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(2003) 10 P&H CK 0114

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 811-SB of 1996

Virender	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: Oct. 22, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 306

Citation: (2003) 8 CriminalCC 290 : (2003) 4 RCR(Criminal) 885

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Virender Singh, J.
By this judgment I shall be disposing of two cases, viz. Criminal Appeal No.811 -SB of 1996 (Virender v. State of Haryana) and Criminal Appeal No.336 of 1997 (Bal Krishan v. Virender) as both are arising out of the same judgment.

2. Virender son of Ishwar stands convicted u/s 306 IPC by the judgment dated December 7, 1996 passed by the learned Additional Sessions Judge, Rohtak and has been sentenced to undergo RI for six years and to pay a fine of Rs. 1,000/-, in default of payment of the fine to further suffer RI for three months vide order dated December 10,1996.

3. Sumitra is the deceased in this case. She was married to the appellant in the year 1979. Two sons namely, Ravi and Anil were born out of this wed-lock. She was posted in police station Narela, Delhi as a Head Constable. She committed suicide on the night intervening November 8/9, 1995 by hanging herself with a ceiling fan.

4. The appellant allegedly used to give beating to Sumitra on different occasions. For that reason she is said to have committed suicide.

5. The investigation of the case was conducted by ASI Sandeep Singh (PW-10), who had recorded the statement (Ex.PC) of the complainant. He went to the spot, prepared rough site plan (Ex.PG) of the spot, took into possession certain articles from the spot as also the ornaments of the deceased. The post-mortem examination of the dead body was got done and according to the medical report (Ex.PE), the cause of death was asphyxia due to hanging, which was ante-mortem and sufficient to cause death in ordinary course of nature. After completion of investigation, the appellant was sent up face trial. He was charged under Sections 306 and 498-A IPC.

6. In support of its case, the prosecution examined as many as 10 witnesses viz. PWl-Sumit Kumar, Draftsman, PW-2 Bal Krishan, the complainant, who is father of Sumitra deceased, PW-3 Chandro, mother of the deceased, PW4-lnspector Fateh Singh, PW5-ASI Hoshiar Singh, PW6-HC Lekhi Ram, PW-7 DayaNand, PW-8 Dr. R.K. Wadhwa, the Autopsy Surgeon, PW-9 Bir Singh Photographer and PW-10 ASI Sandeep Singh, the Investigating Officer.

7. The stand taken by the appellant in his statement u/s 313 Cr.P.C. was that his wife Sumitra was under psychological pressure over dispute of payment of her salary amount, which she has given to her father while staying with him when he (the appellant) was in Military Service; that her father did not return the money to her, due to which she committed suicide and that the complainant got them falsely implicated to camouflage his own greed and excesses.

8. After examining the entire evidence, the learned trial Court convicted and sentenced the appellant, as already stated above. Aggrieved by the judgment of conviction and sentence, he has preferred this appeal.

9. Bal Krishan complainant, the father of Sumitra (deceased) has filed the present revision petition with the prayer that the sentence of the accused be enhanced.

10. I have heard Mr. T.P.S. Mann, learned counsel for the appellant, learned Senior Deputy Advocate General representing the State. With their assistance, I have closely scrutinized the entire evidence on record.

11. No one has appeared on behalf of the revisionist. The last zimni orders also indicate the same position.

12. Mr. Mann, learned counsel for the appellant at the very out-set has fairly submitted that he does not assail the judgment of conviction on merits and instead prays for reduction of sentence.

13. In this regard, Mr. Mann submits that the appellant has already undergone two years, three months and 23 days of his actual substantive sentence as under trial prisoner. He then contends that even otherwise in this case Sumitra had committed suicide after 16 years of the marriage and at that time, she had left behind two sons namely, Ravi and

Amit and at the time of occurrence, Ravi was of the age of 9 years, who is now a student of Law, whereas Amit was of the age of three years, who is now studying in 9th Class. Mr. Mann further contends that at this juncture if the appellant is once again sent behind bars, there would be no one in the family to look after the two sons, who are now grown up students. He thus prays for a lenient view with regard to quantum of sentence. In support of his arguments, Mr. Mann has relied upon the latest judgment of the Apex Court in Mohd. Hoshan and another v. State of Andhra Pradesh, AIR 2002 S.C. W. 3795 : 2003 (1) ACJ 88 (S.C.), and the decisions of this Court in Jagjit Singh and others v. State of Punjab (Criminal Appeal No.448-SB of 1987) decided on 7.9.1999, Jai Kishan v. State of Chandigarh (Criminal Appeal No.582-SB of 1987) decided on 8.9.1999 and Jaswant Singh v. State of Punjab, (Criminal Appeal No.405-SB of 1990), decided on 16.7.2003.

14. The learned State counsel has refuted has refuted the arguments advanced by learned counsel for the appellant and has contended that the appellant does not deserve any concession so far as quantum of sentence is concerned.

15. After hearing the rival contentions of both the sides, I find force in the submissions made by learned counsel for the appellant. Admittedly, Sumitra died an unnatural death by committing suicide after 16 years of the marriage; the two children left behind by the deceased are being brought up by the appellant. The occurrence related to the year 1995. The appellant has faced the rigor of protracted trial for about eight years. He has already undergone a substantial period of sentence i.e. two years, three months and 23 days. The judgments relied upon by Mr. Mann fully support the case of the appellant.

16. Taking into consideration all these facts and circumstances, I am of the view that the ends of justice would be met adequately if the substantive sentence awarded by the trial Court is reduced to the period already undergone by the appellant. It is ordered accordingly.

17. With the modification in sentence, as indicated above, Criminal Appeal No.811 -SB of 1996 filed by the appellant stands dismissed.

18. In Criminal Revision No.336 of 1997, the complainant is aggrieved on the ground of inadequacy of the sentence and prays for its enhancement. I am afraid if the same is maintainable in view of the provisions of Section 377(1) of the Code of Criminal Procedure, 1973. Even otherwise, since I have reduced the period of substantive sentence of the appellant, the revision petition fails and is hereby dismissed.