

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-1430-MA-2017 (O&M)

Date of decision: 04.07.2019

Surmukh Singh

..... Applicant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kirpal S. Thakur, Advocate
for the applicant.

ANIL KSHETARPAL, J.(ORAL)

Application for leave to appeal under Section 378(4) of the Code of Criminal Procedure has been filed against the judgment of acquittal passed by the learned Sessions Judge, Rupnagar.

The relevant findings arrived at by the learned Sessions Judge are is extracted as under:-

“22. So, keeping in view the aforesaid law and the findings of the Hon'ble Punjab and Hayana High Court in Basti Ram's case (supra) one thing is very clear that even if the act of the accused towards the deceased may be insulting and abusing, that is not sufficient to constitute abetment of commission of suicide unless it is reasonably capable of suggesting that accused intended by such acts consequences of suicide. In the present case, right from the date of lodging FIR on first information statement Ex.PW1/A, it is case of the complainant that the deceased telephonically informed him that he was going to commit suicide because of having felt insult due to beatings given to him by accused Avtar Singh at the instance of his wife Sarabjit Kaur. There is nothing in his statement that the deceased in any manner told him that

there was any kind of mens rea on the part of the accused to insult him so as to lead him to commit suicide. Such beatings also cannot be said to have been given to the accused by the accused without any reason because it has been established on record that the deceased had been beating his wife i.e. Sarabjit Kaur (A2) in an inebriated state being addict, due to which she left his company along with her children and went to her parents house. It is also established on record that a compromise was struck, according to which deceased was to go to the house of his in-laws to take back his wife and children on 18.5.2016 i.e. one day before he disclosed to the complainant about such beatings. It has been further established on record that accused went to the house of his in-laws in an inebriated state, due to which his wife i.e. accused Sarabjit Kaur refused to accompany him. It was but natural for accused Sarabjit Kaur to refuse because the deceased was not in fit state of mind. Even in his examination-in-chief PW-3 Harpal Singh Sarpanch, who was mediator regarding such compromise, has deposed that the deceased was a habitual drunkard. He used to beat his wife Sarabjit Kaur in drunkard condition. Thus, he (PW3) intervened and a settlement was arrived, according to which deceased undertook not to consume liquor and in such circumstances, Sarabjit Kaur became ready to go with him. It was settled that on 18.5.2016, the deceased would go to the house of his in-laws at 3-00 PM to take back Sarabjit Kaur, but he went there in drunkard condition and at about 7-00 PM, he (PW-3 Harpal Singh) received message from family of in-laws of the deceased that he came to take back Sarabjit Kaur in such condition and thus, they refused to send her with him. During his cross examination, he further deposed that it was intimated to him that deceased was fully drunk at that time. Similarly, PW-4 Nagar Singh also deposed that the deceased was a drunkard and used to beat his wife and therefore, his mother-in-law had taken Sarabjit Kaur to her house. So, keeping in view such state of affairs even refusal of Sarabjit Kaur to accompany the deceased was on valid reason and if the deceased felt annoyed or insulted, it was the outcome of his own mind, but

otherwise no mens rea can be attributed to any of the accused.

23. *So far as the oral dying declaration of the deceased to PW-1 Surmukh Singh about receipt of beatings at the hand of accused Avtar Singh at the instance of accused Sarabjit Kaur is concerned, the same is not believable because, it has not been corroborated from the medical evidence on record. As per postmortem report not even a single mark of superficial injury was detected on the dead body at the time of postmortem examination. It was a simple case of drowning. Had there been any such beatings of the deceased, the dead body must have borne some sort of marks of injury. So, such medical evidence has also ruled out any such thrashing of the deceased at the hands of the accused so as to lead him to feel insulted at their hands giving him a cause to commit suicide. The entire conversation recorded by PW-1 Surmukh Singh is about the going of the deceased to the house of the accused to take back Sarabjit Kaur and their refusal to send Sarabjit Kaur with him, which does not in any manner prove any of the ingredients, as stated above, so as to prove charge of abetment against both the accused. Hence, it is held that the prosecution has miserably failed to prove charge against any of the accused and thus, by giving benefit of doubt to them, they are acquitted. File be consigned to the record room."*

This Court has heard learned counsel for the applicant at length and with his able assistance gone through the judgment passed.

It is positive finding of the Court that the evidence is not sufficient to prove that there was abetment of commission of suicide. Still further, it has come in evidence that the deceased was addict and used to beat his wife due to which she had left the matrimonial home along with children. Thereafter, compromise was arrived at and the deceased was admitted to be habitual drunkard.

As regards allegations of beating by Avtar Singh at the behest

of Sarabjit Kaur, the wife of the deceased, the Court has found that as per post-mortem report, not a single mark of superficial injury has been detected on the dead body. It has found to be a simple case of drowning.

Learned counsel for the applicant although, made since attempt to persuade this Court to take a different view, however, in absence of any material irregularity or perversity in the judgment, this Court is not inclined to interfere.

Hence, no ground to grant leave to appeal is made out.

Dismissed.

04.07.2019

D.Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No