
(2008) 03 P&H CK 0159
In the Punjab And Haryana At Chandigarh

Shunti @ Raja and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (2008) 2 DMC 596 : (2008) 2 RCR(Criminal) 865

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—By this common judgment, two criminal appeals i.e. Criminal Appeal No. 804-SB of 1997 preferred by Shunti @ Raja, Om Parkash and Rajni and Criminal Appeal No. 865-SB of 1997 preferred by Om Parkash son of Narpat Ram will be decided.

2. By the common judgment rendered by learned Additional Sessions Judge, Jagadhari, all these four accused i.e. appellants have been convicted and sentenced u/s 306, IPC to undergo rigorous imprisonment for five years and pay a fine of Rs. 1,000, in default of which to undergo rigorous imprisonment for three months.

3. FIR Ex. PK was lodged at the instance of Smt. Darshana Devi P.W. 1. She has stated in the FIR that she has got six sons and two daughters. His eldest son is Uttam Chand and younger to him is Ashok Kumar. Ashok Kumar was married with Rajni, appellant, about three years before the occurrence in Kalyan Nagar, Jagadhari. It is stated that from the marriage two daughters and one son was born. She further stated that Ashok Kumar and Uttam Chand were residing separately with their families. In the FIR, it is stated that Rajni was not having good character and she was having illicit relations with Om Parkash son of Narpat Ram, appellant, Tube-well Operator. Ashok Kumar has seen so many times Rajni and Om Parkash wondering together. Due to this reason, there used to be

matrimonial discord. Ten days before the occurrence, Ashok Kumar is stated to have reprimanded his wife Rajni, resultantly she left her matrimonial home and went to her parental house. It is stated that on 2.5.1995 at about 7.30 p.m. complainant Darshana Devi, P.W. 1, along with her son Ashok Kumar went to parental house of Rajni to bring her back to the matrimonial home. There it is stated that she saw Rajni along with Om Parkash, appellant, Tube-well Operator, upon which Ashok Kumar asked Rajni why she was going with stranger. On this Rajni stated that it is her sweet will to go any where and Ashok Kumar cannot restrain her. It is stated that one Harbans Singh was attracted at the spot and in his presence Om Parkash, Tube-well Operator, told Ashok Kumar if he could not take control upon his wife, then he should die by drowning in the water. It is stated that when altercation was going on, two brothers of Rajni, namely Om Parkash and Raja came there and gave slaps and fist blows to Ashok Kumar, upon which he is stated to have said that the fault is of their sister. It is stated that on the intervention of people, Darshana Devi along with her son Ashok Kumar came back to her house and then Ashok Kumar went out and came back to the house while he was vomiting. He is stated to have taken some poison.

4. Prosecution examined P.W. 7 Dr. S.K. Gupta who conducted autopsy on 3.5.1995. He found no external injuries on the body of Ashok Kumar but sent the viscera to Chemical Examiner. After the report of Chemical Examiner Ex. PG, it was opined that death was caused on account of consumption of aluminium phosphide poison. After the report of Chemical Examiner and the opinion of the doctor, report u/s 173, Cr.P.C. was submitted. Accused were committed to the Court of Sessions and learned Additional Sessions Judge, Jagadhari charged them u/s 306 read with Section 34, IPC.

5. Prosecution examined Darshana Devi as P.W. 1. She reiterated the allegations which were made in the FIR. She made certain improvements and she was duly confronted. She had improved the case in the Court that Ashok Kumar saw Rajni at the house of Om Parkash in a compromising position. She was confronted with Ex. PA wherein it was not so recorded. On the material aspects she had improved her case. However, in cross-examination it has come that Rajni was second wife of Ashok Kumar and his first wife died at her parental house of burns. She also stated that her son Joginder also died of burns. However, she denied that her husband had died after consuming poison. She admitted that she practised tantra (exorcism) and she also held chaunki and a number of people come to her for various things (redressal of grievances and curing ailments).

P.W. 2 Uttam Chand, is elder brother of Ashok Kumar.

6. P.W. 3 Harbans Singh, who was stated to be a witness in whose presence Om Parkash, Tube-well Operator, told Ashok Kumar that he should commit suicide. He has stated in the Court that he accompanied Ashok Kumar to the house of father of his wife Rajni where they persuaded everybody to send Rajni with Ashok Kumar on which Beli Ram, father of Rajni, suggested them for bringing some respectable persons of mohalla of Ashok Kumar. He was declared hostile

and was cross-examined by Public Prosecutor, who confronted him with his previous statement, but failed to cause any dent.

P.W. 4 Head Constable Avtar Singh is a formal witness.

7. P.W. 5 Ram Pal and P.W. 6 Head Constable Ram Pal had tendered their affidavits to prove link evidence.

P.W. 7 Dr. S.K. Gupta is a doctor who conducted autopsy.

P.W. 8 Shiv Dayal is Inspector who has recorded ruqa Ex. PA on the basis of which formal FIR Ex. PK was recorded.

P.W. 9 Mukesh Kumar, Assistant Sub-Inspector, is the Investigating Officer. P.W. 10 Phool Singh is a Constable who has tendered his affidavit Ex. PM.

8. Thereafter, the statements of accused were recorded u/s 313, Cr.P.C. and all incriminating evidence was put to the accused. Om Parkash and Shunti @ Raja, brothers of Rajni stated that Darshana Devi being mother-in-law used to torture Rajni and as per compromise Rajni was brought to her parental house and Ashok Kumar was living with Darshana Devi and died in his parental house.

9. Rajni, in her statement, has stated that she was tortured by Darshana Devi due to demand of dowry and she had come to her parental house, whereas her husband died in the house of her mother-in-law.

Om Parkash son of Narpat Ram, Tube-well Operator, has stated that he is innocent. Complainant is a Tantrik. She owed him some money and he demanded his money from her and he has been falsely implicated.

No defence evidence was examined.

10. After analysing the evidence, following points emerge for consideration of this Court:

(a) Whether a daughter-in-law, who is living in her parental house, on account of death of the husband can be made liable, (because she had left the matrimonial home and on the asking of husband has refused to go to the matrimonial home), for the abetment as an offence u/s 107, IPC, which is punishable u/s 306, IPC?

(b) Whether from the testimony of Darshana Devi, wherein it has come that her another son Joginder had committed suicide due to burns and earlier wife of deceased Ashok Kumar has also died due to burns, with a specific suggestion that the husband of the complainant i.e. father of deceased also died of taking poison, can this Court rule out inference that suicidal tendencies were prevailing in the family of deceased?

(c) Whether the witness who has materially improved her case can be relied upon to believe the allegations of illicit relationship levelled against the wife of deceased?

(d) Whether the alleged conduct of the wife if as per prosecution believed to be correct that she was not living chaste life will make her punishable for abetment?

(e) Whether the simple opinion of Om Parkash, Tubewell Operator that deceased is not able to rein her wife and therefore he should commit suicide will make him liable for an offence of abetment?

11. From the reading of the evidence of Darshana Devi, P.W. 1, and Harbans Singh, P.W. 2, there is a sufficient material to hold that Rajni had left her matrimonial home due to the marital discord, though she has stated in her statement u/s 313, Cr.P.C. that her mother-in-law used to torture her.

12. Be as it may, it is a case of prosecution itself that Rajni, ten days ago due to the dispute, had left her matrimonial home and gone to her parental house. P.W. 3 Harbans Singh was cited as independent witness in whose presence Om Parkash has stated to deceased that he should commit suicide as he is unable to control his wife, but in the Court he has specifically stated that nothing as such had happened, rather Ashok Kumar along with him went to the house of father of Rajni and requested him to send Rajni along with him, upon which he (father of Rajni) stated that she can only be sent in case respectables of locality are brought by Ashok Kumar. In the FIR and in the Court it has also been stated that P.W. 1 Darshana Devi went along with Ashok Kumar to the house of Rajni and requested that she should return to matrimonial home. Therefore, in the present case allegations that Rajni was having an illicit relations are nothing but a blemish, which had occurred in the story of prosecution due to consultation and deliberations to involve the four persons on account of suicide of Ashok Kumar i.e. Rajni, wife of Ashok Kumar, two brothers of Rajni, wife of deceased and one Om Parkash, Tubewell Operator. It is stated that brothers of Rajni namely Om Parkash and Shunti @ Raja gave fist blows and slaps to Ashok Kumar but no such injury has been found in medical evidence. Therefore, not only allegations of illicit relations have been concocted rather allegations had been widened too far and four persons have been implicated. Therefore, I hold that it is not sufficient to rely upon the allegations as made out by Darshana Devi, P.W. 1 that Rajni was having not good chaste character and Therefore, Ashok Kumar committed suicide. Except evidence of Darshana Devi, there is no other evidence on the record as the Court has to weigh the evidence of Darshana Devi against the testimony of Harbans Singh and statement of accused u/s 313, Cr.P.C. The Court will tend to weigh towards the version projected by P.W. 3 Harbans Singh and statement of accused u/s 313, Cr.P.C. as the same are probable, natural and convincing.

13. The Court cannot also lose sight of the fact that it has been admitted by Darshana Devi in her cross-examination that she practised tantras (exorcism) and a number of persons have been visiting her for solving their problems. Therefore, she is well conversant with mundane affairs and, therefore, exaggerations to prosecution story to level allegations cannot be ruled out.

14. The defence had taken a gamble to ask a pointed question that whether her another son Joginder Singh had committed suicide, she answered in affirmative that her son Joginder Singh had died due to burns. The defence further asked that Ashok Kumar had been married before his marriage with Rajni and his first wife also died due to burns, to which she also answered in affirmative but she denied the suggestion that her husband had committed suicide by taking poison. A foundation was laid by the defence that suicidal tendencies were prevailing in the family of deceased Ashok Kumar and he has also committed suicide on account of refusal of his wife to return to matrimonial home, this inference which is probable cannot be ruled out.

15. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, , Hon"ble the Apex Court considered causes, reasons and various factors due to which a person can commit suicide and relied upon research work of eminent psychiatrists. Following portions of the judgment, which are necessary are reproduced:

...Robert J. Kastenbaum where in his book "Death, Society and Human Experience" he analyses the causes, the circumstances, the moods and emotions which may drive a person to commit suicide. The learned author has written that a person who is psychotic in nature and suffers from depression and frustration is more prone to commit suicide than any other person. In support of our view, we extract certain passages from his book:

The fact is that some people who commit suicide can be classified as psychotic or severely disturbed.

If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder, is a relevant variable to consider. (P. 243)

And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness. (P. 243)

"Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the junglelike struggle. (P. 243)

The individual does not destroy himself in hope of thereby achieving a noble post-mortem reputation or a place among the eternally blessed. Instead he wishes to subtract himself from a life whose quality seems a worse evil than death. (P. 245)

The newly awakened spirit of hope and progress soon became shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow. (P. 245)

Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress." (P. 251)

People who attempt suicide for reasons other than revenge may also act on the assumption that, in a sense, they will survive the death to benefit by its effect.

The victim of suicide may also be the victim of self- expectations that have not

been fulfilled. The sense of disappointment and frustration may have much in common with that experienced by the person who seeks revenge through suicide.... However, for some people a critical moment arrives when the discrepancy is experienced as too glaring and painful to be tolerated. If something has to go it may be the person himself, not the perhaps excessively high standards by which the judgment has been made.... Warren Breed and his colleagues found that a sense of failure is prominent among many people who take their own lives." (P. 252)

41. The above observations are fully applicable to the case of Manju. She solemnly believed that her holy union with her husband would bring health and happiness to her but unfortunately it seems to have ended in a melancholy marriage which in view of the circumstances detailed above, left her so lonely and created so much of emotional disorder resulting from frustration and pessimism that she was forced to end her life. There can be no doubt that Manju was not only a sensitive and sentimental woman but was extremely impressionable and the letters show that a constant conflict between her mind and body was going on and unfortunately the circumstances which came into existence hastened her end. People with such a psychotic philosophy or bent of mind always dream of an ideal and if the said ideal fails, the failure drives them to end their life, for they feel that no charm is left in their life.

42. Mary K. Hinchliffe, Douglas Hooper and F. John Roberts in their book "The Melancholy Marriage" observe that:

Studies of attempted suicide cases have also revealed the high incidence of marital problems which lie behind the act. In our own study of 100 consecutive cases (Roberts and Hooper 1969), we found that most of them could be understood if the patients' interactions with others in their environment were considered.

43. Such persons possess a peculiar psychology which instils extreme love and devotion but when they are faced with disappointment or find their environment unhealthy or unhappy, they seem to lose all the charms of life. The authors while describing these sentiments observe thus:

"Hopelessness", "despair", "lousy" and "miserable" draw attention to the relationship of the depressed person to his environment. The articulate depressed person will often also struggle to put into words the fact that not only does there appear to be no way forward and thus no point to life but that the world actually looks different.

44. Coleridge in "Ode to Dejection" in his usual ironical manner has very beautifully explained the sentiments of such person thus:

I see them all so excellently fair- I see, not feel, how beautiful they are.

45. At another place, the author (Hinchliffe, Hooper and John) come to the final conclusion that ruptured personal relationships play a major part in the clinical

picture and in this connection observed thus:

Initially we applied these ideas to study of cases of attempted suicide (Roberts and Hooper 1969) and although we did not assume that they were all necessarily depressed, we looked for distal and proximal causes for their behaviour and found that ruptured personal relationships played a major part in the clinical picture.

The observations of the authors aptly and directly apply to the nature, mood and the circumstances of the unfortunate life of Manju which came to an end within four months of her marriage.

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....In Encyclopaedia of Crime and Justice (Vol. 4) by Sanford H. Kadish the author mentions thus:

Other psychologically oriented theories have viewed suicide as a means of handling aggressive impulses engendered by frustration.

93. Another inference that follows from the evidence of the witness discussed is, that the constant fact of wailing and weeping is one of the important symptoms of an intention to commit suicide as mentioned by George W. Brown and Tirril Harris in their book "Social Origins of Depression" thus:

1. Symptom data

Depressed mood:

1. Crying
2. feeling miserable/looking miserable, unable to smile or laugh
3. feelings of hopelessness about the future
4. Suicidal thoughts
5. suicidal attempts Fears/anxiety/worry.
15. psychosomatic accompaniments
16. tenseness/anxiety
17. specific worry
18. panic attacks
19. phobias Thinking
20. feelings of self-depreciation/nihilistic delusions
21. delusions or ideas of reverence
22. delusions of persecution/jealousy

- 23. delusions of grandeur
- 24. delusions of control/influence
- 25. other delusions e.g. Hypochondriacal worry
- 26. auditory hallucinations
- 27. visual hallucinations."

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We might extract what Robert J. Kastenbaum in his book "Death, Society and Human Experience" has to say:

Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress.

16. Each and every case of suicide is not necessarily a result of abetment. Right from the day when human being is born suicides have been committed. In the present days, a convenient mode has been adopted by the relations and the investigating agency to name accused as abettors in each case of suicide. It is incumbent upon the Investigating Officer and the person carrying out inquest proceedings to find out especially when the person who committed suicide is a male, his previous medical record, history of his behaviour a few days before the suicide. Statements of neighbours or relations regarding his behaviour, orientation or manner of interaction a few days before the occurrence, should be recorded, before report u/s 173, Cr.P.C. is submitted.

17. Even if this Court assumes the case of the prosecution that Rajni was not living a chaste life, is conduct of wife and a suspicion of husband and prescription by the husband that wife should live life in a manner as husband wants is sufficient to assume there is an abetment on the part of wife. No human being is perfect. Follies and the tragic flaw are in each human being. Some suffers from vice of ambition (i.e. to rise in ladder of success often spouse is neglected), some for indecisiveness (i.e. tend to be mama's boy or later wife's boy), some for lust, some for greed to say that spouse should live a chaste life in accordance with the expectations of another and, therefore, if same is not adhered to, another will commit suicide and will make another spouse responsible will be far fetched. A gambler, suspicious spouse, smoker, alcoholic or anybody demanding, from one spouse to live a life in the way prescribed by another spouse and to say if someone has not followed, another will commit suicide and offence u/s 306, IPC will be complete cannot be entertained in law unless or until simple act is followed by another aggravating act which compels to commit suicide. A Division Bench judgment of this Court rendered in Raj Kumar v. State of Punjab 1983 (1) CLR 660, held as under:

12. Expression "instigate" in the Concise Oxford Dictionary is defined as urge on, incite, bring about by persuasion and in Webster, it has been defined as urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite,

impel, encourage, animate. The word "instigate" in common parlance would mean to go, to urge forward or to provoke, incite or encourage to do an act.

18. Therefore, it cannot be said that when wife was not living a chaste life, she wanted to incite, urge and provoke the husband to commit suicide. In 1995 Supp (3) SCC 438 , it is stated that appellant without cause remarked to deceased to commit suicide and it cannot be conceded as contribution to abetment. This Court need not hold whether the offence has been committed or not as from the prosecution case this Court has not relied upon the testimony of Darshana Devi and has held that the allegations are result of consultations and deliberations. Resultantly, the present appeal is accepted. Appellants are acquitted of the charges.