



CRA-S-2500-SB-2014 (O&M)

Sr. No. 102

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRA-S-2500-SB-2014 (O&M)
Date of Decision:- 18th May 2024

HARWINDER SINGH @ RANA

.....APPELLANT

versus

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. L.S. Mann, Advocate,
for the appellant.

Ms. Himani Arora, A.A.G., Punjab

HARPREET KAUR JEEWAN, J.

1. The present Criminal Appeal has been filed impugning the judgment of conviction and the order of sentence dated 23.04.2014, passed by the learned Additional Sessions Judge, Hoshiarpur, whereby, the appellant has been convicted under Section 306 of the Indian Penal Code, 1860 (for short '*the IPC*') in case FIR No.21, dated 26.01.2011, under Section 306 IPC, registered at Police Station Tanda, District Hoshiarpur.

2. The appellant has been sentenced under Section 306 IPC to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 03 months.

3. The marriage between the appellant-Harwinder Singh @ Rana and the victim was solemnized on 24.02.2002 and 02 children were born out

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of the wedlock. The victim committed suicide on 25.01.2011 by consuming Aluminium Phosphide Insecticide and died in Johal Hospital, Jalandhar.

4. As per the prosecution version, after the marriage of the victim, she was harassed and beaten up by her husband/appellant-Harwinder Singh @ Rana, her brother-in-law namely Manjit Singh and her mother-in-law namely Swaranjit Kaur. Being aggrieved, the victim used to come to her parental house and then go back to her matrimonial house after the compromise. The family members of the victim used to convince her and drop her back to her matrimonial house.

4.1 On 25.01.2011, at about 07:00 PM, the victim made a phone call to her father Swaran Singh-complainant and informed that the appellant and his aforesaid relatives are harassing her on the pretext that she used to keep dispute in their house. Due to the said harassment by her husband and the aforesaid relatives, the victim consumed a poisonous substance. The appellant-husband and his brother took the victim to Johal Hospital, Jalandhar for treatment but no intimation was given to the father of the victim.

4.2. On 26.01.2011, the complainant-father of the victim came to know through a telephonic call from an unknown person that his daughter had consumed a poisonous substance and she is admitted in Johal Hospital, Jalandhar. On receiving the said information, the complainant, along with his brother-Darbara Singh and other respectables of the village, reached the hospital, where they came to know about the death of the victim from the doctor.

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4.3. On 26.01.2011, at about 06:00 AM, the Police received intimation from the hospital about the death of the victim by consuming a poisonous substance. On receiving the said intimation, ASI Paramjit Singh, along with other police officials, reached the hospital where the complainant got his statement recorded, on the basis of which, FIR was registered.

4.4 After preparing inquest report, postmortem of the dead body was conducted and the investigating officer prepared a rough site plan of the place of occurrence. Statements of the witnesses were recorded. The appellant-accused Harwinder Singh and brother-in-law Manjit Singh were arrested in this case. However, on completion of the investigation, final report ('*challan*') under Section 173 of the Code of Criminal Procedure, 1973, was presented before the trial Court only against the present appellant-accused.

5. The case was then committed to the Court of Sessions. The remaining 02 accused namely Manjit Singh and Swaranjit Kaur were summoned by the trial Court to face trial vide order dated 16.04.2012 on the basis of an application moved by the prosecution under Section 319 Cr.P.C.

6. The trial Court finding a *prima facie* case punishable under Section 306 IPC, accordingly framed charges against the accused on to which he pleaded not guilty and claimed trial.

7. The prosecution in order to substantiate its case, examined as many as 10 prosecution witnesses.

8.1 The complainant-Swaran Singh (PW-1), deposed that the accused Harwinder Singh was having a relationship with someone else other than his daughter and he used to give beatings to her daughter in this context.

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Also brother-in-law Manjit Singh and mother-in-law Swaranjit Kaur used to give beatings to his daughter due to which his daughter consumed poison and she was taken to Johal Hospital for treatment. Earlier, whenever disputes arose between his daughter and son-in-law, '*Panchayats*' were convened for resolving the same but no written compromise was ever effected. A case was registered against the appellant-accused at Police Station Phillaur under Sections 223 and 224 IPC, vide FIR No. 63 of 2004 before the death of his daughter. That on the date of occurrence, the complainant received a telephonic call from the village of his daughter on which he received the information of his daughter consuming poison and being shifted to the hospital. He was also informed that his daughter was taken to the hospital by the accused and his brother Manjit Singh.

8.2 As per the statement of Darbara Singh (PW-2), they received a telephonic call from an unknown person to the effect that his niece (deceased) has been killed. Further, as per his statement, the appellant-accused had administered poison to the deceased due to which she had expired. He also stated that earlier many '*Panchayats*' were convened to rehabilitate but no compromise was ever effected. The children of the deceased were also present in the house when the alleged occurrence had taken place.

8.3 Dr. Vinay Sharma, Medical Officer, Civil Hospital, Hoshiarpur (PW-3) deposed that on 26.01.2011 postmortem examination of the dead body of Maninder Kaur was conducted. Considering the chemical examiner's report (Ex. PE), he gave the opinion that cause of death in the present case

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was poisoning due to aluminum phosphide, an insecticide, which was sufficient to cause death in the ordinary course of nature.

8.4 Surinder Kumar, Draftsman Civil Court, Dasuya, (PW-4) deposed that on 29.01.2011, he along with ASI Paramjit Singh prepared scaled site plan of the place of occurrence, at the instance of the complainant Swaran Singh.

8.5 ASI Sukhwinder Singh, Police Station Tanda, District Hoshiarpur (PW-5), deposed that during the course of investigation on 25.02.2011, he recorded the statements of Head Constable Gurbachan Singh, MHC Jasbir Singh and Head Constable Balwinder Singh. On 05.03.2011, statements of Jagtar Singh and Sukhwinder Singh (member Panchayat of village) under Section 161 Cr.P.C were recorded. The opinion of doctor and the chemical report was submitted in the Court.

8.6 Head Constable (Gurbachan Singh) Police Station Bullawal (PW-6) deposed that he was handed over the dead body of the deceased Manjit Kaur for conducting the postmortem on 26.01.2010 (sic. 26.01.2011). The dead body was handed over to the doctors of the Civil Hospital, Dasuya for getting the postmortem conducted (Ex. PC).

8.7 Jagtar Singh (member Panchayat of the village) (PW-7) deposed that the marriage of the deceased and the appellant was solemnized on 24.02.2022, after which disputes started arising between the deceased, appellant, her mother-in-law and her brother-in-law. Due to this matrimonial dispute, she used to go back to her parental house. Thereafter, the matter used to be settled in '*Panchayat*' and only after that she used to go to her

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matrimonial house. He also stated that other than the telephonic messages received from some unknown persons regarding the deceased consuming poison, no member from her in-laws family informed the same.

8.8 Dr. Sahib Parbej, Medical Officer, Johal Hospital, Jalandhar, (PW-8) deposed that on 20.05.2011 at about 10:30 p.m., the deceased was admitted in ICU by her husband, i.e. the appellant-accused with history of suspected poisoning. The condition of the deceased did not improve and ultimately, she expired on 26.01.2011.

8.9 Jasbir Singh, Head Constable (PW-9) is a formal witness.

8.10. As per the statement of the ASI Paramjit Singh (PW-10), Investigating Officer, on 26.01.2011, a telephonic call was received from Johal Hospital, Jalandhar that Maninder Kaur (deceased) wife of the appellant-accused has been admitted at Johal Hospital and due to consuming some poisonous substance, she has expired. On this information, he along with Head Constable Tajinder Singh, HC Gurbachan Singh, PHC Jarnial Singh reached the said hospital where the complainant got his statement recorded. He prepared the inquest report (Ex. PO) and recorded the statement of the witnesses regarding identification of the dead body of the deceased. On 27.01.2011 accused-appellant Harwinder Singh and his brother Manjit Singh were arrested in this case.

9. On completion of evidence of the prosecution, statement of the accused as required under the provisions of Sections 313 Cr.P.C. was recorded, wherein he denied allegations against him and pleaded his false implication.

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10. The appellant-accused has produced Harmanpreet Kaur, who is his minor daughter, in his defence who was examined as DW-1. She deposed that there was no dispute of any kind between her parents and the relations between them were cordial. She further deposed that his father (appellant-accused) was not having any illicit relationship with anyone. On 25.01.2011 at about 07:00 p.m. when she was playing in the courtyard with her younger brother, her mother was talking on the phone with the complainant Swaran Singh. On hearing loud shrieks of her mother, she rushed to the room and found her lying on the ground and some froth was coming out from her mouth. She immediately informed her uncle Manjit Singh who, in turn, informed the appellant-accused, who came at the spot and shifted the deceased to the hospital where she died.

11. The trial Court, considering the evidence on record, held the appellant-Harwinder Singh, guilty of abetting the commission of suicide by the victim. However, the co-accused of the appellant-Manjit Singh (brother-in-law of the victim) and Swaranjit Kaur (mother-in-law of the victim) were acquitted holding that the prosecution has failed to prove that they have abetted the commission of suicide by the deceased.

12. The trial Court relied upon the testimony of PW-1 Swaran Singh, PW-2 Darbara Singh and PW-7 Jagtar Singh holding the appellant-Harwinder Singh guilty of harassment and maltreatment of the victim. The ocular version of the said witnesses was believed. It was observed that PW-7 is a co-villager and Member Panchayat of the village, as such, his testimony is unshattered. The trial Court found the defence version improbable. The trial

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Court also discarded the testimony of DW-1 Harmanpreet Kaur, who is the daughter of the appellant-Harwinder Singh on the ground that she is living with her uncle-Manjit Singh and grandmother-Swaranjit Kaur, as such, the possibility of tutoring her cannot be ruled out. It is also observed that merely on the statement of DW-1 that her father was not present at home at the time of the alleged occurrence, the appellant-Harwinder Singh cannot be absolved of his liability under Section 306 IPC.

13. The trial Court, while acquitting the co-accused of the appellant namely Manjit Singh and Swaranjit Kaur, observed that the prosecution has not alleged that the said accused and the victim were residing jointly. Relying upon the testimony of PW-10 ASI Paramjit Singh-Investigating Officer, it was observed that the victim was residing with her husband and 02 children in a separate house, whereas, Manjit Singh was residing in a separate house along with his family members including co-accused Swaranjit Kaur.

14. The appellant has assailed the findings of conviction and the sentence awarded by the trial Court by way of filing the present appeal.

15. Learned counsel for the appellant contends that the marriage of the appellant was solemnized with the daughter of the complainant on 24.02.2002 and they were leading a happy married life. The alleged suicide was committed by the victim after 09 years of their marriage. During this period, no complaint was ever made by anyone regarding any matrimonial dispute. The appellant is having a daughter aged 08 years and a son aged 05 years. Even the daughter of the appellant appeared as a defence witness and she did not state anything against the appellant. It is further contended that



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the prosecution has miserably failed to prove that the appellant is guilty of abetment of suicide by the victim. In fact, the victim was taken to the hospital by the appellant himself. The contention of the father of the victim (complainant), that he received intimation from an unknown person that his daughter is admitted in the hospital, is not believable as he did not disclose any phone number of the person who gave him the said information.

16. Learned counsel for the appellant further contends that the testimony of PW-1 (father of the deceased), PW-2 (uncle of the deceased) and PW-7 (co-villager and Member Panchayat of the village) is unreliable and the same cannot be believed as there are substantial improvements in their statements. Their testimony is neither corroborated by any documentary evidence nor is there any independent corroboration. As such, the findings arrived at by the trial Court holding the appellant guilty of an offence under Section 306 IPC are not legally sustainable.

17. Learned counsel for the appellant has relied upon the decision of the Apex Court in “Amalendu Pal @ Jhantu versus State of West Bengal” ; 2010(1) SCC 707, and “Naresh Kumar vs. State of Haryana” ; 2024 (2) R.C.R. (Criminal) 286.

18. Learned State counsel has opposed and refuted the aforesaid contentions raised on behalf of learned counsel for the appellant by referring to the reasons recorded by the trial Court. Learned State counsel contends that the victim was having 02 minor children and there was no reason for her to commit suicide except for an instigation and abetment having been caused by the appellant-husband. It is further contended that the trial Court has



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rightly relied upon the ocular version of the father of the deceased (PW-1) and Darbara Singh-uncle of the deceased (PW-2).

19. I have considered the aforesaid contentions and perused the paper book as well as the trial Court record.

20. As per the testimony of Dr. Shahid Parvez (PW-8), the victim died within 02 hours of being admitted to the hospital since the victim was admitted in the ICU with the history of suspected poisoning at about 10:30 PM on 25.01.2011 and she died on 26.01.2011 at about 12:30 AM. As per the report of the Chemical Examiner (Ex.PE), Aluminium Phosphide Insecticide was detected in the contents of the viscera of the deceased. PW-3 Dr. Vinay Sharma conducted the postmortem examination of the deceased and stated that the cause of death of the victim was due to poisoning by Aluminium Phosphide Insecticide, which was sufficient to cause death in the ordinary course of nature and the said opinion was given by him after considering the report of the Chemical Examiner (Ex.PE). This fact is not disputed that at the time of her death, the victim was residing in her matrimonial home along with her husband and 02 minor children. There is no indication from the evidence on record that the said Insecticide was consumed accidentally, as such, it is established and rightly held by the trial Court that the deceased has committed suicide by consuming a poisonous substance.

21. Now, the question arises as to whether the findings arrived at by the trial Court, holding the appellant guilty of abetment to suicide by the victim, are legally sustainable?

22. Section 107 IPC defines abetment to mean that a person abets



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the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in a conspiracy for 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 that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

23. Section 306 IPC deals with the abetment to suicide, which provides that if any person commits suicide, whosoever 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.

24. It is now well-settled that in order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It requires an active act or a direct act, which led the deceased to commit suicide.

25. The Hon'ble Apex Court, while dealing with the legal position as regards Section 307 IPC, in the case of "Amalendu Pal @ Jhantu versus State of West Bengal" ; 2010(1) SCC 707, held that in order to bring a case within the purview of Section 306 of the Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must play an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. The observations by the Hon'ble Apex Court read as under:-



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12. At the outset, we intend to address the issue regarding the applicability of Section 306 Indian Penal Code in the facts of the present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as follows :

"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.

07. *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 for 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 that 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."

13. The legal position as regards Sections 306 Indian Penal Code which is long settled was recently reiterated by this Court in the case of *Randhir Singh v. State of Punjab*, 2004(4) RCR (Criminal) 740: 2004(3) Apex Criminal 683 : (2004) 13 SCC 129 as follows in paras 12 and 13 :

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 Indian Penal Code.

13. In *State of W.B. v. Orilal Jaiswal* this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing



suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

14. Further in the case of *Kishori Lal v. State of M.P.*, 2007(3) RCR (Criminal) 385 : 2007(3) RAJ 613 : (2007)10 SCC 797, this Court gave a clear exposition of Section 107 Indian Penal Code when it observed as follows in para 6:

"6. Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in Indian Penal Code. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

[See also *Kishangiri Mangalgiri Swami v. State of Gujarat*, 2009(1) RCR (Criminal) 947 : 2009(1) RAJ 675 : (2009)4 SCC 52]

15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 Indian Penal Code is not sustainable.

16. In order to bring a case within the purview of Section 306 of Indian Penal Code there must be a case of suicide and in the commission of the



said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 Indian Penal Code.

17, The expression ‘abetment’ has been defined under Section 107 Indian Penal Code which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 Indian Penal Code. Section 109 Indian Penal Code provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence.

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26. The Hon’ble Apex Court in “Naresh Kumar vs. State of Haryana” ; 2024 (2) R.C.R. (Criminal) 286, observed that if there has been any clinching offence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. It was further observed that a person intends a consequence when he (i) foresees that it will happen if the given series of acts or omissions continue, and (ii) desires it to happen.

The Hon’ble Apex Court further observed that in order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit the offence. The relevant portion of the observation by the Hon’ble Apex Court reads as under:-

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20. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability,



justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).

21. For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:

"A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."

Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

22. It is now well settled that in order to convict a person under Section 306 of the IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

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27. As per the facts of the present case, the victim died after 09 years of the marriage. The victim was blessed with 02 minor children. The daughter of the victim was aged 08 years and the son was aged 05 years at the time of the alleged occurrence. The FIR was registered at the instance of the father of the deceased-victim, who appeared as PW-1 during the trial. The victim had expressed the only grievance to her father that the accused-appellant used to say that she was responsible for the dispute in their house. In the said statement (Ex.P1), the complainant (PW-1) has though alleged that the accused persons used to harass the victim and they used to beat her, however, the said allegations of beating are general allegations. There is no date, month or year of the alleged occurrence of beatings mentioned in the said statement.

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The complainant-Swaran Singh (PW-1) is a retired Army personnel. He served in the Armed Forces for 22 years. He is supposed to be knowing the legal remedies available to a victim in case the wife is physically tortured and harassed. However, there is nothing on record to suggest that at any point of time, the matter was ever reported to any of the authorities. The father of the victim (PW-1) has stated in his cross-examination that he did not move any application in any Court regarding the maltreatment meted out to his daughter by her in-laws. Even the victim had never moved any such application. In his cross-examination, the complainant (PW-1) has stated that whenever any dispute took place between the victim and the appellant, they convened Panchayats. However, he was not aware about the dates when the Panchayats was convened. He stated that he was in service of Army and his brother used to go to the Panchayat. However, he has admitted that no written compromise was ever effected in those Panchayats.

28. The brother of the complainant namely Darbara Singh appeared as PW-2 during the trial. Even he has stated in his cross-examination that he went to the village of the accused once but he does not remember the date, month or the year. He stated that he had gone in one Panchayat. However, he was not aware when the said Panchayat was convened.

29. The complainant-Swaran Singh had tried to introduce an additional allegation for the first time when he appeared before the trial Court as PW-1. In his examination-in-chief, he has stated that the appellant-Harwinder Singh used to keep a lady and he used to bring her in his house. However, this fact is not mentioned in the statement given by him to the

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Police (Ex.PA), upon which, the FIR was registered. When he was confronted with the said improvement, he gave an explanation that actually he disclosed the said facts to the Police. However, the Investigating Officer ASI Paramjit Singh (PW-10), who recorded the said statement (Ex.PA), has admitted in his cross-examination that so long as the investigation remained with him, none of the prosecution witnesses, including father of the deceased Swaran Singh (PW-1), got recorded the fact that the appellant was having illicit relations with anybody, nor during the investigation, this fact ever subsists. As such, the said material improvement has only been introduced to ensure conviction and is an afterthought.

30. Even this fact has been admitted by complainant-Swaran Singh (PW-1) that before the death of the victim, a case was registered against the appellant under Section 223, 224 IPC vide FIR No.63 of 2004 and the said case was pending in the Court at Phillaur. He has also admitted that Phillaur is at a distance of 100-150 km from the village Chalaang, where his daughter was married. The Investigating Officer ASI Paramjit Singh (PW-10) has admitted that on the day of occurrence, both the children were present in the house whereas, the appellant was not in the house when the deceased consumed a poisonous substance as he had gone to Phillaur to attend the case in respect of the said FIR No.63 of 2004. Even the daughter of the deceased Harmanpreet Kaur (DW-1), who was 13 years old at that time, has stated that on the day of occurrence, her father (appellant-Harwinder Singh) had gone to Phillaur to attend some Court proceedings and her mother (victim) was talking in loud voice with her father Swaran Singh (complainant) and after

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some time, she heard shrieks of her mother. She has further stated that when she found out that her mother was lying on the ground and was crying and froth was coming out of her mouth, she raised alarm and her neighbour was attracted to the spot. She informed her uncle Manjit Singh, who came to her house and Manjit Singh informed the appellant-husband of the victim, who also reached there within 10 minutes and her mother was shifted to Jalandhar. Even PW-2 Darbara Singh has admitted in his cross-examination that children were present in the house when the alleged occurrence took place. PW-8 Dr. Shahid Parvez, who initially admitted the victim to the hospital, has also stated in his cross-examination that the victim was brought to the hospital by the her husband (appellant). He has also admitted that as per the bed-head ticket, seriousness of the victim was disclosed to her brother-in-law Manjit Singh, who signed the bed-head ticket. He has also admitted that as per the bed-head ticket, the gold ornaments worn by the victim, were handed over to her husband (appellant) and in this respect, his signatures were obtained.

31. The trial Court has ignored the material testimony of the child witness (DW-1), who is the daughter of the victim and was 09 years old at the time of the alleged occurrence. She was a child witness even at the time when her testimony was recorded in the Court, as her age was 13 years at that point of time. She has stated in her cross-examination that she, along with her father, mother and brother, was residing together in one house. She was present at the spot at the time of occurrence as she has categorically stated that on 25.01.2011, at about 7:00 PM, she was playing in the courtyard of her

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house. She has further categorically stated that there was no dispute of any kind between her mother and father and the relations between them were cordial. In the absence of any other incriminating evidence reflecting discord in the relationship between the appellant and the victim, the testimony of the said witness, who was present at the spot at the time of occurrence, cannot be discarded merely on the presumption that she is a tutored witness. There is nothing on record to suggest that her mother was not as dear to her as her father, as such, her testimony cannot be discarded in the absence of any other indication from the record that the relations between the appellant and the deceased-victim were not cordial.

32. There is another material fact which has been overlooked by the trial Court that at the time of alleged occurrence, the appellant, who is a Police official, was suspended and was getting half salary. He was suspended on account of FIR No.63 of 2004 and the appellant was facing trial in the said case at Phillaur at that point of time. PW-1, father of the deceased-victim has admitted that both the children were studying in a Convent School. Though he could not tell the fee of the school, however, he has further admitted that the appellant was suspended in a case at Phillaur and he was getting half salary and he was not having any landed property except the salary. The said circumstance clearly indicates that the appellant was undergoing a financial crunch. There were financial constraints and the appellant was duty-bound to look after the educational and other expenses of 02 minor children, apart from his other family members. The said circumstance gives an indication towards some quarrel here and there being there in the family on account of

financial constraints but the said constraints do not amount to an act or omission on the part of the appellant to constitute an offence under Section 107 IPC.

33. In view of the aforesaid facts and circumstances, I am of the considered opinion that the ocular version of PW-1, PW-2 and PW-7, that there were dowry demands, is not believable. Hence, it cannot be held that the appellant had played any active role by any act of instigation or by doing any act to facilitate the commission of suicide by the victim. There is no suicide note left by the victim. Merely on the basis of the ocular version of the PW-1 (father of the deceased), PW-2 (uncle of the deceased) and PW-7 (co-villager and Member Panchayat of the village), the case is not proved beyond shadows of doubt against the appellant. It is a cardinal principle of law that the prosecution has to prove its case beyond the shadows of doubt. In the absence of a conclusive evidence, the judgment of conviction and order of sentence dated 23.04.2014, passed by the learned Additional Sessions Judge, Hoshiarpur, is liable to be set aside.

34. Consequently, the present appeal is allowed. The judgment of conviction and order of sentence dated 23.04.2024, passed by the trial Court is set aside.

35. Pending miscellaneous applications, if any, shall stand disposed of.

18th May 2024

simran

(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking

Whether Reportable

Yes/No

Yes/No