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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1616-MA-2015
Date of Decision: 11.12.2023

STATE OF HARYANA

Versus

.....Appellant

RANI DEVI AND OTHERS

.....Respondents

CRA-AS-100-2015
Date of Decision: 11.12.2023

ANIL KUMAR

Versus

.....Appellant

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bharadwaj, AAG Haryana
None for the appellant in CRA-AS-100-2015,
and for respondents in CRM-A-1616-MA-2015.

HARPREET SINGH BRAR, J. (ORAL)

CRM-31806-2015 and CRM-31791-2015

Both the applications seeking condonation of delay in filing the appeals are allowed and delay of 21 days and 58 days respectively, is condoned.

CRM-A-1616-MA-2015 and CRA-AS-100-2015

1. The present appeals are preferred against the judgment of acquittal dated 30.04.2015 passed by the learned Additional Sessions Court, Kurukshetra in FIR No. 7 dated 12.01.2012 under Section 306 IPC registered at Police Station Sadar Thanesar.
2. This common order shall dispose of both CRM-A-1616-MA-2015 and CRA-AS-100-2015 as they arise from the same factual background. For the sake of brevity, the facts are taken from CRM-A-1616-MA-2105.

FACTUAL BACKGROUND

3. The facts, in brief, are that respondent-accused Rani Devi moved a complaint under Section 406,420,506 IPC before the police against Jagan Nath(deceased), father of the appellant-complainant Anil Kumar for recovery of an amount of Rs 6, 30,000/-. Panchayat was convened to resolve the dispute where Jagan Nath denied having borrowed such amount. The panchayat was scheduled to reconvene on 12.01.2012. On that day, Jagan Nath went for a walk at around 7-8 AM but did not return. The appellant-complainant and his associates went to look for Jagan Nath and at around 4:30 PM, found out that the dead body of Jagan Nath is lying in the panchayati land of village Sanwala. The appellant-complainant, along with his uncles Amar Nath and Ram Charan, went to the said place and saw the dead body of his father. There were no external injuries on the person of the deceased, however, on checking his pant pockets, two suicide notes were recovered whereby the respondents-accused were made responsible for death of the deceased.
4. On completion of necessary formalities of the investigation, challan was presented against accused Rani Devi only. The names of the remaining accused(respondents 2-6) were kept in column 2 as they were found innocent on investigation. However, they were later summoned as additional accused vide order dated 19.09.2013.
5. The learned trial Court, after assessing the material on record, charged all the accused jointly for committing an offence under Section 306 IPC, to which they pleaded not guilty and claimed trial.
6. In order to prove its case, the prosecution examined as many as 16 witnesses. The accused examined 6 witnesses in their defence.

CONTENTIONS

7. Learned State counsel assails the impugned judgment on the ground that the learned trial Court has erred in its assessment of the facts and circumstances. The suicide notes recovered from the person of the deceased categorically mentions that he had loaned Rs. 3,00,000/- to the respondent-accused Rani Devi seven months ago and since he was demanding his money back, she had been blackmailing him. The deceased also mentioned that he was being harassed and threatened by respondent accused Malkeet Singh, Head Constable in connivance with Rani Devi. Due to this harassment, the deceased consumed poison and died by suicide.

8. Further, the learned trial Court misinterpreted the statement of PW10- Dr. Satish Kumar, Senior Scientific Officer(Documents), FSL, Madhuban who had opined that the writing signatures on the suicide note duly matched with the standard signatures. Undue consideration has been given to the fact that no pen or ink was recovered from the spot, as the same becomes redundant once the handwriting expert has opined that the signature were freely inscribed. Therefore, it is well established that the suicide notes were in fact written by the deceased.

9. He further contends that filing of a civil suit and complaint no. 44 of 2013 in the court of learned Chief Judicial Magistrate, Kurukshetra by Rani Devi and summoning of appellant-complainant Anil Kumar in the same, cannot be the cause for death of the deceased by suicide. There is ample evidence on record to satisfy the ingredients of Section 107 of IPC and to convict Rani Devi under Section 306 of IPC.

OBSERVATIONS AND ANALYSIS

10. Having heard the learned State counsel and perusing the record of the case, this Court is of the view that ingredients of Section 306 in terms of Section 107 of IPC are not made out.

306. Abetment of suicide. - *If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either*

description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing. - A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy or the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of the thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

11. Not only is there a glaring lack of incriminating evidence, *mens rea* which forms the basis of instigation of this extent, is also completely missing. The respondents-accused cannot be convicted solely on the basis of the undated suicide notes especially when PW10- Dr. Satish Kumar, Senior Scientific Officer(Documents), FSL, Madhuban has deposed that different pens and inks were used in writing the suicide notes. In view of settled law, *mens rea* is of utmost importance for the accused to instigate suicide of the deceased. Further, the instigation, requires active participation of the accused and thereby, necessitates direct action attributable to the accused. In the case at hand, there is no proximity between the alleged act of the accused-respondent and suicide of the deceased.

12. A two Judge bench of the Hon'ble Supreme Court in **Gangula Mohan Reddy v. State of Andhra Pradesh 2010(1) SCC 750**, speaking through Justice Dalveer Bhandari, held as follows:

"19. This court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009(4) RCR (Criminal) 196 : 2009(5) RAJ 278 : 2009(11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each

person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

*21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 Indian Penal Code **there has to be a clear mens rea** to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide" (emphasis added)*

13. Recently, a two Judge bench of the Hon'ble Supreme Court in **Mohit Singhal and Another v. State of Uttarakhand and others Criminal Appeal No. 3578 of 2023** decided on 01.12.2023, speaking through Justice Abhay S. Oka, made the following observations:

"9...Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide."

14. Moreover, the power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional

advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** in CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

15. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his

acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In view of the facts and circumstances of the case, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present appeal and the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

11.12.2023
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>