

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

CRA-S-1177-SB-2014 (O&M)

Reserved on: 19.05.2023

Date of decision : 02.06.2023

Mohan Singh

....Appellant

versus

State of Punjab and others

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sanjeev Kumar, Advocate for
Mr. J.S. Dadwal, Advocate
for the appellant.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. S.S. Brar, Advocate
for respondents No.2 and 3.

RAJESH BHARDWAJ, J.

This appeal has been filed against the order dated 31.10.2013 passed by the Additional Sessions Judge, Ludhiana whereby respondents No.2 and 3 had been acquitted of the charges under Section 306 of IPC in which both of them were prosecuted by the respondent-State. The appeal has been filed by the appellant-complainant before this Court assailing the impugned order of acquittal dated 31.10.2013.

Succinctly, the facts of the case are that on the basis of statement of appellant/complainant, FIR No.222 dated 11.11.2009 was registered on the allegations that the appellant/complainant had two elder sisters who were married. His elder sister namely, Sukhwinder Kaur (since deceased) aged 21 years was married to Kulwinder Singh (respondent No.2) about eight months prior to the occurrence. However, soonafter the marriage, a dispute arose between his sister Sukhwinder

Kaur and Kulwinder Singh on account of the alleged illicit relations of Kulwinder Singh with his sister-in-law, Hardeep Kaur i.e. co-accused/respondent No.3. His sister could not tolerate the same and despite her best efforts, his brother-in-law Kulwinder Singh did not mend his ways. The situation kept worsening day-by-day. On the eve of Diwali, his sister came to Village Kulewal and after the festival of Diwali, his sister was sent back to her matrimonial home. On 31.10.2009, brother-in-law of his sister came to him and informed that his sister Sukhwinder Kaur left home in the morning and she was not traceable. They proceeded in search of his sister. Kulwinder Singh gave a telephonic call at 11:20 AM that he should reach at Bridge Neelon. On reaching the bridge canal, he met Kulwinder Singh and his sister Sukhwinder Kaur. Kulwinder Singh caught hold her, however, she being annoyed with Kulwinder Singh ran towards bridge canal after getting herself freed from Kulwinder Singh, she jumped into the canal. His brother-in-law Kulwinder Singh also jumped in the canal to save her but he could not trace her in the water. It was alleged that his sister had jumped into the canal being harassed by her husband Kulwinder Singh as he was having illicit relations with *jethani* (Hardeep Kaur) of his sister. He informed his relatives telephonically and in the meanwhile Kulwinder Singh ran away from the spot. Prayer was made to take the legal action against the accused. On registration of the FIR, investigation commenced and on completion of the investigation, challan was presented against both the accused persons. Learned trial Court framed the charges and appreciated the evidence led by both the sides. On hearing the arguments raised by both the sides and appreciating the evidence produced, learned trial Court found the

prosecution having been failed in proving the case against the respondents-accused and thus, acquitted them of the charges framed against them, vide impugned order dated 31.10.2013. Aggrieved by the order of acquittal, the appellant/complainant filed the present appeal.

Learned counsel for the appellant has vehemently contended that the learned trial Court has miserably failed in appreciating the evidence produced by the prosecution. He has submitted that on completion of the investigation, the allegations made in the FIR were duly substantiated and the challan was presented against both the accused. He has submitted that the prosecution examined five witnesses wherein Bagga Singh was examined as PW-1. He submits that appellant-Mohan Singh who was the eye-witness of the occurrence was examined by the prosecution as PW-3. He duly supported the case of the prosecution and his deposition could not be shattered by the defence during his cross-examination. He has submitted that Bagga Singh was examined as PW-1 who again supported the case of the prosecution. Besides this, ASI Jaswinder Singh was examined as PW-2 who proved the investigation conducted. He has further submitted that the accused was the husband of the deceased and during his statement recorded under Section 313 Cr.P.C, he simply denied the case of the prosecution and gave no plausible explanation for death of his wife. He has submitted that learned trial Court has failed to appreciate the evidence produced in support of the fact that respondent-Kulwinder Singh had illicit relations with his sister-in-law and it was on account of the same, his sister was instigated to commit suicide. He has submitted that respondent-Kulwinder Singh was the husband of the deceased and his illicit relations with Hardeep Kaur

amounted to the abetment as enshrined under Section 107 IPC and thus, his sister was compelled to commit suicide. He has submitted that the trial Court has miserably failed to appreciate the evidence produced by the prosecution and the law settled and thus, the impugned order acquitting the accused is totally unsustainable in the eyes of law and thus, the same deserves to be *set aside* by convicting both the accused for the charges they were prosecuted before the trial Court.

Learned counsel for respondents No.2 and 3 has vehemently opposed the submissions made by learned counsel for the appellant. He has submitted that the relationship between Kulwinder Singh and the deceased is not denied as they were husband and wife. He has submitted that the allegations pertaining to the illicit relations of Kulwinder Singh with co-accused Hardeep Kaur were totally baseless and there was no evidence produced by the prosecution to substantiate the same before the trial Court. He submits that merely on the basis of bald allegations, the illicit relations as alleged could not have been held to be proved. He has further submitted that the conduct of the appellant itself was totally unnatural. He has submitted that the allegations made in the FIR were totally a cock and bull story and prosecution had miserably failed to prove the same before the trial Court. He has submitted that as per the case of the prosecution, appellant/complainant himself deposed that Kulwinder Singh jumped into the canal immediately after Sukhwinder Kaur. This shows that Kulwinder Singh had tried his best to save Sukhwinder Kaur but unfortunately, she could not be saved. He has submitted that till date, the dead body of the deceased could not be traced and thus accused could not be prosecuted on the basis of presumptions and assumptions. He has

submitted that the statement of the appellant/complainant was exhibited as Ex.PA which contained the signatures of Kulwinder Singh as well. The prosecution miserably failed in proving the signatures of the respondent-accused Kulwinder Singh on his statement. He has submitted that if the statement had been made by the appellant/complainant only, then there was no question of having signatures of the respondent-accused on the same. He has submitted that even the Investigating Officer could not give explanation regarding the same. The other material witness, Bagga Singh i.e. father of the complainant had been produced by the prosecution as PW-1 and his testimony also could not be relied upon as the same could not withstand cross-examination. It has been vehemently contended by learned counsel that the ocular version of the prosecution was not corroborated by any other evidence and thus, the trial Court had rightly acquitted the accused from the charges framed against them. He submits that as per the law settled, learned Appellate Court cannot interfere in the order of acquittal in a mechanical manner, as after acquittal there lies double the presumption of innocence in favour of the accused. He has submitted that the appeal filed being without any merits, deserves to be dismissed.

Learned State counsel has submitted that the prosecution had proved its case by producing cogent evidence on record. He has further submitted that there were specific allegations of illicit relations of Kulwinder Singh with co-accused Hardeep Kaur and it was on account of the same, the sister of the appellant/complainant committed suicide. He submits that the prosecution proved its case beyond reasonable doubt and thus, the order of acquittal deserves to be *set aside* by convicting the

respondents-accused for the charges they were prosecuted.

Heard. It is an admitted fact that the sister of the appellant/complainant was married with Kulwinder Singh about eight months prior to the occurrence. The allegations of illicit relations of Kulwinder Singh with his sister-in-law were made by the appellant/complainant. Sister of the appellant/complainant jumped in the canal in front of complainant. As per the case of prosecution, Kulwinder Singh immediately jumped in the canal after Sukhwinder Kaur in order to save her. However, he failed to save her and the body of the deceased could not be traced. Admittedly, dead body was not recovered and thus, there was no question of any postmortem being conducted of the deceased. The appellant/complainant had been examined as PW-3 and his father Bagga Singh as PW-1. From the joint reading of the evidence produced, the prosecution failed to prove the allegations pertaining to the illicit relations of accused-Kulwinder Singh with co-accused Hardeep Kaur. The statement of appellant/complainant had been exhibited as Ex.PA and the same contained the signatures of the accused-Kulwinder Singh. From the evidence produced, it could not be explained by the prosecution as to how his signatures were there on the complaint Ex.PA when he himself faced the allegations of abetting the suicide of Sukhwinder Kaur. For proving the charge under Section 306 IPC burden lies on the prosecution to prove the ingredients of Section 107 IPC of abetting the same. In the light of evidence produced, the ingredients of Sections 306 IPC and 307 IPC are not proved beyond reasonable doubt. Thus, in the overall facts and circumstances of the case, the view taken by learned trial Court in giving the benefit of doubt to the accused in the

opinion of this Court suffers from no infirmity.

As per the law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. In case of acquittal, it has been held by Hon'ble Supreme Court repeatedly that if there are two views possible in a given case, then, the one favouring the accused should be adopted. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb in a cavalier manner the findings arrived at by the trial Court resulting in acquittal of accused and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **Jafarudheen and others vs State of Kerala 2022 SCC Online SC 495**, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:-

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present appeal is dismissed.

02.06.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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