

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

CRA-S-1840-SB-2005(O&M)

Date of decision:-26.2.2020

Santosh Rani and others

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P.S. Mann, Advocate
for the appellants.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

H.S. MADAAN, J.

Accused Santosh Rani, Jaswant Singh, Amar Kaur and Natha Singh were tried by learned Additional Sessions Judge, Moga for the offence under Section 306/34 IPC and vide judgment dated 6.10.2005 they were convicted under Section 306 IPC and vide order of even date, they were sentenced as under:

Under Section	Sentence Awarded
306 IPC	Rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for one year each.

The accused-convicts – Santosh Rani, Jaswant Singh, Amar Kaur and Natha Singh, who are appellants before this Court

pray that the appeal be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case as per the prosecution version are that complainant Kartar Kaur widow of Amar Nath, resident of Old Moga had submitted a written complaint to Senior Superintendent of Police, Moga on 20.3.2002, *inter alia*, stating that her son Angrej Singh, who was serving in Punjab Police had committed suicide during the intervening night of 14/15.2.2002; this fact came to notice of the family on 15.2.2002 in the morning; the dead body of Angrej Singh was cremated; Angrej Singh had left behind letters in drawer of his bed and they could lay their hands on such letters 1-2 days later; in such letters Angrej Singh had attributed his death to his wife Santosh Rani, brother-in-law Jaswant Singh, father-in-law Natha Singh and mother-in-law Amar Kaur. The complainant further stated that Angrej Singh had got married with Santosh Rani about three years prior to his death and the couple had a son, namely, Sartaj Singh; subsequently the relations between the couple got strained, as such Santosh Rani started residing in her parental house and she had filed a maintenance petition against Angrej Singh; she had also submitted an application before Women Cell, Moga; Kashmir Kaur, Incharge, Women Cell had made efforts to get the matter compromised but to no effect; Santosh Rani had got

Angrej Singh attacked from unidentified persons several times; Santosh Rani had also moved an application before the police at Faridkot on a few occasions; as such Angrej Singh used to be get arrested on such application being submitted by Santosh Rani.

Going further in the complaint, the complainant stated that she had sent message of death of Angrej Singh to Santosh Rani and her family members but none of them came to attend the cremation of Angrej Singh, in that way, Santosh Rani, her father - Natha Singh, mother - Amar Kaur and brother - Jaswant Singh had compelled Angrej Singh to commit suicide. Along with the written complaint, the complainant had attached hand written letter of Angrej Singh.

On receipt of that complaint, the matter was inquired into by Deputy Superintendent of Police, who sent inquiry report to Senior Superintendent of Police, Moga and thereafter FIR No.59 dated 23.3.2002 for the offences under Sections 306/34 IPC was registered against accused Santosh Rani, Jaswant Singh, Amar Kaur and Natha Singh at Police Station City, Moga. Accused were arrested in that case. After completion of investigation and other formalities, challan against all the accused was prepared and filed in the Court of Chief Judicial Magistrate, Moga.

On presentation of challan in the Court of Chief Judicial Magistrate, Moga, he supplied copies of documents relied upon in

the challan to all the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 306 IPC was exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Moga vide his order dated 13.12.2003 committed the case to the Court of learned Additional Sessions Judge, Moga.

Learned Additional Sessions Judge, Moga, finding that prima-facie charge for the offence under Section 306 IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as seven witnesses i.e. Smt.Kartar Kaur as PW1, Gurmej Singh as PW2, Sandeep Gupta as PW3, SI Kashmir Kaur as PW4, SI Avtar Singh as PW5, ASI Gurdeep Singh as PW6 and Surinder Singh – DSP as PW7. The prosecution also tendered in evidence documents Ex.P1 to Ex.P15.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they were innocent and had been implicated in this case falsely.

In addition to abovesaid pleading of innocence and false

implication, accused Santosh Rani further pleaded that at the time of her marriage adequate dowry was given including ornaments but deceased was habitual drunkard and gambler and had sold all the articles and ornaments etc; he had demanded Rs.50,000/- from her and her parents but they showed inability to satisfy his such demand, then deceased and his mother gave her beatings and she was forced to leave the house on 4.12.2000 and since then she was living at Faridkot with her parents. She further pleaded that on 4.1.2001, she filed an application under Section 125 Cr.P.C. at Faridkot in which interim maintenance was granted; that Angrej Singh never came to her at Faridkot and his death was sudden and natural and nobody was at fault; so no report was lodged by complainant party at police station nor dead body was sent for postmortem examination. She further pleaded that she and her family members attended the cremation ceremony of deceased and all the ceremonies thereafter.

Accused Amar Kaur had also taken the same plea.

In defence evidence, the accused examined Constable Surinder Pal, Clerk in the office of SSP, Moga as DW1, A/MHC Balbir Singh from Police Lines, Moga as DW2, Kishan Lal as DW3, Kuldeep Singh as DW4 and Amritpal, Clerk PSEB, Faridkot as DW5.

After hearing arguments, Additional Sessions Judge, Moga convicted and sentenced all the accused as mentioned supra,

which left them aggrieved and they have filed the present appeal.

I have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Punjab besides going through the record.

The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons may go scot-free but even one innocent should not be punished.

Here in this case the prosecution had been unable to prove its charge against the accused conclusively and affirmatively. Nevertheless the trial Court by misappraisal of evidence and wrong interpretation of law convicted and sentenced the accused. There are several reasons for saying so, which are being enumerated as under:

There is gross delay in reporting the matter to the police inasmuch as the death of Angrej Singh had taken place on the intervening night of 14/15.2.2002, whereas his mother Kartar Kaur

complainant had submitted written complaint to SSP, Moga on 20.3.2002 i.e. after a period of more than one month. In a case of commission of a cognizable offence prompt lodging of report to the police is desirable since it provides the spontaneous and blemish free version of the incident. With the passage of time the chance of a coloured version being introduced after due deliberations and consultations come out to be there. For that reason, it is stated that the delay is fatal to a criminal case unless properly explained. Here no such explanation for the delay is coming forth. The prosecution story suffers a severe jolt for that reason alone.

Secondly, there is no cogent and convincing evidence available on the record to show that Angrej Singh had died a unnatural death or committed suicide. No postmortem examination on the dead body of Angrej Singh was performed, which might have gone to show the cause of his death. Similarly no inquest proceedings were carried out by the police, which is normally done in case of an unnatural death. Such report, if available would have pointed out as to whether there were outward symptoms to show that Angrej Singh had died an unnatural death. Therefore, this is another big flaw in the prosecution case.

Thirdly, as it has come on the record that on 16.2.2002, the next day to 15.2.2002 when Angrej Singh was found to be dead his brother Gurmej Singh had got report No.17 dated 16.2.2002

entered in DDR of Police Line, Moga at about 4:20 p.m. wherein he had stated that his brother Angrej Singh, who had gone on three days leave on 14.2.2002 had died and they came to know about his death on 15.2.2002 in the morning and he had died a natural death. Copy of that report had been proved as Ex.D2 by the accused. Gurmej Singh when appeared as PW2 during the trial was cross-examined in that regard and he had admitted that he had got such report recorded. All these factors go to show that family of Angrej Singh had no suspicion or doubt that he had committed suicide or for that matter his wife and members of her family had abetted the same and it was about one month that suddenly version was changed and the matter was reported to the police. The alleged letters and writings of Angrej Singh have not been got compared with his admitted writings from Forensic Science Laboratory so as to clearly show that the disputed writing is in fact in the hand of Angrej Singh. In absence of such scientific evidence, PW2 Gurmej Singh stating that such letters are in hand of Angrej Singh can certainly be not treated as cogent and convincing evidence. Gurmej Singh had obviously a reason to state that letters are in hand of Angrej Singh but by his saying so it is not fully established on record that such documents are in fact in hand of Angrej Singh. No plausible and satisfactory reason for non-sending of such letters to FSL for the purpose of comparison is coming forth. PW2 Gurmej Singh had stated that Angrej Singh had died as a result

of hanging, which he said for the first time. PW1 Kartar Kaur – complainant had nowhere specifically stated so. Even if this improvement is considered that does not help the prosecution story, rather goes against it because if Angrej Singh had committed suicide by hanging, then some rope or piece of cloth would have been there, which he had used for the purpose of hanging. As a result of hanging, the bone in the neck broken and neck gets elongated. These things would have definitely aroused suspicion of family members of the deceased and in any case they would not have cremated the dead body without getting postmortem examination conducted thereon and without getting the inquest proceedings carried out by the police. Rather it comes out that the story is fabricated and concocted.

Even if it is taken that there was some dispute between husband and wife but that can certainly be not taken to be abetment on the part of wife. Merely because such wife was residing with her parents, who were giving her moral and monetary support does not mean that they would also be guilty of abetment. In this case since suicide of Angrej Singh is not established on the record, the allegations against the accused/appellants that they had abetted the suicide pale into insignificance.

Learned counsel for the appellants has referred to various authorities. First being **Ramesh Kumar Versus State of Chhattisgarh, 2001(4) RCR(Criminal) 537** wherein the Apex Court

has observed that when accused- husband was teasing his wife and ill-treating her for mistakes and turning her out of the house; he had given beatings to her on one occasion at odd hours of night and the wife committed suicide, then it was cruelty under Section 498-A IPC but offence under Section 306 IPC was not made out.

In *Sanju @ Sanjay Singh Sengar Versus State of Madhya Pradesh, 2002(2) RCR(Criminal)687* by Hon'ble Supreme Court the meaning of abetment as appearing in Section 107 IPC was explained, which is as under:

Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or thirdly, intentionally aids, by any act or illegal omission, that doing of that thing.

As per the facts of that case a quarrel had taken place between accused and husband of his sister. The accused told the deceased to go and die. The deceased had committed suicide on third day of quarrel. It was observed that it cannot be held that and suicide was direct result of quarrel because there was enough time

for deceased to think over and reflect. Therefore, the charge of abetment against the accused was quashed.

In **Randhir Singh and another Versus State of Punjab, 2004(4) RCR(Criminal) 740** by the Apex Court dealing with a case under Section 306 IPC relating to suicide by bride it was observed that if Court finds that victim was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, the Court cannot give verdict of guilty.

In **Chitresh Kumar Chopra Versus State (Govt. of NCT of Delhi), 2010 AIR(SC) 1446** while dealing with aspect of abetment under Section 107 IPC it was observed as under:

A person can be said to have abetted in doing of a thing, who “instigates” any person to do that thing – The word “instigate” is not defined in the Indian Penal Code – Instigation is to goad, urge forward, provide, incite or encourage to do “an act” - To satisfy the requirement of “instigation” though it is not necessary that actual words must be used to that effect of what constitutes “instigation” must necessarily and specifically be suggestive of the consequence – Yet a reasonable

certainty to incite the consequence must be capable of being spelt out.

It was further observed that a word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable. The same are set aside by way of acceptance of this appeal. The appellants is acquitted of the charge framed against them.

Necessary intimation be sent to the quarter concerned.

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JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**

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