

**Criminal Appeal No. 641-DB of 2002**

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA  
AT CHANDIGARH**

...

**Date of Decision: November 30, 2007.**

**Rajbir**

...Appellant

VERSUS

**State of Haryana**

...Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :

**HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.**

**HON'BLE MR. JUSTICE MOHINDER PAL.**

Present: Mr. N.K. Sanghi, Advocate, and  
Mr. Aditya Sanghi, Advocate,  
for the appellant.

Mr. S.K.Hooda, Additional Advocate General, Haryana.

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**MOHINDER PAL, J.**

Appellant Rajbir has filed this appeal against the judgment of conviction dated August 23, 2002 and the

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sentence order dated August 26, 2002, passed by the learned Additional Sessions Judge, Narnaul, whereby he was convicted under Section 302 of the Indian Penal Code (hereinafter referred to as 'the Code') and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-.

Facts of the prosecution case, in brief, are that Rajbir (appellant) had borrowed some money from Smt. Shakuntla deceased (hereinafter referred to as 'the deceased'). As per prosecution case, some affair was going on between the appellant and the deceased. The deceased had arranged money for the appellant by selling her plot, Vikas Patras and a sum of Rs.5,-0,000/- was raised by her as loan from the Bank in the name of her husband Vikram Singh. The deceased was residing separately at Narnaul with her children whereas her husband was residing at his native Village Gahil. The appellant failed to repay the loan amount to the deceased. The deceased went to the house of appellant at Village Nizampur on April 04, 1999, to demand her money. She was asked to come on April 05, 1999. On April 05, 1999, the deceased reached the house of appellant at 9 A.M along with his son Nitin and daughter Roopsi. Before going to the house of the appellant, the deceased had apprehensions to her life at the hands of the appellant and, therefore, had made a telephonic call in this regard to Bhal Singh (P.W.5), who was her relative and posted as Additional Superintendent of Police at Jaipur, which call was received by his Driver. The deceased

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had also visited Police Post Nizampur before going to appellant's house. At the house of appellant, Smt. Meena, his wife, in the presence of the appellant, served tea to the deceased in the room. After some time, the deceased came out of the room and told Nitin, who was sitting in the verandah along with his sister Roopsi, that some foul substance had been administered to her. She started vomiting. The appellant came outside the room and dragged the deceased to the room. In the meantime, two police officials of Police Post Nizampur reached the house of the appellant on a motor-cycle. One jeep also came and stopped in front of the house of the appellant. The deceased again came out of the room while vomiting. The police took the deceased to hospital in jeep. Nitin and Roopsi also accompanied them in the jeep. After some time, Smt.Shakuntla died. Thereafter, on the application (Exhibit P.F/1) moved by Nitin (P.W.12) to the Station House Officer of Police Station Nangal Chaudhary, the present case was registered. Inquest report (Exhibit P.H) on the dead body of Smt.Shakuntla was prepared by Inspector Zile Singh (P.W.17). Smt.Meena, wife of the appellant, was found innocent during investigation.

After completion of investigation, challan against the appellant was presented in the Committing Court.

The learned Additional Sessions Judge-I, Narnaul, vide order dated October 06, 1999, framed charge under Section 302 and in the alternative under Section 306 and Section 506 of the Code against the accused, to which he did not plead guilty

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and claimed trial.

At the trial, the prosecution examined as many as eighteen witnesses.

After the closure of the prosecution evidence, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution allegations and pleaded innocence.

The trial Court, on consideration of material on record, found that the appellant had an affair with the deceased and his wife was also in the know of it. He wanted to eliminate the deceased on this score besides the fact that he was unwilling to repay the loan taken from the deceased. The appellant had motive to commit the murder of the deceased or to force her to commit suicide.

We have heard Mr. N.K. Sanghi, learned counsel for the appellant and Mr. S.K. Hooda, learned Additional Advocate General, Haryana, and have gone through the records of the case with their help.

Learned counsel for the appellant argued that charges under Sections 302 and 306 of the Code cannot be framed alternatively. He further argued that initially the case of the prosecution proceeded under the provisions Section 306 of the Code and report under Section 173 of the Code of Criminal Procedure was also presented in Court under Section 306 of the Code. Inspector Zile Singh (P.W.17), who had partially investigated this case, had admitted in his cross-examination that it was a

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case of suicide and the deceased had consumed the poison of her own. He further argued that except the evidence of Nitin (P.W.12), there was no evidence to show that the appellant administered poison to the deceased. By relying upon the case of **Jaipal v. State of Haryana, (2003) 1 Supreme Court Cases 169**, learned counsel for the appellant argued that aluminium phosphide cannot be administered deceitfully because of its pungent smell. It was also argued by him that there was inordinate delay in lodging report with the police, inasmuch as incident had taken place on April 05m 1999 at about 9 A.M and the matter was reported to the police at about 7.30 P.M.

On the other hand, learned Additional Advocate General, Haryana, reiterated the submissions made before the trial Court and contended that the impugned judgment and sentence order deserve to be upheld.

We have given our thoughtful consideration to the contentions of both the sides. Two points arise for consideration in this case, one - whether there is sufficient evidence to prove that Smt. Shakuntla was murdered by the appellant i.e making him liable for the offence punishable under Section 302 of the Code, and two - whether Smt. Shakuntla committed suicide after she was abetted by the appellant for the commission of suicide i.e making the appellant liable for the offence punishable under Section 306 of the Code. For the reasons to be recorded below, we hold the appellant guilty

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under Section 306 of the Code.

Dr. Ravi Sudhan Sharma, Medical Officer, General Hospital, Narnaul (P.W.1), who had conducted autopsy on the dead body of Smt.Shakuntla, opined on the basis of report (Exhibit P.H) of the Deputy Director-cum-Assistant Chemical Examiner, Forensic Science Laboratory, Madhuban, that aluminium phosphide was detected in the viscera of Shakuntla. However, no position was detected in the blood and the preservative used. The cause of her death was poisoning due to aluminium phosphide. After going through the records of the case, we do not find any infirmity in the investigation conducted in this case. It is proved on record that the deceased had given a hefty loan, as per her financial status she being a teacher, to the appellant, which the appellant was not ready to repay. Facts and circumstances of the case also suggest that after the loan transaction between the appellant and the deceased, their relations had become sour. The plight of the deceased can be gauged from the fact that even her husband Vikram Singh, who had appeared in the witness box as P.W.18, stated that " I reside in Village Gahli. My wife Shakuntla deceased used to reside at Narnaul. She was teacher in a private school. About two years ago, she committed suicide by consuming aluminium phosphide tablets. On that day, I was in Village Gahli, therefore, I cannot say under what circumstances, she committed suicide". After he made this statement, though he was not declared hostile, but on the request of the Public Prosecutor that the witness

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was suppressing material facts, the trial Court allowed this witness to be cross-examined. In the cross-examination, he stated that he did not know that his wife had sold a plot and had raised loan from a bank. He did not know that the entire amount was taken by the appellant and he did not return the same. This shows that the deceased had hidden from her husband about the advancement of loan to the appellant; meaning thereby that she had a special relationship with the appellant, as has been observed by the trial Court. We agree with the finding recorded by the the trial Court that the appellant had an affair with the deceased and his wife was also in the know of it. The facts and circumstances, discussed above, also reveal that the appellant was unwilling to repay the loan taken from the deceased. Thus, the deceased had severed, to a great extent, her relationship with her husband. The appellant, on whom she had reposed trust, had betrayed her. She had also lost her hard-earned money. Her relations with the appellant had become known to Smt.Meena, wife of the appellant. Under these circumstances, it can safely be held that it was the appellant who was responsible for all this. Moreover, the deceased had the tendency to make attempt to commit suicide. Nitin (P.W.12), son of the deceased, in his cross-examination, had stated thus:

“ It is correct that my mother remained admitted in General Hospital, Narnaul w.e.f October 04, 1998 to October 10, 1998. She had consumed poison

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by mistake at that time. It is incorrect that my mother had made attempt to commit suicide on that occasion. At that time, the matter was not reported to the police. I do not know what kind of poison was used or consumed by my mother at that time. She consumed the poison at our house at Narnaul."

It has also come on record that the deceased was not in proper state of mind. Chander Bhan, Head Constable (P.W.1) deposed that:

" On that day early in the morning, said Shakuntla came to police post Nizampur and introduced herself before us as a Journalist. She wanted to collect information about a person who had a living wife and a beloved in his house and that his wife was threatening for committing suicide if he keeps his beloved with him. She also said that the said person was compelling his beloved to commit suicide."

To the same effect is the statement of Om Parkash, Assistant Sub Inspector (P.W.1). As stated above, she had also telephoned on April 05, 1999, at 9 A.M to Bhal Singh (P.W.5), who is husband of appellant Rajbir's sister, complaining that the appellant was compelling her to commit suicide. In the letter (Exhibit P.1), which was written by the deceased to the Station House Officer, Rohtak, she had also complained about the harassment



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being meted out to her at the hands of the appellant after she had advanced loan to him by selling her plot and raising loan etc. In this letter, she also stated that the appellant had accepted her as his wife before God and filled her 'Maang'. This letter was proved by her son Nitin (P.W.12), who identified her handwriting.

In view of the above-explained facts and circumstances, we hold that the deceased had committed suicide on the abetment of the appellant.

So far as the charge under Section 302 of the Code against the appellant is concerned, suffice to say that the appellant would not have called the deceased to his house along with her two children in order to administer poison to her. It has also come in the examination-in-chief of Nitin (P.W.12) that the appellant was also with them while the deceased was in the hospital. As such, there is no abnormality in the conduct of the appellant. If he had administered any poison to the deceased, he would not have gone to the hospital where poisoning as a cause of death would be immediately known or at least strongly suspected by the doctor attending on the victim. Rather, the accused wanted to be in the company of the deceased and to have her treated. There is no evidence before us to hold that the appellant had the poison in his possession prior to the time of the incident. The investigation was not directed towards inspecting and seizing the box etc. wherefrom the tablets were taken out. Further more, aluminium phosphide cannot be

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administered accidentally on account of its very pungent smell. It was so held in **Jaipal's case (supra)**, by the apex Court, after summing up the opinion of the learned authors from their published papers. In all probability, the deceased had consumed aluminium phosphide herself, but on the abetment of the appellant, as noticed above.

For the aforesaid reasons, we hold that the prosecution has not been able to prove charge under Section 302 of the Code against the appellant. Accordingly, the judgment of conviction and the sentence order, so far as it convicts and sentences the appellant under Section 302 of the Code, is set aside and the appellant is acquitted of this charge. However, we hold that the deceased had committed suicide on the abetment of the appellant making him liable for the offence punishable under Section 306 of the Code. Accordingly, we convict the appellant under Section 306 of the Code and sentence him to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo further rigorous imprisonment for three months.

Consequently, this appeal is partly accepted, as indicated above, and disposed of accordingly.

**( ASHUTOSH MOHUNTA )**  
**JUDGE**

**( MOHINDER PAL )**  
**JUDGE**

November 30, 2007.  
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