

CRM-A-2519-MA-2018

2024:PHHC:010107

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

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CRM-A-2519-MA-2018

Date of Decision: January 23, 2024

Ranjit Singh**...Applicant/Appellant****Versus****Manjit Singh and Ors.****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Karan Kalia, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

The present application under Section 378(3) read with Section 372, Cr.P.C. is preferred against the judgment of acquittal dated 18.09.2018 passed by the learned Additional Sessions Court, Moga in case bearing FIR No. 21 dated 07.03.2015 registered under Section 306 IPC at Police Station Sadar, Moga.

2. The facts, in brief, are that respondent Nos.1 and 2, in connivance with their son (Manpreet Singh) and daughter (Jaspreet Kaur), who is a resident of Canada), allegedly duped the applicant's son Gurpreet (now deceased) for a sum of Rs.9,70,000/-, on the pretext that Jaspreet would marry Gurpreet and thus, needed the said sum in order to take his son Gurpreet to Canada with her. However, as time went on, the respondents kept on dilly-dallying the matter and later on, flatly refused to marry Gurpreet (son of the applicant) and return the said amount. When Gurpreet came to know about this, he felt humiliated as everyone in his village was aware of his engagement. Further, his father/applicant had gone to great lengths in order to arrange the aforemen-

tioned sum. As a result of above stated harassment, the son of the applicant i.e. Gurpreet committed suicide.

3. On completion of necessary formalities of the investigation, the challan was presented against respondent Nos.1 to 3 and Jaspreet Kaur was declared as proclaimed offender.

4. The learned trial Court, on finding a prima-facie case, charged the accused persons for committing an offence punishable under Section 306 IPC, to which, they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution has examined as many as 12 witnesses, whereas, the accused examined 3 witnesses in their defence.

6. On appreciating the evidence and material available on record, respondent Nos.1 to 3 were acquitted from the charges levelled against them by giving them the benefit of doubt by the learned trial Court vide judgment dated 18.09.2018.

CONTENTIONS

7. Learned senior counsel for the applicant assails the impugned judgment on the ground that the learned trial Court has erred in its assessment of the facts and circumstances of the case. It is submitted that even though, no document has been placed on record to prove that the ring ceremony between the deceased Gurpreet and Jaspreet Kaur took place, yet there is other material evidence in the form of photographs and a marriage certificate regarding the engagement of Jaspreet with a boy named Manjit, proving that the respondents have employed a similar sort of ploy in the past as well. Consequently, FIR No.45 dated 14.03.2004 under Section 420 IPC was registered at Police Station Dharamkot.

8. Further, it is contented that the degree of mental sensitivity cannot be gauged by a straight jacket formula and the tendency to commit suicide differs from person to person. The deceased being an innocent young boy felt humiliated and was left shattered by this occurrence. The learned trial Court took a superficial view of the matter without going deep into the nature of the allegations and facts.

ANALYSIS AND OBSERVATIONS

9. Having heard the learned senior counsel for the applicant 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.

10. Not only there is a glaring lack of incriminating evidence, but also *mens rea*, which forms the basis of instigation of this extent, is completely

missing. There is no evidence to prove that Jaspreet Kaur ever came to India to solemnize the marriage or participated in the ring ceremony. Also, no suicide note has been recovered which imputes guilt on the respondents. In view of settled law, *mens rea* is of utmost importance for the accused to instigate suicide of the deceased. Even if it assumed that the victim committed suicide because the talks of marriage fell through or that the respondents refused to return the money, still no case of instigation is made out. The Hon'ble Supreme Court in ***Kanchan Sharma v. State of U.P and Anr. 2021(4) RCR(Criminal) 215*** has categorically held that refusal to marry does not fall under the purview of instigation as required to make out an offence under Section 306 of the IPC. 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-respondents and suicide of the deceased.

11. 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)

12. 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."

13. 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 set-

tled 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.

14. 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 re-view 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, re-affirmed 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."

15. In view of the facts and circumstances of the case, this Court finds that learned senior 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 application and hence the leave to appeal is denied.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

January 23, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No