

(2016) 10 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 334 of 2010

State of Himachal Pradesh

APPELLANT

Vs

Dharamveer @ Kaku

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 306

Citation : (2017) 169 AIC 502

Hon'ble Judges : Mr. Sanjay Karol and Mr. Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : M.N.K. Thakur, Senior Advocate with Ms. Jamuna Kumari, Advocate, for the Respondent; Mr. Vikram Thakur and Mr. Puneet Rajta, Deputy Advocate Generals, for the Appellant

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J. - By way of this appeal, State has challenged the judgment passed by the Court of learned Additional Sessions Judge, Una, in Sessions Case No. 13 of 2009 dated 19.12.2009, vide which, learned trial Court acquitted the accused for commission of offence punishable under Section 306 of Indian Penal Code.

2. The case of the prosecution in brief was that deceased Rekha Rani, who was resident of village Pandoga reached Police Post, Pandoga, on 26.06.2008 at 1.00 P.M. after having consumed some poisonous substance and one constable and PW-11 Bhupinder Dogra rushed her to PHC Bhadsali. Keeping in view her precarious condition, she was immediately referred to Regional Hospital at Una, where she was examined by PW-14 Dr. Vipin Chander Sharma, however, she unfortunately died on the same day. Her uncle PW-15 Dharam Singh who was the only person available at home came to know from a police constable that one girl who was taking name of his brother Gurmeet Singh had consumed some poison and was at Police Post Pandoga. Further as per prosecution, by the time PW-15 Dharam Singh reached the Police Post, Rekha Rani had been shifted to

PHC Bhatsali, from where she had been further sifted to Regional Hospital, Una and he accompanied the deceased. This fact was conveyed to her father by PW-15. He also asked father of the deceased not to come to the hospital. Further as per prosecution, when PW-15 reached home, father of deceased PW-1 Gurmeet Singh showed him a letter which was found lying in the backside of his house. This letter Ext. PW1/A was stated to have been scribed by the deceased. Statement of PW-1 was recorded under Section 154 Cr.P.C. on the basis of which First Information Report Ext. PW15/A was registered at Police Station Haroli. Accused was arrested on the same date. Letter Ext. PW1/A was seized vide seizure memo Ext. PW1/C. Autopsy report of the deceased was collected by Investigating Officer and during the course of investigation, PW-20 HC Ravinder Singh collected the admitted handwriting of the deceased and the extract of register maintained in the Co-operative Society, Pandoga, which bore the signatures of the deceased vide Ext. PW1/F. As per postmortem report Ext. PW13/C, deceased had died due to Phosphide Gas poisoning. Report of Assistant Director, FSL, Junga, stated that the signatures and the admitted handwriting of the deceased and the letter Ext. PW1/A was written by one and the same person.

3. After completion of the investigation, challan was filed in the Court and as a prima facie case was found against the accused, he was charged for commission of offence punishable under Section 306 of Indian Penal Code, to which, he pleaded not guilty and claimed trial.

4. On the basis of material produced on record by the prosecution, learned trial Court held that in the absence of proof of the ingredients of Section 306 I.P.C., it could not be concluded with certainty and beyond reasonable doubt that the accused had abetted the commission of suicide by the deceased. Learned trial Court further held that necessary nexus between the acts attributed to the accused and the commission of the offence were lacking. On these grounds, learned trial Court acquitted the accused.

5. We have heard learned counsel for the parties and have also gone through the records of the case as well as judgment passed by learned trial Court.

6. In the present case, Ext.PW1/A is the alleged suicide note which as per prosecution was written by the deceased. A perusal of the said suicide note which as per prosecution is also the dying declaration of the deceased is to the effect that the accused was for sometime harassing her and often the accused used to block her way. It was further mentioned in the said suicide note that the accused used to harass the deceased by saying that the deceased had said yes to him and she used to come to meet the accused during night time. It was further mentioned in the suicide note that when her uncle came to know about this he called in the morning. It was further mentioned in the suicide note that the accused had threatened the deceased in the morning that this time no one can save her and if she wants then she can either run away or can die by consuming something. It was further mentioned in the suicide note that the uncle of the deceased was not at fault as he was humiliated because of her. It

was further mentioned in the suicide note by the deceased that she went to the house of the accused and informed his mother and thereafter also accused threatened her. It was further contained in the said suicide note that in these circumstances the deceased did not want to live and she was committing suicide and that accused would be responsible for her death because her life was spoiled by him.

7. Before we deal with the suicide note of the deceased, there are few other relevant factors which need to be referred at this stage.

8. Constable Rajesh Kumar entered the witness box as PW-5 and he stated that in the year 2008 he was posted at Police Post Pandoga as MC and deceased had come to Police Station at 11.00-12.00 A.M. on 26.06.2008 and she remained in Police Station for 10-15 minutes. Thereafter, she was taken to the hospital. He admitted it to be correct that while she was present in Police Post she was talking.

9. Constable Sanjeev Kumar who entered the witness box as PW-7, deposed that the deceased had come to the Police Post at 1.00 P.M. and had only disclosed the name of her father as Gurmeet Singh. She was taken to the hospital by one constable and one flour mill owner namely Bhupinder Dogra. In his cross-examination, he stated that it took about ten minutes for him to record DDR No. and he admitted it to be correct that the girl had been sent to hospital after recording the DDR. This witness further stated that the constable who had taken the deceased to the PHC i.e. Constable Rajesh Kumar had returned back by 1.30 P.M. This witness further stated that the deceased had been taken to PHC on scooter which was driven by Constable Rajesh and all three had gone on the scooter. He denied the suggestion that the deceased had come to the Police Station at 11.00 A.M. and she was not talking at that time.

10. Bhupinder Dogra entered the witness box as PW-11 and he deposed that he runs a flour mill at Pandoga which was just opposite the Police Post and on 26.06.2008 one girl had come to Police Post Pandoga and police had called him to the Police Post. He further deposed that the girl was proclaiming that she had consumed poison and she further disclosed that she was upset because of her family problem. This witness was declared as hostile witness and he was examined by learned Public Prosecutor. In his cross-examination by learned Public Prosecutor, he admitted it to be correct that he had taken the girl to PHC Bhadsali along with the police on a motorcycle. He further stated that after having admitted her there, her Chacha and Chachi came and he accordingly left the place. In his cross-examination by the defence, this witness admitted it to be correct that the girl was talking and she had walked till the motorcycle and she had disclosed in his presence that her family and relatives had been harassing her and, therefore, she had consumed poison.

11. One thing which is apparent from the perusal of the testimony of the above prosecution witnesses is that after consuming poison it was the deceased who herself came to the Police Post and disclosed her having consumed poison to the

police. It is further evident from the testimony of the above witnesses that a DDR was entered which took about 10-15 minutes time and thereafter, the deceased was sent to PHC Bhadsali on motorcycle. It has also come on record that while she had come to the Police Station she was talking and she had herself walked upto the motorcycle to be taken to PHC Bhadsali.

12. The prosecution has not been able to demonstrate that during this entire period that is from the moment the deceased came to the Police Post and disclosed the factum of her having consumed poison till her condition deteriorated and she died, she had at any point taken the name of accused and disclosed before the police that she had either consumed poison because of harassment meted out to her by the accused or by his acts the accused had abetted the deceased to take such a harsh step. On the contrary, it has come in the testimony of PW-11 that Bhupinder Dogra that the deceased was upset because of her family problem.

13. In this background, now we will refer to the suicide note allegedly written by the deceased. It is not the case of the prosecution that when the deceased came to the Police Post and disclosed the factum of her having consuming poison she herself handed over the said suicide note to the police. As per prosecution, suicide note was handed over by her father who found the same at the backside of his house.

14. Report of Assistant Director, Document & Photo Division, State Forensic Science Laboratory, Junga, Shimla, is on record as Ext. PZ. As per this report, questioned documents were Q-1 to Q-6, admitted documents were A-1 to A-10 and conclusion mentioned therein was that the blue enclosed signatures and writings stamped and marked as A-4 to A-10 and red enclosed signatures and writings similarly stamped and marked as Q-1 to Q-6, all were written by one and the same person. Incidentally, the author of this document Ext. PZ Dr. Meenakshi Mahajan was not examined by the prosecution.

15. The Apex Court has held in *Puran Chand v. State of Haryana* (2010) 6 Supreme Court Cases 566, that the Courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. It has been further held that a mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned.

16. Coming to the suicide note of the deceased, the handwriting expert who prepared Ext. PZ has not been examined by the prosecution. No plausible justification has been given by the prosecution for not examining the expert. It is apparent from the material produced on record by the prosecution that though the deceased was in her senses and was also talking when she came to the

Police Post and thereafter also however during this entire time while she was in her senses she did not name the accused as the person who had abetted her to commit suicide.

17. From the above circumstances, it cannot be said beyond reasonable doubt that the accused had actually abetted the commission of suicide by the deceased or that the suicide note was in fact written by the deceased.

18. It has been held by the Hon'ble Supreme Court in *Sangara Bonia Sreen v. State of Andhra Pradesh*, 1997 (5) Supreme Court Cases, 348 that the basic ingredients of offence under Section 306 are (a) suicidal death and (b) abetment thereof. In our considered view, in order to attract the ingredients of abetment the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary.

19. It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence, is suicide. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC, whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that, suicide should necessarily have been committed. Thus, the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question, the offence under Section 306 comes into play.

20. Hereinafter, we will apply these principles to the facts of the present case. A close scrutiny of the statements of the prosecution witnesses will demonstrate that none of them have mentioned any explicit act on the part of the accused which can be termed to be an act of abetment on their behalf which led deceased Rekha Rani to commit suicide. On the basis of the statements of the prosecution witnesses who were also interested witnesses, it cannot be said that the prosecution was successful in demonstrating and proving that the accused had committed any act which could be termed to be an act of abetment towards the commission of suicide by deceased Rekha Rani.

21. In order to substantiate the charge under Section 306 I.P.C., it has to be established that the death by commission of suicide was desired object of the abettors and with that in view they must have instigated, goaded, urged or encouraged the victim in commission of suicide. The instigation may be by provoking or inciting the person to commit suicide and this instigation may be gathered by positives acts done by the abettors or by omission in the doing of a thing. Thus, the acts or omission committed by the abettors immediately before the commission of suicide are vital. In the present case, we are afraid that the prosecution was not able to substantiate any of the above ingredients. The prosecution could not prove any act of provocation or incitement or omission or commission on the part of the accused, vide which he had instigated the deceased to commit suicide.

22. The prosecution has not been able to establish any intention of the accused to aid or instigate or abet the deceased to commit suicide. Therefore, it cannot be said that the judgment passed by the learned Trial Court whereby the accused has been acquitted is either perverse or the acquittal of the accused by the learned Trial Court has amounted to travesty of justice.

23. It is settled law that the report of a handwriting expert is only corroborative evidence and in the absence of there being other substantive cogent material on record to prove the guilt of a person, an accused cannot be convicted on the basis of the report of a handwriting expert.

24. It has been held by the Hon''ble Supreme Court in *Magan Bihari Lal v. The State of Punjab*, 1977 Cri. L.J. 711 that it is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. Hon''ble Supreme Court further held that there is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration and that this rule has been universally acted upon and it has almost become a rule of law.

25. It has been held by the Hon''ble Supreme Court in *Jagmal Singh Yadav v. Aimaduddin Ahmed Khan*, 1994 Supp (2) Supreme Court Cases 308:

"We have examined the opinions given by the two experts. Even if we agree with the High Court that the opinion expressed by Shri Sarwate is more convincing than that of Shri Kapur, it would not be possible for us to hold that the signatures on Ex. PW 1/9 are of the appellant. It is settled proposition of law that the charge of corrupt practise against a returned candidate has to be proved like a criminal charge and unless there is cogent evidence to take the case beyond reasonable doubt the election cannot be set aside. Maurya (DW 20) having been proved wholly unreliable witness, the source of the letter Ex. PW 1/9 becomes highly tainted and as such doubtful. It is no doubt correct that the signatures on the letter Ex. PW 1/9 have to be proved independently and irrespective of the source from which the document is produced but keeping in view the totality of the circumstances in this case it would be difficult for us to hold the charge proved against the appellant only on the testimony of the handwriting expert.

26. In *Alamgir v. State (NCT, Delhi)*, (2003) 1 Supreme Court Cases 21, Hon''ble Supreme Court while reiterating the aforesaid legal position held that handwriting expert opinion simply corroborates the circumstantial evidence.

27. It is settled law that in exceptional circumstances, the Appellate Court for compelling reasons can reverse a judgment of acquittal passed by the trial Court if the findings so recorded by the Court are perverse. However, it is also settled law that an acquittal by Court below bolsters presumption of innocence in favour of the accused and, therefore, judgment of acquittal should be reversed only in exceptional circumstances. We do not find that there is either any exceptional circumstance in the present case or the findings recorded by the trial Court are

perverse so as to compel us to interfere with the judgment of acquittal returned by the trial Court.

28. Accordingly, in view of the discussion held above, we do not find any perversity in the findings recorded by learned trial Court and therefore, while upholding the judgment of acquittal passed by learned trial Court, the present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.