

326 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1772-SB-2004

Date of decision : July 16, 2019

Charanjit Kaur

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Deepak Aggarwal, Advocate
for the appellant.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in the instant petition is for setting aside the judgment of conviction and order of sentence dated 31.8.2004 passed by the Additional Sessions Judge-cum-Fast Track Court, Bathinda vide which the appellant was held guilty of offence punishable under Section 306 IPC and was sentenced to undergo four years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergone rigorous imprisonment for a period of one month in FIR No.22 dated 22.4.2000 under Sections 306/34 IPC registered at Police Station G.R.Ps, Bathinda.

It is worth noticing here that the sentence of the appellant was suspended on 4.11.2004 while noticing the fact that

the appellant has already undergone more than one year of actual sentence.

Brief facts of the case are that on 22.4.2000 at about 14.10 hours, a memo was received in Police Station GRPs that one man was run over and killed near fly over bridge. On receipt of said memo, ASI Raghvir Singh reached the spot and conducted enquiry. From the personal search of the deceased, a pocket diary was found in his pocket containing death note that he was Constable Bhupinder Singh, posted at Police Station Thermal, Bathinda. He was annoyed from his relative Charanjit Kaur, wife of Kamaljit Singh. The said note was taken into possession and the same was sent for registration of the case. He conducted the investigation and got the post-mortem of the dead body. Charanjit Kaur and Kashmir Kaur were joined in the investigation and were released on bail as per the orders of the Court. After completion of the investigation, challan was presented before the trial Court. The charge was framed on 18.12.2000 under Section 306 IPC, to which the accused pleaded not guilty and claimed trial. The trial Court, therefore, convicted the appellant. Hence, this appeal.

Counsel for the appellant has argued that in the FIR, which was registered on the statement of PW7 Amarjeet Singh @ Natha Singh, father of deceased Bhupinder Singh, two persons

were nominated as an accused, i.e. Kashmir Kaur, wife of deceased Bhupinder Singh and appellant Charanjit Kaur, who is real sister of Kashmir Kaur.

Counsel for the appellant has referred to the statement of PW7 Amarjeet Singh, wherein in the examination-in-chief, this witness has stated that Bhupinder Singh used to reside at Bathinda in Government quarters, at the time of his death and there used to be a dispute between Bhupinder Singh and his wife Kashmir Kaur. This witness has further stated that he was residing in village Rampura. On 22.4.2010, he received a telephone call from accused-Kashmir Kaur and she abused him. When he reached at the house of Bhupinder Singh in the government quarters at Bathinda, both the accused were quarreling with Bhupinder Singh and were abusing him. This witness has further stated that due to this reason, feeling insulted his son Bhupinder Singh committed suicide by jumping before a running train and writing a suicide note, levelling allegations against Kashmir Kaur and appellant Charanjit Kaur.

In cross-examination, this witness stated as under :-

“It is correct that Bhupinder Singh was married with Sukhpal Kaur @ Sukhi d/o Nachhattar Singh r/o village Buggar. He obtained divorce from her. It is correct that my wife had expired and I contacted second marriage with niece of my

wife. Bhupinder Singh and Rajinder Singh, took birth from the womb of my first wife. Rajinder Singh is missing for the last about 10/12 years. Volunteered, he was mentally upset. Bhupinder Singh my son used to reside at Bathinda for the last 6/7 years prior to incident along with his wife and children. His children used to study at Bathinda. I do not know if Bhupinder Singh purchased insurance policies worth Rs.50,000/- each, in the year 1999 and February, 2000. I also do not know if Bhupinder Singh nominated his wife Kashmir Kaur as his nominee. I do not know if Kashmir Kaur is also known as Jasbir Kaur. I generally, address her as Kashmir Kaur. I did not move any application to the insurance company with regard to the non-release of amount of insurance policy to the wife of deceased Bhupinder Singh.

Counsel for the appellant has further argued that there is sufficient evidence on record that Bhupinder Singh was disturbed due to various reason as admitted by PW7 that previously he married to one Sukhpal Kaur @ Sukhi and he sought divorce from her and, thereafter, he married to Kashmir Kaur. It is also admitted by this witness that even his other son Rajinder Singh was missing for the last 10/12 years as he was mentally upset and Bhupinder Singh was residing at Bathinda for the last 6/7 years prior to the incident, alongwith his wife and children, who were studying at Bathinda and deceased

Bhupinder Singh even obtained an Insurance Policy by nominating Kashmir Kaur as his nominee and he (PW7) never raised any objection with the Insurance Company for non-releasing of the amount in favour of Kashmir Kaur.

Counsel for the appellant has submitted that another witness, i.e. PW8 Rajinder Kaur, though was declared a hostile witness yet in the cross-examination he has stated that Bhupinder Singh used to take liquor and altercation used to took place between Bhupinder Singh and his wife Kashmir Kaur. Counsel has further submitted that this witness has nowhere stated that appellant Charanjit Kaur had any role in the matrimonial life of deceased Bhupinder Singh and Kashmir Kaur.

Counsel for the appellant has further argued that as per the statement of PW1 Bhagat Ram, the driver of the train, he had stated that on 22.4.2000 he was on duty and while crossing the over-bridge, no person came in front of the engine of the train engine, however, he came to know that some person was killed by train, which he was driving.

PW4 Dr. Pawan Kumar Bansal, who conducted the post- mortem has stated that a dead body was received with the information furnished by the police that a person had died in a railway accident.

Counsel for the appellant has further referred the statement of PW6 ASI Baldev Singh, who had proved the death note Ex.PK/2 written in a small diary which was recovered from the hand of deceased Constable Bhupinder Singh and he further submitted that this witness has admitted that there is over-writing of word 'Dass' and there is no date on the note.

Counsel for the appellant has referred to the statement of PW5 ASI Gurdev Singh, who was posted at Police Station Talwandi Sabo as well as PW6 ASI Baldev Singh, to argue that they, being the colleagues of deceased Bhupinder Singh, where he was posted, never stated that deceased had not recorded any statement before the police that on any previous occasion that he was disturbed by the conduct of the appellant.

Counsel for the appellant has referred to the death-note in which no specific allegations are levelled against the appellant as to how she has abated him to commit suicide, except naming her.

Counsel for the appellant has further argued that while holding the appellant guilty of offence, the trial Court has not recorded its satisfaction that the appellant has abated the deceased in a manner that he was forced to commit suicide and without recording any such satisfaction, the trial Court has held the appellant guilty.

Counsel for the appellant has relied upon **2010(4) RCR (Criminal) 66, S.S. Chheena Vs. Vijay Kumar Mahajan and another**, wherein Hon'ble the Supreme Court has held that in order to prove a charge under Section 306 IPC, the prosecution must lead an evidence that there was a positive act on the part of the accused to instigate or aid in committing suicide and in the absence of the same, conviction cannot be sustained merely on the basis of allegations of harassment on the part of the accused.

The operative part of the judgment reads as under :-

“xxx xxx xxx xxx

28. 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 that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which

happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside.

31. As a result, the appeal is allowed and the impugned judgment of the High Court is set aside.”

Counsel for the appellant has further relied upon **2010(1) RCR (Criminal) 643, Amalendu Pal @ Jhantu Vs. State of West Bengal**, wherein a similar view has been taken by Hon’ble the Supreme Court.

Counsel for the appellant has further relied upon **2019(1) RCR (Criminal) 847, Rajesh Vs. State of Haryana**,

deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.

- (9) In our considered view, in the case at hand, M.O.1-letter and the oral evidence of PW-1 to PW-5, would not be sufficient to establish that the suicide by the deceased was directly linked to the instigation or abetment by the appellant-deceased. Having advanced the money to the deceased, the appellant-accused might have uttered some abusive words; but that by itself is not sufficient to constitute the offence under Section 306 IPC. From the evidence brought on record and in the facts and circumstances of the case, in our view the ingredients of Section 306 IPC are not established and the conviction of the appellant-accused under Section 306 IPC cannot be sustained.

- (10) In the result, the impugned order is set aside and the appeal is allowed.”

Counsel for the appellant has lastly argued that on the same set of allegations and evidence, the trial Court has acquitted the wife of deceased, i.e. Kashmir Kaur, who is real sister of the appellant, despite the fact that PW7 and PW8 have stated that they had strained relationship on account of the drinking habit of deceased Bhupinder Singh and the appellant

has been wrongly convicted without there being any cogent evidence.

Counsel for the appellant has, thus, argued that in the absence of any positive evidence against the appellant that she had led any positive role which abated deceased Bhupinder Singh to commit suicide, the conviction of the appellant is not sustainable.

In reply, the learned State counsel has stated that the appellant was named in the suicide note, which was proved by PW15, Dr. Seema Sharda, Assistant Director, FSL, Punjab that the same was written in the handwriting of the deceased Bhupinder Singh.

After hearing counsel for the parties, I find merit in the present appeal. Though in the FIR, it is stated that Bhupinder Singh has levelled some allegations of harassment against the appellant, however, the prosecution has failed to lead any cogent evidence to prove that the appellant was having any direct role in abetting the deceased to commit suicide.

It has come in the statement of PW7 that the marriage of Bhupinder Singh with co-accused Kashmir Kaur was the second marriage, as he obtained divorce from his earlier wife and he has admitted that Bhupinder Singh and his wife Kashmir Kaur had dispute. This witness, who is father of deceased

Bhupinder Singh has admitted that deceased was residing with his wife and children at Bathinda and but he failed to cite any previous incident or any active participation of the appellant which led the deceased to commit suicide. In the cross-examination this witness admitted that deceased had purchased Insurance Policy in the name of co-accused Kashmir Kaur and after his death he (PW7) never raised objection releasing insurance amount in favour of Kashmir Kaur, wife of deceased Bhupinder Singh.

Even as per the statement of PW8, it has come on record that co-accused Kashmir Kaur @ Jasvir Kaur was known to her and deceased Bhupinder Singh used to take liquor and had altercation with his wife Kashmir Kaur. This witness has nowhere stated that the appellant, being sister of Kashmir Kaur has ever interfered in their matrimonial life.

In view of the judgment of Hon'ble the Supreme Court in **S.S. Chheena's case** (*supra*), the prosecution has failed to lead any evidence to show that the appellant had a positive act to instigate or aid Bhupinder Singh to commit suicide.

Even further, the prosecution evidence is also silent to explain any words uttered by the appellant which may have abated the deceased to commit suicide. The only allegation in the suicide note that he was dying because of appellant Charanjit

Kaur, without giving any previous incident or any action of the appellant, cannot be taken as abetment to commit suicide as even PW7, father of the deceased, has not uttered any word in his examination-in-chief against the appellant. Therefore, in view of the judgment of Hon'ble the Supreme Court in **Rajesh's** case (*supra*), no offence under Section 306 IPC is made out.

Apparently, the allegations levelled by both PW7 and PW8 are against co-accused Kulwant Kuar, the wife of deceased Bhupinder Singh, that they had strained relationship on account of drinking habit of Bhupinder Singh, therefore, the trial Court has recorded a finding that and no offence under Section 306 IPC is made out against Kashmir Kaur, wife of Bhupinder Singh. Thus, in view of the same, I find that the trial Court has erred in convicting the appellant Section 306 IPC on basis of same evidence.

Resultantly, the present appeal is allowed and the impugned judgment of conviction and order of sentence dated 31.8.2004 passed by the Additional Sessions Judge-cum-Fast Tract Court, Bathinda, is set aside.

(ARVIND SINGH SANGWAN)
JUDGE

July 16, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No