

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

301

CRA-AS-185-2022
Date of decision:04.08.2022

SUREKHA

....Petitioner

Versus

SUNIL AND ORS.

...Respondents

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

Present : Mr. D.S. Kahlon, Advocate
for the appellant.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The present appeal has been preferred against the judgment dated 03.11.2018, passed by the Judicial Magistrate First Class, Pathankot in CIS No.COMI-32-2017, whereby, the complaint instituted by the appellant was dismissed by the Magistrate finding no sufficient grounds for proceeding further against the accused person.

Briefly the facts of the case are reproduced as under:-

Brief facts of the complaint are that complainant Surekha is widow and enjoys good reputation in the eyes of general public and is resident of Village Lahri Gujran. The accused persons are also residents of the same village. In the month of June sister of the complainant namely Sarita Devi came to the house to complainant alongwith her children to spend Summer Vacations. On 30.6.2016 at about 7.00 AM the accused persons came to the house of the complainant and

requested the complainant in presence of her sister to sent Ritik @ Abhi alongwith them to Taragarh for withdrawal of cash from ATM and assured that they would return back before lunch. The complainant allowed accused persons to take her son Ritik@ Abhi. When the accused alongwith Ritik @ Abhi were going towards Taragarh, in the way, Sukhdev Singh S/o Anant Ram pointed out to the accused persons that "Where they are going alongwith Ritik @ Abhi" but the accused persons did not reply. When the son of the complainant Ritik @ Abhi did not return even after lunch, she started waiting her son. At about 6.15 PM accused no.1 Sunil gave a telephone call from his mobile No.9592819426 to the complainant informing her that Ritik @ Abhi has been drowned in Farida Nagar Canal. The complainant tried her best to locate her son but her son was not traced out. The complainant had belief that both the accused had kidnapped her son Ritik @Abhi and that they have committed his murder by throwing his dead body in Farida Nagar Canal. The complainant also lodged report no.17 dated 30.6.2016 with police post Gharota PS Kanwan but the police did not take any action.

Upon statement of the aforesaid application with the Police, an inquiry was marked to the DSP (R) Pathankot. The aforesaid inquiry report was submitted by the DSP on 10.09.2016 to SSP, Pathankot, finding that the death of Ritik Thakur alias Abhi occurred on account of drowning in the river and that there was no foul play. It was also recorded in the said inquiry report that the allegations levelled against the accused Sunil and Laddu were not substantiated or established by any cogent or convincing evidence led during the course of inquiry.

Dis-satisfied with the inquiry conducted by the officials, the complaint in question was instituted on 28.02.2017. In order to make out a prima facie case, the complainant-appellant examined as many as 04 witnesses namely detailed as under:-

Number	CWs	Name
1.	CW1	Sukhdev Singh
2.	CW2	Sarita
3.	CW3	HC Ramesh Chander
4.	CW4	Surekha

During the pendency of the aforesaid complaint before the Illaqa Magistrate, a report was also called for by the Illaqa Magistrate from the SHO, Police Station Kanwan, wherein, it was stated that on the date of the incident, the Police officials had received an information about a boy drowning in Farida Nagar Canal. Upon receiving such information, ASI Jagdish Kumar went to the spot where Pankaj Rana got his statement recorded that he is a private businessman and that his nephew had gone to Farida Nagar Canal along with his friends for bathing in the river and that he got drowned as a result of over-flow in the river. The dead body of Ritik Thakur alias Abhi has not been traced. It is specifically stated by the uncle of deceased Ritik Thakur alias Abhi that he did not suspect any foul play and that there is no participation of any person in the occurrence of the aforesaid event and that he does not want to get any further investigation. Resultantly, Rapat No.17 dated 30.06.2016 was registered. Efforts were made to trace out the dead body of Ritik Thakur alias Abhi, however, the same is untraceable. An application was thereafter moved by Surekha (the present appellant) on 20.08.2016 before the SSP, Pathankot and an inquiry was conducted into the incident by the DSP(R). During the course of

inquiry, statements of various persons and co-villagers were recorded by the Inquiry Officer-DSP and that a conclusion was drawn by the DSP that death of Ritik Thakur alias Abhi had occasioned as a result of drowning in the river because of excessive flow of water resulting in Ritik Thakur alias Abhi becoming unbalanced and drowning. Besides, the appellant-complainant had only raised a suspicion which was not corroborated by any cogent material to attribute any motive or any reason for participation of suspects in any foul play.

The matter was heard by the Illaqa Magistrate and after taking into consideration the evidence adduced by the complainant, he concluded that there is no sufficient ground for proceeding against the accused persons and thus, dismissed the said complaint. The relevant part of the observation as recorded by the Illaqa Magistrate is extracted as under:-

During the pendency of the complaint, report was called from SHO PS-Kanwan and the report was submitted by ASI Rakesh Kumar wherein it is stated that on 30.6.2016 ASI Jagdish Kumar alongwith other police officials were present at Bridge Bheempur whether they received information from MHC PS Kanwan that a boy has got drowned in Farida Nagar Canal. Thereafter, ASI Jagdish Kumar went to the spot where Pankaj Rana got his statement recorded before ASI to the effect that he is a private businessman and Ritik @ Abhi is his nephew and that on 30.6.2016 at about 2.00 PM Ritik @ Abhi alongwith his friends went to Farida Nagar Canal for taking bath in the river and suddenly while taking bath in the said river got drowned. The death body of Ritik @ Abhi has not been traced yet. There is no fault of any person in the death of Ritik @ Abhi and that they do not want to get any investigation. Thereafter, rapat no.17

dated 30.6.2016 was got registered and efforts were made to trace out death body of Ritik @ Abhi but the death body of Ritik @ Abhi could not be traced. Thereafter, Surekha moved an application no.107 dated 20.8.2016 before SSP, Pathankot which was marked to DSP (R) for inquiry and in the inquiry report submitted by DSP (R) it was held that dead body of Ritik @Abhi has not been traced yet and that there is no truth in the allegations levelled by Surekha against accused Sunil and Laddu that she has suspicion that Sunil and Laddu has intentionally caused the death of Ritik @ Abhi by pushing him in the river. In the inquiry report conducted by DSP (R) it was held that the death of Ritik Thakur was caused while taking bath in the river and because of excessive water Ritik @ Abhi became unbalanced and ultimately got drowned.

The statement of respectables of the village namely Rajinder Kumar (Member Block Samiti) village Lahir Gujran, Narinder Kumar (Member Panchayat) Village Lahri Gujran, and Neena Devi (Member Panchayat) Village Lahri Gujran, Vinod Kumar (Sarpanch) Village Lahri Gujran, Raghunath Singh Village Lahri Gujran were also got recorded during the inquiry wherein they have stated that on 30.6.2016 Sunil Kumar, Neeraj @ Laddu and Ritik @ Abhi went to Farida Nagar Canal for taking bath. At about 5.00 PM a telephone call was received at the house of Ritik @ Abhi informing that Ritik has got drowned in the river. Thereafter, they alongwith other members of the village had gone at the spot where police party was also present. The efforts were undertaken to trace out body of Ritik @ Abhi but the body could not be traced. The death of Ritik was caused while taking bath in the river and due to excessive flow of water in the river, Ritik @ Abhi became

unbalanced and ultimately got drowned and in the said incident there is not fault of Sunil and Neeraj @ Laddu.

The statement of Manik Samyal son of Karan Singh R/o Village Bassi Afgana was also got recorded who has stated that on 30.6.2016 he alongwith Shubham Thakur had gone to take bath in Farida Nagar Canal where other boys of the village were also taking bath including Ritik @ Abhi and Laddu. Ritik and Laddu jumped in the river but due to the excessive flow of water both of them became imbalanced and thereafter one unknown person also jumped in the river and tried to save both of them but could only save Laddu and could not save Ritik @ Abhi. Ritik @ Abhi got drowned due to excessive flow of water in the river and there is no fault of anyone in the drowning of Ritik @ Abhi.

The statement of Shubham Thakur son of Raj Kumar was also recorded who has also stated as per the statement given by Manik Samyal and stated in his statement that there was no fault of anyone in the drowning of Ritik @ Abhi.

During the inquiry the statement of Sunil (accused) was also got recorded who has stated that on 30.6.2016 he alongwith Neeraj @ Laddu and Ritik @ Abhi went to ATM for withdrawing cash and thereafter they changed their mind as it was a very hot day and went to take bath in Farida Nagar Canal. They took bath in the river where the other boys were also taking bath in the said river. At about 4.00 PM Ritik @ Abhi and Neeraj @ Laddu again jumped in the river for taking bath but the water was excessive due to which body of them became imbalanced. He raised hue and cry and after hearing his cries two unknown boys jumped in the water to save them and they were able to save only Neeraj @ Laddu but could not save Ritik @Abhi despite their best efforts. Thereafter, some person informed from his mobile

number at the house of Ritik about his drowning in river. Thereafter, member of the Panchayat and other respectables of the village and police party came at the spot and tried to find the body of Ritik but could not find the body of Ritik @ Abhi.

The statement of Neeraj @ Laddu (accused) was also got recorded who has also stated that on 30.6.2016 he alongwith Sunil and Ritik@ Abhi had gone to ATM for withdrawing cash but changed their mind it was a very hot day and went to Farida Nagar Canal to take bath and reached at about 1.00 PM. They took bath in the said river where other boys of the village were also taking bath. At about 4.00 PM he and Ritik again jumped in the river but because of flow of water was excessive they became imbalanced and started drowning and he was saved by an unknown person but despite best efforts Ritik @ Abhi could not got saved and ultimately drowned. Thereafter, members of the village and police party came and the spot and tried to trace out the body of Ritik @ Abhi but could not find the body of Ritik @ Abhi.

The inquiry report is Ex.C1 where the inquiry on the application no.107 dated 2.8.2016 moved before SSP by complainant Surekha was conducted by DSP (R) Pathankot and in the said report it was concluded that the death of the Ritik @ Abhi was caused due to excessive flow of water while taking bath in the river and there is no truth in the allegations levelled by complainant against accused Sunil and Laddu.

The complainant in her evidence has stated that she has suspicion that accused persons have intentionally caused the death of her son namely Ritik @ Abhi by pushing him in the river and the other witnesses examined by the complainant namely CW-1 Sukhdev Singh, CW-2 Sarita have also stated that they have suspicion that accused persons have intentionally caused

the death of Ritik @ Abhi by throwing him in the river. In the detailed inquiry report conducted by DSP (R) it has been concluded that the death of Ritik @ Abhi was caused due to excessive flow of water in the river and there is no truth in allegations that accused Sunil and Laddu have caused death of Ritik @ Abhi. The statements of Sarpanch of the village, Members Panchayat of the Village and other respectables of the village were also recorded in the inquiry conducted by the police wherein they have stated that the death of Ritik @ Abhi was caused due to drowning in the river because of imbalance caused due to excessive flow of water and there is no fault of anyone in the death of Ritik @ Abhi. Even the Statements of Manik Samyal and Shubham Thakur were also recorded who have also stated that they were present at the Farida Nagar Canal when the incident happened and has stated that Ritik @ Abhi himself jumped in the river alongwith Laddu and because of excessive flow of water they became imbalance and only Laddu was saved and has stated Ritik @ Abhi could not be saved despite bests efforts and ultimately got drowned in the river.

During the course of arguments in the present appeal, learned counsel representing the appellant has strenuously argued that the deceased had undisputedly accompanied the suspects and that the dead body of the deceased so far has not been recovered. He thus contends that there is a strong apprehension and suspicion with regard to the involvement of the suspects in the death of her son.

I have heard learned counsel for the appellant and have also gone through the judgment of the Illaqa Magistrate.

It is a well-settled position of law that suspicion, howsoever grave, cannot substitute for evidence. Merely because the deceased was

accompanied by the suspects on the said date, it would not necessarily lead to an inference that the suspects had indulged in an offence as suggested by the complainant. The matter has been examined twice over, firstly by the concerned Police Station and statement of uncle of the deceased was duly recorded that he did not suspect any foul play and that his nephew Ritik Thakur alias Abhi died on account of drowning due to excessive overflow of water in Farida Nagar Canal. The matter was re-inquired by the DSP (R) Pathankot and he had duly recorded the statements of villagers and other witnesses before recording a conclusion that the suspects had no involvement in committing any murder or causing any harm to the deceased Ritik Thakur alias Abhi and that the incident in question had taken place as noticed above.

Learned counsel could not point out to any mis-apprehension of evidence led by the Illaqa Magistrate or refer to any other evidence to suggest that the finding recorded by the Illaqa Magistrate is not sustainable on a meaningful interpretation of the evidence. It is also not the case of the counsel that any evidence has been latently ignored and upon consideration thereof, the participation of the suspects in the commission of the offence could be duly restricted and established.

The Court of appeal while examining a judgment under challenge is required to assess the illegality, perversity or impropriety in such a judgment or a gross mis-appreciation of the evidence adduced before us. The Appellate Court would not ordinarily substitute the judgment of the Court below merely because some other opinion is a possible opinion on the strength of a suspicion nurtured by the appellant.

Having considered the submissions advanced by the counsel and having gone through the judgment under challenge, I find no infirmity, illegality or perversity in the judgment passed by the Judicial Magistrate First Class, Pathankot in CIS No.COMI/32/17. The present appeal is accordingly dismissed and the judgment of the Illaqa Magistrate is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

04.08.2022
Amandeep

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No