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

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CRM-A-2183-MA-2017 (O&M)
Date of decision: 08.11.2024

Ashwani Kumar ...Applicant

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. K. B. Raheja, Advocate
for the applicant.

Mr. A. S. Sarma, AAG, Punjab.

Mr. Gaurav Vir Singh Behl, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant application has been filed by the applicant, who is son of the victim, under Section 378(4) of the Code of Criminal Procedure (*for short 'the Code'*) seeking grant of leave to file appeal against the judgment dated 29.08.2017, passed in Sessions Case No. 4 of 2015, titled as ***State of Punjab vs. Sajida Begum and another***, arising out of FIR No. 182 dated 27.08.2009, registered under Section 306 read with Section 34 of IPC at Police Station City Malerkotla, whereby respondent No. 2/accused Sajida Begum had been acquitted of charges framed under the aforesaid sections by the Court of learned Additional Sessions Judge, Sangrur.
2. Brief facts of the case relevant for the purpose of disposal of this application are that on 29.07.2009, on receipt of an information regarding admission of the victim, namely Jagdish Kumar, in Civil Hospital, Malerkotla

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due to sustaining burn injuries, a police party immediately rushed there and also moved an application before the Magistrate concerned for recording statement of the victim. The victim was declared to be fit to make statement and it was so recorded by the Judicial Magistrate of the competent jurisdiction. On the same day, the victim succumbed to his burn injuries. Inquest proceedings and post-mortem examination of the dead body of the victim was conducted. On the basis of the statement recorded by the victim, the aforesaid FIR was registered. The victim had disclosed that he had burnt himself due to the reason that accused Sajida Begum in connivance with his wife Pushpa Devi had forcibly demolished his house by calling labourer despite his resistance. While they kept on demolishing his house, he came to the market and thereafter he set himself ablaze by lying in a cot, due to the reason that his house was demolished. Accused Sajida Begum was arrested. Co-accused Pushpa Devi, who is the wife of the victim, could not be arrested. After completion of necessary investigation and usual formalities, challan was presented before the Court.

3. Copies of *challan* were supplied to accused Sajida Begum free of cost. The case was committed to the Court of Sessions. On finding a *prima facie* case for commission of offence punishable under Sections 306 read with Section 34 of IPC, the accused was chargesheeted accordingly. She pleaded not guilty to the charge and claimed trial. Proceedings under Section 82 of the Code were initiated against co-accused Pushpa Devi and she was declared a proclaimed offender, vide order dated 09.02.2012.

4. To substantiate its case, the prosecution examined as many as six witnesses, besides placing reliance on certain documents and thereafter, the

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prosecution evidence was closed. The statement of the accused was recorded under Section 313 of the Code. She abjured her guilt and pleaded innocence. In defence, she examined one witness.

5. After appraising the evidence produced on record and giving due deliberations to the contentions as raised by both the sides, the learned trial Court, vide judgment dated 29.08.2017, acquitted the accused by extending benefit of doubt and by holding that the prosecution had not been able to bring home her guilt beyond doubt. Feeling aggrieved, the complainant has filed the present application seeking leave to file appeal against the aforesaid judgment of conviction.

6. It is argued by learned counsel for the applicant/complainant that the impugned judgment dated 29.08.2017 is liable to be set aside as the findings given by the trial Court are not sustainable in the eyes of law and suffer from several material infirmities. These findings are based on conjectures and surmises. The trial Court did not apply its judicious mind. The evidence produced on record had not been properly appreciated by the trial Court. The fact that the victim had recorded a statement before the Judicial Magistrate before his death and the same was his dying declaration and he had specifically named the accused as the person responsible for his death had not been taken into consideration. It was wrongly held that the guilt of the accused had not been proved beyond doubt. With these submissions, it is urged that the application deserves to be allowed and the applicant deserves to be granted leave to file appeal against the aforesaid judgment of acquittal.

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7. Learned State counsel has not raised any serious objection to the contentions raised by learned counsel for the applicant.

8. Learned counsel for respondent No.2/accused Sajida Begum, on the other hand, has strenuously argued that the findings given by learned trial Court do not deserve any interference. It is urged that the same are well reasoned. Learned trial Court had passed a speaking and well reasoned order. The evidence produced on record did not attract the provisions of Section 306 of IPC at all against respondent No. 2. No positive, cogent and convincing evidence could be produced by the prosecution to prove that respondent No. 2, in any manner, had abetted the suicide committed by the victim. Therefore, it is urged that there is no merit in the application and the same is liable to be dismissed.

9. I have heard learned counsel for the parties at considerable length and have also perused the material available on record.

10. Before advertng to the merits of the case and the contentions raised by the applicant, it would be appropriate to review the approach to be adopted while deciding the appeal against acquittal by the learned 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

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weakened but reinforced, reaffirmed and strengthened by the trial Court. The Hon'ble Apex Court further 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, reappraise 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. Reference can also be made to *Atley v. State of U.P.*, AIR 1955 SC 807; *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217; *Ramesh Babulal Doshi v. State of Gujarat*, 1996 SCC (Crl.) 972; *Sadhu Saran Singh v. State of U.P. and others*, 2016 (2) RCR (Criminal) 319 and *State of Maharashtra v. Fazal Rehman Abdul*, 2014 (7) SCC (Criminal) 1, wherein similar proposition of law had been laid down and it was observed that while entertaining appeal against judgment of acquittal, the Appellate Court was required to seek an answer to the question whether the findings of the trial Court were culpably wrong, manifestly erroneous and demonstrably unsustainable. It was held that the Appellate Court should not ordinarily set

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aside the judgment of acquittal in a case where two views are possible, though the view of the Appellate Court may be the more probable one and further that in an appeal against acquittal, the Appellate Court would interfere only when there exists perversity of facts and law.

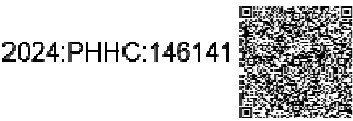
12. Keeping in view the above settled law in mind, it is to be seen as to whether the present application deserves to be allowed? The FIR in question had been registered against respondent No. 2 and co-accused Pushpa Devi, who was declared a proclaimed offender, on the allegations that they had abetted the suicide committed by the victim. The victim had admittedly set himself ablaze on 29.07.2009. He was taken to hospital and before his death, he had recorded his statement before the Judicial Magistrate alleging that respondent No. 2, in connivance with co-accused Pushpa Devi, had demolished his house despite his resistance and had not stopped on his asking and then he had set himself on fire while lying in a cot. He also stated that he had set himself ablaze due to demolition of his house. There is no dispute to the fact that the victim had died due to sustaining burn injuries. PW-6 Sh. Gurpartap Singh, Chief Judicial Magistrate, Barnala, had recorded the statement of the victim on 29.07.2009 and proved the same as Ex. PW-6/C. On a perusal of this statement, it is revealed that he stated before the Magistrate that respondent No. 2, in complicity with applicant's wife Pushpa Devi, had forcibly demolished his house by calling labourers and continued doing so. He further stated that he set himself on fire due to demolition of his house. It was not the version of the victim that the house in question was owned by him. On a perusal of the material placed on record, it is revealed that the victim along with his son

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Sanjay Kumar was residing in the above said house. The victim was not having good relations with his wife i.e. co-accused Pushpa Devi. It has also come on record that Sanjay Kumar, son of the victim, had sold two rooms of the said house to respondent No. 2 Sajida Begum. Respondent No.2-accused produced on record Ex. DW1/1, copy of extract of assessment register for the year 1994-95, showing Sanjay Kumar and the victim himself as owners of a house. It has also come on record that there was dispute between the victim and his wife with regard to this property as well. The brother and mother of the complainant had sold this house to respondent No. 2 and feeling disturbed due to the same, the victim had ended his life. However, the question that arises for consideration is as to whether the act of respondent No. 2 of purchasing a portion of that house from the son of the victim and then demolishing the same amounted to abetting suicide by the victim?

13. Section 107 of IPC defines the offence of abetment. To constitute abetment, it is to be proved that the accused instigated a person either by act or omission. It is required to establish and show the *mens rea* on the part of the accused and further that in furtherance of that state of mind, he abetted a crime. So far as Section 306 of IPC is concerned, the essential ingredients of this offence are the abetment and the intention of the accused to aid or instigate or abet a person to commit suicide. It is required to be proved that the person, who is alleged to have abetted the commission of suicide, played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Merely on the allegations of harassment and without there being any positive action proximate to the time of occurrence on the part of the accused, which led



or compelled a person to commit suicide, an accused cannot be convicted under Section 306 of IPC. On a perusal of the contents of the statement recorded by the victim before the Chief Judicial Magistrate, Barnala, it is apparent that the victim had immolated himself due to the reason that a part of his house in which he was residing had been demolished. Neither from his statement nor from the evidence on record, it is revealed that there was any instigation, aid or goading on the part of respondent No. 2 to abet the suicide by the victim. Rather, it appears that the victim himself was hypersensitive to the ordinary petulance, discord or difference in his life and that was the reason of his taking extreme step of setting himself on fire. The learned trial Court, after carefully analyzing the above discussed facts in the light of well established position of law had recorded a well reasoned finding of acquittal of respondent No. 2 by holding that the ingredients for commission of offence under Section 306 of IPC had not been made out. In view of the discussion as made above, I see no reason to come to a different conclusion. As such, no ground has been made for allowing the present application, which has been filed seeking leave to file appeal against the aforesaid judgment of acquittal. Accordingly, the same is dismissed.

08.11.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>