

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

223

CRA-AS-229-2019

Date of Decision: January 10, 2024

Suresh Kumar

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Sandhu, Advocate
for the appellant

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal is preferred against the judgment of acquittal dated 26.04.2019 passed by the learned Additional Sessions Court, Jalandhar in FIR No.182 dated 26.11.2013 under Section 306,34 IPC registered at Police Station Division No. 2, Jalandhar.

FACTUAL BACKGROUND

2. The facts, in brief, are that on 25.11.2013, respondent no. 4-Varun, who happens to be appellant's nephew called the appellant and informed him that the son of the appellant-Rohit was in a serious condition and he should come to Civil Hospital, Jalandhar. After 10 minutes, Varun called the appellant again to inform him that Rohit is being taken from Civil Hospital to Oxford Hospital. However, 15 minutes later, when the appellant had reached Kathar, he received another call from Varun, asking him not to come as Rohit had died and they were bringing his dead body. About half an hour later, sister of the appellant- Sunita Takiar-respondent no. 2 and her son respondent no. 4- Varun along with Seema-repsondent no. 3, Sunita Takiar's sister-in-law reached the house of the appellant with dead body of his son-

Rohit. The appellant stated that deceased Rohit was in a romantic relationship with respondent no. 5-accused Surabhi for three years. The appellant's family was ready for the alliance but parents of respondent no. 5 were not willing. At about 3:30 PM, respondent no.5- Surabhi had called Dr. Lalit Chawla, who happens to be the brother-in-law of appellant's nephew-Vishal, to inform him that Rohit was vomiting. Hence, Surabhi, in connivance with her classmates Tarun-respondent no. 6, Varun Takiar-respondent No. 4 and other private respondents have committed an offence under Section 306/34 of the IPC.

3. On completion of necessary formalities of the investigation, challan was presented against the accused. On finding, a prima facie case against the accused for commission of an offence punishable under Section 306/34 of the IPC which is exclusively triable by the Sessions Court, the case was committed to the Court of Sessions vide order dated 22.08.2014 by Judicial Magistrate Ist Class, Jalandhar. Thereafter, the accused were charged with offence under Section 306/34 of the IPC to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 14 witnesses. Statements of the accused were recorded under Section 313 of the Cr.P.C. in which they pleaded false implication but they did not examine any witnesses in their defence. After considering all the material available on record, the learned trial Court acquitted the respondents-accused vide judgment dated 26.04.2019, which has been impugned in the present appeal.

CONTENTIONS

5. Learned counsel for the appellant assails the impugned judgment on the ground that the mobile phone of deceased Rohit remained with respondents-Varun, Surabhi and Tarun after his death on 25.11.2013. The mobile phone was recovered from respondent no.4-Varun which was taken into possession on 10.01.2014 and the

same has been recorded in the recovery memo (Ex Pw7/D) attached with the Challan. Further, it is contended that the respondents-accused weild political influence and have interfered with the investigation which is evident from the fact that Dr. Lalit was not listed as a witness. He further submits that it is factually incorrect that deceased Rohit died at the hospital as evidence on record indicates that he was taken from the hospital against medical advice at 6 PM and the same has been signed by one of the accused. Learned counsel further submits that the respondents-accused actively tried to prevent the appellant from going to the hospital and the record also indicates that they did not take the deceased to another hospital. The deceased died due to lack of timely medical intervention and malicious conduct of the respondents-accused. Furthermore, the deceased was last seen alive with Surabhi, Varun and Tarun.

6. It is also contended that the respondents-accused did not explain their presence in their respective statements recorded under Section 313 of the CrPC and merely denied the allegations. He further argues that presence of respondent no. 5- Surabhi with the deceased indicates that they were in a relationship and that it is incorrect to state that she did not want to marry the deceased. The testimonies of PW5- Narsingh Rana and PW6-Balwant Rai prove that on 25.11.2013 the deceased with respondent no. 5- Surabhi, went to Gupta Medical Hall where Surabhi had informed them that the deceased had consumed some poisonous substance and asked for some medicine after which, she took the deceased on her scooter. Further, PW9- Dr. Raj Kumar Badhan has proved that the deceased was brought by respondent no. 6-Tarun to the Hospital and was admitted with suspected case of poisoning. It was also stated that the deceased was taken from the hospital against medical advice in order to admit him into another hospital. Lastly, PW1 Dr. Surinder

Pal, who conducted the postmortem examination, has proved the postmortem report (Ex PW1/A) which states the cause of death to be poisoning.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned counsel for the parties and perusing the record of the case, this Court is of the view that ingredients of Section 306 in terms of Section 107 of IPC are not made out in the present case.

306. Abetment of suicide. - *If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

107. Abetment of a thing. - *A person abets the doing of a thing, who -*

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy or the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of the thing; or

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

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

8. In order to attract the offence defined under Section 306 of the IPC, the presence of mens rea is indispensable, which is completely missing in the instant case. In his cross-examination, the appellant had deposed that the respondents-Varun, Tarun and Surbhi had killed his son and taken him to Civil Hospital, Jalandhar whereas the same is not reflected in appellant's statement (Ex PA) made to the police on the basis of which FIR was registered. He deposed that the abovementioned respondents-accused killed his son by administering poison which again is not corroborated by his statement (Ex PA). The appellant further claimed to have filed a complaint before the Court regarding murder of his son by the accused.

However, a perusal of the certified copy of the complaint (Ex D1) does not

reflect the same. Further, the appellant claimed to have made a statement under oath (Ex D2) that the respondents-accused have committed murder of his son, while the statement does not find a mention of the same. Nothing has been brought on record to substantiate the claim that the respondents-accused had poisoned the deceased.

9. Further, in his cross-examination, PW4- Vishal Sharma has stated that he had not seen the accused with the deceased at his hotel on 25.11.2013 and the incident was narrated to him by his staff. The statements of PW5-Narsingh Rana and PW6-Balwant Rai only proves that respondent no.5- Surabhi was worried for the life of the deceased. Moreover, the appellant had filed a criminal complaint against the accused which was dismissed at the stage of summoning. A revision petition was filed against the same which was also dismissed. As far as the relationship between respondent no. 5-Surabhi and deceased-Rohit is concerned, the Hon'ble Supreme Court in ***Kanchan Sharma v. State of U.P and anr 2021(4) RCR(Criminal) 215*** has categorically held that refusal to marry does not fall under the purview of instigation as required to make out an offence under Section 306 of the IPC. A positive act by the accused to instigate suicide is essential to abetment of suicide. In the instant case, merely bald statements are made by the appellant- father of the deceased, which do not indicate any wrongdoing on the part of the respondents-accused. In absence of any proximity between the alleged act of the accused-respondents and suicide of the deceased, this Court is of the view that ingredients of Section 306 of the IPC are completely missing in the present case.

10. A two Judge bench of the Hon'ble Supreme Court in ***Gangula Mohan Reddy v. State of Andhra Pradesh 2010(1) SCC 750***, speaking through Justice Dalveer Bhandari, held as follows:

"19. This court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009(4) RCR (Criminal) 196 : 2009(5) RAJ 278 : 2009(11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the

dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

*21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 Indian Penal Code **there has to be a clear mens rea** to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide" (emphasis added)*

11. Recently, a two Judge bench of the Hon'ble Supreme Court in **Mohit Singhal and Another v. State of Uttarakhand and others Criminal Appeal No. 3578 of 2023** decided on 01.12.2023, speaking through Justice Abhay S. Oka, made the following observations:

"9...Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide."

12. Moreover, the power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional

advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others in CRM-A No.3 of 2022** decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

13. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

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

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to 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 double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is

further reinforced, 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."

14. In view of the facts and circumstances of the case, this Court finds that learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present appeal and the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

10.01.2024

Ajay Goswami

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