

...

1277

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-1525- DB-2013
Date of Decision : September 2nd, 2016

Baldev Singh and three others Appellants

Versus

State of Haryana Respondent

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present Mr. Rajeshwar Singh, Advocate,
for the appellants.

Mr. Rajesh K. Sheoran, Addl. A.G. Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 24.10.2013 and order of sentence dated 28.10.2013 passed by learned Additional Sessions Judge, Ambala whereby the appellants were convicted for commission of offence punishable under Sections 305 and 306 IPC and sentenced as under:-

Under Section	Sentence	In default
U/S 305 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹5000/-.	to further undergo RI for three months.
U/S 306 IPC	to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of ₹2,000/-.	to further undergo RI for one month.

...

2. Relevant facts for the purpose of decision of this appeal are that on 12.09.2012 at 8.30 PM, Station Superintendent, Jagadhri received the information that 4/5 persons jumped before the train and he reported the matter to the police. Police completed proceedings under Section 174 Cr. P.C. and identified the dead bodies to be of (1) Narender Kaur wife of Paramjit Singh, (2) Paramjit Singh son of Baldev Singh (3). Pritpal Kaur (4). Triptpal Kaur, both daughters of Paramjit Singh and (5). Harjinder Singh son of Paramjit Singh, residents of House No. 122, Ward No. 20, Krishna Nagar, Police Station Farakpur, District Yamuna Nagar. On 13.09.2012, Amarjit Kaur, mother of Narender Kaur [since deceased] got recorded her statement at Civil Hospital, Yamuna Nagar that her husband was working at Assansole, West Bengal. The marriage of Narender Kaur [since deceased] was performed about 15 years back with Paramjit Singh and three children namely, Pritpal Kaur, aged about 13 years, Triptpal Kaur, aged about 10 years and Harjinder Singh, aged about 6 years were born out of the said wedlock. All of them used to live with their parents in the same house, but in separate portion. From the last about one year, there used to be a dispute about the said house. 5/6 months prior to the occurrence, Narender Kaur [since deceased] had informed the complainant about the said dispute. Even 2/3 days prior to the alleged occurrence, the complainant had received a telephonic message in that regard. On 12.09.2012 she telephonically received an intimation that her daughter Narender Kaur, son-in-law Paramjit Singh and three minor children committed suicide by running over of a train. Thereafter on receipt of

...

message, they reached Yamuna Nagar and got recorded her statement. Police got recovered the suicide note allegedly written by Narender Kaur and Paramjit Singh [since deceased] which was taken into possession by the police in the presence of accused persons. On 14.09.2012, on arrival of Dalbir Singh, father of Narender Kaur [since deceased] from Assansole, dead-bodies of all the above deceased persons were cremated. On 18.9.2012, the accused-appellants surrendered before the Court of Special Railway Magistrate, Ambala Cantt. After completion of investigation proceedings, report under Section 173 Cr.P.C was presented in the Court for trial.

3. During trial, learned trial Judge framed charge against the accused persons for commission of offence punishable under Sections 305 and 306 read with Section 34 IPC against all the four accused. After recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C and appreciation thereof, learned trial Judge held all the appellants guilty for commission of offence punishable under Sections 305 and 306 IPC vide judgment dated 24.10.2013 and sentenced them on 28.10.2013 as detailed in para No.1 of this judgment.

4. The trial Judge has mainly relied upon the testimony of Amarjit Kaur, mother of Narender Kaur [since deceased]. While appearing as PW-6, Amarjit Kaur deposed that on 12.09.2012 at about 8.30 PM, she had received a telephonic call that her daughter Narender Kaur and son-in-law and their three children had committed suicide by coming under the train. On receipt of that information, she reached Civil Hospital, Jagadhari and

...

identified the dead-bodies of Narender Kaur, Paramjit Singh and three children namely, Pritpal Kaur, Triptpal Kaur, and Harjinder Singh. As per her testimony, all of them committed suicide because of harassment, maltreatment and beatings at the hands of accused persons who are appellants before this Court. According to her, all the four accused persons used to give beatings on the pretext of getting vacated the house from them. Her daughter had told about her miseries on telephone. She along with her husband and other relatives visited the matrimonial home of her daughter 5/6 months prior to the occurrence and tried to persuade upon her in-laws not to harass them, but to no effect. Her daughter, Narender Kaur [since deceased] and son-in-law, Paramjit Singh had narrated their tale of woe to her on different occasions. Police had recorded her statement Ex.P25. Her version was duly supported and corroborated by testimony of PW-7, Satnam Singh, brother of Narender Kaur [since deceased]. Apart from that, the trial Judge placed reliance upon the statement of Dr. Rajesh Garg from Civil Hospital, Jagadhri, who had got conducted post-mortem examination on the dead body of Paramjit Singh, Narender Kaur, Pritpal Kaur, Triptpal Kaur and Harjinder Singh and proved his affidavits, Ex. P1 to P5 and post-mortem reports Ex. P6 to P6/D.

5. Reliance was also placed upon the testimony of PW-10, Dr. Satish Kumar, Senior Scientific Officer, FSL, Madhuban, who had examined the writing Ex. P31 and standard writing Ex. P24, P26 to P30 and Ex. P41 and submitted the report that the persons who had written the 'enclosed admitted writings' had also written 'question writings' and proved

...

his report, Ex. P42. The remaining material evidence available on the file is the testimony of PW-2, ASI Dharam Pal, who had conducted the investigation and completed the inquest proceedings. As per him, on 13.09.2012, police party had reached the house of the deceased and during inspection, a suicide note, signed by Paramjit Singh and Narender Kaur [since deceased] was recovered, photocopy of which was Mark-P1. The same was taken into possession vide recovery memo Ex. P12 and the same was duly attested by Amarjit Kaur and Surjit Singh. On 21.9.2012, Dalbir Singh, father of Narender Kaur [since deceased] alongwith his son produced one page of an old copy on which there was some writing of Narender Kaur [since deceased], which was also taken into police custody vide memo Ex. P17. Suicide note Ex. P31 and writing of the deceased Ex. P24 were duly identified by them and same were taken into possession vide memo Ex. P17. Learned trial Judge also considered the defence version. DW-1, Sanjay Grover, Clerk of Indian Bank, Yamuna Nagar was examined so as to prove that Baldev Singh, appellant No.1 used to deposit ₹100/- each in the accounts of Baby Triptpal Kaur, Pritpal Kaur daughters of Paramjit Singh, Jaskreet Kaur and Simranjeet Kaur. DW-2 Dharam Singh, Inspector Food Supply, Yamuna Nagar was examined to establish that the deceased were having separate residence and separate ration cards whereas, Baldev Singh and Jagmohan Singh were having separate ration cards Ex. D6 and D7. The ration card of Charanjit Singh was proved on record as Ex. D8. He further deposed that the names of Paramit Singh, Narender Kaur, Pritpal Kaur, Triptpal Kaur and Harjinder Singh are not mentioned in the above

...

Ration Cards. Jasbir Singh, Councillor, Nagar Nigam, Yamuna Nagar was examined as DW-3 who deposed that he knew the family of deceased Paramjit Singh being his neighbour. The living of the said family of Paramjit Singh [deceased] was normal and he had never come across with any family dispute over the property.

6. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal.

7. Learned counsel for the appellants mainly submitted that there was no evidence available on the file so as to suggest that there used to be any dispute between the deceased and the appellants prior to the occurrence. There is absolutely no evidence that there was any provocation or instigation on the part of the accused person to commit suicide. More so, the appellants were living separately from the deceased and they have having separate ration cards. The deceased died in railway accident and the appellants were not even present near the scene of occurrence. More so, the complainant in this case is the driver of the train, but he has not been examined. In fact, he was person, who was in a position to depose the true facts of the accident. No independent witness has been joined in the investigation by the prosecution nor examined at the trial. At best, the entire case of the prosecution rests upon circumstantial evidence, but the chain is completely missing so as to connect the appellants with the alleged crime.

8. Learned counsel for the appellants submitted that prosecution has mainly relied upon the writing of Narender Kaur and Paramjit Singh and

...

that has been treated to be dying-declaration on the part of the deceased. However, apparently, there is no evidence that the said writing [Ex. P31] was authored by them. There is no admitted writing of Narender Kaur and Paramjit Singh and in the absence of that, there was no reason or basis for the Court below to arrive at a conclusion that the said writing Ex. P31 was in the hands of Paramjit Singh and Narender Kaur [since deceased].

9. Learned counsel for the appellants further submitted that the conviction has been recorded under Section 305 IPC as well. The three children, namely, Pritpal Kaur, Triptpal Kaur and Harjinder Singh are just kids of tender age and there was even no allegation that they were being harassed or there was any instigation on the part of either of the appellants to commit suicide, but still the Court below held the appellants guilty for commission of offence punishable under Section 305 IPC as well which is legally not sustainable.

10. Learned State counsel submitted that there is no dispute on the fact that all the five deceased and victim of most unfortunate incident were members of the family of the appellants and they were living in the same house, though having separate ration cards. The bone of contention between the deceased and the appellants was the same very house and there used to remain dispute over the said property. Complainant, Amarjit Kaur, mother of Narender Kaur [since deceased] and Satnam Singh, while appearing as PW-6 and PW-7 respectively have duly made statement before the Court and they have withstood the test of cross-examination. The dying-declaration at the instance of Paramjit Singh and Narender Kaur [since

...

deceased] was duly proved on the basis of comparison of writing by Dr. Satish Kumar [PW-10] on the basis of his expert knowledge and report. The standard handwriting of the deceased was taken into police possession in the presence of accused persons and no dispute was raised at that point of time. The Court below has already considered all these aspects while recording the judgment of conviction and the present appeal is without any merit and the same be dismissed.

11. We have considered the submissions made by learned counsel for the parties and perused the record and are of the considered view that most of the facts are not disputed that this unfortunate incident had taken place involving death of five persons including three minor children. The conviction recorded against the appellants is under Section 305 IPC and 306 IPC. The relevant provisions of Sections 305 and 306 IPC are extracted below:-

Section 305 IPC

305. Abetment of suicide of child or insane person.- If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Section 306 IPC

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.

...

12. The above relevant provisions establish that in the present case on the basis of entire prosecution evidence, no case is made out for the offence punishable under Section 305 IPC. The basic ingredients of Section 305 IPC are that there must be abetment and a person who had committed suicide must be less than 18 years of age. Undisputedly, the age of Pritpal Kaur, Triptpal Kaur and and Harjinder Singh is much less than 18 years, But there is absolutely no evidence that there was any abetment to commit suicide qua these minor children. There is nothing to suggest any role on the part of the appellants-accused to instigate the minor children aged about 6 years to 13 years, who even do not know the meaning of death to commit suicide and the Court below has not considered these facts while recording judgment of conviction against the appellants under Section 305 IPC. So, the offence under Section 305 IPC is not made out against either of the appellants in the absence of any evidence.

13. As regards the offence under Section 306 IPC qua Narender Kaur and Paramjit Singh, the prosecution case is mainly based upon the statement of Amarjit Kaur [PW-6] and Satnam Singh [PW-7] and dying declaration Ex. P31. The said dying declaration has been held to have been proved on the basis of comparison with standard hand writing [Ex. P24 and Ex.26 to Ex. P30] of Narender Kaur and Paramjit Singh. At any rate, Ex.P24 and Ex.26 to Ex. P30 are neither admitted writings of Narender Kaur and Paramjit Singh nor the same have been admitted to be in the hand-writing of Narender Kaur and Paramjit Singh. The report submitted by Dr. Satish Kumar [PW-10], Senior Scientific Officer was mainly based upon the

...

comparison taking these to be admitted hand-writing which has not been proved to be so. On this point, relevant provisions are envisaged under Section 73 of the Indian Evidence Act, 1872 which we extract here below :-

“73. Comparison of signature, writing or seal with others admitted or proved.-In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

14. The said standard writing is from a note-book allegedly being maintained by Narender Kaur and the nature of document are details showing the ration articles to be purchased from the market. The said note book is neither duly authenticated nor established as being maintained by the deceased in regular course. It is not the case of the prosecution that the same was part of any judicial proceedings or in any way admitted handwriting. The report submitted by Dr. Satish Kumar [PW-10] on the basis of such writings cannot be safely relied upon. Similar matter was before Hon`ble Apex Court in **Amarjit Singh Vs. State of U.P, 1998(8) SCC 613** and view taken was that if there is no evidence on record to show

...

that the specimen writing was given by the accused-appellant during the course of any judicial proceedings, such a specimen writing under the circumstances could not be used against him.

15. As per the ingredients of Section 306 IPC, there must be some overt act for instigation on the part of the appellants to the deceased to commit suicide. Abetment to suicide has been defined under Section 107 of the Indian Penal Code, which reads as under:-

“**107.** A person abets the doing of a thing, who –

First – 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.

Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 – Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

16. It is not the case of the prosecution even that the appellants-accused facilitated or provided any aid to commit the suicide. At the most, there are allegations of instigation. The basis for the instigation is property dispute within the family and that was going on since long. The requirement

...

of Section 306 IPC is somewhat different.

18. In **Gangula Mohan Reddy Vs. State of Andhra Pradesh, 2010**

(1) SCC 750 Hon`ble Supreme Court while dealing with similar matter discussed that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active or direct act which ought to have led the deceased to commit suicide and this act must have been intended to push the deceased into a position of no option, but to commit suicide.

17. Though, the word “instigates” has not been defined in the Indian Penal Code, however, the meaning of the said word was considered by Hon`ble Supreme Court in **Ramesh Kumar Vs. State of Chhattisgarh, 2001(4) RCR [Criminal] 537** and the Apex Court observed that to satisfy the requirement of “instigation” though it is not necessary that actual words must be used to that effect or what constitutes “instigation” but it must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred. Even a word uttered in a fit of anger

...

or emotion without intending the consequences to actually follow, cannot be said to be instigation. Thus, to constitute “instigation” a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in **Ramesh Kumar's case (supra)**, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i). the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii). that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted

...

above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

18. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations. On a plain reading of Ex.P31, it is difficult to hold that there has been any abetment by the appellants. The note, except saying that the accused-persons used to harass, they were going to commit suicide, contains nothing more. The said note cannot be construed to be abetment or instigation to commit suicide. However, the Court below has not considered these facts while recording the judgment of conviction and after considering the matter in its entirety, we are of the opinion that the judgment of conviction and order of sentence are not sustainable against the appellants.

19. In view of our above discussion and in the light of provisions of law, the present appeal stands allowed. The judgment of conviction dated 24.10.2013 and order of sentence dated 28.10.2013 passed by learned Additional Sessions Judge, Ambala are set-aside. The appellants are acquitted of the charge. They be set at liberty forthwith, if not required in any other case.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

September 2nd, 2016

som

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes