

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

214

CRM-A-2228-MA-2016(O&M)

Date of order: 02.04.2024

Amar Nath

.....Applicant(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. J.S. Brar, Advocate
for the applicant.

Ms. Aakanksha Gupta, AAG Punjab.

Nidhi Gupta, J.

CRM-40064-2016

This is an application under Section 482 Cr.P.C. for exemption from filing certified and true typed copies of orders of Annexure A1 and A2 and of impugned judgment dated 19.08.2016.

After going through the contents of the application, which is supported by affidavit of the applicant, the same is allowed subject to all just exceptions.

MAIN CASE

Present application under Section 378(3) Cr.P.C. is filed seeking grant of leave to file appeal against judgment dated 19.08.2016 passed by learned Additional Sessions Judge, Gurdaspur in case FIR No.177 dated 12.12.2012 registered under Section 306 IPC at Police Station

Dhariwal, whereby accused/respondent No.2 has been acquitted. Applicant is the complainant/father of the deceased.

2. Brief facts of the case as per the prosecution are that about 15 years back Neelam Rani daughter of appellant was married with respondent no.2 Baldev Raj. On 16.9.2012, someone telephonically informed complainant that Neelam Rani has consumed some medicine as such is admitted in Oberoi Hospital, Gurdaspur. Complainant along with his son reached hospital and found Neelam Rani in critical condition and she expired after half an hour. Respondent no.2 Baldev Raj informed him that Neelam Rani has consumed some expired medicine due to which she lost her life. The complainant believed him and as such proceedings u/s 174 Cr.P.C were conducted. Later on complainant came to know that respondent no.2 had illicit relations with some lady and whenever Neelam Rani objected, he used to beat her. Thereafter complainant came to know that a suicide note was also recovered from her clothes at the time of postmortem examination which was handed over by the doctor to the police. As such Neelam Rani had committed suicide after being harassed by respondent no.2. On the complaint of complainant, FIR in question was registered on 12.12.2012. After receipt of report of chemical examiner cause of death was declared Aluminum Phosphide. Police filed the challan and charge under section 306 IPC was framed against the accused.

3. Learned counsel for the applicant inter alia submits that the impugned judgment is prima facie unsustainable as the learned trial Court has failed to consider the evidence of various prosecution witnesses i.e. PW1 to PW9, whose testimony is consistent and reliable. It is submitted

that even as per the medical evidence on record, the guilt of respondent No.2 is made out. It is further stated that the learned trial Court is in patent error in ignoring the fact that as per the suicide note (Ex.PD) recovered from the person of the deceased at the time of conducting post-mortem, the guilt of respondent No.2 is clearly established as, it has been clearly stated in the suicide note that the deceased had committed suicide due to the illicit relationship of respondent No.2. It is accordingly, prayed that the impugned judgment of acquittal be set aside.

4. No other argument is made on behalf of the applicant.

5. I have heard learned counsel for the applicant and perused the case file in detail.

6. Perusal of record of the case shows that the date of incident is 16.09.2012. Cause of death of daughter of the applicant was consumption of aluminum phosphide. Post-mortem in the matter was conducted on 17.09.2012. Admittedly, suicide note (Ex.PD) was recovered from the clothes of the deceased by PW4/Dr. SK Hans on 17.09.2012 itself. Admittedly, the complainant/applicant and his son were present at the time of post-mortem. Yet, the complaint was filed by the applicant almost two months thereafter on 05.11.2012. On repeated queries by this Court as to the reason for delay in filing the complaint, learned counsel for the applicant is unable to give any satisfactory explanation for the same. Although, it has been submitted on behalf of the applicant that cause of delay was that the applicant was not aware of the suicide note recovered at the time of post-mortem, however, the said explanation does not inspire

confidence as admittedly the suicide note was recovered from the clothes of the deceased at the time of post-mortem. As such, it is not plausible that the applicant would not be aware of the same; especially as it is an admitted fact on record that the applicant and his son were present at the time of post-mortem examination of the deceased. Even further, despite repeated queries from this Court that if the applicant did not discover about the suicide note at the time of post-mortem, then how and in what manner did the applicant come to know about the suicide note. However, Id. counsel for the applicant has no reply to this.

7. In this regard in respect of the suicide note, relevant findings of the learned Court below are as under:-

*“24. The next aspect of the present case is that PW.1 and PW.3 having suspected foul play in the death of deceased, probed from the postmortem report of the deceased that a four page suicide note was taken into possession by the doctor PW.4 Dr. S.K. Hans, which was handed over by him to the Investigating Officer. Undoubtedly, PW.4 testified that on 17.09.2012, while conducting the postmortem examination, four pages were recovered from the banyan of the dead body, handed over by him to PW.6 ASI Ashok Kumar, which was taken into possession vide memo **Exhibit PW.6/D** and the **suicide note** was proved as **Exhibit PD**. In this regard, my first observation is that PW.4 admitted during his cross examination that in the column of clothes on the postmortem report paper, PW.4 mentioned only clothes including the banyan and did not mention the four papers in that column discovered under the banyan. Secondly, it is observed that the **form No. 25.35 Exhibit PW.6/B** was rather prepared on 16.09.2012, whereas the postmortem was conducted on the dead body of the deceased on 17.09.2012. The **form No. 25.35 Exhibit PW.6/B** does not find mention regarding the suicide note, therefore, it remains a dilemma as to how did alleged suicide note was recovered from the clothes of the deceased at the time of postmortem on 17.09.2012. Therefore, the recovery of suicide note **Exhibit PD** itself remains*

a mystery. Furthermore, as per the testimony of PW.1 and PW.3, they were present in the Civil Hospital at the time of the postmortem on the dead body of deceased on 17.09.2012, then how could they be said to be ignorant with regard to the alleged recovery of suicide note by PW.4. The version of PW.1 and PW.3 that after 50 days of death of deceased, obtaining the copy of the postmortem report, they came to know regarding the suicide note is not believable at all. If such was the situation, then PW.1 and PW.3 would have suspected the foul play in death of the deceased and would have not waited for lapse of 50 days.”

8. Furthermore, admittedly, the deceased was married to respondent No.2, 15 years prior to the date of incident. Admittedly, during this time not even a single complaint was filed by the deceased or the applicant regarding any harassment meted out to the deceased by respondent No.2. As such, the argument of the applicant that the deceased committed suicide due to harassment caused to her by respondent No.2, is not made out.

9. Even further, the applicant has suffered a joint statement dated 17.09.2012 (Ex.DB) along with one Mohan Lal and accused Baldev Raj, in which the applicant had admitted that the deceased often remain ill and was under treatment from various doctors. In fact, it has come on record that the deceased was under depression and was on medication for the same.

10. The relevant findings of the learned Court below are as under:-

*“23.....accused made an effort by way of examining Dr. Ravinder Mohan Sharma, who after seeing the photocopies of the **prescription slips Mark DW.3/A to Mark DW.3/L** issued in the name of one Neelam, identified his writing thereon and*

stated that those pertains to diagnosis of depression with obsession and the patient stated to be undergoing treatment as an outdoor patient and the last prescription stated to be pertaining to the year 2009. DW.3 specifically stated that 15% of the depressed patient do commit suicide having suicidal tendency. Therefore, the testimony of DW.3 also cannot be put out of sight all together.....”.

11. Furthermore, as per the post-mortem report (Ex.PW4/A), the cause of death was Aluminum Phosphide. In this regard, the applicant has made three statements. In the first it has been admitted by the applicant that on 16.09.2012, the deceased was taken seriously ill and she had taken out medicine from her almirah without observing its expiry date, due to which a reaction was caused and she died. In the second instance, the applicant had moved an application (Ex.DA) for conducting post-mortem of the deceased, in which he has specifically mentioned that since the deceased had consumed some wrong medicine or overdose on account of being mentally upset, therefore, she fell ill. It has further been stated that despite treatment the deceased did not survive and therefore, he does not suspect any foul play of anybody. The third statement (Ex.PA) was made by the applicant to the police under Section 174 Cr.P.C., wherein he has stated that the deceased had died due to consuming some wrong medicine inadvertently, due to which she could not survive and nobody is responsible for her death. Thus, no complicity of the accused is made out.

12. As regards the alleged illicit relationship of the respondent No.2 with another lady, it has come on record that the deceased had allegedly informed her mother-in-law and sister-in-law regarding illicit relationship of her husband. It is however, very odd that the deceased had not even whispered regarding this to anyone on her parents

side. It is especially odd in view of the fact that admittedly, the applicant's home is located 12-13 km from the village of respondent No.2, and the deceased and respondent No.2 used to visit there regularly, after about 2-and-a-half months. Admittedly too, the relationship inter se the family was cordial. Although, it has been alleged by the applicant that certain neighbours of respondent No.2 had informed him regarding illicit relationship of respondent No.2 with another lady and of the harassment meted out to the deceased by him, however, the applicant has not disclosed the names of the said persons, let alone examined them.

13. Ld. Counsel for the applicant is unable to dispute the above said findings of the learned Court below. Nothing whatsoever has been produced before this Court to controvert the said findings.

14. Moreover, Section 306 IPC is reproduced hereinbelow:-

*"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."*

15. The term 'abet' has been defined by the Hon'ble Supreme Court in the case of "**Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh**" Law Finder Doc ID # 9495, as meaning to aid, assist or to give command, to procure, to counsel, to countenance, to encourage. Only a person who has helped the criminal or provided him with any assistance in any form can be held to be liable for abetment. Thus, to constitute an offence under Section 306 IPC, the above said ingredients of adding, assisting, giving command, procuring, counselling, countenancing, or encouraging, are required to be satisfied. In the present case, none of the

above said ingredients are satisfied. To the contrary, there is evidence that the deceased was under depression and on medication for the same. Abetment of the accused in any manner is not made out.

16. On the parameters required to bring an act or omission by the person within the purview of the offence under Section 306 of the IPC, reference may be made to elaborations in “**Netai Dutta Vs. State of W.B.**”, (2005) 2 SCC 659 and “**M. Mohan v. State**”, (2011) 3 SCC 626. Reference may also be made to judgment of the Hon’ble Supreme Court in “**Prabhat Kumar Mishra v. State of U.P.&Anr.**”, 2024 SCC OnLine SC 232, Decided on: 05-03-2024.

17. In view of the above, I find no ground is made out to interfere in the impugned judgment dated 19.08.2016 passed by learned Additional Sessions Judge, Gurdaspur. Present application accordingly stands **dismissed**.

18. Pending application(s) if any also stand(s) disposed of.

02.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No