.

State of Haryana and others

.....Respondents

2) CRM-A-712-MA-2015 (O&M)

...

State of Haryana

.....Appellant

vs.

Nirmal Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Gaurave Bhayyia, Advocate
for the appellant.

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana for respondent No.1 in CRA-S-4070-SB-2017
and for the appellant in CRM-A-712-MA-2015.

Mr. Tarun Singal, Advocate for
Mr. Ajay Jain, Advocate for respondents No. 2 to 4.

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H. S. Madaan, J.

Vide this judgment, I intend to dispose of CRA-S-4070-SB-2015 titled as Pardeep Kumar vs. State of Haryana and others and CRM-A-712-MA-2015 titled as State of Haryana vs. Nirmal Singh and others, as both these cases have been filed against judgment dated 22.9.2014, passed by Additional Sessions Judge, Ambala, vide which the accused were acquitted of the charge against them.

Briefly stated, facts of the case, as per the prosecution story are that in 15.9.2012 on receipt of information that a man had been run over and killed at K.M. No. 194/08-10 from Station Master, Railway Station, Ambala Cantt, a Police Party from GRP Ambala Cantt, led by SI Raghubir Singh, went to the spot. The dead body was identified to be that of Ramesh Kumar s/o late Hari Nand Sharma, r/o Village Machonda, Police Station Parao, District Ambala, aged about 68-70 years. The family members of the deceased had arrived at the spot. Inquest proceedings under Section 174 Cr.P.C. were conducted. A suicide note was recovered from the pocket of the deceased blaming Jaswinder @ Jassi s/o Surjeet Singh r/o village Machonda and his two sons namely, Nirmal Singh and Randeep Singh, for his suicide. Brother of deceased, namely, Pardeep Kumar, complainant presented two pages which were also found in a bag near the dead body mentioning that Jaswinder s/o Surjeet Singh and his two sons got registered false cases against him and his family members without any reason and because of that he was committing suicide. Those documents were taken into possession. Formal FIR was registered. The matter was investigated. Jaswinder @ Jassi could

not be arrested and he was declared a proclaimed offender vide order dated 9.1.2013, whereas Nirmal and Randeep were arrested in this case. A fresh charge for offences under Section 306 read with Section 34 IPC was framed against all the accused to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined E/ASI Om Parkash as PW-1, Ram Anchal as PW-2, E/ASI Suresh Kumar as PW-3, Pardeep Kumar as PW-4, Darshan Singh as PW-5, K.R. Bhatia as PW-6, Naresh Raj Meena as PW-7, HC Sanjay Pal as PW-8, Dr. Sunil Kumar as PW-9, Rajneesh Kumar Verma as PW-10, ASI Raj Kumar as PW-11, Brij Mohan as PW-12, Surinder Kumar as PW-13, Sanjay Kumar as PW-14, Inspector Tirath Ram as PW-15, ASI Budh Dev as PW-16, Harsh Vardhan as PW-17, SI Raghbir Singh as PW-18, Inspector Sukhwinder Singh as PW-19, SI Gurdev Singh as PW-20 and thereafter closed the prosecution evidence.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating evidence appearing against the accused was put to them, in which they pleaded that they are innocent and have been falsely involved in this case. During the defence evidence, they examined Jaswinder Pal Singh as DW-1 and Dr. Lakshay Bhalla as DW-2.

After hearing the arguments, the trial Court acquitted all the three accused of the charge framed against them, which left the complainant Pardeep Kumar aggrieved, and he has approached this Court by filing appeal against acquittal of the accused bearing CRA-S-4070-SB-2015, notice of which was given to the respondents, who

have put in appearance. Whereas State of Haryana has also filed CRM-A-712-MA of 2015 seeking special leave to appeal against the judgment of acquittal.

I have heard learned counsel for the parties, besides going through the record.

Learned trial Court had formulated following points for determination :-

- 1) Whether deceased was abetted to commit suicide beyond his capacity under the act of provocation, instigation and incitement of accused facing trial, resulting into his death? OPP
- 2) Whether deceased was having no other option to survive his life except to commit suicide under extreme mental stress beyond his capacity built up by accused facing trial? OPP
- 3) Whether if above issues are proved, then prosecution has been able in bringing home the guilt against all accused for the commission of offence under Section 306 read with Section 34 IPC beyond shadow of reasonable doubt? OPP

All these points were decided against prosecution. The reasons given for the same were:-

- i) that abetment on the part of accused was not established on the record in terms of definition of abetment under Section 107 IPC;
- ii) that there was no mention of any reason in the

suicide note Exhibit P-7, stated to have been recovered from the pocket of deceased that how the accused were responsible for his death. There was no mention in the two pages stated to be recovered from the polythene bag lying near the dead body of the deceased giving details of any case lodged by the accused and further that mere pendency of litigation initiated by the accused would not amount of abetment;

iii)that it being doubtful as to whether the deceased had died while jumping in front of running train since as deposed by the train driver appearing as PW-5, Ramesh Kumar had not jumped in front of the running train rather he was walking on railway track under the influence of intoxication and due to displacement of the air got sucked in and struck against the train; and

iv)that the deceased was unduly perturbed by the litigation stated to have been initiated by the accused and he took it as an extra burden and disturbed by his own thinking level and then consumed liquor and went towards railway line down track and when the train came near due to displacement of the air and he struck against the train.

The case law on the subject has been discussed in detail in paragraph 20 of the judgment.

Paragraph 22 of the judgment is quite relevant and it is being reproduced as under:-

“22. It is thus cardinal principle of criminal jurisprudence that none is guilty until and unless his guilt is established by prosecution beyond the shadow of all reasonable doubts. Prosecution in the instant case has failed to discharge this burden upon accused in the nature of evidence adduced by the prosecution and the several dents caused to the story of the prosecution as set up by the defence and argued by the learned defence counsel go to the roots of the case and shake the story of the prosecution. Upon such a shaky story, the accused cannot be saddled with criminal liability. Surmises and conjectures appears to have taken the better of the complainant in the vain hope of credulity expected from the Court. It has thus become abundant clear that prosecution could not be able to prove all three issues burdened upon it against accused by way of coherent deposition of testimonies beyond shadow of reasonable doubts. Accordingly, all three issues are decided against prosecution.”

The judgment passed by Additional Sessions Judge,

Ambala, is based upon proper appraisal and appreciation of evidence and correct interpretation of law. Thus no ground for grant of special leave to appeal, as sought by the State of Haryana, is made out. The application in that regard stands dismissed.

Since neither the suicide of the deceased is established conclusively nor it is proved that the accused had in any way abetted the alleged suicide. Therefore, the trial Court was justified in acquitting the accused of the charge framed against them and no ground is made out for reversal of that judgment of acquittal by accepting the appeal. The appeal filed by the complainant stands dismissed.

27.4.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No