

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

CRA-S-867-2022 (O&M)
Reserved on: 03.08.2022
Date of decision: 26.08.2022

RAVI BHARTI

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. S.S. Dahiya, Advocate and
Mr. Bikram Chaudhary, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. Through a verdict drawn, on 02.05.2022, upon, Sessions Case No.SC/423 of 2016, the learned Additional Sessions Judge, Sonapat qua a charge drawn against the accused for offences punishable under Section 306 of IPC read with Section 34 of IPC, proceeded to make a verdict of conviction, upon the accused, and, also proceeded to, through a separate sentencing order drawn, on 02.05.2022, impose upon him, the sentence of rigorous imprisonment extending upto a term of 5 years, besides imposed upon him a sentence of fine comprised in a sum of Rs.5,000/-, and, in default of payment of fine amount sentenced the convict to undergo rigorous imprisonment for a term extending upto 6 months. The convict is aggrieved from the above drawn verdict of conviction, and, the consequent therewith sentence (supra), as became recorded by the learned Additional Sessions Judge, Sonapat, and, is led to challenge them, through his constituting the instant appeal before this Court.

2. The brief facts of the case are that on 02.12.2013 when ASI Jasmer, Incharge Police Post Sector-23, Sonapat went to Raju Palace in Sector-23, Sonapat then Rakesh Sharma – complainant (PW.9) presented a complaint in which he disclosed that he is Municipal Councillor from Ward No.29, Sonapat. His father Satbir (since deceased) had taken CC Limit of Rs.75.0 lacs from Punjab National Bank, Mall Road Branch, Delhi. His father used to go to the bank. Sharwan Kumar, (2nd accused who has since been acquitted and hereinafter would be referred as ‘acquitted accused’) was doing the work of intermediary and his father has obtained CC Limit facility from the bank with the help of acquitted accused. On account of this, his father has good acquaintance with acquitted accused, and, accused Ravi Bharti (accused herein). Further that the complainant family received a notice from District Investigation Unit, North District, Lacknow Road, Timarpur, Delhi and in pursuance to that notice, he along with his father Satbir went there. There they came to know that one Pardeep Sharma, Proprietor of M/s Shyam Trading Company has obtained a loan from Punjab National Bank, Mall Road Branch, Delhi by forgery qua which a case was registered therein. Investigating Officer told them that on this loan papers signatures of his father Satbir are appended. His father Satbir told that though signatures on the loan papers of firm M/s Shyam Trading Company are his own but he does not know Pardeep Sharma. Further told that these signatures have been appended by him on the asking of acquitted accused Sharwan Kumar and Ravi Bharti (duo) told him that Pardeep Sharma is their relative. On account of this, complainant and his father met the duo but they did not divulge any details about Pardeep Sharma rather stated that since signatures on those papers are of Satbir, therefore, now they should face the consequences and further that duo will tell nothing. The duo told that since Satbir is a witness on loan papers,

therefore, he has to pay the amount. From that time, his father Satbir started remaining tense.

3. On 02.12.2013 his father from his Mobile Phone No.9416771454 made a call to the Mobile No.09971089232 of acquitted accused at about 11.00 'O' clock and requested the acquitted accused to provide the details of Pardeep Sharma but acquitted accused stated that he has been asked by Ravi Bharti accused not to divulge any details about Pardeep Sharma. Complainant further stated that he persuaded his father Satbir to remain calm/patient but his father started entertaining tension, felt harassed and by going at the shop of his friend Ishwar Jain consumed some poisonous substance. Ishwar Jain passed on information about consuming poisonous substance by his father to him. The complainant stated that when he was shifting his father to Civil Hospital, Sonapat then he breathed his last. Therefore, he brought the dead body of his father to Raju Palace Banquet Hall. His father has consumed poisonous substance on account of harassment meted out by acquitted accused Sharwan Kumar, Ravi Bharti and Pardeep Sharma. From it, offence under Section 306 read with Section 34 IPC was found to have been committed. Investigations were carried out by ASI Jasmer (PW.21). During investigation, suicide note from the pocket of lower of Satbir was also recovered by the police in which Satbir has mentioned the names of Ravi Bharti and acquitted accused to be the persons responsible for his death. In the suicide note it was clearly mentioned that the duo has lured Satbir in trap, and therefore he has consumed the poisonous substance. Satbir also put his signature underneath the suicide note. The suicide note has been sent to FSL Madhuban for test report.

4. During further investigation, complainant also provided copy of complaint made in the year 2010 by deceased Satbir against accused Ravi Bharti

and acquitted accused to the Investigating Agency when deceased went to the duo to get his CC Limit increased. Further that duo has cheated the deceased for an amount of Rs.1,12,47,500/- on the pretext of providing property at the cheap rate. The duo made his father as guarantor in firm M/s Shivani Agro India. In this firm M/s Shivani Agro India, acquitted accused has given surety of the property of his wife namely Bimlesh Devi and has given property papers while same property was kept mortgaged by SBI Bank at the time of raising loan of Rs.1,14,67,081/- and this fact stands verified by Bimlesh Devi before DRT Delhi. The relevant documents pertaining to firm M/s Shivani Agro India (guarantee agreement) sent to Satbir from DRT Delhi and reply submitted by Bimlesh Devi wife of acquitted accused were taken into police possession. The relevant record from Punjab National Bank, Mall Road Branch and Head Office Rajindra Palace pertaining to firm M/s Guruji Trading Company (belonging to deceased Satbir), and, other firms where Satbir was made guarantor and introducer was also collected. During further investigation, it was found that the duo after hatching a conspiracy, and, for the purpose of increasing CC Limit of firm M/s Guruji Trading Company run by deceased Satbir also kept the forged property papers of Baldev Raj and in turn through various cheques usurped Rs.1,12,47,500/-, in cash or through cheques withdrawal from the firm of deceased Satbir in the year 2010. Further in various forged companies, the duo kept the forged property documents and showed Satbir as guarantor and introducer in those forged firms. Satbir deceased used to get notices from various banks to repay the outstanding amount of those forged firms and CBI was also investigating the status in these forged companies. Qua firm M/s Shyam Trading Company, FIR No.164 of 2013 under Sections 406, 420, 467, 468, 471, 120B, 34 IPC in Police Station Roop Nagar, Delhi stood registered

where deceased Satbir was called and he was asked to join investigation on 02.12.2013. The duo mounted pressure upon the deceased, that, amount shown outstanding in various forged firms, has to be returned by deceased for which reason(s) the deceased committed suicide. Accused Ravi Bharti was enlarged on interim bail as per the orders of this Court and was joined in investigation.

5. After completion of investigations into the appeal offences, the investigating officer concerned, drew, and, filed a report under Section 173 of Cr.P.C., before the learned Committal Court concerned, and, the latter through an order drawn, on 08.11.2016 committed the trial of the appeal FIR, to the Court of Session.

6. Through an order drawn, on 30.07.2018 by the learned Sessions Court concerned, charges for commission of an offence punishable under Section 306 of IPC, read with Section 34 of IPC became formulated, and, upon the above formulated charges becoming put to the accused, he pleaded not guilty, and, claimed trial.

7. In support of the prosecution case, the prosecution examined 24 witnesses, and, in the proceedings drawn under Section 313 of Cr.P.C., the accused claimed false incrimination, but though he chose to adduce defence evidence, but yet subsequently he made a statement that he does not intend to adduce any evidence. Consequently, on an appraisal of the deposition(s) of the prosecution witnesses, the learned trial Judge concerned, proceeded to make a verdict of conviction, and, also the consequent therewith sentence(s) (supra), became imposed upon the convict.

8. The learned counsel for the appellant, has made a vigorous submission before this Court that, the impugned verdict of conviction, and, also

the consequent therewith order of sentence, as become respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does suffer from a gross perversity, absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. Consequently, he has argued that the impugned verdict be quashed, and, set aside.

9. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

10. A perusal of Ex.PW-7/C proven by PW-7 reveals that the deceased Satbir suffered his demise on account of his consuming aluminum phosphate.

11. Be that as it may, even if in his cross-examination PW-7, has stated that the FSL report appertaining to the deceased reveals that, he may have consumed ethyl alcohol before his demise, but yet even if assumingly his demise occurred on account of over consumption of ethyl alcohol, and/or, may have erupted on account of his consuming aluminum phosphate, but the prosecution attributes the above consumptions by the deceased, and, which led to his demise, rather upon the deceased Satbir Singh becoming instigated, and, goaded by the accused to commit suicide. The main plank of the prosecution case, becomes rested, upon a suicide note purportedly authored by the deceased, and, to which Ex. PW-9/B is assigned. The suicide note is *ad-verbatim* reproduced hereinafter.

“Sarwan Garg and Ravi Bharti dono he Pradeep Sharma ke jimmedar hain. Inhone mere sath bahut he pdatap kia hai. Jis karan mujhe bahut jada harassment hai. Meri mrityu ka karan dono he hain. Mujhe inhone galat fasaya hai jis karan mene poison lia hai.”

12. A perusal of the suicide note, and/or, of the dying declaration of the deceased, as, appertains to the cause of his demise makes it fall within the ambit

of Section 32 of the Indian Evidence Act, and, it does *prima-facie* constitute potent evidence of immense evidentiary vigor, unless its contents are proven to be not authored by the deceased, and/or, if the signatures made thereons are opined by the Handwriting Expert concerned, to be not belonging to the deceased.

13. In the above, it becomes relevant to allude to the report of the Handwriting Expert concerned, to which Ex.PX is assigned. Though therein, the Handwriting Expert concerned, has after making the apposite comparisons recorded an opinion, that the deceased authored the dying declaration, but yet utmost evidentiary sanctity would be assigned thereto, only if, the provenly admitted writings of the deceased rather were provenly drawn contemporaneously to the drawings of the suicide note purportedly by the deceased. In the above regard, a perusal of the report of the Handwriting Expert concerned, reveals that, the admitted writings purportedly drawn by the deceased, and, as became purveyed to the Handwriting Expert concerned, rather not mentioning the date of drawings thereof by the deceased. The resultant effect thereof, is that, the investigating officer concerned, not purveying to the Handwriting Expert concerned, such purported admitted handwritings of the deceased, as were drawn in contemporaneity to the drawings of the suicide note rather by the deceased. The sequel of the above lack of contemporaneity *inter-se* the drawings of the purported admitted writings by the deceased hence with the purported drawings of the suicide note, by him, is that, much scope was left for changes or variations occurring in the purported admitted writings of the deceased, since his purportedly scribing them, especially rather from the one(s), as, become carried in the suicide note to which Ex.PW-9/B is assigned. If so, the

apposite comparisons were neither efficacious nor become amenable for any reliance being placed thereons.

14. Be that as it may, though PW-6 makes a deposition in his examination-in-chief qua his handing over three pages from his loan file to the police, and, theirs becoming taken into possession vide Ex.PW-6/D. However, ASI Bir Singh to whom the above documents became handed over, has in his examination-in-chief, not spoken about the above fact, and, nor has mentioned in his examination-in-chief qua his sending to the Handwriting Expert concerned, the above purported admitted handwritings of the deceased, as carried in Ex.PW-6/A to Ex.PW-6/C. Though, the Handwriting Expert concerned, who stepped into the witness box as PW-20, has deposed about his receiving Ex.PW-6/A to Ex.PW-6/C, at the FSL concerned, but the moot question, which still emerges, is whether, the above echoings, as, made by PW-20, in his examination-in-chief, did also emanate from the investigating officer concerned, who rather collected them, and, was to send them to the FSL concerned. Only if the purported admitted handwriting of the deceased Satbir Singh, as became handed over by PW-6 to ASI Bir Singh, through memo Ex.PW-6/D, were the ones, as, became sent to the FSL concerned, thereupon, alone a conclusion may have been formed, but subject to the above made opinion, by this Court, that may be the apposite comparisons were validly made. However, for ensuring that this Court, does become led to make the above conclusion, as stated (supra), the investigating officer ASI Bir Singh was required to be making a deposition, qua his sending Ex.PW-6/A to Ex.PW-6/C, to the Handwriting Expert concerned, but he has not made the above communication in his examination-in-chief. Consequently, even if PW-20 in his examination-in-chief echoes, that Ex.PW-6/A to Ex.PW-6/C, as, respectively

embody therein, the purported admitted writings of the deceased, did become received by him, at the FSL concerned, but yet since the source of their collection, is PW-19, and, who however does not make the above deposition, thereupon the *inter-se* comparisons as revealed by PW-20 in his examination-in-chief, to be made *inter-se* Ex.PW-6/A to Ex.PW-6/C, with the dying declaration of the deceased, does become suspect, and/or, the source of theirs becoming purveyed to the Handwriting Expert concerned, does come under a cloud of suspicion. The apt sequel is that, Ex.PW-6/A to Ex.PW-6/C, did never embody therein, rather the purported admitted writings of the deceased, with the consequent effect, that the apposite comparisons were completely frail, and, fragile, conspicuously when even otherwise PW-20 has not spoken about the imperative factum of *inter-se* contemporaneity of the drawings of compared documents.

15. In sequel, the report of the Handwriting Expert concerned, cannot be imputed any credence. Furthermore, PW-20, who is the Handwriting Expert concerned, in his cross-examination admitted a suggestion, that he could not examine pages No.1, 6, and, 51 of the diary before preparing the report, as the investigating officer concerned, had not identified the writings carried therein to be belonging to the deceased. Therefore, it not only appears, that the investigating officer concerned, never transmitted Ex.PW-6/A to Ex.PW-6/C, to the Handwriting Expert concerned, but also it appears that rather documents other than those spoken by PW-6, were surreptitiously sent for their examination to PW-20, and, theirs becoming untenably assigned Ex.PW-6/A to Ex.PW-6/C.

16. Even if assuming, that the admitted handwriting(s) of the deceased, as embodied in Ex.PW-7/D, and, as, became collected by PW-19, did reach PW-20, the Handwritings Expert concerned, and also assuming that the *inter-se*

comparisons, as made by him *inter-se* the disputed writings, and, the admitted writings, were both valid, and, credible, (a) but yet until, and, unless there was cogent proof on record, in respect of all the strokes of all the letters, in the purported dying declaration of the deceased, to which Ex.PX is assigned, were also existing in the purported admitted writings, of the deceased, (b) rather thereupon alone the report of the Handwriting Expert concerned, hence drawing an opinion about common authorship *inter-se* admitted writings, and, the disputed writings, as, carried in the dying declaration, would become amenable for the assigning of the utmost evidentiary value thereto.

17. In the above regard there is no cogent evidence, especially qua the purported admitted writings of the deceased carryings almost all the strokes, and/or, all the letters, as became carried in the dying declaration, as purportedly made by the deceased, and, the effect of the above, is that, the Handwriting Expert concerned, could never make apposite best comparisons *inter-se* the purported admitted writings of the deceased rather with the letters, and, strokes, as carried in the dying declaration, as, became purportedly authored by the deceased.

18. In nutshell this Court concludes that, no probative vigor is to be assigned to the report of the Handwriting Expert concerned.

19. Leaving aside the above, the abetment of commission of suicide by the deceased, is rested, upon a deposition made by his son, who stepped into the witness box as PW-7, who therein, has assigned to the convict the *mens-rea* of his instigating the deceased to commit suicide, arising from the deceased being a guarantor of the borrowings made by one, Pardeep Sharma, and, as, apparent on a reading of the testification of PW-7, rather an exacting pressure becoming mounted by the present appellant along with one, Sarwan Kumar Garg, upon the

deceased, to liquidate the borrowings, as made by one, Pardeep Sharma. However, through a judgment drawn on 15.03.2019, the learned trial Judge concerned, has recorded a verdict of acquittal qua co-accused Sarwan Kumar Garg, and, no material has been placed on record before this Court by the learned State counsel, suggestive that the above verdict of acquittal has been challenged before this Court. In sequel the verdict of acquittal (supra), does acquire conclusive, and, binding effect.

20. Moreover, when a role similar to acquitted accused Sarwan Kumar Garg, is attributed to the present appellant, thereupon, he too becomes entitled to a verdict of acquittal being made qua him, by this Court.

21. A reading of deposition of PW-12 unveils, that the deceased was the proprietor of M/s Guruji Trading Company, and, was availing one cash credit account bearing No.0991008700001199, and, from the above account, hence his drawing respectively, through cheque bearing Nos.125905 Rs. 9 lacs, through cheque No.125906 Rs.9.5 lacs, through cheque No.125907 Rs.9.5 lacs. Moreover, it is apparent on a reading of the cross-examination of PW-12, that deceased Satbir, was only an introducer in Sham Trading Company, and, also was an introducer in M/s Balaji. In the above capacity, there was no necessity for the deceased Satbir to, as introducer in respect of the borrowings, as, made by Sham Trading Company, as, owned by one Pardeep Sharma, to liquidate borrowings, as made by the above, in respect of Sham Trading Company, nor also the appellant can be construed to mount any exacting pressure, upon him, to liquidate the borrowings, as made by Pardeep Sharma. Therefore, it appears that the purported instigation, and, goadings, as made by the convict qua the deceased were rather never made, and, rather their attribution by the prosecution to the accused, is obviously surmisal.

22. Since PW-19 in his cross-examination has stated, that deceased Satbir along with the appellant, Hari Shankar Sharma, and, one Tara Chand were convicted by the Court of Shri Manoj Jain, Special Judge, (PC Act) (CBI) South district, Saket District Courts, New Delhi, in respect of offences under Sections 120-B read with Sections 420, 468, 471 of IPC, and, Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, thereupon it appears, that the above verdict of conviction, and, consequent therewith sentence, as became imposed, upon the deceased rather led to his committing suicide, than the false attribution of instigations, as, made by the son of deceased qua the convict.

23. From the above discussion the following principles of law emerge:

- a) The report of the Handwriting Expert concerned, may enjoy evidentiary vigor only upon his being provenly purveyed by the investigating officer concerned, rather along with the disputed writings, also the provenly admitted/standard writings of the deceased or of the person concerned.
- b) The admitted/standard apposite writings being provenly drawn rather contemporaneously to the drawings of the disputed writings by the deceased concerned, or by the person concerned.
- c) The source of the collections by the investigating officer concerned, qua the standard writings of the deceased concerned, or of the person concerned, is required to be unflinchingly proven, by the prosecution, as only upon the provenly standard/admitted writings of the deceased concerned, or of the person concerned, becoming purveyed to the Handwriting Expert concerned, thereupon alone the latter becomes efficaciously enabled to make the worthy apposite comparisons, otherwise not.

d) The attributions of inculpatory, in the purported dying declaration concerned, as purportedly authored by the deceased concerned, and, as appertaining to commission of suicide by the maker, and, appertaining to his becoming instigated by any purported potent instigatory *actus-reus* of the offender(s) concerned, cannot *per-se* be believed, unless all the surrounding circumstances, and, other evidence also suggests that such attribution, is truthful, and/or, is not ridden with any aura of falsity, otherwise not.

24. The result of the above discussions are that, the impugned verdict suffers from a gross infirmity of gross misappraisal of the above, and, requires its being annulled, and, set aside.

25. In consequence, there is merit in the instant appeal, and, the same is allowed. The impugned verdict, as, drawn upon the convict, by the learned Additional Sessions Judge concerned, is quashed, and, set aside. The personal, and, surety bonds of the convict are directed to be forthwith cancelled, and, discharged. The convict if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to him, but in accordance with law. Records of the Courts below, be sent down forthwith. Case property, if any, and, if not required, be dealt with, and, destroyed after the expiry of period of limitation.

26. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

26.08.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No