

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

Criminal Appeal No. S-81-SB of 2014 (O&M)

Date of decision : March 26, 2018

Ram Mehar and another

.....Appellants

Versus

State of Haryana

....Respondent

Criminal Appeal No. S-1314-SB of 2016 (O&M)

Pala @ Satpal

.....Appellant

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anupam Gupta, Senior Advocate with
Mr. Gautam Pathania, Advocate and
Mr. Ashok Kumar, Advocate
for the appellants (in CRA-S-81-SB-2014).

Mr. Sandeep Gahlawat, Advocate
for the appellant (in CRA-S-1314-SB-2016).

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

LISA GILL, J.

This judgment shall dispose of two appeals i.e. CRA-S-81-SB-2014 and CRA-S-1314-SB-2016 as both these appeals arise out of a common judgment and order dated 24/30.10.2013.

CRA-S-81-SB-2014 has been preferred by the appellants – Ram Mehar and Surender and CRA-S-1314-SB-2016 has been preferred by Pala @ Satpal challenging the judgment dated 24.10.2013

passed by the learned Additional Sessions Judge, Jind, whereby all the appellants have been convicted for the offences punishable under Section 306 read with Section 34 IPC. Vide order dated 30.10.2013, the appellants have been sentenced to undergo rigorous imprisonment for seven years besides pay a fine of ₹2,000/- for the offence punishable under Section 306/34 IPC and in default thereof undergo rigorous imprisonment for one month.

As per the prosecution case, a telephone call was received at Police Station Julana on 08.10.2011 from one Dharampal son of Tek Ram, who informed about the death of his sister-in-law (Bhabhi) namely Babli wife of Dalbir by hanging herself. Inspector Rohtash Singh (PW4) reached the spot and statement of Dalbir – husband of the deceased was recorded to the effect that he had three children. His wife remained unhappy for the past few days and he revealed that she was full of shame and could not even move out of the house due to this reason. Dalbir – PW1 stated that on 07.10.2011 he alongwith his wife slept in the inner room after taking meals. Their children and parents were sleeping in the outer room. His brother – Sultan and his children resided on the first floor of the house. PW1 - Dalbir stated that at about 5.00 a.m. he found his wife missing from her cot. He inquired from his father, who revealed that Babli had not gone out. There was no light at that time. Dalbir waited for his wife and ultimately found her hanging with a rope on the rafter in the cattle shed. He called his family members. It is further stated that his wife committed suicide due to shame and none is at fault. PW1 stated that the present was a chance

incident and he did not wish for action to be taken against anyone. Inquest proceedings were carried out. DDR No. 11 dated 08.10.2011 was recorded that in view of the statement of the husband of the deceased, nobody was at fault, therefore, no action was being taken. Inquest proceedings were duly signed by PW1. A Constable was sent to the spot. Photographs were taken.

It is relevant to note, at this stage, that FIR No. 143 dated 11.09.2011 for the offences punishable under Sections 365, 366, 376 (g), 506, 34 IPC was filed against the present appellants on an application submitted by the deceased on 11.09.2011. As per allegations in the said complaint the prosecutrix (deceased in this case) stated that she was married to PW1 and had three children out of the said wedlock. It is further averred that she alongwith her children and husband were sleeping in their house on 12.07.2011 when the appellants – Ram Mehar and Surender entered their house at about 12.30 midnight. They enticed and allured her besides pressuring her to leave her house. They also coerced her to take some of the gold and silver ornaments from her house and threatened her that in case she raised alarm, they would kill her husband and children. As per the said complaint, the appellants – Ram Mehar and Surender took the prosecutrix to one Yadav Hotel, Machha Diary, Gaziabad, where she was kept for 2/3 days and both of them with the help of their accomplices committed rape upon her one by one. Thereafter, the appellants told her that they were being pressurised by the police and other villagers and, hence, they would have to go to Police Station

Julana and she was pressurised to suffer a statement in favour of the appellant - Ram Mehar and other accomplices before the police and villagers to the effect that she had gone with them out of her own accord or else her entire family would be killed. It is further averred in the complaint that the prosecutrix was taken to Police Station Julana in an Indica car by Ram Mehar, Surender and two other accomplices on 17.07.2011. She was threatened to make a statement in favour of Ram Mehar and others by the family members of Ram Mehar, who were standing outside the police station. In order to save the life of her family members, the prosecutrix suffered a statement in favour of the accused persons. She was then returning home with her husband that Ram Mehar and his friends forcibly kidnapped her and threatened her husband not to inform the police. It is alleged that the appellant – Ram Mehar and his friends again took her in their car to Nizamuddin, Delhi where she was kept for about 15 days and subjected to rape. Thereafter, the appellant - Ram Mehar is alleged to have taken her forcibly to Paonta Sahib in Himachal Pradesh. Friends of Ram Mehar used to come to meet him and give him money and weapons at Paonta Sahib. Ram Mehar allegedly used to talk to his friends and family members everyday on telephone. He repeatedly threatened to kill her and her family members. His friends also used to threaten her. It is alleged that Ram Mehar committed rape upon her every day. She stated that one day Ram Mehar had gone out and she managed to call her husband by asking a neighbour for help. The prosecutrix revealed the facts to her husband, who alongwith some other villagers, reached Paonta Sahib

while looking for her. Ram Mehar allegedly fought with them and threatened to kill them but her husband somehow managed to save her from their clutches on 09.09.2011. It is stated that the appellants - Ram Mehar, Surender, their family members and friends were still troubling and harassing her as well as her family members with an intention to kill them. Legal action was, thus, prayed for against the appellants for having committed rape upon her and threatening to kill her and her family. FIR No. 143 under Sections 376, 365, 366, 506, 34 IPC was registered.

After the prosecutrix unfortunately passed away on 07/08.10.2011, her husband admittedly recorded on 08.10.2011 that none was to blame for her death and he did not seek any action against anyone. Inquest proceedings were carried out. However, subsequently an application dated 22.02.2012 (Ex. PBB) was moved before the learned Illaqa Magistrate in FIR No. 143 dated 11.09.2011 under Sections 376, 365, 366, 506, 34 IPC, registered at Police Station Julana for further investigation wherein it was alleged that the accused used to pressurise the victim directly/indirectly to withdraw the case against them. On her refusal to compromise the matter, they used to defame her and threatened to kill her as well as her family members.

It was directed by learned ACJM, Jind to further investigate the matter. Alleged suicide notice was sent for comparison with the specimen hand writing (Ex.PC) in file of FIR No. 143 of the deceased handed over by her husband. As per report of the FSL, signatures on the alleged suicide note, (photocopy of which is Ex. PA in the present

case and the original Ex.PB in the file of FIR No. 143) compared positively with those of the specimen signatures. Thereafter, the present FIR (Ex.PR/2) under Section 306 IPC was registered. As per the suicide note, the present three appellants as well as one Mussa and Ram Kumar are stated to be responsible for the death of Babli. The present appellants were arrested in this case. Mussa and Ram Kumar were found innocent.

The cause of death in this case was opined to be asphyxia due to hanging. PW10 – Dr. Vikas Phogat revealed that on 08.10.2011, he alongwith Dr. Raghubir Poonia and Dr. Sawayam Parbha conducted the post mortem of the deceased. Post mortem report (Ex. PX) was proved by him. As per the FSL report (Ex. PZ) no common poison was detected in the viscera of the deceased. Opinion regarding cause of death was proved as Ex.PY/1.

Final report under Section 173 Cr.P.C. was presented after completion of investigation against the present appellants. Charge under Section 306 read with Section 34 IPC was framed against the appellant on 09.11.2012, to which they pleaded not guilty and claimed trial. The prosecution examined as many as eleven (11) witnesses to prove its case and relied upon Exs. PA to PQ. The appellants in their statements under Section 313 Cr.P.C. denied the incriminating evidence put to them. They pleaded innocence and false implication. Three witnesses were examined in defence besides tendering documents Exs. DA to DD and Ex. D1.

Learned trial Court on considering the facts and

circumstances of the case concluded that the prosecution had successfully proved its case beyond reasonable doubt against all the appellants and convicted them for the offence punishable under Sections 306 read with Section 34 IPC and sentenced them as detailed above in the foregoing para.

Aggrieved from their conviction and sentence, the appellants have filed these appeals.

Learned senior counsel for the appellants vehemently argues that there is nothing on record to prove the guilt of the appellants in this case. There is a complete vacuum of culpability. Though it is unfortunate that the victim chose to terminate her life but at the same time there is nothing on record to prove any active or overt act or threat after the incident/incidents leading to registration of FIR No. 143, which prove the commission of the offence punishable under Section 306 IPC qua the present appellants. The complainant had himself stated in the earlier proceedings that his wife had accompanied Ram Mehar out of her own accord having illicit relations with him, therefore, the appellant cannot be connected with the alleged offence. In fact, the husband of the deceased himself at the outset in this case stated that none is responsible for the death of his wife. There is no incident proved on record during the intervening period i.e. from registration of FIR No. 143 on 11.09.2011 till the unfortunate demise of the complainant's wife to point out to an irrefutable conclusion that the appellants are guilty of the offences as charged. It is argued that though specimen signatures of the deceased taken from the Punjab

National Bank, Gatoli were available on record, there is no explanation as to why signatures/writing of the deceased on the alleged suicide note (Ex. PA) was compared with a cryptic piece of writing handed over by the husband of the deceased. Moreover, the mode of proof, it is argued, is unacceptable and illegal as the original suicide note was placed on the record of the case relating to FIR No. 143. It is a mere photocopy of the alleged suicide note which has been placed on record of this case. The report regarding the specimen signature is available on the file of the said case pertaining to FIR No. 143 and was not proved in the present proceedings. Therefore, it could not, in any case, have been read in evidence in the present case. It is submitted that PW3 Harshvardhan, Assistant Director, Forensic Science Laboratory, Madhuban, Karnal, has admitted that he has not submitted any report in the present case. It is further pointed out that PW4 Inspector Rohtash Singh though in his examination-in-chief stated that he found one suicide note (Ex. PA) when he inspected the spot on 08.10.2011, in the cross examination stated that no suicide note was found at the time statement of the husband of the prosecutrix was recorded on 08.10.2011. PW4 expressed his ignorance regarding the availability of the suicide note when the spot was photographed and photographs of the dead body were taken.

It is vociferously urged that first and foremost, recovery of the suicide note itself is suspect. Moreover, there is nothing on record to prove that the said piece of writing is indeed penned down by the deceased. This is specifically so in view of the admission of the

husband of the deceased that she was illiterate. Moreover, there is no explanation whatsoever as to why once PW8 ASI Ranbir Singh had taken specimen signatures from the Manager of the Punjab National Bank, Galoti, where the deceased had an account why comparison of the suicide note was not done with the same by the Director, Forensic Science Laboratory, Madhuban but with a cryptic writing on a scrap of paper handed over by the husband of the deceased. The said note, it is contended, cannot be taken to be the specimen handwriting of the deceased.

It is argued that there is no element of forcible abduction of the deceased by the appellants or the commission of rape upon her. She was a mature lady having three children, therefore, it is highly improbable that she would have been allured to leave the house by any of the appellants, that too alongwith valuables and jewellery and thereafter not having raised any hue and cry till she was ultimately brought back from Paonta Sahib by her husband. More so in the present case, there is nothing on record to indicate the commission of an offence punishable under Section 306 IPC.

Learned counsel for the appellant further pointed to the suggestion put to PW1 in respect to the sister of the deceased, who was married to the real brother of PW1 to the effect that sister of the deceased had also run away from the matrimonial home and was recovered from one Billu etc. PW1 stated that he did not know whether FIR No. 125 dated 24.04.2010 was registered against Billu etc. under

Sections 341, 365, 376 (g), 506 IPC or that the accused therein were

acquitted as the complainant and material witnesses resiled from their statements after taking a handsome amount as it was only a false case registered to blackmail them. The suggestion that the deceased had herself gone to Paonta Sahib out of her own free will was denied. PW1 has, however, admitted that they were challaned under Section 107, 151 Cr.P.C by the police at Paonta Sahib. It is admitted by PW1 that he swore affidavit (Ex. DD) to the effect that none is responsible for the death of his wife. It is, thus, argued that the ingredients of the offence punishable under Section 306 IPC are conspicuous by their absence.

In respect to the appellant – Pala @ Satpal, it is additionally argued that he has not been specifically named at the outset neither did husband of the prosecutrix name the said appellant in his statement before the police. Appellant – Pala @ Satpal was sought to be inculpated at a later stage without any evidence on record to indicate his complicity. It is, thus, prayed that both these appeals be allowed. Impugned judgment dated 26.10.2013 and order dated 30.10.2013 be set aside and all the three appellants be acquitted of the charge against them.

Per contra, learned counsel for the State argues that there is clear and cogent evidence on record to prove the guilt of the appellants. The victim, in this case, was first subjected to gang rape after being forcibly abducted. The victim was somehow brought back by her husband. She started residing in her matrimonial home but could not bear the shame. Therefore, she committed suicide on 08.10.2011. It is argued that both the cases i.e. the present FIR and FIR No. 143 are

intrinsically entwined, therefore, in case, the original report by the FSL has not been placed on record of this case, it cannot be of any benefit to the appellants and does not detract from the prosecution case. Impugned judgment dated 26.10.2013 is a well reasoned and logical judgment, based on proper appreciation of evidence on record, therefore, the said judgment as well as order of sentence dated 30.10.2013 be upheld.

I have heard learned counsel for the parties at length and have carefully gone through the record with their able assistance.

At this stage, it is useful to reproduce Section 306 IPC, which reads as under:-

“ Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The Hon'ble Supreme Court in **Gangula Mohan Reddy versus State of Andhra Pradesh (2010) 1 Supreme Court Cases 750** has observed as under:-

“ Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit

suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

In the case of **Gurcharan Singh versus State of Punjab (2017) 1 Supreme Court Cases 433**, the Hon'ble Supreme Court observed as under:-

“ It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.”

A careful perusal of the evidence on record reveals that the prosecution has failed to discharge the burden of proving its case against the appellants beyond the shadow of reasonable doubt. A serious doubt is cast on the prosecution version due to various reasons which are discussed in the following paras.

It is not in dispute that at the outset husband of the victim

stated that none is responsible for the death of his wife. He also submitted his affidavit (Ex. DD) to this effect. Subsequently, on an application dated 11.09.2011 (Ex. PA) moved in proceedings under FIR No. 143, further investigation was directed and the present FIR under Section 306 IPC was lodged separately against all the three appellants for the offence punishable under Section 306 IPC.

Husband of the deceased PW1 stated that on the night of 12.07.2011, his wife was forcibly taken away by the appellants - Ram Mehar and Surender while threatening him that, in case, he disclosed the fact to anyone they would kill him. PW1 stated that he was forcibly confined in a room and locked from outside. He raised alarm which attracted his neighbour, who opened the door. Both the said accused had also taken away gold and silver ornaments besides cash amount of ₹10,000/-. Number of people collected and he alongwith them went to Police Station Julana. However, the police sent them back with an assurance to take action against the accused but no steps were taken. On 17.07.2011, all the three appellants came present at Police Station Julana alongwith his wife. The matter was compromised. It was decided that his wife would reside with him and he did not pursue the matter any further. However, when PW1 alongwith his wife were returning home from the police station on 17.07.2011, the appellant - Ram Mehar forcibly took away his wife on his motorcycle. PW1 rushed back to the police station but no action was taken.

PW1 kept searching for his wife for about 45 days. He received a call from his wife from Himachal Pradesh. PW1 alongwith

7/8 people went to Paonta Sahib in Himachal Pradesh. They saw appellant - Ram Mehar on the road and chased him. They followed him into a house and discovered his wife (victim) lying on a cot in a semi-conscious state. They sprinkled water on her face. She re-gained consciousness and when they asked her to accompany them to her village, she initially refused due to fear of the appellant - Ram Mehar while stating that he would beat her and kill her. Police authorities at Paonta Sahib came to the spot and took PW1, his wife as well as Ram Mehar to the police station. They were released on the next day.

PW1 stated that after about one month of return, his wife was again found missing in the morning and he ultimately found her hanging in the room used for tying buffaloes. PW1 stated that a suicide note was recovered. He gave a specimen hand writing of his wife, photocopy of which is Ex. PC. The said suicide note was compared with the specimen handwriting given by PW1.

At this point, it is relevant to note that in his statement before the learned trial Court on 16.10.2012 in FIR No. 143, PW1 had given a different version of the incident alleged to have taken place on 12.07.2011. PW1 in the said proceedings stated that he alongwith his children were sleeping in their house on 12.07.2011. He woke up in the morning and found his wife alongwith valuables missing from home. He never saw any of the accused taking away his wife on 12.07.2011. The file pertaining to FIR No. 143 was duly summoned and PW1 was duly confronted with his earlier statement. In his cross examination in the present case, PW1 has admitted his initial statement (Ex. DA).

It is relevant to note at this stage that PW1 has admitted the proceedings under Sections 107, 151 Cr.P.C. at Paonta Sahib against him as well as appellant – Ram Mehar. The calendra (Ex. DC) is duly admitted by PW1. It is specifically stated in the said calendra that there was a quarrel due to illicit relations of the wife of PW1 with Ram Mehar. Medical examination of the (deceased) wife of PW1 alongwith others was conducted. No mark of injury or any sign of intoxication of the wife of PW1 was detected. The said medical report forms part of the calendra. It is not in dispute that PW1 brought back his wife from Paonta Sahib on 09.09.2011.

It is pertinent to note, at this stage, that vide judgment of even date all the appellants have been acquitted of the offences punishable under Sections 376(2)(g), 365, 506, 34 IPC.

Another glaring circumstance in this case is regarding the suicide note allegedly left by the deceased. In the present case, the alleged suicide note, the recovery of which in itself is suspect was available on the file of FIR No. 143. The report in respect to the said examination is also available on the file of FIR No. 143. In the present case, a photocopy of report (Ex. P1) was presented, which was objected to on the ground of admissibility. PW3 Harshvardhan, Assistant Director FSL, Madhuban has specifically admitted that he has not given any report in the present case.

Be that as it may a perusal of the record reveals that the alleged suicide note when translated reads as under:-

“ Ram Mehar, Surender, Pala, Mussa, Raj Kumar have

spoiled my life. All of them should be punished. Due to them I am dying out of shame.”

The name of the deceased is mentioned thereunder. The alleged specimen hand writing is on a scrap of paper, one fourth ($\frac{1}{4}^{\text{th}}$) of a page of a notebook. The said specimen contains a few garbled words, which do not make any sense. There is no explanation to indicate as to why the specimen signatures available at the bank, where the deceased had her account and which were duly sent to the FSL, not compared. PW1 has specifically stated that the deceased used to append her signatures while casting votes in every election. No effort was made for comparison of the same.

It is admitted that specimen hand writing (Ex. PC) does not bear the signatures of the deceased. PW1 stated that he had destroyed the diary pertaining to the specimen hand writing (Ex. PC). In contradiction to the statement of PW4 Inspector Rohtash, PW1 disclosed that his statement was recorded by the police after recovery of the suicide note (Ex. PA). No recovery of any ornaments or cash was effected from any of the appellants.

PW8 Baljit Singh ASI, in his cross examination, stated that no suicide note was recovered when the statement of the complainant - Dalbir was recorded.

PW2 Ashok Kumar, Branch Manager, Punjab National Bank, Gatoli proved that an account of the deceased was maintained in the said bank. Specimen signature form of the deceased (Ex. PF) and the receipt voucher (Ex. PG) were handed over to the police authorities.

It has been held by the Hon'ble Supreme Court in **State of Maharashtra versus Sukhdev Singh alias Sukha and others (1992) 3 SCC 700** that,

“ Before a court can act on the opinion evidence of a handwriting expert two things must be proved beyond any manner of doubt, namely, (i) the genuineness of the specimen/admitted handwriting of the concerned accused and (ii) the handwriting expert is a competent, reliable and dependable witness whose evidence inspires confidence.

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It is well settled that evidence regarding the identity of the author of any document can be tendered (i) by examining the person who is conversant and familiar with the handwriting of such person or (ii) through the testimony of an expert who is qualified and competent to make a comparison of the disputed writing and the admitted writing on a scientific basis and (iii) by the court comparing the disputed document with the admitted one. In the present case, the prosecution has resorted to the second mode by relying on the opinion evidence of the handwriting expert PW120. But since the science of identification of handwriting by comparison is not an infallible one, prudence demands that before acting on such opinion the court should be fully satisfied about the authorship of the admitted writings which is made the sole basis for comparison and the court should also be fully satisfied about the competence and credibility of the handwriting expert.”

In the present case, there is serious doubt regarding the authorship of the note taken as the specimen writing of the admittedly illiterate complainant. Therefore, in the given circumstances it would

be unsafe to place reliance on the said suicide note to convict the appellants of the offence punishable under Section 306 IPC. The other evidence on record is discrepant and shaky.

There is nothing on record to indicate any overt act, instigation or abetment by any of the appellants leading to the complainant's wife committing suicide. It has wrongly been concluded by the learned trial Court that committing of suicide by the wife of PW1 was in fact a continuation of a series of acts committed by the appellants.

As mentioned earlier the appellants vide judgment of even date have been acquitted of the charges under Sections 376 (2)(g), 365, 366, 506, 34 IPC while affording them benefit of doubt. PW1 in his testimony before the learned trial Court has clearly admitted his initial version of the incident. He was duly confronted with his statement dated 15.08.2011 and 13.09.2011 (Ex. DB/DD) wherein he has mentioned that his wife had illicit relations with Ram Mehar and had gone with him. In my considered opinion, it cannot be concluded on the basis of evidence on record that the appellants are guilty of intentionally aiding, abetting or instigating the complainant's wife in committing suicide.

Specific, substantial and tangible doubt is cast on the prosecution version. The evidence on record does not unerringly point to the guilt of the appellants. The learned trial Court has erred in convicting the appellants for the offence punishable under Section 306

IPC on the basis of the evidence on record. The appellants are entitled

to the benefit of doubt in the facts and circumstances of the case

Accordingly, both these appeals are allowed while affording the benefit of doubt to all the appellants. Consequently, impugned judgment dated 26.10.2013 and order dated 30.10.2013 passed by the learned Additional Sessions Judge, Jind are set aside. The appellants Ram Mehar, Surender Singh (in CRA No. S-81-SB of 2014) and Pala @ Satpal (in CRA No. S-1314-SB of 2016) are acquitted of the charges against them. The appellants be released forthwith in case not required in any other case.

March 26, 2018
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(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No