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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 29.07.2024

KRISHAN (SINCE DECEASED) THROUGH HIS SON/LRs
... APPELLANT

V/s

RAJESH @ KALA AND ANOTHER ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Shiv Kumar Rana, Advocate
for the applicant-appellant.

SUMEET GOEL, J.

CRM-14135-2024

The instant application has been filed for condonation of
delay of 46 days in filing the present appeal.

For the reasons stated in the application as well as in
view of the submissions made by the learned counsel, the application
in hand is allowed. Delay of 46 days in filing the appeal is condoned.

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1. Present appeal has been filed against the judgment of
acquittal dated 18.11.2023, passed by Learned Additional Sessions
Judge, Bhiwani in Session Case No.63 of 2022, emanating out of FIR
No. 352 dated 10.06.2022 under Section 306, 34 of IPC registered at
Police Station Bhiwani Sadar, District Bhiwani, Haryana. The appeal
has been filed by the brother of the deceased.

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2. Brief facts of the case shorn of unnecessary details as gathered from the trial Court record are that the above-mentioned FIR was lodged by the police on the complaint of the father of the victim. The relevant contents of the complaint made by him as culminated in the FIR are as under:

“I married my daughter Sxxxx with Sandeep, son of Kanwarpal. About 16 years have passed since then. Today on 10.06.2022 in the night at about 1.00 O’clock I got information through mobile that my daughter had hanged herself. I have a suspicion that my daughter had talks with one mobile No. 94xxxxxxx and that it may have a connection with the death of my daughter. Besides this we doubt this incident Sandeep son of Kanwarpal and Kanwarpal son of Ramchander and his wife and Kalu son of Kanwalpal and his wife may also be involved. You are requested that the matter be investigated and justice be done to our daughter.”

3. The police during the investigation found Sandeep and his family members i.e. the husband and in-laws of the deceased daughter of the complainant, innocent in the matter. However, the police after investigating the matter filed a Challan against respondent No.1 (herein), for committing the offence under Section 306 of the IPC. The trial Court framed a charge against respondent No.1 under Section 306 of the IPC and conducted a trial. Vide the impugned judgment dated 18.11.2023 trial Court acquitted

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respondent No.1 from the charge framed against him under Section 306 of the IPC.

4. The appellant being the brother of the deceased has filed the present appeal with the plea that his father who was the complainant in the case has since died on 29.07.2022 during the pendency of the trial.

5. However, while arguing the matter the counsel for the appellant argued that the prosecution, on the strength of the testimony of the appellant (herein) who deposed as PW-9 before the trial Court, coupled with the circumstantial evidence in the shape of social media chats between respondent No.1 and the deceased, has proved that there were illicit relations subsisting between them. It is argued that the alleged illicit relations between the parties eventually coerced the deceased to commit suicide. Therefore, it is argued that on this score alone respondent No.1 is liable to be convicted under Section 306 of the IPC.

6. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal passed by the trial Court, as laid down by various judgments passed by the Hon'ble Supreme Court of India are as under:

In the case of ***Rajesh Prasad v. State of Bihar, (2022) 3***

SCC 471 it is held as under:

“28. After referring to a catena of judgments, this Court 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:

"42. From the above decisions, in our considered view, the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An Appellate Court has full power to review, reappreciate 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 the 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 emphasize the reluctance of an Appellate Court to interfere with acquittal than to curtail the power of the Court to review 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 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 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, reaffirmed 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."

7. Further in the case of ***H.D. Sundara &Ors. Vs. State of Karnataka, 2023 (9) SCC 581*** Hon'ble Supreme Court of India summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal as under:

“(a) The acquittal of the accused further strengthens the presumption of innocence;

(b) The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

(c) The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to

consider whether the view taken by the trial Court is a possible view which could have been taken on the basis of the evidence on record;

(d) If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

(e) The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

8. While reiterating the above principles governing the exercise of power by the Appellate Court in an appeal against acquittal, the Hon’ble Supreme Court in the judgment passed in Case titled as ***“Babu Sahebagouda Rudragoudar and others versus State of Karnataka”***, ***2024 INSC 320 = 2024(2) Law Herald (SC) 928*** held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

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(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

9. In the light of the above principles laid down by the Hon’ble Supreme Court, I now proceed to examine the arguments advanced by the appellant. After giving my careful and thoughtful consideration to the entire case material and the evidence available on record of the case, I do not find any substance in the arguments advanced on behalf of the appellant.

10. In the complaint moved by the father of the deceased to the police resulting in the FIR besides alleging in a single line that he had a suspicion that his daughter had talks with one mobile number and that it may have a connection with the death of his daughter, nothing more is alleged. However, proceeding towards investigating his said suspicion, the police concluded that the accused had illicit relations with the deceased. To prove the relation between the accused and the deceased the prosecution has relied upon WhatsApp Chat (Ex.P-11) between them. A Perusal of document Ex.P-11 shows that it contains 9 messages written by the deceased with no response from the side of the accused. The trial Court after going through the said chat concluded in para 21 of the impugned judgment that it cannot be inferred that accused had instigated or abetted deceased to commit suicide.

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11. Perusal of the testimony of the husband of the deceased i.e. PW-11 depicts that the relation between the deceased and the accused was not a secret affair and it was known even to the husband of the deceased and his family members. The husband of the deceased in his cross-examination admitted that he tried to prevail upon the deceased to make her understand not to talk with the accused, but she did not stop. Even the mother of the accused visited the house of the deceased to make her understand not to talk with the accused.

12. There is no eye witness account of the circumstances that took place prior to the incident of deceased hanging herself on the fateful day. Though the prosecution examined the daughter of deceased as PW-12 to prove the said circumstances but her testimony does not throw any light on the reason behind the deceased taking such an extreme step. In her statement in Court, she deposed that on 09.06.22 at about 8/9.00 PM deceased was trying to commit suicide by hanging. Thereafter, she went to house of PW-8, her neighbour to call her to save the deceased. But by the time she returned with PW-8, the deceased had committed suicide. She did not mention any reason for the deceased to commit suicide in her statement. Though in the end of her statement, she simply stated that the accused instigated her mother to commit suicide. The one line statement by her accusing the accused, bereft of any details of any such instigation on part of the accused, cannot be made the basis to incriminate the accused, for the offence of abetment of suicide, committed by the

deceased. Hon'ble Supreme Court of India in the case of "***M. Mohan vs. State Tr. Dy. Supdt. Of Police***", 2011 (2) RCR Criminal 272 held as under:

"45. 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.

46. The intention of the Legislature and the ratio of the cases decided by this Court are 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/she committed suicide."

13. The onus to prove the ingredients of the offence under Section 306 of the IPC against the accused lies heavy upon the prosecution. True, it is that the prosecution has proved that the death of deceased was due to suicide committed by her. The prosecution cast a shadow of suspicion in the evidence led that the suicide committed by deceased was the outcome of her illicit relations with the accused. However, the accused cannot be convicted for the offence under Section 306 of the IPC on this basis. It is a trite law that the suspicion, however grave, cannot substitute the requirement of proof. There is no iota of evidence led by the prosecution to prove

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the *mens rea* or any overt act on part of the accused, in actively instigating the deceased to commit suicide, by creating an atmosphere for the deceased not to be left with any other alternative but to commit suicide. The allegations of the accused simply having illicit relations with the deceased cannot by any stretch of imagination be held sufficient to infer any *mens rea* or overt act on his part to instigate the deceased to commit suicide. Moreso, in view of the evidence available on record to prove that the said illicit relations between the deceased and accused were in the knowledge of husband of deceased and his family members.

14. The whatsapp chat relied upon by the prosecution (Ex.P-11) depicts that all the messages in the said chat were written by the deceased only, there being no response from the accused. Perusal of the said messages clearly shows that there is no instigation on part of the accused to compel the deceased to commit suicide, rather the said messages hint out only some dejection on part of the deceased, without spelling out any exact cause of such dejection. There is no attribution of anything to the accused on part of the deceased, showing that he had actively in a culpable state of mind instigated the deceased to commit suicide.

15. Perusal of the judgment of acquittal passed by the trial Court shows that the trial Court has gone through the entire evidence led by the prosecution in detail in painstaking manner and has dealt with each and every aspect of the case in pragmatic manner. The judgment of acquittal passed by the trial Court is based on sound

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reasoning, and does not suffer from any illegality or perversity. As such the judgment of acquittal dated 18.11.2023 passed by the Learned Additional Sessions Judge, Bhiwani in the present case is upheld. Resultantly, the present appeal being bereft of merit fails and is dismissed.

(SUMEET GOEL)
JUDGE

July 29, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No