

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

CRM-A-182-MA-2016 (O&M)

Date of decision : 12.04.2019

Savitri Devi

...Applicant/Appellant

Versus

Raju and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rajesh Sethi, Advocate and
Ms. Paramjeet Deol, Advocate and
Ms. Sukhpinder Kaur, Advocate and
Mr. Arun Biriwal, Advocate for the applicant/appellant.

ANIL KSHETARPAL, J.

Leave to appeal has been sought against the judgment dated 23.11.2015 acquitting the accused under Sections 306, 34 of the Indian Penal Code.

The aforesaid case was initiated on the complaint of Savitri Devi who had alleged that her son Kundan Lal had committed suicide on 20.01.2009 on the abetment of the accused. The suicide note is alleged to have been found after a period of three days from the date of death in the cupboard.

Prosecution in order to prove its case examined PW1 Dr. Jagdeep Aggarwal, Medical Officer, General Hospital, Sirsa, PW2 Savitri Devi, complainant, PW3 Constable Surender Singh, PW4 Prithvi Singh, brother of the deceased and son of the complainant, PW5 Anil Kumar Gupta whereas accused apart from having been examined under Section 313 of the Code of Criminal Procedure also examined DW1 Balbir Singh Bhamboo, Chief Manager, State Bank of India, Ellenabad, DW2 Head Constable Sumit Kumar, DW3 Jagdish Sharma, DW4 Babu Lal, DW5 Deputy Superintendent of Police,

Daljit Singh.

On appreciation of evidence, the learned Additional Sessions Judge, Sirsa held that the allegations leveled by the prosecution had not been proved beyond reasonable doubt. The learned Sessions Judge has recorded following reasons:-

- 1) The prosecution has failed to prove that handwriting of the deceased who alleged to have wrote suicide note has not been proved.
- 2) Cogent evidence which corroborate the version of the prosecution i.e. accused were harassing the deceased before death has not been led.
- 3) There is no document to support the version of the complainant that she had advanced a loan of ₹1,02,000/- to the accused.

This Court has heard learned counsel appearing on behalf of the applicant/appellant and with his able assistance gone through the impugned judgment passed and the record.

Learned counsel for the applicant/appellant has submitted as follows:-

- A) At the stage of grant of or refusal of leave to appeal, only prima facie case is to be seen.
- B) The investigation by the police was not proper.
- C) The learned Additional Sessions Judge decided the case in a casual manner.
- 4) No evidence of the witnesses produced by the prosecution has been discussed.

As regards first argument of the learned counsel for the appellant, it may be noted that the judgment passed by the Court acquitting the accused can only be interfered with if the complainant/author of the FIR or the State

establishes before the Court that the judgment under challenge is result of perversity or non-consideration of substantive material evidence or substantive non-reading of material evidence or there is any material irregularity effecting the merits of the case. The notice in the application for leave to appeal cannot be issued in every case. Accused who has already faced trial for number of years cannot be called upon once again to defend the appeal unless it is established that the parameters enabling this Court to interfere with the judgment under appeal, stand fulfilled. In the present case, although learned counsel appearing on behalf of the appellant made sincere attempt, however, could not draw attention of the Court to any reason or ground which may enable the Court to entertain and grant leave to appeal.

As regards second arguments, it may be noted that initially police after investigation had filed/submitted a cancellation report. Complainant lodged protest petition and it is thereafter the case was tried in which neither the state agency nor the complainant could prove the guilt of the accused beyond reasonable doubt. Learned counsel appearing on behalf of the appellant but for making submission could not draw attention of the Court to the facts or the evidence from which prima facie it can be concluded that the investigation by the police was not proper.

As regards second reason, the learned Additional Sessions Judge has noticed the oral as well as documentary evidence and thereafter gave its own reasons to pass a judgment which of course went against the prosecution. Therefore, it cannot be said that the trial Court adopted a casual approach. Let us remind ourselves that accused in a criminal case cannot be punished unless guilt of the accused is established beyond reasonable doubt. Thus, this Court does not find that the judgment passed by the learned Additional Sessions

Judge is erroneous.

Last argument of learned counsel for the appellant is also factually incorrect. Learned Additional Sessions Judge/trial Court has noticed and extracted gist of statements of all the witnesses which were examined by the prosecution. After noticing the evidence given by both the parties, the Court proceeded to note the contentions of each of the counsel and thereafter discussed what has been stated by each of the witness. In para 13, evidence of PW4-Prithvi Singh as also PW5-Anil Kumar Gupta has been discussed. In these circumstances, it cannot be said that the learned Additional Sessions Judge has not referred to the oral evidence of the prosecution.

Still further, it may be noted that late Sh. Kundan Lal was admittedly having a matrimonial dispute, cause whereof is alleged to be the accused. Apart from that, late Sh. Kundan Lal was involved in a criminal case of cheating as FIR No.219 dated 10.12.2008 registered against him and his effort to secure a pre-arrest bail did not bore fruit as the same was dismissed on 17.01.2009.

It may be noted here that prosecution in the present case has failed to establish beyond reasonable doubt that the accused are guilty of the offence alleged to have been committed.

For the reasons recorded above, there is no ground to grant leave to appeal. Accordingly, application for grant of leave to appeal is dismissed.

12.04.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No