

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

CRA-S-1560-2021 (O&M)
Reserved on: 29.04.2022
Date of decision: 13.05.2022

HARPREET KAUR

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. J.S. Sandhu, Advocate
for the appellant.

Mr. Bhupender Beniwal, AAG, Punjab

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 15.09.2021, upon Sessions Case No.53, CIS No.SC/213/2019, by the learned Sessions Judge, Moga. Through the afore made verdict, the learned trial Judge concerned, proceeded to draw a verdict of acquittal qua co-accused Raju Khan, whereas it proceeded to convict the present appellant for a charge drawn, against him under Section 306 of the IPC. In consequence to the afore made verdict of conviction qua Harpreet Kaur, she became sentenced to undergo rigorous imprisonment for 5 years, and, also became sentenced to a fine amount of Rs.5,000/-, and, in default of payment of fine amount, she became sentenced to undergo rigorous imprisonment for 3 months. Obviously becoming aggrieved, the convict one, Harpreet Kaur, has challenged the above made verdict of conviction, and, consequent therewith sentence (supra), as became imposed, upon her, by the learned trial Judge concerned.

2. The brief facts of the case are that on 08.08.2019, an intimation was received at police station that Harbhajan Singh son of Darshan Singh, resident

of Patto Hira Singh has died by consuming some poisonous substance. On this, the police party headed by ASI Amarjit Singh along with other police officials went towards village Patto Hira Singh for conducting proceedings. When the police party reached Jawahar Singh Wala Chowk, Darshan Singh son of Wasakha Singh son of Kishan Singh, resident of Patto Hira Singh, P.S. Nihal Singh Wala along with Panch Sukhmander Singh met them and said Darshan Singh got recorded his statement to the effect that he is resident of above said address and is doing labour work. He has got two sons. The elder one is Jugraj Singh and younger one is Harbhajan Singh, who got married 6 years ago with Harpreet Kaur daughter of Darshan Singh at village Buraj Kulara, District Ludhiana. They had two children i.e. a daughter Rajbir Kaur aged 3 years and a son Lovejit Singh aged about 1½ year. His daughter-in-law Harpreet Kaur developed illicit relations with Raju Khan, tailor master of his village. About two months ago, his son Harbhajan Singh came to know about the illicit relations of Harpreet Kaur. He stopped Harpreet Kaur, due to this, a dispute used to remain in their house. The matter was discussed with Darshan Singh and Gurdev Kaur parents of Harpreet Kaur but they took the side of their daughter Harpreet Kaur. Harpreet Kaur started taking Raju Khan to her house at her parental village. On 05.08.2019, his daughter-in-law Harpreet Kaur went to her parental village Buraj Kulara along with her son Lovejit Singh and left her daughter Rajbir Kaur with Harbhajan Singh. On 07.08.2019, his son Harbhajan Singh went to take Harpreet Kaur at village Buraj Kulara where Harpreet Kaur and her father Darshan Singh and mother Gurdev Kaur insulted Harbhajan Singh and turned him out of the house. His son Harbhajan Singh returned to his house at 5.00 p.m, and told him (complainant) that Harpreet Kaur, father-in-law Darshan Singh and mother-in-law Gurdev Kaur had insulted him and gave

beatings to him and that he has consumed sulphas and he is going to die. In the meantime, his son Harbjajan Singh had a vomit and he became unconscious. Dr. Pritam Singh of the village was called, who declared Harbjajan Singh dead. He has kept the dead body of his son in Civil Hospital Moga and was going to inform the police along with Sukhmander Singh Panch. However, the police met him on the way. His son Harbhajan Singh died due to the harassment at the hands of his wife Harpreet Kaur, his mother-in-law Gurdev Kaur, father-in-law Darshan Singh and friend of Harpreet Kaur Raju Khan. Action be taken against them.

3. The above said statement was signed by complainant after hearing and admitting its contents as true and it was attested by ASI Amarjit Singh. Ruqa was sent for registration of the case under Sections 306/34 IPC, which was accordingly registered. Statements of witnesses were recorded. Site plan was also prepared. Accused Harpreet Kaur and Raju Khan were arrested. At the time of presentation of challan, accused Gurdev Kaur and Darshan Singh were yet to be arrested and PO proceedings were initiated against them. After completion of necessary formalities, challan was prepared and presented against accused Harpreet Kaur and Raju Khan u/s 306/34 IPC.

4. On appearance of the accused in the Court, the copies of the report u/s 173 (2) Cr.P.C., along with annexed documents, as envisaged u/s 207 Cr.P.C., were supplied to both the accused free of costs.

5. After conclusion of trial, upon the charged offences (supra), the learned trial Judge made the hereinabove verdict of conviction, and, also imposed the consequent therewith sentences (supra), upon the present appellant.

6. The learned counsel appearing for the appellant, has contended with much force before this Court, that the impugned verdict, is ridden with a gross

fallacy of mis-appreciation, and, non-appreciation of evidence germane to the charge, and, has contended that the impugned verdict be quashed, and, set aside.

7. On the other hand, the learned State counsel, has also made a vigorous address before this Court, that the impugned verdict does not suffer from any infirmity, and, illegality, and, that it be affirmed, and, upheld.

8. As unfolded by the report of the chemical examiner to which Ex. P-X is assigned, the deceased-Harbhajan Singh died owing to his consuming aluminium phosphide insecticide.

9. The present appellant, who is the surviving spouse of the deceased is alleged to abet, and, instigate the deceased to commit suicide, and, the afore penal inculcation as made against her, is grooved in the fact, that she was, to the knowledge of the deceased rather holding an extra marital relationship with one, Raju Khan. Raju Khan also faced a charge alongwith the present appellant, for commission of an offence punishable under Section 306 of IPC, but became acquitted qua the afore drawn charge against him. The learned State counsel, has not been able to place on record any evidence suggestive, that the verdict of acquittal, as became drawn against co-accused Raju Khan, has been challenged before this Court. Therefore, the verdict of acquittal as made, upon the co-accused Raju Khan acquires conclusivity, and, finality, and, the further sequel thereof, is that *prima-facie* hence the the ascription of a penal mis-demeanor, to the present appellant, arising from hers holding, and, to the knowledge of the deceased, an extra marital relationship with one, Raju Khan rather becomes completely capsized. In sequel, since the prosecution case, is rooted in the afore trite factum, and, when the afore root of the prosecution case becomes uprooted/displaced, therefore the present appellant became also entitled to receive a verdict of acquittal qua the above drawn charge against her.

10. Be that as it may, yet this Court is to analyze the evidentiary worth of the evidence brought in respect of the afore drawn charge against the present appellant. In the above endeavour, it becomes incumbent, upon this Court to thoroughly analyze the testification(s) of the complainant, who has stepped into the witness box, as PW-1, and, to also make an incisive analyses of the testification of PW-2.

11. PW-1 is the complainant. In his deposition embodied in his examination-in-chief, he has supported the genesis of the prosecution, as becomes unfolded in the apposite FIR, to which Ex.P-4 is assigned. A reading of his examination-in-chief, discloses, that the relevant occurrence happened at about 04:00 to 05:00 p.m., on 05.08.2019, on the deceased returning to his abode, after his prior thereto hence visiting his in-laws' home, where the present appellant was residing. PW-1 articulates in his examination-in-chief, that the deceased, on returning to his abode, rather intimating him, that when he visited his in-laws' home, his being thrashed, and, insulted by the present appellant. However, after the afore intimation being made to him, PW-1 echoes in his examination-in-chief, that his deceased son, intimating, that he has consumed a poisonous substance, as he intended to die. After consumption of poison, PW-1 echoes in his examination-in-chief, that his deceased son expired.

12. Even though, in his examination-in-chief he has completely supported his previous statement recorded in writing, and, as is carried in Ex.PW-1. However, his testification in his examination-in-chief, cannot, solely become the foundation for sustaining the charge drawn against the present appellant. This Court is also required for making an incisive veracity test rather of his deposition, through its reading also his cross-examination, hence to gather therefrom, whether in his examination-in-chief, PW-1, has made gross

improvements, and, embellishments from his previously statement recorded in writing, and/or, has therein openly contradicted his testification, as, carried in his examination-in-chief.

13. A reading of the prosecution case, as above stated, is embodied in the trite factum, of the deceased being in know of the present appellant holding an extra marital relationship with one, Raju Khan. However, as above stated, the above has received a verdict of acquittal, consequence whereof, especially when for above stated reason, it has acquired finality, is that, the above alleged extra marital relationship of the present appellant, with one, Raju Khan rather cannot be assigned any credence. Conspicuously, also no credible electronic evidence to support the above fact is adduced. Even otherwise, if the deceased about two months prior to the relevant incident, had acquired knowledge of the present appellant, having an illicit relationship with co-accused Raju Khan, thereupon in the promptest sequel thereof, he became enjoined to purvey an information to the Panchayat. However, in his cross-examination, though PW-1 *suo-motu* articulates, that with respect to the above trite factum, he had made an intimation to the Panchayat, but the above echoings, as carried in his cross-examination, become shaky, as, upon his being confronted with his previous statement recorded in writing, the above fact has remained unechoed therein. The effect thereof, is that the above disclosure when *suo-motu* exist(s) only in the cross-examination of PW-1, rather makes it becoming completely belied, especially hence when it is a fact engineered or invented rather only during the course of PW-1 stating it in the witness box, and, not earlier thereto. Therefore, the afore factum purportedly comprising, the instigatory fact for the deceased committing suicide, does loose its evidentiary worth. Moreover, in his examination-in-chief PW-1 communicates, that when on the relevant day, he has visited his in-laws'

home he was insulted, and, also became thrashed but the veracity of the afore deposition becomes unhinged, as upon PW-1 becoming confronted with his previous statement recorded in writing, therein occurs, only the factum of the deceased being insulted by the present appellant. If so, it appears that PW-1 has taken to over stretch the purported humiliation meted to his deceased son, upon his visiting his in-laws' home.

14. In addition, in his cross-examination PW-1 echoes, that the deceased had vomited, in his presence, and, has also voluntarily stated, that he had arranged for medication, being purveyed to his deceased son, from a doctor. Moreover, he has also deposed, that the doctor in his neighbourhood had given medicine to his deceased son. Therefore, it appears that PW-1, though may not have been in the vicinity of the deceased when the latter consumed poison, but he definitely acquired knowledge qua his son consuming poison, given his stating that he noticed his son vomiting, and, that a doctor in the neighbourhood purveying medication to him. However, the name of the doctor concerned, has not become revealed, to the investigating officer concerned, nor he was cited in the list of prosecution witnesses. The suppression of the above fact, by the PW-1, does boost an inference, that the truth of the prosecution case has been smothered. Further the resultant effect thereof, is that, when for the reasons (supra), the inculpatory role, as assigned to the present appellant becomes grounded, in hers instigating the deceased to commit suicide, and, as arising, from his being in the know of the present appellant rather holding an extra marital relationship with one, co-accused Raju Khan, which otherwise, for reasons (supra), is rather not creditworthy, thereupon the above suppression also gives additional strength to the above conclusion.

15. Nonetheless the deposition of PW-1 may have yet become amenable for meteing credence, if PW-1, had unfolded to the investigating officer concerned, the name of the doctor concerned, who upon, his being cited, as a prosecution witness, and, after his making a deposition, on oath may have unfolded, the condition of the patient at the relevant time, and, if he had also unfolded, that he was fit to make a statement, then yet the deceased not making an oral dying declaration, to him about the cause of his demise, would obviously beget a conclusion, that the deposition of PW-1 rather is completely untruthful. On the contra, if any oral dying declaration was made to the doctor concerned, by the deceased about the cause of his demise, then obviously the deposition of PW-1 would acquire an utmost sanctity. However, the want of revelation by PW-1 to the investigating officer concerned, of the name of the doctor, and, also his being not cited, as a prosecution witness, and, nor his stepping into the witness box, for his making the afore echoings, does foster a conclusion, that the doctor concerned, noticing the deceased to be at the relevant time to be fit to make a statement, and, yet his not making any oral dying declaration to him about the cause of his demise. The effect of all the afore failures naturally add strength to the above conclusion, that the deposition of PW-1 is completely lacking in truth.

16. PW-2 though has supported the deposition of PW-1, insofar as it appertains, to the deceased holding an extra marital relationship with Raju Khan, but the afore deposition does also lack in evidentiary vigor, primarily for all the reasons, as become hereinabove alluded, rather for dis-imputing credence to the testimony of PW-1. Though, he has in his cross-examination deposed, that an intimation of the above factum was made to the panchayat, but he was unable to either place on record the resolution concerned, nor he entered in the records of panchayat concerned, the apposite intimation, as made to him.

17. In consequence the purported instigatory role, as comprised in above factum, and, which allegedly constitutes the actuary factor, for the present appellant abetting the deceased to commit suicide, rather does become completely belied.

18. The impugned verdict of conviction, and, consequent therewith sentence(s) is for all the reasons (supra), is ingrained with a deep vice of gross mis-appreciation, and, non-appreciation of evidence germane to the charge, and, it requires interference. In nutshell the present appeal is allowed, and, the present appellant is acquitted of the charged offence. The personal and surety bonds of the convict-appellant herein are ordered to be forthwith cancelled, and, discharged. Fine amount, if any, realized from the present appellant may, in accordance with law, be refunded to her. The case property is ordered to be dealt with, in accordance with law, after the expiry of the period of limitation. Records be sent down forthwith. The present appellant, if not required in any other case be forthwith released from custody. Release orders be accordingly prepared.

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

(SURESHWAR THAKUR)
JUDGE

13.05.2022

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