

CRA-AS-523-2023

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-523-2023
Date of Decision: 04.01.2024

BOGHA SINGH -APPELLANT

Versus

STATE OF PUNJAB & ORS. -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. J.K. Singla, Advocate
for the appellant.

KULDEEP TIWARI, J.

1. The instant appeal is directed against the order of acquittal dated 23.08.2023, rendered by learned Additional Sessions Judge, Mansa, whereby, the private respondents No.2 and 3 have been acquitted from the charges framed against them, under Section 305 read with Section 34 of the IPC, in FIR No.82 dated 10.04.2019, registered at P.S. Sadar Mansa.

SUBMISSION OF LEARNED COUNSEL FOR THE APPELLANT

2. The learned counsel for the appellant has challenged the order of acquittal mainly on the ground that the learned trial Court has not appreciated the prosecution evidence in its right perspective, as despite the prosecution establishing, beyond reasonable doubt, the essential ingredients of abetment, as defined in Section 107 of the IPC, yet it acquitted the private respondents No.2 and 3, on the basis of conjectures and surmises. He has further argued that the learned trial Court has erred in giving undue weightage to the defence evidence, while ignoring the credible evidence

CRA-AS-523-2023

2

adduced by the prosecution. Therefore, he has argued that the order of acquittal (supra) is required to be interfered with, it being tainted with gross perversity in appreciation of the evidence.

3. Before we proceed to deal with the submissions advanced by the learned counsel for the appellant and the validity of the impugned order of acquittal, it is deemed imperative to first dive into the factual aspects of the present case.

FACTUAL MATRIX

4. The prosecution story is rooted in the statement of the present appellant/PW2 Bogha Singh, wherein, he alleged the private respondents No.2 and 3 to be culpable for commission of suicide by his minor son Gurjant Singh. The relevant extract of his statement, as narrated in paragraph No.2 of the impugned order of acquittal, is reproduced hereinafter:-

“he got married with Kulwinder Kaur daughter of Bhola Singh resident of Bhagi Badar about 22 years back. They are having two children including one daughter Amandeep Kaur who is married and one son Gurjant Singh aged 17 years. His wife Kulwinder Kaur is having illicit relationship with one Jeon Singh son of Labh Singh resident of Kot Lallu. About 2 months back, he had gone to meet his relatives, then Jeon Singh came to his house and his son saw Jeon Singh and his wife Kulwinder Kaur in objectionable condition. When his son objected the same, then Jeon Singh and Kulwinder Kaur abused him and fled away from there. From that day his wife never came back. His son came under depression and used to feel ashamed because of the act of his mother. On 10.04.2019 he (complainant) went to village Chakerian to attend bhog ceremony due to a death and at his back, his son hanged himself with Parna in the bathroom and died. His son committed suicide because of acts of his mother. The body of his son Gurjant Singh is lying in Civil Hospital Mansa.”

INVESTIGATION PROCEEDINGS

CRA-AS-523-2023**3**

5. The above extracted statement led to registration of the present FIR against the private respondents No.2 and 3, besides led to their arrest. During the course of investigation, the investigating officer prepared rough site plan and seized the white coloured cloth parna, as produced by one Raj Singh. After completion of investigation, the Final Report under Section 173 Cr.P.C. was presented against the private respondents No.2 and 3, before the concerned Illaqa Magistrate. However, finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate, committed the case to the court of Sessions vide committal order dated 28.06.2019.

PROCEEDINGS OF TRIAL COURT

6. Finding a prima facie case, the private respondents No.2 and 3 were charge-sheeted for commission of offence punishable under Section 305 read with Section 34 of the IPC, to which they pleaded not guilty and claimed trial.

7. The prosecution, in order to prove its case against the private respondents No.2 and 3, examined as many as 7 witnesses.

8. The private respondents No.2 and 3, in their statements recorded under Section 313 Cr.P.C., pleaded innocence and false implication in the present case while denying all the allegations, as leveled against them. The private respondents No.2 and 3 also chose to adduce defence evidence and availed the said opportunity, through examining two defence witnesses and thereafter, closed the defence evidence.

9. After completion of trial, and, upon appreciation of the entire evidence available on record, the learned trial Court recorded the order of acquittal, which is now being assailed before this Court.

CRA-AS-523-2023

4

ANALYSIS

10. There is no dispute that this Court can re-appreciate the entire evidence while dealing with an order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in ***State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475.***

11. Also, Hon'ble Supreme Court in ***Chandrappa vs. State of Karnataka, 2007(2) RCR (Crl.) 92*** laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(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 exercise of such power and an appellate Court, based 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 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.”

12. This Court has made a meticulous survey of the impugned order of acquittal, however, it does not appears to be tainted with any illegality or perversity. The reasons for forming this inference are elucidated hereinafter.

13. The present is a very strange and sensitive case, where a mother has been alleged to be culpable for suicide of her own minor son. The allegations levelled by the complainant/present appellant, in nutshell, are that the private respondent No.2, who is none else but mother of the minor deceased Gurjant Singh, was having illicit relations with private respondent No.3, and, they were witnessed in an objectionable position by the deceased Gurjant Singh. Such obnoxious act of the private respondents No.2 and 3 led the deceased Gurjant Singh to raise objection, however, he was abused and ousted from the house by the private respondents No.2 and 3. Resultantly, the deceased Gurjant Singh became severely depressed and ultimately hanged himself to death.

14. Indisputably, the prosecution has established, beyond reasonable doubt, the primary two ingredients for invoking the provisions of Section 305 of the IPC, inasmuch as, it has well proved on record, in the manner elaborated hereinafter, that the deceased Gurjant Singh had not attained the age of majority on 10.04.2019, i.e. the day when he committed suicide, as his cause of death has been opined as “*Asphyxia due to*

hanging”.

CRA-AS-523-2023

6

15. Insofar as the age of the deceased Gurjant Singh is concerned, the prosecution had examined PW7 Sadhu Ram, Retired Superintendent, Office of Civil Surgeon, who proved on record the date of birth certificate of deceased Gurjant Singh as Ex.PW2/B, wherein, his date of birth has been recorded as 17.09.2002. Therefore, there is no doubt that the deceased was less than 18 years of age at the time of commission of suicide.

16. To substantiate its version qua the cause of death of the deceased to be suicide, the prosecution had examined PW1 Dr. Sahil Kumar Goyal, Medical Officer, Mansa, who proved on record the post-mortem report of the deceased as Ex.PW1/B, according to which, his cause of death was *“Asphyxia due to hanging, which is ante mortem in nature and sufficient to cause death in ordinary course of nature”*.

17. Apart from the above, another significant ingredient for invoking the provisions of Section 305 of the IPC, which required its becoming established by the prosecution to bring home guilt of the private respondents No.2 and 3, related to abetment of suicide of child. Since the provision of “abetment” has been defined in Section 107 of the IPC, therefore, Section 305 has to be read in conjunction with Section 107 of the IPC, which are extracted hereinafter:-

“305. Abetment of suicide of child or insane person.--If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

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

(1) Instigates any person to do that thing; or

(2) 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

(3) Intentionally aids, by any act or illegal omission, the doing of that thing.

18. However, the impugned order of acquittal, as also the record, reveals that the prosecution has miserably failed to establish that there was any abetment by the private respondents No.2 and 3, which resulted in the deceased committing suicide.

19. The prime reason, which constrained the learned trial Court, for forming the above inference stemmed from the factum that, despite there being categoric allegations qua private respondent No.2 maintaining illicit relations with the private respondent No.3, yet there was nothing concrete brought on record by the prosecution, except the bald statement of complainant/present appellant, to substantiate such allegations. Moreover, the allegation that upon witnessing his mother/private respondent No.3 in a compromising position with private respondents No.2, the deceased Gurjant Singh became severely depressed and ultimately hanged himself to death, does not at all prove that the private respondents No.2 and 3 intentionally instigated or abetted the deceased to commit suicide.

20. The allegations of the complainant/present appellant also pales into insignificance in the light of testimony made by DW1 Hardev Singh, who is uncle of private respondent No.3, who deposed that owing to a matrimonial discord *inter se* the present appellant/complainant and the private respondent No.3, his niece/private respondent No.3 had been living in her parental house since December 2018 and she never visited her

matrimonial house thereafter. Moreover, during cross-examination, when a

CRA-AS-523-2023

8

specific suggestion was put to this witness, he affirmed his stand that his niece Kulwinder Kaur had been living at her parental house. Therefore, when the private respondent No.3 never returned to her matrimonial house after December, 2018, there does not arise any occasion for the deceased Gurjant Singh to witness her in a compromising position with private respondent No.2, in February 2019, in her matrimonial house.

21. Upon a cumulative reading and appreciation of the evidence on record, this Court comes to a conclusion that the prosecution has failed to establish *mens rea* on the part of the private respondents No.2 and 3 leading to commission of suicide by the deceased Gurjant Singh, therefore, they cannot be held responsible for the commission of suicide by the deceased, as there was no instigation or abetment on their part. Moreover, the reasoning given in the trial Court's judgment does not suffer from any gross perversity or absurdity of mis-appreciation and non-appreciation of the evidence on record. It is trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances.

22. Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470.***

FINAL ORDER

23. In sequel, this Court does not find any ground to interfere with the order of acquittal. Consequently, the instant appeal is hereby **dismissed**, it being bereft of merit, and, the impugned order of acquittal, rendered by the learned trial Court, is hereby **upheld**.

CRA-AS-523-2023

9

24. The case property, if any, be dealt with in accordance with law.

The record be forthwith sent down.

(KULDEEP TIWARI)
JUDGE

04.01.2024
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No