

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1. CRM-A-791-MA-2016 (O&M)

Bhim Singh ...Applicant

Versus

Lakhan and another ...Respondents

2. CRM-A-1617-MA-2016 (O&M)

State of Haryana ...Applicant

Versus

Lakhan ...Respondent

Date of decision: 10.04.2024

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Karan Pathak, Advocate
for the applicant in CRM-A-791-MA-2016.

Mr. Neeraj Poswal, AAG, Haryana
for the applicant in CRM-A-1617-MA-2016;
for respondent No. 2 in CRM-A-791-MA-2016.

Mr. Nikhil Ghai, Advocate
for the respondent-accused.

MANISHA BATRA, J. (Oral)

1. This common order of mine shall dispose of aforementioned two applications filed under Section 378(4) Cr.P.C..
2. Prayer in these application is for granting leave to appeal against the judgment of acquittal dated 12.10.2015, passed by the Additional

Sessions Judge, Palwal (*hereinafter referred to as 'the trial Court'*) in Sessions Case No. 51/2014, titled as State vs. Lakhan, arising out of FIR No. 432 dated 09.08.2014, registered under Section 306 of IPC read with Section 17 of the Protection of Children from Sexual Offences Act, 2012 (*for short 'POCSO Act'*), whereby the respondent-accused Lakhan had been acquitted of the charges framed against him for commission of aforementioned offences. The first application, bearing CRM-A-791-MA-2016, has been filed by the complainant Bhim Singh, whereas the second application, bearing CRM-A-1617-MA-2016, has been filed by the State of Haryana.

3. For the sake of convenience, the parties shall be referred to as per their original nomenclature given during the course of trial.

4. Brief facts of the case relevant for the purpose of disposal of the aforementioned applications are that on 09.08.2014, on receipt of information regarding dead body of one 'N' (*name withheld*), daughter of applicant Bhim Singh, having been brought to the Civil Hospital, Palwal, a police party reached there, where a written complaint had been submitted by the complainant alleging therein that the victim 'N', who was his 16 years' old daughter, studying in 12th Class, was harassed by the accused from the last one and a half month. She had started remaining in stress. The complainant had made complaint to the family members of the accused in this regard but the accused did not listen and kept on harassing the daughter when she used to go to her school. He even entered in their house on finding her alone. he alleged that on 09.08.2014 i.e. on the same date after return from school, the victim poured kerosene oil over her and set her ablaze at about 3-3:15 PM when none else was present in the house. He also alleged that his wife rushed towards her house on hearing noises and found the victim

in a burnt condition. On asking, she informed her mother that she had taken her life as the accused had been eve teasing her. She was rushed to the hospital but died on the way. On the basis of this complaint, initially a case under Section 306 of IPC and Sections 16 and 18 of the POCSO Act was registered. Investigation proceedings were initiated. the inquest proceedings and postmortem of the dead body of the victim was conducted. The accused was arrested on 10.08.2014. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented before the Court and charges under Section 306 of IPC and Section 17 of the POCSO Act were framed against the accused by the trial Court, vide order dated 03.11.2014. Accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution had examined as many as 14 witnesses and thereafter, it had closed its evidence. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein he abjured his guilt and claimed himself to be innocent. In defence evidence, he examined one witness.

6. After considering the evidence produced on record and giving due deliberations to the contentions as raised by both the sides, the trial Court, vide judgment dated 12.10.2015, acquitted the accused of the charges as framed against him. Feeling aggrieved from the same, the aforesaid applications, seeking leave to file appeal by the complainant and State of Haryana, respectively.

7. It has been argued by learned State counsel, assisted by learned counsel for the applicant/complainant, that the impugned judgment is liable to be set aside and the findings as given by the trial Court are perverse and are not sustainable in the eyes of law. There was overwhelming evidence on

record to prove that the accused had been sexually harassing the victim and had abetted the suicide by her. However, the trial Court did not appreciate the evidence produced on record in a proper manner. Before her death, the victim disclosed about the reason for committing suicide to her mother, who is PW2 Om Kari. Her statement so recorded was to be considered as oral dying declaration, which was not so considered by the trial Court. The ingredients for commission of offence punishable under Section 306 of IPC as well as Section 17 of the POCSO Act were fully established. However, ignoring the evidence produced on record, the impugned judgment had been passed by the trial Court. The trial Court had wrongly held that the victim was major at the time of incident and was not proved to be a minor. With these broad submissions, it has been urged that the present applications deserve to be allowed and the applicants deserve to be granted leave to file appeal against the judgment of trial.

8. Learned counsel for the respondent-accused has, however, argued that he had been falsely implicated in this case and the trial Court had rightly acquitted him of charge framed against him. While submitting that there is no infirmity or perversity in the impugned judgment passed by the trial Court, it is urged that the present applications deserve to be dismissed.

9. Due deliberation have been given to the contentions as raised by learned counsel for the parties and I have minutely scrutinized the material available on record in the form of record of learned trial Court which had been requisitioned.

10. Since the applicants have sought leave to file appeal against the judgment of acquittal, therefore, before proceeding further and adverting to the arguments raised by the counsels, it would be useful to review the

approach to be adopted while deciding the appeal against acquittal by the trial Court. In ***Chandrappa and others v. State of Karnataka : (2007) 4 SCC 415***, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In ***Atley v. State of U.P. : AIR 1955 SC 807***, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In ***Aher Raja Khima v. State of Saurashtra : AIR 1956 SC 217***, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In ***Ramesh Babulal Doshi v. State of Gujarat : 1996 SCC (Crl.) 972***, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In ***Chandrappa's*** case (Supra), the Apex Court after referring to a catena of judgments, culled

out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) 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.

11. On applying the above enunciated principles of law to the peculiar facts and circumstances of the present case and on a careful appraisal of evidence produced on record, I am of the opinion that the applications do not deserve to be allowed and no case has been made out for grant of leave to appeal to the applicants.

12. The criminal law in this case was set in motion against the accused on the allegations that he used to stalk and harass the victim when she used to go to her school and it was on account of the acts committed by him that the victim had set her ablaze on 09.08.2014. PW3-Dr. J. P. Parshad had conducted the post-mortem examination of the dead body of the victim and as per his statement, the victim had suffered 100% burns on her body. Though, as per opinion of this witness, death was not caused due to burn injuries but the probable cause of death of the victim was smothering, which

was ante-mortem and sufficient to cause death in normal circumstances, however, since it was not the version of the prosecution itself that somebody had smothered the victim and had caused her homicidal death and as from the testimony of the mother of the victim, it is revealed that while trying to extinguish the fire from the person of the victim, she had covered her with a blanket, so, it can reasonably be assumed that the smothering of the victim was caused due to covering her with a blanket, obviously with an intent to extinguish the fire on her person. In such a way, it cannot be stated that it was not a case of suicidal death since the same is not the version of the prosecution or of the complainant.

13. Now the next question that requires consideration is as to whether there was any live and proximate link between the death of the victim and the act and conduct of the accused ? The offence of abetment of suicide has been defined under Section 306 of IPC. The essential ingredients of this offence are as follows:

(i) the abetment;

(ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide.

14. It is well settled proposition of law that in case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement for commission of suicide. The act of accused of harassing or eve-teasing the deceased will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same, whereas the abetment itself is defined under

Section 107 of IPC, as per which, a person abets doing of a thing, who instigates any person to do that thing, intentionally aids the doing of that thing or engages with one or more other persons in any conspiracy for doing of that thing. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. It is well settled proposition of law that in case of accusation of abetment of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case. Reference in this regard can be made to *Ude Singh & Ors. Vs. State of Haryana : (2019) 17 SCC 301*, wherein while making the similar observations, it was further held Hon'ble Supreme Court that instigation means goading, urging forward, provoking, inciting or encouraging a person to do an act. If a person who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide.

15. Now in view of the aforesaid position of law, it is to be considered as to whether the accused was proved to have committed any such act and conduct which instigated, incited and abetted or compelled the victim to end her life. The case of the prosecution with regard to allegations as levelled against the accused mainly rests upon the testimonies of applicant-Bhim Singh, who is also the complainant of the FIR and his wife Om Kari, who appeared as PW-1 and PW-2 respectively. On considering the

statements of both these witnesses, the trial Court had observed that the same did not inspire confidence for proving that suicide of the victim had been abetted by the accused. On a careful assessment of their statements, I do not find any reason to differ with the observations made by the trial Court in view of the fact that though PW-1 deposed that the accused had been harassing his daughter from the last 1 ½ years and even on that day, he had teased her, due to which, she had set herself ablaze after coming into her house, however, material inconsistencies have been found in the statements of PW-1 and PW-2 with regard to allegations so levelled, which have been discussed in detail by the trial Court. Though it had been alleged that the victim had herself disclosed to her mother that she had set herself ablaze due to being harassed by the accused and in ordinary circumstances, the statement so made would have been treated as dying declaration of the victim but since the statement of PW-2 herself in this regard is inconsistent to the statement of PW-1 as well as the prosecution version and as the circumstances also point out that there was no occasion for PW-2 to talk to the victim after reaching at the place of occurrence as the victim was already in a burnt condition and she had covered her with a blanket, therefore, it cannot be believed that any dying declaration had been made by the victim to her mother as to the cause of her death. On going through their statements, it is apparent that the same could not be acted and relied upon beyond doubt to prove that the accused had been harassing the victim or that any complaint had been made by these witnesses to the family members of the accused in that regard or that on the date of occurrence, the accused had committed any such act and conduct, which had live and proximate link with the commission of suicide by the victim. The allegations of harassment of

the deceased by the accused do not suffice as mentioned above and in this case, even the allegations of such harassment have not been established beyond doubt on the basis of evidence produced on record. Therefore, I have no hesitation in holding that the prosecution had not succeeded in producing any evidence of such nature, which could have proved beyond doubt that there was an intention on the part of the accused to aid or instigate or abet the victim to commit suicide or there was some *mens rea* on his part to abet the said act by the victim or that there was a particular action on his part which compelled the victim to commit suicide. Accordingly, it is held that there is no infirmity, illegality or perversity in the impugned judgment, whereby the respondent-accused had been acquitted of the charge framed against him.

16. However, at this juncture, a perusal of the record has compelled this Court to observe that while recording findings of acquittal of the accused, the trial Court had failed to make any discussion with regard to charge as framed under Section 17 of the POCSO Act against the accused and neither any finding of guilt or of acquittal had been recorded by it on that point. But at the same time, it is also relevant to mention that even otherwise, no charge under Section 17 of the POCSO Act could have been framed against the accused. As per Section 17 of this Act, any person who abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence. On a bare reading of this provision, it is crystal clear that the punishment under this section can be awarded only when it is alleged and proved that any offence under the provision of POCSO Act had been abetted by the accused. In this case, though there is allegation that the

accused used to harass and eve-tease the victim but no charge under any provision of the POCSO Act had been framed against the accused. Therefore, despite the fact that the trial Court failed to make any discussion with regard to Section 17 of the POCSO Act while passing the impugned judgment, it is observed that no useful purpose would, even otherwise, be served because no case for commission of offence punishable under Section 17 of the POCSO Act had even been made out from the record as it has not been proved beyond doubt that the respondent had sexually harassed the victim.

17. With the aforesaid observations, finding no merit in the present applications, the same are dismissed.

18. Let a photocopy of this order be placed on the file of connected case.

10.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>