

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CrlA(AS) No. 19/2022

State of J&K

.....Appellant(s)/Petitioner(s)

Through: Mr. Suneel Malhotra, Advocate.

vs

Dheeraj Kumar and Anr.

..... Respondent(s)

Through: Mr. Akshat Sharma, Advocate, with
Mr. Prateek Majahan, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

08.05.2025

(ORAL)

1. This appeal has been directed against judgment dated 23.02.2018, propounded by learned principle Session Judge, Kathua, vide which respondents came to be acquitted for offence under Section 306 of RPC.
2. Before a closer look at the grounds urged in the memo of appeal, it shall be apt to have an overview of the background facts.
3. On 12.06.2012 Police Post Nagri, District Kathua received a source information that one Rama Devi W/o Dharam Paul R/o Ward No. 3, Nagri Parole had made an attempt to set herself ablaze and was admitted in district hospital, Kathua for treatment. A docket was flashed by the Incharge Police Post on the basis of which FIR No.213/2012 came to be registered in Police Station, Kathua. Statement of injured came to be recorded at Government Medical College, Jammu (GMC) on 12.06.2012, wherein, she stated that at about 12:30 PM, while she was cooking food in her house, she got burnt due to bursting of gas cylinder and on her raising hue and cry her husband Dharam Paul came from his shop and shifted

her to District Hospital, Kathua, where-from she was referred to GMC, Jammu. Pertinently, the injured stated that she had not been burnt by anybody, but had received burn injuries in the aforesaid accident.

4. The prosecution story goes on to reveal that on 14.06.2012, statement of injured was again recorded at Sukh Sadan Hospital, Pathankot, whereby she revealed that respondent Sunita Devi w/o Manohar Lal, brother of her husband, had alleged that she had stolen an amount of Rs. 5000/- from her almirah and despite her repeated denials, said Sunita Devi and her son, the respondents repeated the allegation. It was also alleged that even before the occurrence, her sister-in-law, respondent No. 2, used to quarrel with her and it was due to the said allegation of theft that she went upstairs on the second floor, poured tarpin from a plastic bottle upon herself, entered a room, bolted the room from inside and set herself ablaze. When she screamed, her husband and both the respondents came on spot, broke open the door and sprinkled water to douse the fire and she was evacuated to Kathua Hospital in a car, where-from she was referred to GMC, Jammu.

5. Unfortunately, she succumbed to the burn injuries during investigation on 07.07.2012. The investigating agency completed the legal formalities and investigation culminated in presentation of final report against the respondents under Section 173 Cr.P.C. for offence under Section 306 RPC.

6. The accused were charged by the trial Court for the aforesaid offence, but they pleaded innocence and claimed trial, prompting the trial Court to ask for the prosecution evidence.

7. The prosecution examined 15 witnesses to bring home the charge against respondents. They denied the incriminating imputations in their respective statements under Section 342 Cr. P.C. and did not choose to enter the defence.

8. Learned trial Court having analysed and marshalled the prosecution evidence has come to the conclusion that prosecution has failed to prove its case beyond reasonable doubt, as a result respondents came to be acquitted.

9. The appellant State has questioned the impugned judgment on the conventional grounds that learned trial court has failed to appreciate prosecution evidence in its right perspective and since the deceased in her dying declaration on 14.06.2012 had implicated the respondents with the allegation that they instigated her to commit suicide, they are liable to be convicted.

10. Having heard learned counsels for the parties and perused the record, I have given my anxious consideration to the facts and circumstances of the present case as also the legal position governing the field.

11. While Mr. Suneel Malhotra, learned Govt. Advocate, has reiterated the grounds urged in memo of appeal, Mr. Akshat Sharma, learned defence counsel has defended the impugned judgment on grounds, on the basis of which respondents came to be acquitted by the trial Court.

12. Before we advert to the merits, it shall be apt to have a brief resume of the prosecution evidence.

13. **PW-1 Dharam Paul** is husband of the deceased. He has stated that accused are his nephew and sister-in-law (brother's wife). Deceased was not mentally stable and committed suicide. The deceased immediately after the occurrence had

told him that accused Sunita Devi had falsely accused her of theft of Rs.3000/-. But the deceased later revealed that she had falsely stated about the allegation of theft by accused. He was declared hostile. In cross-examination by the prosecution, he has denied his statement recorded under Section 161 Cr. P. C. that deceased had committed suicide due to allegation of theft. He also stated that deceased had survived for about 28 days.

14. The statement of **PW-2 Mukesh Kumar**, the neighbourer, recorded during investigation, was admitted by accused under Section 272 Cr.P.C. He admitted in his statement under Section 161 Cr. P. C. that he had received information that deceased had set herself ablaze. He also stated that when he went to the spot he found both the respondents accused and husband of the deceased trying to douse the fire.

15. **PW-3 Sat Paul** is father of the deceased. He has stated that deceased was happily married. He received telephonic information on 12th of June, that deceased got burnt. The deceased was shifted to Kathua Hospital, where-from she was referred to GMC, Jammu. He accompanied the deceased and was told by her that she got burns due to bursting of gas pipe. This statement was made by the deceased before the arrival of the police in the presence of many people. The witness, however goes on to state that when he privately enquired from the deceased, he was told that she was pressurised by her in-laws to make the earlier statement with respect to the bursting of gas pipe, accused had levelled an allegation of theft of amount of Rs.5000, due to which she immolated herself. In cross-examination by the defence, he has stated that on 12.06.2012, the deceased

was in her senses and was talking properly. She made statement to the police with respect to leakage of gas pipe. The police again examined her at Pathankot on 20th June but that statement was not signed by the deceased. He has denied the suggestion that deceased had not made the second statement and it was a concocted story.

16. PW-4 Kamlesh Devi is mother of the deceased. She has stated that deceased had cordial relations with her husband. However, the witness has alleged that accused persons used to tease her daughter and levelled a false allegation of theft of Rs. 5000/- against her, which was denied by the deceased but the accused persons repeated the allegation. The witness has also alleged that respondents/accused Sunita Devi caught hold the deceased by her hair, dragged her to the upper floor of the house, closed the door, sprinkled thinner over her and the respondents/accused Dheeraj lit a match stick and set her ablaze. Injured deceased was shifted to Kathua hospital by her family, where-from she was referred to GMC, Jammu. Deceased was conscious and had sustained about 85% burns. On the same day deceased was referred and shifted to Sukh Sadan, Hospital Pathankot, where she remained hospitalised for 26 days. Witness has stated that when she enquired from the deceased, she revealed about the theft of Rs. 5000/-, the use of thinner and that she was burnt by accused. According to the witness, the deceased was also threatened and dissuaded by accused persons from disclosing the incident to anybody. It is also alleged by the witness that deceased had also disclosed to her in the hospital that accused had illicit relations with her husband and that was the reason she was burnt. She stayed with the deceased in

Sukh Sadan Hospital, Pathankot for 25 days. In cross-examination she has stated that she told the police that deceased had died due to bursting of gas pipe and she attested her statement. When confronted with her statement under Section 161 Cr.P.C., she has stated that she did not state in her police statement that accused Sunita Devi had taken the deceased to the upper floor by pulling her hair and that accused Dheeraj Kumar set her ablaze because deceased had revealed it later to her. She has also admitted that she did not reveal in her statement under Section 161 Cr. P.C. that accused No. 2 had illicit relations with her husband. She has denied that accused committed suicide.

17. PW-5 Pratibha is cousin sister of the deceased. She has also stated that accused levelled allegation on the deceased for stealing an amount of Rs. 5000/- which was denied by the deceased but the allegation was repeated by accused. It is further alleged by the witness that deceased had been accused of theft by accused persons four days prior to the occurrence and when allegation was denied by the deceased, accused Sunita Devi asked the deceased to immolate herself with the help of tarpin and match box, due to which the deceased went upstairs and immolated herself. The deceased committed suicide due to false allegation and nobody went to save her. The accused had shut the gate and did not permit anybody to enter the house. The fire was doused by the husband of the deceased. The witness also alleged that accused Dheeraj told his uncle, husband of the deceased, to let her die and he would get another wife. She was told by accused Dheeraj that deceased had got burns due to bursting of cylinder and it revealed during police investigation that the story of gas leakage was false. On being

enquired, the deceased revealed to her that accused alleged her to have stolen an amount of Rs. 5000/- and abetted her to commit suicide. The deceased died 26 days after the occurrence. In cross-examination, she has denied her statement under Section 161 Cr.P.C. recorded by the police on 14.06.2012, though it bears her signatures. The witness has admitted the statement of the deceased recorded on 14.06.2012, but denied that accused had broken the door to douse the fire.

18. PW-6 Pritam Chand has stated that he received a telephonic call on 12.06.2012 that deceased was burnt. They reached Kathua hospital but deceased was already referred to GMC, Jammu and on reaching GMC, Jammu, he came to know that deceased had been shifted to Pathankot. He went to Sukh Sadan Hospital, Pathankot and when he enquired, he was told by the deceased that respondents accused her of stealing an amount of Rs. 5000/- due to which, she went upstairs on second floor, she was followed by the accused persons who asked her that if she was truthful, she should prove it by burning herself. She sprinkled tarpin from a bottle and watched till accused Dheeraj brought match stick to her. The witness goes on to state that when dead body of the deceased was brought to Kathua, Hospital, accused Dheeraj came on a motorcycle with two more boys and threatened to commit more murders in future. In cross-examination, he has stated that incident was narrated to him by the deceased at Sukh Sadan Hospital, Pathankot on 12.06.2012 at 5.00 p.m. including false allegation of stealing Rs. 5000/- by her which was levelled against her 10 days prior to the occurrence but same is not recorded in his statement under Section 164-A Cr.P.C.

19. PW-7 Hira Lal has stated that on 12.06.2012, he received a telephonic call from the police that his niece had been burnt and was hospitalised at Pathankot. He went to the hospital and was told by the police that her sister-in-law had been teasing her for last one month that she had stolen Rs.5000/- and she was driven by accused to an extent that she decided to end her life. The witness also stated that he was told by the deceased that both the accused told her that tarpin oil and match box were lying and she can die. The deceased immolated herself and nobody came to save her. In cross examination, he has stated that the deceased herself narrated the facts to him.

20. PW-8 Neeraj Kumar, nephew of the deceased, has turned hostile and in cross-examination he has admitted the seizure memo (Ext.P-9), custody memo (Ext.P-1) and arrest memo (Ext.P-1/1).

21. PW-9 Abhishek is witness to the seizure of gas cylinder and gas stove. He has also been declared hostile.

22. PW-10 Lady Constable Asha Rani is witness to the arrest memo (Ext.P-11) and personal search memo (Ext.P-11/1) of the respondent/accused Sunita Devi.

23. PW-11 SgCt Sat Paul has entered the report in the *roznamcha*.

24. PW-12 Dr. Avnish Kumar has stated that on 12.06.2012, he examined the deceased Rama Devi with alleged history of suicidal burn, approximately 62% of total body surface area. She remained admitted in the hospital from 12.06.2012 to 07.07.2012 and passed away on 07.07.2012 at 2.40 p.m. He has admitted the certificate (Ext.P-13). In cross-examination, he has stated that face, chest, bilateral

legs and both arms of the deceased were burnt; the patient was in a position to speak at the time of her admission and was given some sedative drugs to relieve the pain. The witness has stated that deceased narrated the incident in the hospital that she had an argument with her relative at home on money issue on 12.06.2012 at 12:30 p.m. The deceased was admitted by her sister-in-law. The deceased did not make any statement in his presence. On request, a certificate was issued that deceased was fit to make the statement. The patient was not fit to make the statement on 14.06.2012 at about 12.00 pm but on the same day at 2.00 pm the deceased was found fit to make the statement. However, there is no fitness certificate of the deceased on the Court file. He has not attested the statement of the deceased.

25. PW-13 Dr. Vijay Bali has stated that on 07.07.2012 Assistant Surgeon of District Hospital, Kathua, conducted autopsy on the dead body of deceased with 90% deep burns and on examination following injuries were found:

“External and internal injuries:

Singeing of eyebrows and eye lashes. Blackening of both ears and nostrils. Singeing of vulval hair. Blackening of whole body. All the viscera of body were Paule. Trachea-blackening of tracheal mucosa.

Lungs-Paule few black spots on both lungs.

All joints of the body were stiff. Singeing of head hair at bulbous with deposition of carbon matter.

Blackening of both lower legs below knee.

Brain tissue was Pauled.”

The witness has further stated that deceased had died on 07.07.2012 at 2.30 p.m. at Civil Hospital, Pathankot and in his opinion the deceased had died due to

severe deep burns leading to multiple organ failure on account of septicaemia. He has admitted the post-mortem report Ext.P-14. In cross-examination, he has stated that since dead body was mutilated and had 90% deep burns, as such it was difficult to ascertain the duration of the burn injuries. The deceased would not have been able to speak or otherwise convey anything by gestures, because she had received 90% deep burns.

26. PW-14 Amit Singh is the photographer. He has taken photographs of the dead body.

27. PW-15 ASI Ramesh Singh Jamwal is the investigating officer. He seized the burnt match box and a white coloured half a liter plastic bottle containing some tarpin, a black plastic hair clip and burnt clothes of the deceased. He recorded statement of the victim at GMC, Jammu after permission of the Medical Officer, who had stated that she was burnt due to leakage of gas pipe. He visited the place of occurrence and found the gas cylinder and its pipe in good condition, which were seized and photographed. As per the orders of his superior officer, he again recorded statement of the injured in the presence of her parents at Sukh Sadan Hospital, Pathankot, where the deceased revealed that accused No. 2 levelled false accusation against her that she had stolen money and on 12.06.2012, both the accused alleged that she had stolen an amount of Rs. 5000/- and despite her repeated denials, they insisted with the false allegation, she went upstairs and set herself ablaze with the use of tarpin oil and ignited the same with the match stick. As per his investigation, offence under Section 306 RPC was made out against the respondents accused. He has admitted various documents prepared by

him during investigation. In cross-examination, he has stated that there is cutting by “is fit for surgery in (Ext.P-16/7)” and it has been recorded “as to give statement”, which is not attested by the doctors. He has admitted that both the statements of the deceased dated 12.06.2012 and 14.06.2012 are not attested by the doctors and in both the statements, mother of deceased Kamlesh Devi has been cited as a witness. The investigating officer has also admitted that he did not investigate to ascertain whether accused had charged the deceased on 12.06.2012 to have stolen an amount of Rs. 6000/-, despite the fact that deceased in her statement on 14.06.2012 alleged that accused had accused her for stealing Rs. 5000/- and had she not changed her statement, it would have been a case under Section 309 RPC. The witness has stated that deceased had made first statement at the instance of the accused and second statement of her own accord. He investigated the case without any pressure. He has also admitted that it was correct in the statement of the deceased that on 14.06.2012, on raising hue and cry by her, her husband and both the accused came together, broke open the door, doused the fire and shifted her to the hospital.

28. PW-16 Inspector Bhushan Singh Manhas has registered the FIR on receipt of docket from Incharge, Police Post, Nagri Parole.

29. PW-17 Subash Chander is the photographer.

30. This is the crux of the prosecution evidence and, as already stated, the incriminating imputations arrogated to the respondents in the prosecution evidence were denied by them in their respective statements under Section 342 Cr.P.C. and they did not enter the defence.

31. The appellant has assailed the impugned judgment primarily on the ground that learned trial Court has failed to appreciate the prosecution evidence as also the import of Section 306 RPC in its right perspective and respondents are liable to be convicted in view of categoric declaration made by the deceased on 14.06.2012 that she was instigated by the respondents to end her life.

32. It may be reiterated, though at the cost of brevity, that it is the prosecution case that when statement of the deceased was recorded in GMC, Jammu on 12.06.2012, she revealed that while she was cooking food at around 12.30 p.m. in her house, she was burnt due to bursting of gas cylinder and on her raising hue and cry, her husband Dharam Paul came from his shop and shifted her to District Hospital, Kathua. The deceased specifically stated that she had not been burnt by anybody but received burn injuries by accident. However, it is also the prosecution story that the deceased made a statement on 14.06.2012 at Sukh Sadan Hospital, Pathankot, that respondent Sunita Devi accused her of stealing an amount of Rs. 5000/- from her almirah and since the respondents persisted with the allegation despite her repeated denials, she went upstairs to the second floor, entered a room, bolted the room from inside, sprinkled tarpin upon herself and immolated herself. If the statement of the deceased dated 14.06.2012 is carefully glanced over, the only allegation against the respondents is that they accused the deceased of having stolen Rs. 5000/- due to which she decided to end her life. As a result, respondents have been charged with the offence punishable under Section 306 RPC i.e., abetment to suicide.

33. Section 306 RPC conceives abetment to suicide, in the terms and meaning of abetment, as understood in Section 107 RPC. Both the provisions are reproduced hereunder as a ready reference.

“306 Abetment of suicide

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“107 Abetment of a thing

A person abets the doing a thing, who-

Firstly-Instigates any person to do that thing; or

Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing.

.....
.....”

34. It is evident from a conjoint reading of aforesaid provisions that a person can only be charged with the abetment to suicide, if the abettor instigates any person to do a particular thing or engages with one or more person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place pursuant to that conspiracy and in order to doing of that thing or if the abettor intentionally aids by any act or illegal omission, with doing of that thing. It is manifest from a plain reading of Section 107 RPC that an abettor can be charged with the offence of abetment to suicide under Section 306 RPC, if he actively participates to instigate the victims or engages with one or more persons in conspiracy for the doing of a particular thing or intentionally aids by an act or illegal omission, the doing of that thing and the deceased committed suicide pursuant to the conspiracy or intentional aid of a particular act or illegal omission

on the part of the abetter. The prosecution, in order to constitute offence under Section 306 RPC, is obliged to prove active participation of the accused.

35. If we approach the present case with the aforesaid principle in mind, I find that there is nothing on the record to suggest that respondents at any point of time actively participated or abetted the deceased to end her life or they instigated the deceased to end her life or engaged with anyone in the conspiracy to instigate the deceased to commit suicide or they intentionally aided by any act or illegal omission, thereby, abetting the deceased to immolate herself.

36. As per the post-mortem report, the deceased had died due to severe deep burns leading to multiple organ failure on account of septicaemia. Learned trial Court has rightly observed that accepting the dying declaration Ex.P-16/6 of the deceased recorded on 14.06.2012 in the presence of her parents, PW-3 Sat Paul and PW-4 Kamlesh Devi, there is no direct or indirect evidence on record against the respondents with respect to the occurrence. The entire case of the prosecution hinges upon the alleged dying declaration of the deceased made on 14.06.2012.

37. The only allegation against the respondents in the said dying declaration is that they allegedly accused the deceased to have stolen an amount of Rs. 5000/- and persisted with the allegation despite repeated denials of the deceased. On this, the deceased went to the second floor of her house, doused tarpin oil and immolated herself. It was also stated by the deceased that the earlier statement made by her, where she had stated that she was not burnt by anybody, was made under pressure. However, it is also mentioned in the dying declaration that her husband and both the respondents broke open the door and tried to douse the fire.

Be that as it may, none of the dying declarations of the deceased is signed by her nor there is fitness certificate of any medical officer attending on her that she was fit to make the statement. Even if the second dying declaration of the deceased dated 14.06.2012 is accepted as a gospel truth, the allegations contained therein are not sufficient to constitute offence under Section 306 RPC.

38. Reliance placed by learned trial Court on **State of West Bengal v. Orilal Jaiswal; AIR 1994 SC 1418**, in this respect is well founded. It was clearly ruled by Hon'ble Supreme Court that Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in support thereof. To ascertain whether the cruelty meted out to a victim in fact instigated her to end the life by committing suicide, it was observed that if it transpires to the Court that the victim committing suicide was hyper sensitive to ordinary petulance, discord and differences in domestic life, which is quite common to the society, to which the victim belongs and such petulance, discord and differences in the family are not expected to induce a similarly circumstanced individual to commit suicide, it shall not be sufficient to constitute offence of abetment to suicide. If the facts and circumstances attending the present case and the unsigned dying declaration, attributed to the deceased, are carefully glanced over, it is sufficient to conclude that deceased was hyper sensitive and the allegations contained in the dying declaration do not amount to instigation or intentional aid on the part of respondents within the meaning of Section 107 RPC.

39. Be that as it may, there are as many stories projected by the prosecution witnesses as their number. The father of the deceased, PW-3 Sat Paul, though

admitted that he was told by the deceased on 12th of June that she was burnt due to bursting of gas pipe and she made that statement in the presence of many people, but he has stated that it was later told by the deceased that she made the earlier statement under pressure and when he enquired privately, he was told by the deceased that respondents levelled a false allegations of theft of Rs.5000/- due to which she immolated herself. On the contrary, PW-4, mother of the deceased, introduced a new story by alleging that it were the respondents who killed her daughter. She has alleged that she was told by the deceased that she was being teased by respondent Sunita Devi and she was accused of theft of Rs. 5000/, which allegation was persisted by the respondents despite her repeated denials, respondent Sunita Devi caught hold of her hair, dragged her to the upper floor, closed the door from inside, sprinkled thinner over her and respondent accused Dheeraj lit a match stick and set the deceased on fire. This is neither the prosecution story nor the statement of any other prosecution witness that deceased was killed by the respondents. Surprisingly, PW-4, mother of the deceased, Kamlesh Devi alleged in the cross-examination that deceased also disclosed to her in the hospital that respondent Sunita Devi had illicit relations with her husband and that was the reason that she took the extreme step and decided to end her life. PW-5 Pratibha cousin sister of the deceased has narrated another story by alleging that after the deceased was accused of stealing an amount of Rs. 5000/- by respondent No. 2, she was asked by respondent Sunita Devi to immolate herself, due to which she went to upper floor and set herself ablaze. PW-6 Pritam Chand, another prosecution witness, has narrated another story, contrary to all the

aforesaid prosecution witnesses, as he alleges that after the deceased was accused of stealing an amount of Rs. 5000/- of respondent No. 2, she went upstairs to the second floor, where she was followed by both the respondents, who asked her that if she was truthful, she should prove it by burning herself, as a result whereof, she sprinkled tarpin over her and set herself ablaze. The prosecution evidence, as such, being replete with serious discrepancies and embellishments does not inspire confidence.

40. Having regard to the legal position discussed above, and having analysed and marshalled the prosecution evidence, I have no doubt that prosecution has failed to establish the charge against the respondents beyond reasonable doubt. The evidence and material on record do not suggest any act of instigation or intentional aid on the part of respondents which induced the deceased to commit suicide within the meaning of Section 306 RPC.

41. For what has been observed and discussed above, the present appeal being devoid of merit is **dismissed** and impugned judgment is upheld.

Jammu
08.05.2025
Sushant

(Rajesh Sekhri)
Judge

Whether the order is speaking? **Yes**
Whether the order is reportable? **No**