

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2371-SB-2018(O&M)

Date of Order: 03.10.2019

Krishna Devi and another

..Appellants

Versus

State of Haryana

..Respondent

CRA-S-1964-SB-2018

Aman

...Appellant

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Ghai, Sr. Advocate, with
Mr. J.S.Mehndiratta, Advocate,
for the appellants.

Mr. Manish Bansal, DAG, Haryana.

ANIL KSHETARPAL, J.

By this judgment, CRA-S-2371-SB-2018 and CRA-S-1964-SB-2018 shall stand disposed of, arising from a common judgment passed by learned Additional Sessions Judge, dated 30.03.2018 in Sessions Case No.33 of 2015 in FIR No.391, dated 17.06.2013 under Sections 306/506/34 IPC, Police Station Jhajjar.

Facts of the prosecution case which culminated into trial are that on 16.06.2013, an information was received by the Investigating Officer from Government Hospital, Jhajjar that late Sh. Ram Niwas is admitted.

When the Investigating Officer reached, he was informed that late Sh. Ram

Niwas has been referred to PGIMS, Rohtak. On 17.06.2013, he received information from PGIMS, Rohtak, that late Sh. Ram Niwas had died. On reaching there, a complaint was moved by Sunder Lal, father of late Sh. Ram Niwas, Ex.PW1/B. It was stated in the complaint that he is resident of village Sikanderpur and the appellants Smt. Krishna Devi, Pawan Kumar, Aman Kumar have threatened his family with dire consequences. They have been causing hindrance in the road by parking their vehicles just in front of the gate and as and when they come out, the appellants are in the habit of quarreling with the complainant and his family members. Appellants had threatened to finish his entire family. Smt. Krishna Devi is a quarrel some lady due to which anything can happen. His son late Sh. Ram Niwas had committed suicide on account of continuous teasing and quarrels by the appellants. Krishna Devi also moved an application alleging the offence of theft has been committed by his family and she has also threatened to implicate the family in a false case. She remained Sarpanch for three tenures but was dismissed from the post of Sarpanch and the Police had locked her premises. She has also been threatening to falsely implicate his son late Sh. Ram Niwas in a false rape case. Due to the threats, his son late Sh. Ram Niwas has consumed poisonous liquid . Hence, action be taken.

Suicide notes Ex.P1 to Ex.P6 were alleged to have been taken in possession by the Investigating Officer from the pocket of the deceased. Inquest proceedings were carried out. Post mortem report is Ex.PW11/D.

On completion of the investigation, police report was submitted in the Court and copies thereof were supplied to the accused free of cost.

Learned Chief Judicial Magistrate committed the case to the Sessions.

Charge under Sections 306/506/34 IPC was framed and the appellants pleaded not guilty and claimed trial.

Prosecution examined as many as 14 witnesses in evidence. Statements of the accused under Section 313 Cr.P.C. were recorded. In defence, accused examined DW1 Sunil Kumar, DW2 Punit, DW3 Kuldeep Kumar and DW4 Deepak Kumar.

This court has heard learned senior counsel for the appellants as well as counsel representing the State and with their able assistance carefully gone through the judgment under appeal passed by the learned Additional Sessions Judge and the record.

Learned senior counsel appearing for the appellants has submitted as under:-

- (1) Even if the allegations in the suicide notes are, for arguments sake, taken as gospel truth, still offence under Sections 306/506/34 IPC is not made out;
- (2) The prosecution has failed to establish that the alleged suicide notes Ex.P1 to Ex.P6 are in the handwriting of the deceased;
- (3) The appellants are residing in Delhi for the last 25-30 years as admitted by Mukesh Kumar, brother of the deceased;
- (4) There was civil litigation between the family of the first informant and father of the appellants;
- (5) Appellants are closely related and the prosecution has failed to establish motive;
- (6) Late Sh. Ram Niwas was studying and used to

remain depressed as he could not clear examination in the result announced on 03.06.2013 wherein he got re-appear in one subject. The motive for false implication of the appellants is established on the file because on the complaint of appellant-Krishna Devi, proceedings under Sections 107/151 Cr.P.C. were initiated against Ram Niwas, Naresh Kuar, Ramesh son of Sunder Lal, on 02.05.2013 and a civil suit for possession by way of partition and permanent injunction filed by the first informant on 18.09.2012 against the appellants was pending;

- (7) Suicide note has many cuttings/over writings at many places.

On the other hand, learned counsel for the State has defended the judgment and has stated that the prosecution has proved its case beyond shadow of reasonable doubt and the judgment passed by the learned Additional Sessions Judge does not require interference.

First application on the basis whereof FIR was registered is Ex.PW1/B submitted by Sunder Lal, father of the deceased. This application has been filed against Krishna Devi, Pawan Kumar and Aman Kumar. The basic allegations in the application are that they threatened to eliminate the entire family. Appellants park their car in front of house of the family of first informant and ready to pick up fight whenever they come out of the house. Krishna Devi has bad intentions. His son had committed suicide due to this dispute. Krishna Devi had given application against his

family members, alleging false theft and is threatening to implicate the entire family in the case of theft and she is also threatening to involve my son in a false rape case.

It is required to be noticed here that Sunder Lal has 3 sons. Mukesh Kumar (eldest son-practicing advocate), Naresh Kumar and Ram Niwas deceased (who was the youngest). He is alleged to be studying in the course Bachelor of Arts Part-I. He is alleged to be minor at the time of death. A reading of application Ex.PW1/B, the allegations are that the accused are threatening to finish the entire family. Sunder Lal did not specifically alleges that Krishna Devi-appellant was allegedly threatening to falsely implicated in the false case of rape which of his son.

Now let us examine the alleged suicide note.

This suicide note is written on 3 different pieces of papers-rule sheets. By and large the contents of each rule sheet is same, however, there are slight variations. On careful perusal of the alleged suicide note, it is apparent that there are cutting, over writings in large number. No evidence has been led that who had carried out these cuttings and over writings. In short, if the contents of all the 3 suicide notes are summarized, the allegations are as under:-

1. *Krishna Devi, her 2 sons, daughter and daughters-in-law damaged our passage on 29.5.2013 and gave us beatings. Threatened to kill us. Police did not take any action.*
2. *During medical examination I was beaten up by them.*
3. *On 31.05.2013 doctor prepared medical of his private parts only. Police did not record our statements.*

4. *On 30.05.2013 police found them beating us at our house but no action was taken against appellants and others. We informed police by calling at number 100 but no one came to our house.*
5. *They dug up foundation for constructing a wall.*
6. *They gave me beatings on 03.06.2013 and went to Delhi.*

On careful reading of the aforesaid suicide note, it is clear that the allegations of instigation to the suicide are missing so as to make one a case of offence under Section 306 IPC. Still further, as alleged record of medical examination of the deceased on 31.05.2013 has not been produced.

In order to prove suicide note, prosecution produced 2 note books allegedly written by the deceased. As per Ex.PW1/C, the memo prepared at the time when note books were taken into possession, it is apparent that 2 note books were taken into possession. The aforesaid memo re-possession of the note books shows that there is cutting in the date where the signature are appended by the Investigating Officer. It appears that initially it was written as 17.06.2013 which after over writing has been converted into 21.06.2013. Both the note books which were taken in possession are not part of the file. Only few loose rule sheets Ex.P7 to Ex.P17 are part of the record. No explanation is forthcoming as to why these loose rule sheets were separated or torn from the alleged two note books. In order to prove that Ex.P7 to Ex.P17 are in the hand writing of the deceased, there is an oral evidence of Mukesh Kumar, brother of the deceased, who is practicing Advocate is available. No effort was made by the prosecution to send authentic hand writing of the deceased for comparison with the hand writing on the alleged suicide notes. Undisputedly, deceased was studying.

He must be appearing in various examinations held from time to time. Prosecution ought to have made an effort to bring on record some authentic hand writing of the deceased appearing in those examination papers or from other material.

Now let us discuss the oral evidence.

Mukesh Kumar has appeared as PW1. He states that his deceased brother, when admitted in Government Hospital, Jhajjar in critical condition, displayed suicide note to the Media and revealed reasons for committing suicide. This entire incident was recorded on a compact disc which was handed over to the police. In cross-examination, he deposes that he does not remember exact date of birth of the deceased. He goes on to state that his brother had passed 12th standard examination. However, on being specifically asked, he states that he has no knowledge as to whether his deceased brother had got re-appear in one subject in the result declared on 03.06.2013 i.e. 13 days before the date of suicide. He has further stated that he does not know as to whether his father and others including his deceased brother were challaned under Sections 107/151 Cr.P.C. on the application of Krishna Devi. He admits that civil suit filed by his father Sunder Lal against the accused persons is pending. Imarti Devi, aunt of the deceased has also filed a suit against him in the year 2003. He admits that they never moved any complaint regarding threats being given by the accused to the police. Although, he states that Krishna Devi had moved an application to the police complaining theft. He admits that family of Krishna Devi resides in Delhi for the past 25-30 years. He denied the suggestion that he had sold earth (mud) to the contractor and Krishna Devi had filed a complaint regarding selling of the earth(mud).

From the reading of the evidence, it is apparent that Mukesh Kumar is not a truthful witness. He on being confronted, denied that his father and others including Ram Kumar were challaned by the police under Sections 107/151 Cr.P.C.. He was specifically asked as to whether his mother and wife of Kishan Pal belong to the same village, initially he denied but thereafter admitted in the cross-examination recorded on 03.04.2017. He further admits that their family and family of Krishna Devi were not having visited terms. He even refused to identify his signatures on the written statement filed in the civil suit. He goes on to state that cupboard of the accused persons is not lying with them, although, in the application Ex.PW1/B, it has been stated that when their families were joint, a cupboard in which Krishna Devi had kept her record was placed in the room and thereafter police had locked that room. Hence, the evidence of Mukesh Kumar cannot be relied upon to convict the appellants.

Next material evidence is of Jaage Ram, who has been examined as PW8. He has stated that he got the information telephonically through some unknown number that his nephew Ram Niwas son of Sunder Lal has consumed some poisonous substance and when he went at the place, Ram Niwas told him that he has consumed poisonous substance due to his aunt and her sons. In cross-examination, when he was asked about the details of his mobile number on which he received information, he has stated that he does not know his mobile number. He admits that he has come from Delhi today and is residing at that place these days. He admitted that he owns a house at Delhi built 15 years ago. He further state that he had started using mobile for the last 1½ months from the date of recording statement and before that he did not keep/use the mobile phone. He has stated that the

phone was received about the occurrence by Krishan Pal who had informed him that some unknown person had called him regarding the incident. He was specifically given suggestion that he was deposing because he was having enmity with Krishna Devi as she did not favour him when she was Sarpanch. Although, he admits that he had a civil litigation with Sibbal son of Badaam regarding land for which application in the Panchayat was moved when Krishan Devi was Sarpanch.

Next important evidence is of Jai Singh, Investigating Officer, who has appeared as PW11. He has deposed that on receipt of information when he went to Government Hospital, Jhajjar and came to know that Ram Niwas has been referred to PGIMS, Rohtak. Hence, he went back and on the next date i.e. 17.06.2013 he received information from PGIMS, Rohtak, that Ram Niwas had expired and thereafter reached Rohtak. He has stated that Sunder Lal moved a complaint which is Ex.PW1/B and thereafter he searched the body of the deceased-Ram Niwas and found suicide note from the pocket of deceased's shirt which he was wearing. He admits that Mukesh Kumar had handed over two note books containing hand writing of the deceased which was taken into possession vide memo Ex. PW1/C. He goes on to admit that Mukesh Kumar had also produced before him a compact disc which was taken into possession but he never took trouble to see that what is contained therein. He further admits that Krishna Devi had handed over some documents but he had taken them in possession. However, when further cross-examined he has stated that the documents which were taken into possession were submitted by the counsel for Krishna Devi in the Court at the time of hearing of the bail application. He admit that the medico legal report of the deceased-Ram Niwas prepared by the

doctors at Government Hospital, Jhajjar is not on judicial file. He further admit that he did not join any doctor or any independent witness at the time of recovery of alleged suicide note. He further admits that all accused are residing in Delhi.

On careful examination of the evidence, the prosecution has miserably failed to prove its case beyond shadow of reasonable doubt. The alleged suicide notes have not been proved to be in the handwriting of the deceased in accordance with law. There is no explanation that where are those note books which were taken into possession by the Investigating Officer. There is also no explanation as to why the medico legal report of Government Hospital, Jhajjar, has not been produced when as per the case of the prosecution deceased was first taken to Government Hospital, Jhajjar. Further, the ingredients of Section 306 Cr.P.C., are not fulfilled in the present case. As per the suicide note, on 29.05.2013, 30.05.2013 and 31.05.2013 he along with his family members were beaten up by the appellants. The suicide is on 16.06.2013. No reason is forthcoming as to why only the deceased took this extreme step, although, he was youngest son of Sunder Lal. Still further allegations made in the complaint Ex.PW1/B, particularly referring to parking of the vehicle-car in front of their gate by the accused and allegations of Smt. Krishna Devi, appellant had threatened to involve Ram Niwas into false rape case are not part of the alleged suicide note. The alleged suicide notes which are 3 separate rule sheets contain by and large same allegations, however, there are some differences. In Ex.PW1/B, deceased has alleged that accused have dug a foundation of the wall which is not in the other 2 alleged suicide notes. In Ex.P5, it is alleged that brother Mukesh Kumar, Advocate, has lodged a

police report, which is missing in other two suicide notes i.e Ex.P1, PW2, PW3, PW4. Even, medico legal report of the deceased on 30/31.05.2013 has not been produced. On careful reading of the statement of Mukesh Kumar, it is apparent that he nowhere alleges that the accused have the (damaged) floor of the street through which they pass.

There is a mystery as to how and when the alleged suicide note was written and recovered. Jagge Ram, the witness of alleged oral dying declaration, does not state anything about the suicide note. Had there been any suicide note, Jaage Ram would have mentioned about it in his testimony. He categorically admitted in his cross- examination that he had not stated before the police that the suicide note was in the pocket of the deceased. He, however, states that he saw the suicide note at Civil Hospital, when it was shown to the doctor. Had this fact been true, the suicide note would have found mentioned in the FIR, which has been got registered by Sunder Lal, father of the deceased. It has been stated by PW1 Mukesh that the suicide note was shown to the media and a CD was prepared. However, the prosecution did not examine any person from the media to prove the said fact. The CD was also not proved by the prosecution. It is further pertinent to note here that if the suicide note had been recovered from the pocket on the same date, the Investigating Officer would have mentioned the said fact in the FIR itself. The alleged suicide note does not even mention the place or the date, where it was written. It has also not been attested by the doctor.

As per the allegations levelled by the prosecution, the ingredients of Section 305 IPC are missing in the present case. As per settled position in law, the essential ingredients for attracting the offence of Section 305

IPC are intention of the accused to aid or instigate or abet the deceased to commit suicide. Definition of Section 305 of the Indian Penal Code, 1860 has to be read in conjunction with Section 107 of the Indian Penal Code, 1860.

It has been held by the Hon'ble Supreme Court of India in a long line of binding precedent that unless the intention of the accused to aid, instigate or abet the deceased to commit suicide is there, the rigors of Section 306 or 305 of the Indian Penal Code, 1860 would not be attracted.

In view of the aforesaid reasons recorded, this Court is of the view that prosecution has miserably failed to prove its case beyond shadow of reasonable doubt.

Hence, both the appeals are allowed. Judgment of conviction of the appellants in both the appeals are set aside.

03th October , 2019
nt

(ANIL KSHETARPAL)
JUDGE

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