

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226-CRA-S-2580-SB-2013

Date of Decision: 07.12.2022

Sushila

... Appellant

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen, Advocate for
Mr. Sanjiv Gupta, Advocate for the appellant

Mr. Parveen Kumar Aggarwal, DAG Haryana

Sandeep Moudgil, J.

This criminal appeal has been preferred by the appellant-complainant challenging the judgment of acquittal dated 02.05.2013 passed by the Additional Sessions Judge, Sirsa in case FIR No.95 dated 04.08.2010 under Sections 306/34 IPC, Police Station Odhan, District Sirsa, vide which the accused, namely, Poonam w/o Yogesh and Yogesh s/o Mahipal, have been acquitted.

The factual matrix of the prosecution case is that on 04.08.2010 MHC Police Station Odhan received a telephonic message from Govt. Hospital Sirsa about arrival of dead body of Sunil Kumar s/o Madan Lal resident of village Banwala. Upon receipt of this information, Hans Raj ASI, alongwith HC Bhagat Ram and HC Anand Kumar, went to Government Hospital Sirsa, where Sushila wife of Sunil Kumar met them, who got recorded her statement, Ex. PC, *inter-alia*, on the allegations that she was married with Sunil son of Madan Lal about 9 years back. She has one son named Ashish aged about 5 years. Her elder sister Samishta is also married with Anil Kumar, elder brother of her husband Sunil Kumar. Her father-in-

law and mother-in-law had already died. Her sister-in-law Poonam was married with Yogesh son of Mahipal about four years back. In her marriage, they had spent more than their capacity after taking loan. Poonam has two daughters. Since last eight months, Poonam alongwith her husband and her daughters had started living with them at village Banwala. They were looked after by them. Poonam and Yogesh also asked them to give Rs.5,00,000/- for clearing their loan taken by them by mortgaging their land of village Madho Singhana. They asked for Rs.5,00,000/-, as per conspiracy of Madhu, mother-in-law of Poonam. On 25.7.2010, Madhu came at village Banwala and told them to give Rs.5,00,000/- to Poonam otherwise, they would not allow Poonam and Yogesh to live at village Madho Singhana. In this regard, father of the complainant, namely, Ram Sarup son of Hari Ram, Om Parkash, Jai Singh and Surender, Umed Singh son of Prithvi Singh had come and tried to make Poonam and Yogesh understand but Poonam and Yogesh became annoyed and went from there alongwith their daughters by saying that they would kill them into pieces. After that, her husband Sunil Kumar, due to fear, had consumed Spray and became unconscious. She and Umed Singh took her husband Sunil Kumar to Govt. Hospital, Sirsa for treatment but he had died on the way. Her husband Sunil Kumar had committed suicide due to fear and pressure of Poonam, Yogesh and Madhu, mother-in-law of Poonam. The instant FIR was lodged and the case was committed to the Court of Session.

On finding a *prima facie* case, accused persons were charged for the commission of offences punishable under Sections 306 read with Section 34 of IPC, to which they pleaded not guilty and claimed trial. The prosecution examined as many as 11 witnesses, namely, EASI Bhagat Ram as PWI,

Radhey Sham, Draftsman as PW2, Sushila (complainant) as PW3, HC Jaibir Singh as PW4, Constable Mahesh Kumar as PW5, Inspector Heera Singh as PW6, Dr. Arush Arora as PW7, EHC Umed Singh as PW8, Girdhari Lal as PW9, Anil Kumar as PW10, ASI Hans Raj as PW11. Thereafter the prosecution evidence was closed.

The accused persons were examined under Section 313 Cr.P.C., in which they denied the allegations of the prosecution and pleaded innocence. They alleged that they have been falsely implicated in the instant case. In their defence, the accused persons examined Om Parkash as DW-1, Ram Singh as DW-2, Anil Kumar, President, Jyoti Foundation De-addiction and Rehabilitation Centre, Hisar, as DW-3 and Rameshwar Lal as DW4 and then closed their defence evidence.

The Addl. Sessions Judge, vide impugned judgment dated 02.05.2013, has acquitted the accused persons on the ground that the prosecution has failed to make out any case against the accused persons. Aggrieved against the judgment of acquittal, the complainant-appellant has filed the present appeal challenging the judgment of acquittal.

Learned counsel for the appellant averred that PW3 Sushila and PW10 Anil have fully supported the case of the prosecution. Though PW9 Girdhari Lal has not stated in his examination in chief but the perusal of statement would show that there was sufficient material available from the statements to hold the accused persons guilty. As per statements of PW3 and PW10, the depression and tension was due to the harassment and threat caused by the accused persons. PW9, during cross-examination by the counsel for the accused has stated that he did not know if Sunil deceased and

Anil were addicted to drugs, it shows that though PW9 is a hostile witness but he did not support the defence contention that the deceased was a drug addict. In cross-examination by the defence, PW9 denied the suggestion of the defence that there was no demand of Rs.5 lacs by the accused.

Learned counsel for the appellant further submitted that the statement of a hostile witness, which helps the prosecution, can be used in favour of the prosecution to hold the accused guilty. From the perusal of the cross-examination of Sushila, it is evident that the accused were present at village Banwala on the day of occurrence and they were adamant to stay there at village Banwala. The defence has alleged that the complainant and her father misbehaved and abused the accused and they had left their house at village Banwala, on the reprimanding by husband of the complainant. This suggestion was denied by the complainant. The complainant had stated that accused used to misbehave with them continuously during their stay of 5-6 months in their house at village Banwala.

It is further averred that from statements of PW3, PW9 & PW10, it is obvious that the accused had conspired together and started residing at the house of the deceased. They were residing there for the last 5-6 months and had been harassing continuously and on the day of occurrence, they had threatened the deceased and his brother Anil to cut and kill them into pieces.

At the same time, opposing the contentions of the appellant, urged that the judgment of the trial court is not based on facts, law and the documentary and oral evidence, led by the parties. The trial court has not considered the material aspects and the statements made by the prosecution witnesses.

I have heard learned counsel for the parties and have gone through the evidence available on the record.

Appellant, who is wife of the deceased Sunil Kumar, appeared as PW-3 in this case and reiterated the averments made in the FIR and further stated that police came to the hospital and her statement was recorded. Police came to their house on the next day. Police took into possession bottle of spray vide recovery memo Ex.PD. It stands revealed from her cross-examination that she had no knowledge about the landed property of Mahipal, father of Yogesh, in village Madho Singhana and whether Mahipal had given the share of Yogesh to him alongwith a residential house at village Madho Singhana. She also did not know as to who had inherited the land of Khewani after her death and if Poonam had also inherited some land of Khewani. She denied the suggestion that Madan Lal and Sulochna, who were her parents-in-law, had owned landed property, which was inherited by them after their death. She admitted that her husband, her Jeth and Poonam accused equally inherited the land of her parents-in-law. The total land inherited by all of them was 28 acres. The same was joint and was possessed by both the brothers except Poonam. She did not know, if the land was 33 acres and not 28 acres. The dispute was regarding the said land. They did not enquire about the loan of Rs.5.00 lacs on the land of Yogesh situated in village Madho Singhana nor collected any document in this regard. Poonam had told them that they had taken loan of Rs.30 lacs on their land of village Madho Singhana. The panchayat was convened in their house but she did not know whether other 7-8 persons who had attended the panchayat were produced before the police or not. Except these persons, no other person had attended

the panchayat. The panchayat had lasted upto 2 PM. Yogesh, Poonam and their children left the house on the same day around 12.00 noon or 1.00 PM. Panchayat did not continue after their departure from the house. Complainant also did not state in her statement that Poonam had threatened to kill them into pieces. She had stated in her statement that Umed Singh had taken her husband to General Hospital, Sirsa. She had not accompanied her husband to the hospital. Police had met her on the next day of death of her husband but did not meet her on the day of incident. She did not remember the name of the month and date on which Poonam, alongwith her husband and children, had started residing at their house. She denied the suggestion that they wanted to grab the share of land of Poonam and on that account, they had got registered a false case against Poonam and her husband. During their stay, for 5-6 months, prior to this occurrence, both the accused used to misbehave with them. They did not lodge any report with the police regarding their misbehaviour with them. Renu had lodged complaint with the police one day prior to the occurrence against her husband by making a telephonic call from Chandigarh.

PW7 Dr. Arush Arora, MO, deposed that he, along with other members, had conducted post mortem on the dead body of Sunil Kumar and opined that the death was due to consumption of *organo phosphorous* compound group of insecticides. Besides the oral evidence prosecution proved many documents.

PW9 Girdhari Lal deposed that there was no dispute between the parties and Sunil died due to some depression and tension in his mind. This witness was turned hostile by the court.

PW10 Anil corroborated the version of Sushila, the complainant. He revealed that there was cordial relation between Sunil (deceased) and Poonam (accused).

PW1 EASI Bhagat Ram, PW11 Hans Raj ASI, PW4 Jasbir Singh, PW6 Heera Singh, PW8 EHC Umed Singh, being official witnesses supported the case of the prosecution.

On the other hand, the Om Parkash DW1 deposed that he is the maternal uncle of deceased Sunil, Anil and Poonam accused. On 4.8.2010 a panchayat was convened in village Banwala at the instance of Sunil (since deceased) in which Jai Singh his brother, Surinder and Umed Singh, Sunil and Anil were also present in the panchayat besides other known and unknown persons. Sunil and Anil told the panchayat that Poonam, her husband and children were not leaving their house. Poonam told him that her brothers did not pay the Batai share of her land. The amount of Batai was more than Rs.4 lakhs. Sunil and Anil did not make any other complaint against Poonam besides that she was not leaving their house. Anil and Sunil were addicted to intoxication by consuming liquor and opium etc. He was sure that Poonam and her husband were not responsible for death of Sunil. He did not disclose to the police that Poonam had threatened to kill her brothers even after persuasion of the panchayat to her. He denied the suggestion that he was won over or that in order to save sons of his sister, he was deposing falsely.

DW2 Ram Singh, who is also the maternal uncle of the parties, corroborated the version of DW1 Om Parkash.

DW3 Anil Kumar, President, Jyoti Foundation De-addiction and Rehabilitation Centre, Hisar and DW4 Rameshwar Lal deposed that Anil Kumar was addicted to *opium*, post since 2002 and to Alprazolam since October, 2008.

The only question that arises in this case, in view of the above circumstances, is as to whether the accused used to harass Sunil deceased and he committed suicide on account of the harassment given by the accused or not?

The trial court rightly raised doubt about credibility of FIR because complainant Sushila was not present in hospital as per her own admission while appearing as PW3 in the court and stated that she had not accompanied her husband while going to the hospital. The facts, emanating from the allegations made in the FIR are that (i) the accused were living at Banwala for 7-8 months and were demanding Rs.5 lacs to repay the loan against their land of village Madho Singhana, i.e., the paternal village of Yogesh, (ii) the mother of Yogesh visited the house of Sunil on 25.7.2010 and demanded Rs.5 lacs and she was instigating the accused, (iii) a panchayat consisting members of both the sides was convened in which the accused were persuaded to leave Banwala, (iv) accused left the village while threatening Anil and Sunil, (v) thereafter, Sunil consumed poisonous substance.

The trial court rightly observed that the allegations of demand of Rs.5 lakhs were not sustainable as the same are not substantiated by leading any evidence. Nothing was placed on record to prove, if there was loan taken on the land of Yogesh Kumar, nor there is any evidence of any person from

the neighbourhood that there was any dispute between Sunil and Poonam and her husband prior to the death of Sunil during their stay at the parental house of Poonam. It is also evident that Poonam did not demand her share and neither even filed any suit for partition nor claimed possession of her share from Anil and Sunil, if she was demanding the amount of Batai, as alleged. There is no evidence qua threats given by Poonam and Yogesh to cut Anil and Sunil into pieces. It is strange that even though there was evidence that Poonam had her own share, then why she would demand Rs.5 lakhs from her brothers.

It was rightly held that the prosecution is concealing some material things as the FIR appears to have been recorded after due deliberations incorporating the factum of demand of Rs.5 lakhs because the complainant PW3 is also a hearsay witness and it is not established that whether she got recorded her ruqa in the hospital or at her residence. The prosecution witnesses were not consistent in their statements.

While taking into consideration the evidence of DW3 and DW4 and also of Girdhari Lal, this Court would appreciate that Anil, who was addicted to drugs, his evidence cannot be believed. As regards the statement of Sushila, she was not a party to the panchayat dated 4.8.2010 and it is also clear that Sushila was not present in the hospital because she did not accompany her husband while being taken to the hospital, then how her statement came to be recorded by the ASI Hans Raj. Therefore, her credence also stands impeached under Section 155 of the Evidence Act. There is no act or omission on the part of the accused persons, from which it can be inferred that they had abetted the commission of suicide by deceased Sunil and as

such the trial court judgment is undoubtedly based on true facts and events, available on the record and as such the accused have been rightly acquitted of the charges.

This Court, having examined the evidence on file and the submissions, in the light of the above discussion convincingly upheld the judgment ____ as the same do not suffer from any infirmity, illegality but is based on the appreciation of evidence and material before it.

Accordingly, this appeal fails being devoid of any merits.

Dismissed.

07.12.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No