

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.102

CRA-D-666-DBA-2002 (O&M)
Date of decision:16.05.20024

State of Haryana

...Appellant

Versus

Ram Bhagat

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sheenu Sura, DAG, Haryana for the appellant-State.
Mr. N.R. Dahiya, Advocate for the respondent.

N.S. SHEKHAWAT, J.

1. Challenging the legality of the impugned judgment dated 21.12.2001 passed by the Additional Sessions Judge, Bhiwani, whereby the accused-respondent has been acquitted of the charges under Sections 306/376/452 IPC, the State of Haryana has preferred the present appeal before this Court.

2. As per the case of the prosecution, the FIR in the present case was registered on the basis of the statement made by PW-11 Ram Chander son of Mange Ram, wherein he stated that he was posted as a Baildar in PWD Department. He had four children i.e. two sons and two daughters.

The eldest daughter Savita was aged about 14 years. On the night intervening 9th/10th August, 1999, he along with his family had taken their meals and were sleeping in the courtyard of their house. At about 12:30 AM in the night, his daughter Savita cried all of a sudden and on hearing her cry, he and his wife Kamla woke up and saw that Ram Bhagat son of Ram Kumar, their neighbour, was lying on his daughter Savita after opening the string of her salwar and removing his underwear. On seeing them, Ram Bhagat tried to flee from the spot after wearing his underwear, however, he was apprehended by him and his wife. Meanwhile, his daughter Savita went inside the room and due to this incident, she consumed the SPRAY lying there. On hearing the noise, his brother Lakshmi, his cousin Satyawar son of Bahadur and other neighbours also reached there. They handed over Ram Bhagat to Balwan son of Ram Sarup and Chander Bhan son of Mange Ram. The complainant and Ranvir son of Bahadar arranged a vehicle and shifted his daughter Savita to Tosham hospital for treatment. However, on reaching the hospital, his daughter expired. He further alleged that accused Ram Bhagat had entered their house and committed rape with his daughter and due to this incident, his daughter had consumed SPRAY and lost her life and prayed for strict action against Ram Bhagat, accused. With these allegation, the FIR (Ex.PM) was recorded in the police station by PW-14 ASI Bhim Singh and after registration of the FIR, the special report was sent.

3. During the course of investigation, the inquest proceedings were recorded, post-mortem examination was got done from the doctors and the accused was formally arrested. After completion of the

investigation, final report under Section 173 Cr.P.C. was presented before the Area Magistrate, which was committed to the Court of Sessions for trial.

4. After considering the material placed on record, the trial Court ordered framing of charges under Sections 376, 306, 452 IPC. The accused claimed his innocence and prayed for holding a trial by the trial Court.

5. To prove the charges against the accused-respondent, the prosecution examined 14 witnesses and exhibited various documents before the trial Court. The prosecution examined Constable Vir Shakti Singh, Draftsman as PW-1, who had prepared the site plan (Ex.PA), on pointing of Satyawan and Kamla. The testimonies of PW-2 Constable Satyawan, PW-4 Constable Ram Dhari and PW-5 HC Rattan were formal in nature. The prosecution examined Constable Ved Singh as PW-3, who had taken and handed over the special report to the Illaqa Magistrate at 11 AM on 10.08.1999. Bhoop Singh, Head Master, Government High School, Riwasa appeared as PW-6, who brought the record relating to date of birth of Savita daughter of Ram Chander and as per his record, the date of birth of Savita was 05.02.1985. He exhibited the certificate Ex.PE. However in cross-examination, he stated that the date of birth was recorded in the record on the basis of Middle Examination certificate. Constable Ishwar Singh appeared as PW-7, who was a witness on the report under Section 174 Cr.P.C. The prosecution further examined PW-8

Dr. K.L. Bawa, who conducted the post-mortem examination on the dead body of Savita on 10.08.1999 and found the following condition:-

(i) *Dead body of female aged approximately 14 years wearing light cream coloured Salwar and Kameej Salwar was smeared with faecal matter on back and front part. The yellow metallic topsin each ear lobul was present. Yellow metallic KOKA in left Ala of the nose. Yellow metallic bangle two in right wrist were present.*

(ii) *Eyes were partially opened. Froth at both the nostrils were present. Rigor mortis was present in all the four limbs. Postmortem staining was present on the back. No mark of injury was visible on the body and private part.*

(iii) *Trachea and larynx were congested and contained froth. Both the lungs were congested. The left chamber of the heart was empty and right was full of blood and the blood sample was taken sent chemical Examiner.*

Stomach was congested contained dark black fluid material, mucosa was congested eroded at places and peticaal haerrhage present. Stomach as a whole was sent to Chemical Examiner. All the visceras were congested a piece of small intestine, a piece of large intestines, A piece of liver, spleen as a whole, half of both kidneys were sent to chemical Examiner. Urinal bladder was empty.

The organs of the generation on examination there was no mark of injury externally, the pubic hairs were matted with facal matter. Pubic hairs collected in a veil and sent to Chemical Examiner. The old age of the hymen were visible. No bleeding was present per vagina. Vaginal swabs were taken and sent to Chemical Examiner. Uterine cavity was empty....”

As per PW-8 Dr. K.L. Bawa, the cause of death in his opinion was organophosphorous and halogenated hydrocarbon compound of insecticides. After seeing the FSL report, Ex.PK, he opined that the possibility regarding sexual intercourse could not be ruled out. In his cross-examination, he also admitted that there was no injury on the private part and other parts of body, internal and external of patient Savita. The possibility of injury by a forcible intercourse could not ruled out. He further admitted that semen remains in the vagina up-to 12 days.

6. Sadhu Ram, Statistical Assistant, CMO Office, Bhiwani appeared as PW-9, who stated that as per the report Ex.PL. the date of birth of Savita was 18.12.1985 and the date of registration was 30.12.1985. As per him, Kavita was a child at Sr.No.3 in the family. There was no mention of date of birth of earlier two children. The testimony of PW-10-ASI Ram Kumar was formal in nature. The prosecution examined its star witness Ram Chander, complainant, as PW-11 who reiterated the version as mentioned in the FIR Ex.PM. However, in cross-examination, he admitted that the boundary walls of his house, where they were sleeping on the night of the occurrence was about five feet. Even the height of boundary wall towards the western side and towards the house of Satyawar was six feet. He had closed the door of his house, while going to sleep. The house of Satyawar was towards the western side of his house and the house of complainant opened towards western side. He further admitted that there were six cots in the courtyard on that night. Cot of Savita was near their kitchen. Next to her cot, there was cot of his son Naresh, who was sleeping and the cot of his wife was towards western side.

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Cot of Anita was next to the cot of his younger son and next to her was the cot of her elder son. His cot was near the door. All the lights were switched off, when they were sleeping. He further admitted in cross-examination that he was unarmed, when he caught hold of the accused and even his wife was unarmed. He did not cause any injury to Ram Bhagat, however, he might have sustained some injuries while making rescue. Lakshmi and Satyawar also did not cause any injury to the accused. He denied the suggestion that there was a love affair between his daughter and Ram Bhagat, accused.

7. The prosecution further examined PW-12 Dr. Hemant Singh, who had medico-legally examined Ram Bhagat, accused, on 10.08.1999 and observed as under:-

“The general condition of the patient was conscious, alert, oriented to time and place, able to answer questions, Pulse 120 per minute, B/P 116/84 MM of Hg.

On examination, the patient Secondary Sexual Characteristic where as follows:-

Moustache present but hairs are scanty. Scanty axillary hair. Pubic hairs is well developed and shows good growth. Descended testes present and noted. Scanty chest hairs present on the sternum.

Penis Length: 8.0 cms, non-erectile presently.

***Prepuce:** Covering the glans presently but can be retracted fully.*

***Corona Glands:** No smegma seen. Frenulum is Intact. No tears seen.*

Pubic hair: Not matted.

No history of Bath after the alleged rape.

Cremastic Reflex: Positive.

Opinion:

Patient was fully capable of performing sexual intercourse. On further examination, I found the following injuries on his person:-

- i) Abrasion contraction 2.5 cms x 0.5 cms, vertically placed on the middle of the front of right lower leg.*
- ii) Contusion radish in colour, 6.0 cm., 3.0 cm., horizontally placed on the middle of the back right thigh.*
- iii) Reddish contusion, 6.0 cm x 3.0 cm. obliquely placed on the lateral surface of left lower leg in upper 3rd area.*
- iv) Reddish contusion, 15.0 cm, x 3.0 cm, vertically placed on the back of right upper arm.*
- v) Reddish contusion 10.0 om, x 3.0 cm, obliquely placed Just above the left buttocks.*
- vi) Complaint of pain and swelling on the dorsum of right hand. Minimal local tenderness present. Advised x-ray and ortho-surgeon's opinion.*
- vii) Complaint of pain on the palmar surface of all the four fingers of right hand. Local tenderness present. Advised X-ray and ortho-surgeons' opinion.*
- viii) Reddish contusion 14.0 cm. x 4.0 cm. obliquely placed on the middle of the lateral surface of left upper arm.*

- ix) *Complaint of pain on the palmar surface of all the four fingers of left hand. Local tenderness present. Advised x-ray and, ortho-surgeon's opinion.*
- x) *Multiple contusions reddish brownish in colour of varying shapes and sizes on the left side of the back over the left scapular, supra scapular and away from the lateral surface of the scapular. Complaint of pain Local tenderness present. Advised x-ray and surgeons opinion.*
- xi) *Sub-conjunctival hemorrhage present in the right eye on both the nasal and temporal side. More on the nasal side. Advised eye surgeon's opinion.*
- xii) *Complaint of pain and swelling on the left side of the face away from the Lateral danthus of left eye.*
- xiii) *Reddish contusion 6.0 cm. x 4.0 cm. obliquely placed on the left side of chest just below the medial and of the left clavicle.”*

He proved the carbon copy of the MLR of the accused as Ex.PO. As per him, the patient was feeling pain in some parts of his body. A person with such injuries may or may not scale on the wall.

8. The prosecution further examined PW-13 Ramesh Kumar SI/SHO, who had investigated the matter in the present case. However, in cross-examination, he admitted that he did not show any marks of scaling the wall, because it was not a case of scaling the wall. It was found during the investigation that the accused had entered the house through the main gate, when the same was opened at the time of occurrence. He had not shown any light point in the site plan. The prosecution further examined

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PW-14 Bhim Singh (Retd. ASI), who had recorded the statement Ex.PN of Ram Chander PW-11, father of Savita (since deceased) and made his endorsement Ex.PN/1, on the basis of which, FIR Ex.PM was recorded by Ram Kumar ASI.

9. After examining 14 witnesses, the prosecution evidence was closed and the entire incriminating evidence was put to the accused. Even in his statement under Section 313 Cr.P.C, the accused had offered the following explanation regarding his innocence:-

“Ques:Any thing else you Want to say about this case?

Ans: I am innocent. I have not committed any sexual intercourse with Savita at any time. In fact, Savita used to love me and used to write love letters to me. Out of which four original letters Mark DI, Mark DJ, Mark DK and mark DL are produced herewith. These letters were written by Savita and I identify her handwriting on these letters. I and Savita were having love affairs from more than two years prior to her death. In this connection a Panchayat was convened by the parents of Savita and in that Panchayat Savita had confessed that she had love affairs with me. On this Savita as well as myself were given beating by father of Savita. Feeling humiliation from that beating Savita, consumed SPRAY as a result of which she died. This false case has been planted upon me by her father in order to save his honour and in order to save his skin from the criminal prosecution. I am innocent.”

10. In his defence, the respondent/accused had examined Ram Kumar, Head Master, Government Primary School, Village Dharan as DW-1, who had brought the summoned record relating to the admission of

Savita (since deceased) daughter of Ram Chander. She was admitted in their school on 18.07.1988 in Class 1st and the photocopy of the register was Ex.DA. As per their record, her date of birth was 05.07.1982 and her admission form was available with them, which was Ex.DB. He further stated that this date of birth continued in their record till 24.10.1989. However, in cross-examination, he stated that while she was admitted on 22.07.1991, her date of birth was shown as 05.02.1985.

11. Learned State Counsel vehemently argued that the trial Court had completely brushed aside the evidence led by the prosecution and the observations made by the trial Court were legally unsustainable. Learned State Counsel further submitted that the prosecution had led overwhelming evidence to show that Savita (since deceased) was aged about 14 years and had attended the classes at 9th standard in her school. Even she was aged about 14 years and her consent with regard to sexual intercourse was immaterial. Since, she was subjected to forcible sexual intercourse, the respondent/accused was liable to be convicted by the trial Court. Learned State Counsel further submitted that the trial Court had drawn wrong inference from the fact that the FIR in the present case was got registered by the complainant after a delay of 11 hours. In fact the main challenge before the family of Savita (since deceased) was to save her life and in that process, the delay of 11 hours had occurred, which was usual delay in such like matters. Learned State Counsel further contended that the trial Court had erred in disbelieving the evidence of PW-11 Ram Chander, complainant/father of the prosecutrix and even after lengthy cross-examination, his testimony could not be shattered in any manner.

Further, human semen was detected on the underwear of Savita (since deceased) and since she had consumed a poisonous substance, after she was subjected to forcible sexual intercourse, the respondent was liable to be convicted for the offences under Sections 306/376 IPC. Learned State counsel further submitted that even the accused in the present case had suffered superficial injuries and the trial Court had drawn wrong inferences from the said fact and such minor injuries were liable to be ignored, which were suffered by the respondent, while saving himself from the clutches of the villagers, who had gathered at the spot.

12. On the other hand, learned counsel appearing on behalf of the accused-respondent submitted that the impugned judgment was based on correct appreciation of the evidence led by the parties and the settled canons of law. The trial Court had considered every aspect of the matter in the light of the evidence led by the prosecution. However, the trial Court correctly held that the evidence led by the prosecution did not inspire confidence and the testimony of PW-11 Ram Chander lacked independent corroboration and his solitary statement was full of material contradictions. Thus, the impugned judgment passed by the trial Court is liable to be upheld.

13. We have heard the learned counsel for the parties and have carefully gone through the trial Court record in the present case.

14. In fact in the present case, the respondent was tried for committing rape upon Savita (prosecutrix) and was further charged with abetment of suicide by the prosecutrix. A further charge was set up against

the respondent that he had criminally trespassed into the residential house of the prosecutrix and the complainant at night and the evidence of the prosecution has been discussed, while determining the above stated charges separately.

15. The first charge against the respondent/accused was with regard to commission of rape on Savita, aged about 14 years. To prove the said charge, the prosecution tried to set up a case that the date of birth of Savita, as per Ex.PE, was 05.02.1985, whereas the occurrence had taken place on the night intervening 9/10.08.1999. The prosecution had examined PW-6 Bhoop Singh, Head Master, Government High School, Riwasa, who stated that the date of birth of Savita as per the record (Ex.PE) was 05.02.1985. However, in cross-examination, he admitted that the said date of birth was recorded on the basis of middle examination certificate. The second witness, which was heavily relied by the prosecution, was PW-9 Sadhu Ram, SA, CMO Office, Bhiwani, who proved the date of birth of Kavita was 18.12.1985 and Kavita was a child at Sr. No.3 in the family. He further admitted that there was no mention of date of birth of earlier two children. It requires mention that he had prepared a report Ex.PL, pertaining to the date of birth of Kavita, who was stated to be a child at Sr. No.3 in the family. In fact, the testimony of PW-9 Sadhu Ram, SA, had demolished the entire prosecution case as the name of the prosecutrix in the present case was Savita and she was the eldest child in the family as per the testimony of her father PW-11 Ram Chander. In fact the prosecution could not lead any cogent and unimpeachable evidence, which could prove the date of birth of Savita to be 05.02.1985.

16. On the other hand, the respondent had examined Ram Kumar, Head Master as DW-1, who had proved the date of birth of Savita (prosecutrix) as 05.07.1982 and this date of birth continued in their record till 24.10.1989. He proved the copy of register as Ex.DA and certificate Ex.DC before the trial Court. Thus, the trial Court had correctly recorded the date of birth of Savita (prosecutrix) was 05.07.1982 and on the date of occurrence i.e. on 10.08.1999, she was aged more than 16 years.

17. As per the provisions of Section 375 and 376 of Indian Penal Code, if a sexual assault was committed with a girl less than 16 years of age, there was no question of consent on the part of such a female. However, in the present case, it was evident from the testimony of DW-1 Ram Kumar, Head Master that the age of Savita (prosecutrix) was more than 17 years and the trial Court correctly held that the prosecution had failed to show that Savita was less than 16 years of the age. Consequently, it stands established that she was aged more than 16 years on the date of occurrence and as such, she was able to give her consent for the sexual intercourse.

18. This Court further agrees with the findings recorded by the trial Court that in the present case, there was no forcible sexual intercourse by the respondent/accused with the prosecutrix. Before proceeding further, we would refer to the testimony of PW-8 Dr. K.L. Bawa, who clearly deposed that on examination of organs of the generation, there was no mark of injury externally. No bleeding was present on the vagina. He further admitted that there was no injury on the private part and other parts

of the body, internal and external, of Savita. He further admitted that in case of forcible intercourse, the possibility of suffering of injuries could not be ruled out. He further admitted that the semen remains in vagina up-to 12 days. Apart from that, even from the testimony of PW-11 Ram Chander, complainant, it is apparent that there were six cots in their courtyard, where the complainant, his wife and all other family members were sleeping. Consequently, it is highly unbelievable that Savita (prosecutrix) was subjected to sexual intercourse by respondent/accused against her wish. Rather the evidence led by the prosecution itself clearly ruled out such an incident and the findings recorded by the trial Court are based on correct appreciation of evidence on this aspect of the matter.

19. The prosecution had further charged the respondent of the abetment of suicide of Savita (prosecutrix) in the present case. The word 'abetment' has not been explained in Section 306 of IPC and has to take its meaning as provided under Section 107 IPC. The word 'instigate' literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Sometimes the instigation is expressed, sometimes it may be by implied conduct. In order to prove the abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased react. A causal remark or something said in routine or usual conversation or invoking the legal remedies should not be misunderstood as 'abetment'.

20. It has been held by the Hon'ble Supreme Court in the matter of "Geo Varghese vs. State of Rajasthan", 2021 SCC Online, SC 873 as follows:-

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 IPC, which reads as under:-

*"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."*

14. Though, the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium', 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same. Abetment is defined under Section 107 of IPC which reads as under:—

"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 for 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 that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

16. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in the case of *Ramesh Kumar v. State of Chhattisgarh* has defined the word 'instigate' as under:—

“Instigation is to goad, urge forward, provoke, incite or encourage to do an act.”

17. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by this Court. In the case of *S.S. Cheena v. Vijay Kumar Mahajan*, 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.”

21. It was further held by the Hon'ble Supreme Court as under:-

“19. In the case of M. Arjunan v. State, Represented by its Inspector of Police, 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.”

20. At this stage, we may also refer to another recent judgment of a two-Judge Bench of this Court in the case of Ude Singh v. State of Haryana, which elucidated on the essential ingredients of the offence under Section 306 IPC in the following words: —

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by

another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case

may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

21. We may also refer to a two-Judge Bench judgment of this Court in the case of *Narayan Malhari Thorat v. Vinayak Deorao Bhagat*, wherein the judgment rendered by the High Court quashing the FIR under Section 482 was set aside. In the said case, an FIR was registered under Section 306 IPC stating that the son and daughter-in-law were teachers in a Zila Parishad School where the accused was also a teacher used to make frequent calls on the mobile of the daughter-in-law, and used to harass her. Despite the efforts of the son of the informant in trying to make the accused see reason and stop calling, the accused continued with his activity. On 09.02.2015, there was a verbal altercation between the son of the informant and the accused and on 12.02.2015, he committed suicide leaving a note stating that his family life has been ruined by the accused who should not be pardoned and should be hanged. Under Section 482 Cr.PC, a petition was filed by the accused challenging the FIR, which was allowed by the High Court and thereafter, was challenged before this Court. The appeal was allowed by this Court and made the following observations:—

“We now consider the facts of the present case. There are definite allegations that the first respondent would

keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation. The record shows that 3-4 days prior to the suicide there was an altercation between the victim and the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abate the commission of suicide. At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of the respondent.”

22. Keeping in view the aforesaid principles of law, this Court is required to address whether there has been abetment of suicide in the present case or not. Mere bald allegations of PW-11 Ram Chander, without any positive action in the proximity to the time of occurrence on the part of the accused which led to commission of suicide by Savita, a conviction in terms of Section 306 IPC would not be sustainable. There has to be a positive action, which creates a situation for the victim to put end to her life. In the present case, the prosecution had examined PW-11 Ram Chander, a solitary witness, to prove the charge under Section 306 IPC against the respondent/accused. However from the entire testimony, it is apparent that after Savita was allegedly caught with respondent, she all of a sudden went inside the room and had consumed SPRAY (some

poisonous substance). Apart from the testimony of PW-11 Ram Chander, the prosecution had not led any evidence to prove the abetment on the part of the present appellant. Even the trial Court has correctly absolved the respondent of the charge under Section 306 IPC, as there was no positive act on the part of the present respondent by which he had instigated Savita (prosecutrix) to commit suicide. Thus, the ingredients of the offence under Section 306 IPC are completely missing in the instant case.

23. Apart from that, we have considered the detailed reasons recorded by the trial Court, while acquitting the respondent of the charge under Section 452 IPC. The prosecution had examined PW-13 Ramesh Kumar SI/SHO, who had conducted the investigation in the present case. He clearly admitted in his cross-examination that he did not show any marks of scaling of the wall, because it was not a case of scaling the wall. It had come in the investigation that the accused had entered in the house through the main gate, when the same was opened at the time of occurrence. Even in the foregoing paragraphs, we have clearly discussed the fact that Savita (prosecutrix) apparently appeared to be a consenting party in the present case. Apart from that, the defence had also proved on record, four original love letters marked as D-I, D-J, D-K and **D-L**, which were written by Savita (prosecutrix) to the respondent. In fact, the defence had set up a positive case that both of them while having love affairs for the last more than 2 years prior to her death, the prosecutrix used to write love letters to him. Apart from that, with regard to this charge also, the prosecution had placed reliance on the sole and uncorroborated testimony of PW-11 Ram Chander, which was otherwise full of contradictions. As

per the initial statement Ex.PN/FIR Ex.PM, Lakshmi, brother and Satyawan cousin of Ram Chander PW-11 were attracted at the spot. However, none of them was examined by the prosecution. Apart from that, the complainant had handed over the custody of Ram Bhagat to Balwan son of Ram Saroop and Chander Bhan son of Mange Ram. However, for the reasons best known to the prosecution, they were not examined as witnesses in the present case. Thus, the trial Court correctly observed that the offence under Section 452 IPC cannot be said to have been proved, in accordance with law in the present case.

24. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra", 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court

was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach

of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

25. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495) as follows:

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

26. In view of the detailed discussion hereinabove as also the law laid down by the Hon’ble Supreme Court as well as by this Court, the view taken by the trial Court while passing the impugned judgment is a reasonable view, based on the evidence on the record and as such is not required to be interfered with. Therefore, we find no reason to interfere with the findings recorded by the trial Court and accordingly, the present appeal is hereby dismissed. Pending application(s), if any, shall also stand disposed of.

(GURVINDER SINGH GILL)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

16.05.2024
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO