

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-2008-SB of 2004

Date of Decision: May 31, 2019

Sajjan Kumar

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant

Mr. Arun Beniwal, DAG Haryana

Sudhir Mittal, J.

On account of the unnatural death of Suresh Kumar son of Satbir Singh— complainant which took place on the night intervening 7/8.10.2003, a complaint Ex. PJ was given to the police resulting in registration of FIR No. 116 dated 08.10.2003 at Police Station Uklana under Sections 306, 377 of Indian Penal Code (45 of 1860) (for short 'IPC'). On conclusion of the trial, the appellant was convicted under both the provisions of the Code and sentenced to undergo RI for 10 years and to pay fine of Rs. 5000/-, in default of payment of which to further undergo simple imprisonment for two months for the offence under Section 377 IPC and RI for 10 years and to fine of Rs. 5,000/-, in default of payment of which to further undergo SI for 2 moths for the offence under Section 306 IPC. The sentences have been directed to run concurrently.

2. The case of the prosecution as is evident from the complaint Ex. PJ is that the complainant Satbir Singh is an agriculturist. He had a son named Suresh Kumar who was about 20 years old. After dinner at 07.10.2003, he went to bed and in the morning on 8.10.2003 his chachi Darshna Devi discovered his dead

body when she went to serve him tea. The time was around 6.15 a.m. Both the complainant Satbir Singh and his younger brother Krishan (husband of Darshna Devi) went to check and found Suresh Kumar lying dead. They assumed that he suffered heart attack and cremated the body at around 9.30 a.m. Their telephone rang at around 10.00 a.m. but it was disconnected by the caller when the receiver was picked up. A letter was found lying next to the same which was in the handwriting of deceased Suresh Kumar in which he had implicated Sajjan doctor – appellant for sodomizing him and photographing the act. The note states that deceased Suresh Kumar usually complained of headache and that Sajjan doctor was on good visiting terms with the family. On a particular day nobody was at home and he called Sajjan for medication. Sajjan gave him sedative pills and sodomized him. This went on for about four years. Presently, he had asked the deceased to stay with him for two days and he had decided to go and stay with him on the pretext of taking a test. The plan, however, did not work as his uncle decided to accompany him. This was informed to Sajjan who asked the deceased to come to Uklana instead of Hisar. When he reached Uklana he struck a deal for Rs. 30,000/- with five persons and handed over the deceased to them. All of them tore his clothes and tried to outrage his modesty but he managed to escape. A scooterist gave him a lift and he came home. He was committing suicide as he could not disclose the truth to his family and that Sajjan should be punished. This letter has been treated as suicide note and dying declaration and the appellant has been convicted accordingly.

3. During trial, the complainant appeared as PW-7 and turned hostile. He failed to identify the note Ex. PM allegedly written by his deceased son. He also failed to identify the handwriting thereon. When the complaint Ex. PJ was put to him, he stated that the police had taken his signature on a blank paper. Chachi Darshna Devi appeared as PW-8 and also resiled. The younger brother of the complainant namely Krishan Kumar appeared as PW-9 and deposed on the lines of

PW-7 and PW-8. The handwriting on the suicide note Ex. PM was got compared with the answer sheet which was written by the deceased in 10+2 examination held in the year 2003, which is Ex. PB on record. The report in this regard received from Forensic Science Laboratory, Madhuban is Ex. PZ on record, according to which the handwriting on the suicide note is that of deceased Suresh Kumar.

4. Learned trial Court has convicted the appellant by holding that the suicide note stands proved as the defence has not been able to lead any evidence to displace the opinion of the handwriting expert. Accordingly, the contents thereof have been treated to be a dying declaration and it has been held that the deceased committed suicide on account of the fact that he was being sodomized by the appellant. The law regarding circumstantial evidence has been relied upon to return a finding of conviction.

5. Learned counsel for the appellant submits that the suicide note Ex. PM has not been proved in accordance with law. The opinion of handwriting expert can not be treated to be conclusive evidence and keeping in view the fact that the father, uncle and aunt of the deceased have refused to identify the handwriting on the suicide note Ex. PM, it has to be held that the same was not proved in accordance with law. That being so, the contents thereof can not be read into evidence and, hence, it could not be held that the deceased had been -

(a) sodomized by the accused and blackmailed and

(b) the deceased had committed suicide.

The conduct of the family members of the deceased has been contrary to the usual conduct that is expected of close relatives when they discover the dead body of a family member. Instead of getting the body medically examined, the same was cremated within about 3½ hours of its discovery. This conduct is suspicious and the trial Court has failed to take the same into consideration. The emergence of the suicide note immediately thereafter strengthens the suspicion against the case of the prosecution. Had the suicide been written by the deceased, the same

would have been normally found in his bedroom but in this case note has been allegedly found near the telephone which in a village household is likely to be kept at a central place. The prosecution case is not fool proof and the appellant is entitled to be acquitted.

6. Learned State counsel supports the impugned judgment and submits that the trial Court has not committed any illegality by convicting the appellant. The suicide note Ex. PM stands fully proved and that being so, it had to be held that the appellant performed sexual intercourse with the deceased against the order of nature and, thus, abetted his suicide.

7. The present case is one of circumstantial evidence. There is no direct evidence of the appellant having been sodomized by the deceased or having blackmailed him on the basis thereof. Similarly, there is no direct evidence of suicide. As noticed earlier the relatives of deceased Suresh Kumar, cremated his dead body within 3-3 ½ hour of its discovery and did not get it medically examined. Thus, can it be held that the prosecution has been able to prove its case beyond reasonable doubt on the basis of circumstantial evidence?

8. For basing a conviction on circumstantial evidence, it is now settled that the circumstances should be such that they only lead to a conclusion of guilt and nothing else. They should be consistent in nature and not explainable. This means that the circumstances should not give rise to any other possibility except that of guilt of accused and the chain of circumstances should be so complete that the innocence of the accused is ruled out completely. The trial Court has also relied upon the aforementioned exposition of law by placing reliance upon ***Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 SC 1622***. However, it has failed to apply the aforementioned principles of law correctly.

9. The various undisputed circumstances of this case are -

(a) dead body was discovered at about 6.15 a.m. on 08.10.2003;

(b) it was cremated on the same day at around 9.30 a.m. without

medical examination;

(c) suicide note Ex. PM was discovered at around 10.00 a.m. on the same day near the telephone;

(d) the suicide note was got forensically examined and the report of the FSL Ex. PZ opines that the same is in the handwriting of the deceased;

(e) The relatives of deceased Suresh Kumar failed to recognize the handwriting on the suicide note Ex. PM as his handwriting;

(f) the appellant was about 30 years of age in the year 2004 when his statement under Section 313 Cr.P.C. was recorded;

(g) No evidence had been led by the prosecution to establish that the appellant used to indulge in practise of medicine; and

(h) the deceased was prone to suffering from headache.

10. Taking these circumstances together, a finding of guilt can not be returned. To start with the conduct of the relatives of deceased Suresh Kumar is extremely unnatural. A young boy of 20 years allegedly passed away in sleep and his relatives assumed that he died due to a heart attack can not be digested. Immediately thereafter, a suicide note surfaced and that too near the telephone which in a village household would normally be at a central place accessible to all family members. If the deceased had committed suicide, it is not likely for him to have moved out of his bed room to place the suicide note near the telephone. It is now well settled that the opinion of handwriting expert is not conclusive in nature. It is only in the nature of opinion evidence and where the close relatives failed to recognize the handwriting, it can not be said that a document containing the handwriting stood proved. Further, if the prosecution wanted to rely on the suicide note, it should have attempted to establish that the appellant was involved in practising medicine or was generally relied upon by the villagers for treating

minor ailments. Further, the prosecution should have also led evidence to show that the deceased was prone to suffering from headache. Thus, if all the circumstances are taken together, it can not be said that the prosecution has been able to prove its case beyond reasonable doubt. The prosecution has not been able to prove that this was a case of suicide and that the appellant had been sodomizing the deceased for about four years prior to his death and blackmailing him on the basis thereof.

11. The appeal is, accordingly, allowed; the impugned judgment of conviction and order of sentence passed by Additional Sessions Judge, Hisar, is set aside and the appellant is acquitted of the charge framed against him.

12. Copy of this judgment be sent to the Court/Successor Court of the trial Court concerned for compliance.

May 31, 2019
reena

[SUDHIR MITTAL]
JUDGE

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