

226 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2313-MA-2017
Date of decision :10.09.2018

Rattan Kumar ...Applicant

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amandeep Singh Rai, Advocate, for the applicant.

RAJBIR SEHRAWAT, J. (ORAL)

This is an application seeking leave to appeal against the judgment of acquittal dated 05.08.2017 passed by the Court of Additional Sessions Judge, Hoshiarpur.

The brief facts of the case are that the FIR in the instant case was registered on the basis of the statement of complainant-Rattan Kumar. It was alleged by the complainant that on 08.07.2015, he along with his family was present in his home. At about 12:50 PM, their neighbourer Davinder Singh came to their house and told that he has received one phone call from his elder brother-Harminder Singh to the effect that Rajinder Kumar, who is younger brother of the complainant, had told him (Harminder Singh) on phone that he has consumed some poisonous substance. On receiving this information, he along with his cousin brother Yashpal, reached at the place where Rajinder Kumar was stated to be present. On reaching there, they found that Rajinder Kumar was lying in unconscious condition on a cot, outside the room of electric motor (of tubewell in the field). They took Rajinder Kumar to the hospital, where, he breathed his last. Therefore, the treating doctor declared him dead. It was further alleged

that while going to the hospital, the complainant removed the pant and shirt of Rajinder Kumar. On checking his pant, one written note was found, which was, supposedly, suicide note dated 13.04.2015. It was written in the suicide note that Rajinder Kumar Raju, the deceased, was to recover an amount of Rs.8 lacs from Rinku Suniari, the accused in this case. Despite repeated demands, the accused was not returning the money. After sometime, she stopped even picking up the phone calls of the deceased. Rather, she started threatening the deceased from mobile No. 93561-47714. Besides Rinku Suniari, another person named in the suicide note was Surjit Kumar Sodhi. Therefore, it was written in the suicide note that if something happened to the deceased, then, both these persons would be responsible. Thereafter, the poisonous substance was consumed by the deceased on 08.07.2015, as stated above. On these facts, the FIR was registered.

The prosecution led the evidence.

After appreciation of the evidence, the trial Court acquitted both the accused. It is against that judgment of acquittal that the present application for grant of leave to appeal has been preferred by the complainant.

While arguing the case, counsel for the applicant has submitted that the trial Court has gone wrong in law in not appreciating the evidence, correctly. It has been contended by the counsel that the prosecution has duly proved the case against the accused. The suicide note has been placed on record as Ex.PC. By the statements of witnesses also, it is successfully proved that the deceased was being threatened by the accused. Therefore, it is duly proved that the accused abetted the commission of suicide by the deceased by mentally torturing him, and after being fed up of their torture,

the deceased consumed the poisonous substance. Therefore, the accused should have been convicted by the trial Court.

However, this Court does not find any substance in the argument of learned counsel for the applicant.

A perusal of the judgment passed by the trial Court shows that the evidence has rightly been appreciated by the trial Court. It has been found as a fact by the trial Court, that except the allegation of the alleged harassment on the part of the accused, there is no other evidence to that effect. The only allegation against the accused is that the accused had borrowed some money from the deceased and that the accused was not returning that money. However, mere non-returning of the money borrowed by the accused cannot be taken as an instigation to the deceased, as required under Section 306 of IPC. This Court has already held in case of **CRR-669-2018; Om Parkash Vs. State of Haryana and another, decided on 06.09.2018** that there is a definite difference between the accused being a 'reason' for committing suicide by the deceased and the accused being 'responsible' for a suicide committed by the deceased. If the accused is merely a 'reason' for suicide, the accused cannot be punished under Section 306 IPC.

There has to be some positive effort or the overt act on the part of the accused, intended to invite the suicide of the deceased as a direct consequence thereof. Unless that positive effort or the overt act is alleged and proved by the prosecution, the accused cannot be held responsible for offence under Section 306 of IPC. It would be appropriate to have reference to the relevant part of the judgment mentioned above:-

“Before proceeding further it is appropriate to have reference to Section 306 IPC, which is as

reproduced herein below:-

“306. 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.”*

A perusal of this Section shows that the person accused under the Section is punished for abetment of the act of suicide by the deceased. The abetment is defined under Section 107 of IPC. It would be beneficial to have reference to this Section as well, which is reproduced below:-

“107.Abetment of a thing:--*A person abets the doing of a thing, who--*

First:- Instigates any person to do that thing; or

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; or

Thirdly:- Intentionally aids, by any act or illegal omission, the doing of that thing.”

Although Section 107 IPC deals with abetment in general, however, read in the context of Section 306 IPC, it would mean, that a person accused under Section 306 IPC can be held liable only:-

(a) If he instigates the deceased to commit suicide.

(b) If he conspires with a third person/s to lead the deceased to commit suicide, and pursuant to the conspiracy some act or illegal commission takes place on his/their part.

(c) If he intentionally aids the deceased in committing the suicide, by his act or illegal omission.

Bare reading of this section shows that it employs phrases like 'instigates', 'conspires' and 'intentionally aids'; all of which conclusively determine that there has to be a 'mens rea' on the part of the accused for making him liable for abetment of suicide by the deceased. Mere silence or inaction on the part of the accused or the accused remaining unconcerned about the problems of the deceased; is not a ground to punish the accused under Section 306 IPC; when the deceased commits suicide. There has to be a positive participation of the accused, with culpable mind, for specifically deriving the deceased to the decision of ending his life by committing suicide. This can be through positive advice or a threatful coercion, cast upon the deceased to cajole or to force him to commit suicide. The advice or coercion can be direct, as well as, through some conspiracy. Another instance where accused would be liable under Section 306 IPC is where he positively and directly participates in the process of suicide by the deceased by intentionally aiding him in committing the suicide, irrespective of the fact whether such aid is provided by him before the actual starting of the act of suicide or at the time of actual commission of suicide by the deceased. But, as observed above, in any case, there has to be an intentional and positive or the overt act to make him liable under Section 306 IPC. The positive participation or the overt act of the accused should be intended to produce as direct consequence, the commission of suicide by the deceased. This proposition is adequately clarified by the above cited judgments of Supreme Court; relied upon by the counsel for the petitioner. Therefore, there is a clear distinction between an accused being a mere 'reason' for suicide on one hand and the accused being 'responsible' for suicide on the other hand. While being merely a 'reason' for suicide

of deceased is not punishable under Section 306, being intentionally 'responsible' for suicide by the deceased, through positive participation, is very much punishable.”

In the present case, the trial Court has recorded a categorical finding that except the allegation that the accused was not returning the borrowed money to the deceased, there is not even assertion, as to any positive effort or act being done by the accused; to show that the deceased was forced to commit suicide. There is no illegality or perversity in the findings recorded by the trial Court, keeping in view the evidence led on the file.

Not only this, the trial Court has also appreciated the evidence led on file, with a view to find out if there is some reason, more than merely not returning money by the accused, which could connect the accused to the act of suicide committed by the deceased. However, the trial Court has found that PW-5 Balwinder Singh, to whom the mobile number, from which the accused are alleged to have threatened the deceased belongs, has specifically stated that he had never given sim of the mobile number mentioned above, to the accused. He has also stated that he does not know anything about the case. Therefore, it is clear that the prosecution witness itself has not supported the case of prosecution.

Qua the relevance of the alleged suicide note, written by the deceased, the trial Court has found that; assuming the writing contained therein to be true, that cannot be taken to be a sufficient act of instigation to the deceased; to commit suicide. There is a gap of about three months between the writing as contained in the alleged suicide note and the actual commission of suicide by the deceased. Hence, there is no proximity

between the writing made by the deceased; and the date on which the deceased committed suicide. Therefore, possibility of something else having intervened in between, cannot be ruled out.

Otherwise also, the alleged suicide note is not, in fact, a suicide note. It is only an advance assumption by the deceased that in case something happens to him in future, the accused would be responsible for that harm him. Since this writing does not even presuppose anything to the effect that the deceased would commit suicide, therefore, this has rightly not been taken to be a suicide note by the trial Court.

In view of the above, this Court does not find any illegality or perversity in the judgment passed by the trial Court.

Hence, finding the present petition for leave to appeal to be without any substance, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

10.09.2018
hemlata

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No