

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**RESERVED ON : 18<sup>th</sup> SEPTEMBER, 2013**

**DECIDED ON : 20<sup>th</sup> SEPTEMBER, 2013**

**+ CRL.A. 810/2002**

**PREET PAL SINGH**

**..... Appellant**

**Through : Mr.M.L.Yadav, Advocate.**

**VERSUS**

**STATE OF DELHI**

**..... Respondent**

**Through : Mr.M.N.Dudeja, APP.**

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Preet Pal Singh (the appellant) challenges a judgment dated 29.08.2002 in Sessions Case No. 42/2001 arising out of FIR No. 453/2000 under Sections 498A/306 IPC PS Ambedkar Nagar by which he was held guilty for committing offence under Section 306 IPC. By an order dated 01.10.2002, he was sentenced to undergo RI for five years with fine ₹ 500/-.

2. Allegations against the appellant – Preet Pal Singh were that he used to treat Pinky (his wife) with cruelty during her stay at House No.C-11, Raju Park, Debli. On 26.11.2000, he abetted Pinky to commit

suicide by uttering words 'marke dikha'. Pinky poured kerosene oil on her body and put herself on fire. Preet Pal Singh did not take her to hospital and fled the spot. The police machinery was set in motion when Daily Diary (DD) No. 21 was recorded at 07.45 P.M. at Police Post Madangir about admission of Pinky in burnt condition at Safdarjang Hospital. The investigation was assigned to SI Kalu Ram who with Const. Upender went to the hospital. He informed Sh. Amar Singh, SDM to record her statement. Sh. Amar Singh, SDM recorded her statement (Ex.PW-1/A) and directed the Investigating Officer to lodge First Information Report under Section 498A IPC. Pinky succumbed to the injuries on 03.12.2000. Post-mortem examination on the body was conducted. Statements of the witnesses conversant with the facts were recorded. The appellant surrendered in the Court on 09.06.2001. After completion of investigation, a charge-sheet was submitted in the Court. The appellant was duly charged and brought to trial. The prosecution examined ten witnesses to prove the appellant's guilt. In his 313 statement, the appellant pleaded false implication. The Trial Court, after appreciating the evidence and considering the rival contentions of the parties, found the accused guilty of offence under Section 306 IPC only. It is relevant to note that State did not challenge his acquittal under Section 498A IPC.

3. Pinky was earlier married to Gopal Singh in 1995 and was blessed with a daughter. Due to some differences, she left her matrimonial home and came at her parents' home. After some time, she took a house on rent and started living separate. The marriage with Gopal Singh was not dissolved and no divorce was obtained. It appears that she had live in relation with Preet Pal Singh. In her dying declaration (Ex.PW-1/A), she claimed herself Preet Pal Singh's wife after marriage with him in March, 2000. The Investigating Officer, however, could not collect any cogent and reliable evidence to establish if there was any valid marriage in existence between the two. PW-2 (Kishan Bahadur), her father was not aware of any such marriage. Dying declaration (Ex.PW-1/A) reveals that she had not taken into confidence her parents and had voluntarily entered into a relationship with Preet Pal Singh. PW-5 (Inder Singh), her landlord confirmed that the room was rented to her about two or two and a half months prior to the occurrence. PW-4 (Usha) and PW-5 (Inder Singh) were not having any knowledge if there was relationship of husband-wife between the two.

4. Only allegations against the appellant were that he allegedly uttered words 'marke dikha'. Dying declaration (Ex.PW-1/A) shows that in a quarrel on 26.11.2000, the appellant had told her, 'marke dikha'. On

that, she put kerosene oil and burnt herself. It is, however, not clear as to at what time the quarrel had taken place and what was the cause of quarrel. Dying declaration does not disclose if Preet Pal Singh persistently used to treat her with cruelty. There are no indications of physical harm caused to the deceased any time. No such act of cruelty, physical or mental, was reported by the deceased to her parents or to the police, at any time, prior to the incident. The dying declaration does not show that ill-treatment and harassment was constantly meted out to her by the appellant. PW-2 (Kishan Bahadur) did not confirm regarding any such quarrel to have been taken place with the deceased that day. In the cross-examination, he explained that he went to the spot after getting information about the incident from Inderjit at 04.30 P.M. He took Pinky to Safdarjang Hospital and on the way, she did not disclose anything to him. Additional Public Prosecutor cross-examined him after seeking court's permission as he resiled from his previous statement. In the cross-examination, he disclosed that Pinky had told him that a day prior to the incident, her husband Preet Pal Singh had asked her 'marke dikha'. He did not elaborate as to under what circumstances these words were uttered by the appellant. PW-4 (Usha) who went to the spot on hearing noise of 'Aag Lag Gai, Aag Lag Gai' did not find Preet Pal Singh in the house.

Similarly, PW-5 (Inder Singh), landlord who put water on Pinky did not speak about appellant's presence in the house at the time of occurrence.

5. Even if, the allegations made out in the dying declaration / charge-sheet are taken on their face value and accepted in entirety, in my considered view, they do not constitute any offence under Section 306 IPC against the appellant. Under Section 306/107 IPC, establishment and attribution of mens rea, on the part of the accused which caused him to incite the deceased to commit suicide is of great importance. The cruelty shown towards the deceased in such cases, must be of such magnitude, that it would in all likelihood, drive the deceased to commit suicide. The utterances of a few harsh words on one occasion does not amount to harassment/ cruelty of such intensity, that it may be termed as abetment to commit suicide. There is no evidence that the appellant used to persistently and consistently harass the deceased or subject her with cruelty. The prosecution could not establish that it was not an isolated instance of harassment or an occasional offhand remark that was made by the appellant in relation to the deceased. In '*Swamy Prahaladdas vs. State of M.P. & anr.*', (1995) Supp (3) SCC 438, during the course of a quarrel the words were uttered 'to go and die'. The person to whom such remark

was made, went home very dejected and thereafter, committed suicide.

The Supreme Court held :

*“.....In the first place, it is difficult in the facts and circumstances, to come to even a prima facie view that what was uttered by the Appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides, the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the Appellant.”*

6. Similarly in ‘Sanju @ Sanjay Singh Sengar vs. State of M.P.’, AIR 2002 SC 1998, the Supreme Court held :

*“.....a quarrel had taken place between the accused and the deceased during which, the accused asked the deceased "to go and die". A chargesheet was filed against the accused under Section 306 r/w Section 107 Indian Penal Code when the said person actually committed suicide. This Court dealt with the issue elaborately, taking into consideration the fact that the accused had also specifically been named in the suicide note left behind by the deceased, and held that merely asking a person "to go and die" does not in itself amount to instigation and also does not reflect mens rea, which is a necessary concomitant of instigation. The deceased was anyway in great distress and depression. The other evidence on record showed him to be a frustrated man who was in the habit of drinking. Thus, considering the said circumstances, this Court quashed the proceedings against*

*the accused, holding that ingredients of abetment were not fulfilled therein.”*

7. In ‘Ramesh Kumar vs. State of Chhattisgarh’, AIR 2001 SC 3837, the Supreme Court held :

*“...What constitutes 'instigation' must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.*

*14. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 Indian Penal Code. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.”*

8. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. In the instant case, domestic discord and differences (if any) between the deceased and the appellant were not expected to induce her to commit suicide. The present case is not one which may fall under any clauses of Section 107 of the Indian Penal Code. What transpired on the date of incident and at what time was known only to the deceased and the appellant. No adverse inference can be drawn against the appellant for not

putting off fire and taking Pinky to the Hospital, as his presence at the spot was not established beyond reasonable doubt.

9. In the light of above discussion, in my opinion, there is no evidence and material available on record wherefrom an inference of the accused / appellant having abetted the commission of suicide by Pinky may necessarily be drawn. The totality of circumstances discussed hereinabove, especially the dying declaration do not permit the presumption under Section 113A of the Evidence Act being raised against the accused. The accused / appellant therefore deserves to be acquitted of the charge under Section 306 IPC. The appeal is allowed. The conviction and sentence of the appellant are set aside. Bail bond and surety bond of the appellant stand discharged. The Trial Court record be sent back forthwith.

**(S.P.GARG)**  
**JUDGE**

**SEPTEMBER 20, 2013**

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