

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

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CRA-AS-171-2015(O&M)
Date of decision: 21.07.2022

HARDEEP SINGH

....Petitioner(s)

Versus

MOHAN SINGH AND ORS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Ghulam Nabi Malik, Advocate
for the applicant/appellant.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

CRM-37398-2015

Instant application has been filed under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') for condonation of delay of 93 days in filing the present appeal.

Notice in the application.

Mr. Karanbir Singh, AAG Punjab accepts notice on behalf of the respondent-State.

For the reasons stated in the application, same is allowed. Delay is condoned.

CRA-AS-171-2015

The present appeal has been preferred against the judgement dated 07.05.2015 passed by Additional Sessions Judge, Ludhiana whereby respondents has been acquitted in case FIR No.178 dated 14.12.2012 registered under Sections 306, 420 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') at Police Station Sadar Ludhiana.

The present case has been registered at the instance of Hardeep Singh on the basis of an application moved by him on 10.12.2009 submitting therein that Mohan Singh son of Tarlok Singh resident of village Daad had one plot measuring 110 sq. yards in village Daad which he had agreed to sell to Harjap Singh son of Darbara Singh on 27.01.2009 and had received the entire sale consideration but thereafter, he had again entered into an agreement to sell with Charanjit Singh son of Pal Singh resident of village Daad who was related to Mohan Singh i.e. his 'Saandhu' and amount of Rs.80,000/- was received by Mohan Singh in this regard. That when Charanjit Singh came to know about the earlier agreement, he asked Mohan Singh to cancel the deed and return the amount advanced but Mohan Singh told him to pay the remaining amount and to get the sale deed registered and that he would not return the amount of Rs.80,000/- under any circumstances. The plot was situated within the red line of the village and Mohan Singh, by effecting sale of the plot in question for a second time in favor of Charanjit Singh, had cheated him. Due to this reason, Charanjit Singh remained under stress and had demanded amount of Rs.80,000/- on many occasions which was not returned by Mohan Singh. Eventually, on 04.11.2009 at about 4.00 A.M., Charanjit Singh left his house without informing anybody and did not return and in this regard a D.D.R was registered on 10.11.2009 at Police Post Lalton Kalan with regard to Charanjit Singh not being traceable and efforts were made by his relatives etc to trace him out. On 13.11.2009 while a search was being conducted, Mindi son of Madan Lal, Balvir Singh son of Pal Singh, Balwinder Singh son of Hardeep Singh , Khalli son of Mohinder Singh accompanied by 5/6 other persons located clothes of Charanjit Singh from near the bridge at Chubki and they intimated the police. Thereafter, on 14.11.2009 dead body of Charanjit Singh was located in between the bridges of

villages Dalla and Akhara which was identified and tied with bushes and the complainant was informed about the recovery of the body on the same day, but it being dark he decided to inform the police in this regard on the next day. On the same night, accused accompanied by others had allegedly gone in a Tempo late at night and returned at about 03:00 A.M. in the morning. That on the next day at 6:00 A.M. in the morning, complainant alongwith others went to take the dead body of Charanjit Singh which had been tied to the bushes, however, the dead body was found missing and could not be located. That the accused accompanied by 5/6 other persons had caused disappearance of the dead body and the dead body of Charanjit Singh be got recovered and case be registered against accused Mohan Singh etc. The appellant-complainant was however not satisfied with the inquiry being conducted in the said case. The matter was thus raised before the High Court by filing a Criminal Miscellaneous Petition. The inquiry was re-conducted on the orders of the High Court and the case was registered. Investigation was then initiated. All the accused persons except accused Mohan Singh were admitted to bail and charge sheet was filed against the accused persons.

Prosecution examined six witnesses to prove its case and thereafter the evidence was closed. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein they denied the incriminating evidence against them. No witness was however examined in defence.

Upon consideration of the evidence adduced by the parties and arguments respectively, the Additional Sessions Judge, Ludhiana held that the prosecution had failed to prove that the accused persons have abetted the commission of suicide of deceased Charanjit Singh and accordingly acquitted

them of the charges framed against them.

Appellant has assailed the said judgment by urging that the trial Court has failed to take due note of the evidence brought on record and has thus recorded its judgment on misreading and misinterpretation of the evidence. There was a specific deposition by the appellant that it was on account of the accused person not returning the money to the deceased Charanjit Singh that he had been murdered and that it is not a case of suicide. He further contends that respondent-accused Mohan Singh had sold the plot earlier in point of time to one Ajaib Singh and despite the same, a subsequent agreement to sell was executed with Charanjit Singh-the deceased brother of the appellant-complainant for a sum of Rs.80,000/-. He had allured the deceased brother of the appellant to enter into the agreement to sell and also refused to return the money when the transfer of the plot was not completed and sale consideration was demanded back.

On a pointed query to the appellant as to whether there is any specific evidence collected by the prosecution to suggest that it was a homicidal death and not suicidal death, learned counsel for the appellant could not refer to any evidence on record.

It is also not disputed that the case was initially registered for commission of offence under Section 306 IPC and even the charge was framed for the said offence. No application had at any point of time been moved by the appellant for seeking further investigation or modification of the charge to Section 302 IPC as is being suggested today.

Furthermore, it has also gone un-controverted that the dead body of deceased Charanjit Singh has not been recovered and the cause of death, if any, is not known. Although an explanation has been attempted to be given by the

appellant and also by the prosecution in its evidence that the body of the deceased Charanjit Singh had actually been recovered on 14.11.2009 and that Manwinder Singh @ Mindi (son of appellant) had made call to the appellant about having traced the dead body whereupon the appellant had advised his son to leave the body there only. However, when they went back to the bank of the river on the next day, they could not find the dead body and the same was not traceable. The said aspect was duly noticed by the Additional Sessions Judge, Ludhiana in his judgement dated 07.05.2015. The relevant extract of the finding so recorded by the Additional Sessions Judge, Ludhiana is reproduced herein below.

10. Initial version of the prosecution is contained in the application moved by the complainant Hardeep Singh Ex.PA. As per the allegations, on account of a deal by deceased Charanjit Singh with Mohan Singh with regard to sale of his plot which had earlier been sold by accused Mohan Singh and non return of the amount paid towards the sale of plot, Charanjit Singh left his house on 4.11.2009 at 4:00 A.M but did not return thereafter and report dated 10.11.2009 was lodged in this regard and on 13.11.2009 certain clothes of deceased recovered and on 14.11.2009 his dead body also recovered which was tied with bushes but lateron when on the next day they returned back, dead body was found missing and that accused had abetted commission of suicide by Charanjit Singh.

11. Prosecution version and evidence is with regard to Mohan Singh being owner of a plot having agreed to sell the same to Harjap Singh but for the second agreeing to sell the same plot to Charanjit Singh and having received Rs. 80,000/- but not returning the said amount and thereafter his whereabouts not known after 4.11.2009 and that his dead body being located on

14.11.2009 which was left at the spot by Mindi and Khalli etc but was not found on the next day at the said place.

12. In the present case, though it is alleged that dead body of Charanjit Singh was located on 14.11.2009 and in this regard Jaswinder Singh examined as P.W.6 who deposed that they had located the dead body of Charanjit Singh but it being dark they had tied the dead body with some bushes but after that Manwinder Singh @ Mindi made a call to his father who told them to leave the dead body in the canal as in the alternate they might be implicated in a criminal case after which they came back to their village and again went to the spot where the dead body was not found present.

13. In case dead body of Charanjit Singh was located on 14.11.2009 as referred to above and so stated by complainant and witnesses examined in this regard but P.W.2 Ravinder Singh son of the deceased in his evidence, i.e cross examination stated that when dead body of his father was located it was night time, as such, they did not inform the police and they also did not inform the police about the dead body on the next day.

14. Where dead body of deceased was located and secured with some bushes on 14.11.2009 and no intimation in this regard ever being given to police authorities and as discussed above son of the complainant deposing as a witness and stating that even on the next day police was never informed.

15. Where the recovery of the dead body was on account of a thorough search and where it was stated by his son that after it was recovered but no intimation was given to any authorities and thereafter dead body of Charanjit Singh never being located it cannot be believed that in case dead body of Charanjit Singh was located and this fact known to his son and complainant also informed about the same, no efforts being made to bring back his body immediately or to inform any authorities is not the natural course of behavior.

Furthermore, while examining the aspect as to whether the essential ingredients of Section 107 IPC are made out in the present case or not, the entire prosecution evidence was considered by the Additional Sessions Judge and it was recorded as under:-

16. Further even in case evidence adduced by prosecution with regard to deceased Charanjit Singh to have paid amount of Rs.80,000/- to accused Mohan Singh and later not returning the same, question arising would be whether it fell within the definition of abetment. Abetment is defined under section 107 of the I.P.C which is as under:-

S.107. A person abets the doing of a thing, who-

First-- 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, the doing of that thing.

17. The factum of accused Mohan Singh allegedly not returning the amount received by him from deceased Charanjit Singh apparently not falling in any of the clauses defined above would not amount to abetment of suicide by Charanjit Singh whose dead body was never located even in case he is presumed to have taken his life.

18. Further, it is the prosecution version that accused had left the house at 4.11.2009 at 4:00 in the morning without disclosing this fact to anybody but evidence of P.W.6 Jaswinder Singh is otherwise that on 4.11.2009 at 4 a.m Charanjit Singh went to the house of Mohan Singh demanding back his money on which there was a commotion in the street and he also witnessed Charanjit Singh entering house of Mohan Singh and

then he to have came back to his house.

19. Further non payment of the amount allegedly by accused to Charanjit Singh in absence of any other evidence does not prove intention of the accused to cause abetment of suicide by Charanjit Singh.

20. All these factors stated to lead Charanjit Singh to commit suicide in absence of dead body of the deceased being recovered and where it was stated to be recovered no efforts being made to secure the same or to retrieve or to inform any concerned authorities and alleged act of the accused,i.e non return of the amount of Rs. 80,000/- by deceased not sufficient to attribute intention of abetment whereas there being no evidence with regard to instigation on the part of the accused or accused engaging among themselves in any conspiracy or any act or illegal omission in pursuance of the conspiracy or any intentional aid or any act or illegal omission and no positive act of aid by accused even in case Charanjit Singh deceased was presumed to have taken his life, act of the accused Mohan Singh not returning the amount due to deceased Charanjit Singh would not fall within the definition of abetment.

A perusal of the judgement impugned by the appellant has not been controverted by referring to any material on record on the strength whereof it could be said that the said finding suffers from perversity, illegality and/or based on misreading of the evidence adduced on record. The appellant had never set up a case for commission of Section 302 IPC and the necessary ingredients of Section 306 IPC read with Section 107 IPC are not fulfilled. It would at best, even if the case of the prosecution is taken to be correct in its entirety, be a case of non refund of the sum of Rs.80,000/- by the accused-respondent Mohan Singh and the same

would not *ipso facto* amount to aiding; abetting or instigating the commission of suicide by the deceased Charanjit Singh.

I find that the findings recorded by the Additional Sessions Judge, Ludhiana are not based upon any misreading or non-appreciation of the evidence brought on record. Besides, there is no argument raised to the effect that the conclusions drawn by the trial Court were not sustainable upon a meaningful reading of the evidence.

In the absence of any illegality, perversity, mis-appreciation or non-appreciation of evidence having been reflected by the appellant to hold that the finding so drawn by the trial Court was not sustainable, it would not be proper to substitute the finding recorded by the trial Court merely because any other view may be a possible view.

In the light of above, the judgement passed by the Additional Sessions Judge, Ludhiana dated 07.05.2015 in Sessions case No.138 of 02.08.2013 arising out of FIR No.178 dated 14.12.2012 under Sections 306, 420 and 120-B of the Indian Penal Code, 1860, registered at Police Station Sadar Ludhiana is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

July 21, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>