

(2017) 08 RAJ CK 0017

RAJASTHAN HIGH COURT

Case No: 922 of 2015

Smt. Khushbu wife of
Kanhaiya Lal, D/o
Shyam Sunder

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision: Aug. 9, 2017

Acts Referred:

- Indian Penal Code, 1860, Section 34, Section 306 - Acts done by several persons in furtherance of common intention - Abetment of Suidde

Hon'ble Judges: Sandeep Mehta

Bench: SINGLE BENCH

Advocate: Anil Vyas, H.S. Shrimali, O.P. Rathi, Ajay Vyas

Judgement

1. All these revisions petitions are directed against the order dated 13.07.2015 passed by learned Additional Sessions Judge No.1, Bikaner in Sessions Case No.43/2014 and are thus being decided together.

2. Facts in brief are that respondent No.2 Makkhan Lal lodged a written report at the Police Station Naya Shahar, Bikaner on 22.06.2014 alleging inter alia that he had lodged a report at the police station a few days ago in which, he had complained of the misbehaviour being meted out to his family members by Smt. Khushbu wife of his younger son Kanhaiya Lal. It was alleged in the report that on 20.06.2014, the lady crossed all limits and accompanied by her father Shyam Bohra, mother, Babulal Vyas, etc., she came to his house and misbehaved with his daughters and also outraged their modesty. The household articles were damaged. Locks of an almirah were broken and Khusbhu took away some valuables from it. While going away, these persons threatened that either Khushbu would kill Kanhaiya Lal or he would be left with no option but to end

his life. Makkhan Lal mentioned in the report that despite the incident of 20.06.2014 being reported at the police station, no action was taken and rather he was advised to go to the woman police station where, talks of settlement were undertaken between the parties. In the night preceding lodging of the report, Khushbu called Kanhaiya Lal on mobile and threatened him with dire consequences. Being perturbed thereby, Kanhaiya Lal committed suicide. On the basis of this report, an FIR No.226/2014 came to be lodged at the Police Station Naya Shahar, District Bikaner and investigation was commenced. After investigation, the investigating officer proceeded to file a charge-sheet against the petitioners herein for the offence under Section 306 / 34 IPC. The trial court passed the order dated 13.07.2015 and directed framing of charges against all the accused for the offences under Section 306 IPC in the alternate under Section 306 / 34 IPC. Being aggrieved thereby, the petitioners have approached this Court by way of these three revisions. Whilst the revision Nos.922/2015 and 875/2015 were presented within limitation, however, the revision No.1395/2015 submitted on behalf of petitioner Dau Lal is time barred without any application for condonation of delay. However, at the time of advancing arguments, Shri H.S. Shrimali learned counsel representing the petitioner Dau Lal submitted that as this Court has already entertained two other revisions against the very same order passed by the trial court, the delay occasioned in filing the revision No.1395/2015 being bonafide be condoned and the same be heard on merit. The oral prayer made by Shri H.S. Shrimali is fit to be accepted and thus, the delay occasioned in filing of the revision No.1395/2015 is condoned.

3. Notice of the revision No.922/2015 has been served on the respondent complainant and Mr. Ajay Vyas, Advocate has put in appearance on his behalf. His arguments were heard in all the three revisions on behalf of the complainant.

4. Sarva Shri Anil Vyas and Shri H.S. Shrimali, learned counsel representing the accused petitioners vehemently urged that ex- facie there is no material on the record of the case to show that the petitioners instigated or abetted the deceased Kanhaiya Lal to commit suicide. A matrimonial rift was going on between Kanhaiya Lal and his wife the accused petitioner Khushbu and owing to this, she left the matrimonial home and went back to her father's house. There was no interaction between the petitioners and the deceased soon before he committed suicide and thus, ex-facie there is no material so as to frame charge against the petitioners for the offence under Section 306, 306 / 34 IPC. They thus urged that the revisions deserve to be accepted and the impugned order being bad in law should be set aside. In support of their contentions, learned counsel placed reliance upon the following judgments:

- (1) Sanju @ Sanjay Singh Sengar vs. State of M.P ., AIR 2002 SC 1998;
- (2) Satveer singh & Anr. vs. State of Rajasthan, 2003(1) CJ (Raj.) Cr. 441;
- (3) Surendra Kumar vs. State of Rajasthan, 2002(2) R.C.C. 965;

(4) S.S. Chheena vs. Vijay Kumar Mahajan & Anr . (2010) 3 CCR (SC) 476;

(5) Gangula Mohan Reddy vs. State of Andhra Pradesh, AIR 2010 SC 327;

5. Per contra, learned Public Prosecutor and the learned counsel representing the complainant vehemently opposed the submissions advanced by the petitioners' counsel and urged that there is ample material on the record to show that the petitioner Khushbu and her family members were continuously harassing and humiliating the deceased Kanhaiya Lal and his family members and were threatening them with dire consequences. Makkhan Lal, the complainant had submitted repeated applications at the police station complaining of the cruel behaviour meted out by the petitioner Khushbu to her husband, the deceased Kanhaiya Lal. Just two days before the incident, Khushbu accompanied by her parents and Babulal Vyas came to the house of the complainant and damaged the household articles and also molested his daughters. Some articles were also stolen after breaking the lock of an almirah. The matter was reported to the police. On 22.06.2014, Khushbu called Kanhaiya Lal and threatened him with dire consequences upon which, he became highly perturbed and ended his life leaving behind a suicide note spelling out the gory details of the excesses committed upon him by Smt. Khushbu and her maternal relatives. They urged that it is clearly spelt out from the suicide note and statements of Makkhan Lal, the first informant, Laxmi Devi (his wife), Narmada Devi (daughter) and other witnesses that the petitioner Khushbu and her family members were indulging in continuous harassment and humiliation of the deceased. The petitioner Khushbu and her parents forced their way into the complainant's house and damaged the household goods. The locks of an almirah were broken and Khushbu forcibly took away the articles lying therein. Modesty of Kanhaiyalal's sisters was outraged and they were humiliated. This incident was reported to the police and conciliation was attempted. Soon thereafter, Khushbu called the deceased Kanhaiya Lal on his mobile phone and gave him threats. Upon this, the deceased became highly perturbed and ended his life by hanging himself. They thus urged that the order framing charge against the petitioners is perfectly justified and does not warrant any interference.

6. I have heard and considered the arguments advanced by the learned counsel for the parties and have gone through the impugned order, the challan papers and have also respectfully perused the judgments cited at bar.

7. Suffice it to say that each criminal case traverses on its own facts and the precedents laid down by courts of law have to be considered in context to the peculiar facts of each case. Upon examination of the facts of the case at hand, I am of the opinion that none of the judgments cited by the learned counsel for the petitioners apply to the present case. In most of these judgments, the events preceding the suicide reveal that either it was an outcome of a sudden quarrel or that the deceased was of highly sensitive nature. In the case at hand, there is a clear allegation of the complainant side that the deceased Kanhaiya Lal was being continuously harassed by the petitioner Khushbu who was threatening him with dire consequences. The deceased and his father, the complainant

herein were regularly approaching the police station for reporting these offensive vengeful acts. Just two days before the incident, Khushbu accompanied with her parents and other relatives, forced her way into the complainant's house and took away some articles after breaking open the doors of an almirah. Smt. Narmada, sister of Kanhaiyalal in her statement has claimed that the articles belonged to her and her sister. The deceased Kanhaiyalal left a suicide note before ending his life in which, he has clearly narrated the gory details of the offensive, cruel and vengeful acts particularly those of the petitioner Smt. Khushbu which instigated him to take the tragic decision of ending his own life. On a consideration of the tenor of the prosecution evidence, it is apparent that the main allegations of threat, harassment and wreaking vengeance upon Kanhaiya Lal which finally drove him to commit suicide are attributed to his wife, the petitioner Khushbu. So far as the other accused petitioners are concerned, all that is alleged is that they had were also present during the incident of 20.06.2014 and allegedly forced their way into the house of the complainant and took away certain articles, etc. The deceased committed suicide after two days of this incident. Thus, by no stretch of imagination, the said incident dated 20.06.2014 can be considered to be the catalyst which instigated the deceased to commit suicide. The immediate cause of suicide appears to be the threat given by the petitioner Khushbu to the deceased on his mobile phone just before he ended his life. The recording of the conversation and the transcription thereof have also been taken on record by the I.O. in which the highly cruel and vengeful behaviour of the petitioner Khushbu with the deceased is clearly reflected. The deceased and his father were continuously making reports to the police regarding the harassment meted out to them by Smt. Khushbu.

8. In this background, I am duly satisfied that the impugned has to be maintained to the extent, charge under Section 306 IPC was framed against the petitioner Khushbu. However, so far as the other accused petitioners are concerned, this Court is of the opinion that the admitted prosecution allegations and evidence collected by the I.O. during investigation are not sufficient so as to justify the charge framed against them for offence under Section 306 in the alternative 306/34 IPC . Consequently, the impugned order dated 13.07.2015 passed by the learned Additional Sessions Judge No.1, Bikaner deserves to be set aside to their extent.

9. Thus, revision Petition Nos.875/2015 and 1395/2015 are allowed in toto whereas revision No.922/2015 is allowed in part. While quashing and setting aside the impugned order framing charge dated 13.07.2015 to the extent of the petitioners Smt. Asha Devi and Shyam Sunder, Babulal and Daulal, the same is affirmed qua the petitioner Khushbu.

10. A copy of this order be placed in each file.