



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210

CRM-A-63-MA-2016 (O&M)
Date of Decision: 21.10.2024

Jaswant Rai Saini	 Applicant
Versus	
State of Punjab and another	 Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Ms. Shivani, Advocate for
Mr. Narinder S. Lucky, Advocate for the applicant.

Mr. Kunwarbir Singh, A.A.G., Punjab.

NIDHI GUPTA, J.

This is an application under Section 378(4) Cr.P.C., seeking leave to file the present appeal against the judgment dated 10.09.2015 whereby the accused/respondent No.2 herein has been acquitted by the learned Additional Sessions Judge, Jalandhar in case FIR No. 73 dated 05.05.2014 registered under Section 306 IPC at Police Station Maqsudan, Jalandhar.

Learned counsel for the applicant/complainant submits that in acquitting respondent No.2, the learned trial Court has totally misread the prosecution evidence and other documentary evidence on record including the call details record duly exhibited by the prosecution. It is submitted that the daughter of the applicant had committed suicide as she was being threatened by respondent No.2 that he will upload her objectionable video on the internet. The applicant himself had appeared before the learned trial Court as



PW1 and proved the case against respondent No.2 without any doubt. Even mother of the deceased/PW2 had categorically deposed regarding her last conversation with the deceased in which the role of respondent No.2/accused has been clearly mentioned. However, these facts have been ignored by the learned trial Court. On the contrary, the learned trial Court had wrongly held that there is a contradiction in the statements of PW1 and PW2.

In fact, even in the FIR, the applicant has clearly mentioned role of respondent No.2, upon which investigation was conducted against him. During investigation, respondent No.2 has admitted to the police that he was having relation with the deceased daughter of the applicant. Even in the missing report, which was submitted by uncle of the deceased, apprehension of the involvement of respondent No.2 was clearly stated. Despite these facts, the learned trial Court has gone off tangent and incorrectly held that the deceased was in love relation with one Sourav Saini. This assertion of the learned trial court is clearly falsified from the fact that it has been proved on record that respondent No.2 was having a 20-minute MMS of the deceased which he was threatening to upload on the internet which led to the suicide of the deceased. These facts are clearly contained in the testimony of PW2/mother of the deceased. However, the same has not been considered by the learned trial Court while passing the impugned judgment of acquittal. Despite the above said allegations, even the mobile phone of respondent No.2 was not taken into custody, and the messages, conversation or MMS were not scrutinized by the Investigating Agency. In fact, the respondent No.2 had even shared the said MMS with Sourav Saini PW8. Further, even the phone records of Sourav Saini have not been examined by the prosecution.



From the above, it is clear that slipshod investigation was carried out in the matter and the prosecution has not brought the evidence properly before the Court. The learned trial Court had not considered the record and totally misread the evidence produced by the prosecution, thus, leading to the wrong acquittal of respondent No.2. It is accordingly prayed that the present application be allowed and the judgment of acquittal dated 10.09.2015 be set aside.

Per contra, learned counsel for respondent No.2 opposes submissions made on behalf of the applicant and submits that since the very beginning, the case of respondent No. 2 was that the deceased was in love affair with Sourav Saini. However, he had refused to marry the deceased as a result of which she was upset and had, therefore, committed suicide. Furthermore, Sourav Saini had admitted in his testimony as PW8 that the deceased had fallen in love with him and wanted to marry him and it was he who had refused to marry with the deceased. In this regard, learned counsel refers to the testimony of Sourav Saini (at page 155 of the photocopy of Lower Court Record - hereinafter 'LCR') wherein he has clearly stated in his examination-in-chief that he had received a friend request on Facebook from the deceased in March 2014. He had accepted the same. Thereafter, they started chatting on facebook.

It is submitted that in fact the applicant himself has admitted in his testimony as PW1 (available at page 111 of the photocopy of LCR) that *“we were having a good and healthy relation with the accused and his family and they were visiting our house frequently till the morning of 04.05.2014*



and till the morning of 04.05.2014, we were having no suspicion against the accused regarding his involvement in the commission of the offence.”

Even as per the call details record Ex. PW9/A from the period **25.04.2015** till the date of incident i.e. 04.05.2014, only 3 phone calls were exchanged between the respondent No.2 and the deceased. Most importantly, on the fateful day of incident i.e. 04.05.2014, it was the deceased who had called the respondent No.2. It is accordingly, submitted that respondent No.2 has been falsely implicated in the matter; and has therefore, has been rightly acquitted by the learned trial Court. It is accordingly prayed that the present application seeking leave to appeal against the well-reasoned judgment of the learned trial Court be dismissed.

No other argument is raised by learned counsel for the parties.

I have heard learned counsel for the parties as also perused the case file in great detail.

The brief facts of the case as presented in the complaint/ FIR filed by the applicant are that on the date of incident/4.5.2014, the daughter of the applicant was 18.5 years of age. She was studying in B. Com 2nd year in KMV College, Jalandhar. On 4.5.2014, the applicant had gone to his office at 8.30 a.m. and returned 12.30 p.m. to his house and asked about his daughter from his wife and his wife told him that she might have gone to her friend's house. But when his daughter did not come back the wife of the applicant made a mobile call to the deceased, who told her that accused/ Respondent No. 2 namely Nekdeep, their neighbour used to tease her since 8-10 days, used abusive language and was threatening her to throw acid on her face. Further she said that accused has got a 20-minute MMS of the deceased and



he will upload the same on internet and due to this reason she is committing suicide. Thereafter the complainant came to Dhogri road where accused/respondent No. 2 met him on motorcycle and on seeing the applicant he got perplexed. On the asking of the applicant, the accused informed that deceased is at Uchi Bassi and further told the applicant that he can get him arrested. On the basis of the above statement of the applicant, the present FIR No. 73 dated 05.05.2014 was registered under Section 306 IPC at Police Station Maqsudan, Jalandhar.

In determining whether the accused has committed the offence under Section 306 IPC or not, a few notable factors require consideration. Firstly, it has been admitted by the applicant in his examination-in-chief that after the telephonic call with the deceased, he had met with the accused at about 2 PM at Dhogri Road and had asked him about his daughter whereupon the respondent No.2 had informed the applicant that his daughter had gone to Uchi Bassi canal to kill herself. The relevant portion of the testimony of the applicant as PW1 (at page 105 of the photocopy of LCR) is reproduced as under: -

“Then, I met with Nekdeep accused at about 2 PM at Dhogri Road and made enquiry regarding Geeta from him and he told me that Geeta has gone to Uchi Bassi canal to kill herself and you can get arrest me from police and then he ran away on the motorcycle. Then I called my elder brother from RCF from Kapurthala, who reached at about 4 PM at my residence and we visited Police Station and we got recorded missing report on 04.05.2014 and we made search for Geeta here and there i.e. Railway Station, religious places, outside the KMV College, Devi Talab, Sodal etc and we also enquired from Mukerian and Dasuya Railway Stations and on 05.05.2014 in the morning we



again visited Uchi Bassi Canal and made enquiry regarding my daughter and we have also shown photographs to the people and one owner of Dhabba and he told me after seeing the photograph that such type of girl has committed suicide by droning herself in the canal at about 2/2:30 PM in their presence and they tried to save her but we could not save her.”

From the above testimony, it is clear that despite the fact that the accused is stated to have informed the applicant that his daughter had gone to commit suicide at the Canal, despite that, the applicant did not go to Uchi Bassi canal to look for his daughter. Oddly, the applicant and his brother namely Kulwant Singh had searched for the deceased at Railway Station, religious places, outside the KMV College, Devi Talab, Sodal etc., but not Uchi Bassi Canal. It is inexplicable that despite specific information, why did the applicant not rush immediately to the Uchi Bassi Canal to look for his daughter. This would be especially so in the background of the information supplied by the wife of the applicant to the effect that the accused was threatening the deceased because of which the deceased was upset.

Another incongruous factor is that in his examination-in-chief the applicant has admitted that he had called his elder brother Kulwant Singh from the RCF, Kapurthala, who had reached his residence at about 4 PM and they had got recorded a missing report on 04.05.2014. However, in the missing person report the name of respondent No.2 was not mentioned. The only logical reason for that can be that even till the time of filing the missing person report, the applicant had no suspicion on the respondent no.2.

The further relevant excerpt of the testimony of the applicant is reproduced as under (available at page 105 of the photocopy of LCR):-



“.... Before registration of the FIR, we were not having knowledge about the Sourav Saini of Pathankot volunteered we came to know about him after the registration of the FIR. I have no knowledge if the Sourav Saini was making telephone call to my daughter on her mobile phone. My daughter never disclose any thing about Sourav Saini..... I have no idea if my daughter ever made any complaint to the family of the accused or the neighbourers regarding the allegation of harassment by the accused. Till the morning of 04.05.2014 we were having a good and healthy relation with the accused and his family and they were visiting our house frequently till the morning of 04.05.2014 and till the morning of 04.05.2014, we were having no suspicion against the accused regarding his involvement in the commission of the offence. My wife reported me that the accused came to our office in the morning of 04.05.2014 to take the hair dryer but I do not know if he took the hair dryer from my wife or not.”
(Emphasis added)

Thus, it has been admitted by the applicant in his cross-examination that he was having good relations with the accused, even till the morning of the incident.

Even the mother of the deceased in her testimony as PW2 has admitted this fact in her cross-examination (at page 125 of the photocopy of LCR), the relevant portion of which reads as under: -

“The relation between our family and with the accused and his family remain good till the occurrence took place. Till the occurrence my daughter never made any complaint of any type before me against the accused. I never discussed any type of relationship of my daughter with my husband. My daughter never developed love affair with any boy. Geeta had never discussed with me her internal feelings. I have never discussed with my husband regarding the attitude of my husband. Sourav



Saini is not our relative. I do not know how he was knowing my daughter. I did not know that Sourav Saini was knowing my daughter or having any relation with my daughter. I have not verified for how long the accused was having love with my daughter. It has not come in the investigation that Sourav Saini used make phone call to my daughter. Till the occurrence the family of Nekdeep used to visit our house frequently and we were having good relations with his family. I rarely used to visit their house. We lodged a report to the Police Station about the missing of my daughter. We were not having any suspicion on anybody till the receipt of telephone from my daughter. I myself had made a phone call to my daughter at about 1-2 PM.”
(Emphasis added)

Even uncle of the deceased, namely, Kulwant Singh as PW3 has admitted in his cross-examination (at page 133 of the photocopy of LCR), the relevant portion of which reads as under: -

“Later on I came to know that the talk between Sourav Saini and my niece might be going on Whats app. I came to know that my niece was talking with Sourav Saini and accused on Whats app when we received messages. I do not know if the police investigated the said fact during investigation. On the basis of call report received, my whole family came to know that my niece was talking with Sourav Saini volunteered she was also talking with the accused. Before the occurrence neither my niece nor my brother nor other family member ever complaint on the allegation that the accused was teasing my niece. The accused and his family were having good and healthy relations with my brother Jaswant Rai Saini and his family. Till the time I received message from my brother no body knows what happened to my niece.” (Emphasis added)



It is most important to note that the Investigating Officer ASI Tarlok Singh/ PW4 has stated in his cross-examination (at page 139 of the photocopy of LCR), as under: -

“The deceased did not tell anything to her parents before leaving her house. I enquired from the neighbourhood and found that the relation of the deceased and her family with the accused were normal and good. No document was recovered showing any type of affair between the accused and the deceased. The deceased did not write any suicide note or any type of any object showing any symptoms of committing suicide. I joined the Sourav Saini in the investigation. In the marriage Sourav Saini met the deceased and later on they started conversation with each other on face book. Sourav Saini disclosed during the investigation that the deceased fall in love with him and wanted to marry with him. Sourav Saini told during the investigation that he refused to marry with the deceased. I have not investigated the case from this angle that the deceased might have committed a suicide on refusal of the Sourav Saini to perform a marriage with deceased. Sourav Saini was exchanging conversation with the deceased on Whatsapp. Before death of the deceased the conversation between Sourav Saini took place on mobile phone.”
(Emphasis added)

Then even the abovesaid Sourav Saini was examined as PW8 who has deposed as follows (at page 155 of the photocopy of LCR): -

“I have studied in B-Tech and taking my final exam and doing training in Mohali, I have received friend request on face book from Shanu in March 2014. I have accepted the same. Then we started chatting on facebook. My statement was recorded by the police.”

Perusal of the LCR further shows that in recording his statement under Section 313 Cr.P.C. (which begins at page 181 of the photocopy of



LCR), in respect of question No.7 as to whether accused wishes to say anything else, the accused has replied as follows (at page 189 of the photocopy of LCR):-

“I am innocent and have played no role in the commission of death of Geeta Saini @ Shainu. I never harassed Geeta Saini @ Shainu. I never made any telephonic call to Geeta Saini. I never used any abusive language against her. I never threatened her to throw acid on her face. I never made any MMS of Geeta Saini nor I told her about uploading MMS on the Interret. Geeta Saini never talked to her mother on the day of alleged occurrence. I came to know later on that she developed love affairs with Sourav Saini and wanted to perform marriage with him and Sourav Saini refused to perform marriage with her. She might have committed suicide an account of refusal of Sourav Saini to perform marriage with her. I have been falsely involved in the present case by the parents of Geeta Saini.”

Thus, it was only after consideration of the entire documentary and oral evidence on record, that the learned trial court acquitted the accused. The relevant findings are contained in paras 24 and 26 of the impugned judgment which read as under: -

“24. From the evidence of father, mother and uncle of the deceased, one thing has been proved that the deceased never made any complaint to her parents & uncle, against the accused that he is teasing her or threatening her on telephone. It is also proved that their families were having good relations with each other. It has been proved on the record that the deceased was having telephone number 7696499398 and the accused was having telephone number 9653805010. As per call detail proved by the prosecution Ex.PW9A, the accused rang her thrice from 25.4.2014 till 4.5.2014 for three times. For the first time on the day of occurrence ie on 4.5.2014 at about 1.45 p.m, the deceased



Geeta Saini made a phone call to the accused. The accused Nekdeep never made any telephone call to her on the day of occurrence prior to 1.46 p.m as per record. At that time, as per call record, the deceased Geeta Saini was in the area of Darpura, Ward No.10, Dasuya, District Hoshiarpur. The prosecution has not proved on record that the accused was harassing her through land line number. One land line number has been mentioned in the calls detail, but whose land line number is this, has not been proved by the prosecution. Land line number shown in the calls record as 181-5025333. From the calls detail, it can be inferred that both were talking on telephone. But, at the relevant time the deceased was in the area of Hoshiarpur and not at Jalandhar. PW1 Jaswant Rai Saini in his examination in chief has stated that the accused met him at about 2.00 pm at Dhogri Road, Jalandhar, who told him that the deceased has gone to Uchi Bassi Canal to kill herself. If the accused met him and asked him to get him arrested then why the police did not arrest him, is unexplained. This fact also remained unexplained that if the accused had informed them that the deceased has gone to Uchhi Basi Canal, why the parents of the deceased did not go there and kept on searching her at Jalandhar only till 5.5.2014 specially when in cross examination, this witness has stated that he disclosed the conversation of his wife and his daughter to the police in the presence of accused and the accused was interrogated by the police in his house only, but he was not arrested till that time.

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26. *Thus, from the evidence led by the prosecution, this fact is proved that till the occurrence the complainant was not having any apprehension against the accused. It has also come on the record that the deceased was having love affair with one Sourav Saini and he refused to marry her. Calls detail have been proved, but from this, it can not be inferred that the accused has abetted the deceased to commit suicide as at that*



time as per calls detail she was in Hoshiarpur District, which is 65 KM away from Jalandhar and the accused was in Jalandhar at that time. The call details of Sourav Saini and deceased has not been proved. Phone number of Sourav Saini has not been disclosed by the prosecution. This shows that something had happened prior to conversation between the accused and the deceased. This has not been proved that the conversation between the accused and deceased, made her to end her life. Love affair between accused Nekdeep and the deceased, has not been proved. It has not come on the record that accused Nekdeep has ever deceived her or had ever refused to marry her. Even if for the sake of arguments, it is assumed that he has refused to marry her, this is not abetment in the eyes of law. As the accused has never aided and abetted in such a manner leaving no option to the deceased than to commit suicide.”

I am in complete agreement with the above rational and cogent reasoning of the learned Trial Court.

Before parting, besides the factual position as noticed above it is also necessary to advert to the legal aspect of the matter. As per judicial precedent, to constitute an offence under section 306 IPC it is essential that there be active instigation, and positive aid on part of the accused in leading the deceased to commit suicide. Not only that, there has to be a clear intention/ *mens rea* on part of the accused indicating that he intentionally aided and instigated the deceased into committing suicide. In this regard, it would be beneficial to refer to a judgment of the Hon’ble Supreme Court in **“Geo Varghese vs. State of Rajasthan and anr” (SC): Law Finder Doc Id # 1889201**, wherein, while defining what would constitute ‘abetment’, it was observed as under: –



*“17. The scope and ambit of Section [107](#) IPC and its co-relation with Section [306](#) IPC has been discussed repeatedly by this Court. In the case of **S.S.Cheena v. Vijay Kumar Mahajan and Anr., (2010) 12 SCC 190**, it was observed as under:-*

"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. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section [306](#) IPC 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 that act must have been intended to push the deceased into such a position that he committed suicide."

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*19. In the case of **M. Arjunan v. State, Represented by its Inspector of Police, (2019) 3 SCC 315**, a two-Judge Bench of this Court has expounded the ingredients of Section [306](#) IPC in the following words:-*

"The essential ingredients of the offence under Section [306](#) I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language 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. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section [306](#) I.P.C."

A Coordinate Bench of this Court in case of “**Naresh Kapoor v.**

State of Punjab & Anr.” Law Finder Doc Id # 2564244, where a charge for



the offence punishable under Section 306 IPC had been framed against the petitioner therein, has observed as follows: –

“12. A perusal of the aforementioned judgments would show that to constitute an alleged abetment of suicide under Section 306 IPC there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such action on the part of the accused which compelled the commission of suicide. If a person committing suicide is hypersensitive and the allegations attributed to the accused are otherwise not ordinarily expected to induce a similarly situated person to take the extreme step to commit suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Therefore, what is required is an examination of every case on its own facts and circumstances and keeping in view the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased. Further, even if the allegations against the accused were of such a nature that would drive an ordinary person to commit suicide, there must be a proximate and live link between the occurrence of extreme harassment and the subsequent suicide. The act complained off at the hands of the accused must be the only factor which subsequently led to the deceased committing suicide.”

In the present case, none of the above ingredients necessary to constitute an offence under Section 306 IPC are satisfied. Admittedly, the accused was not even present with the deceased at the time of occurrence. As already mentioned above, as per the call details record of the accused and the victim, at the time of incident the victim was at Hoshiarpur whereas the



respondent No.2 was 65 km away in Jalandhar. This has been deposed by the applicant himself that he had met the accused in Jalandhar, when the accused had informed the applicant regarding the possibility of the deceased committing suicide by drowning herself in Uchi Bassi canal. As such, it cannot be said that there was any active or direct act on part of the accused in aiding the suicide of the deceased. Moreover, if it was the intention of the accused that the deceased commits suicide, then he would not have informed the applicant regarding the possibility of the deceased drowning herself in the canal.

Even the testimony of mother of the deceased alleging that the accused was harassing the deceased on account of some objectionable video and had threatened to throw acid on her face, is not reliable as, if this was so then there is no explanation as to why the deceased was not named by the applicant and his brother at the time of filing of the missing person report. As such, it cannot even be said that the accused was harassing the deceased.

In view of the factual and legal position as noticed above, no ground to interfere in the impugned judgment is made out. The present application stands **dismissed**.

Pending application, if any, also stands disposed of.

21.10.2024

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No