

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-2363-SB of 2003

Date of decision : 07.09.2016

Dalbir Kaur

..... Appellant

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Harshit Sethi, Advocate
for the appellant**

Mr. K.S. Aulakh, AAG Punjab

ANITA CHAUDHRY, J.

The appellant was convicted and sentenced to five years rigorous imprisonment along with fine of Rs. 2000/- under Section 306 IPC. In default of payment of fine to further undergo rigorous imprisonment for two months.

The facts necessary for disposal of the present appeal and as presented by the prosecution need a narration at the outset.

Dalbir Kaur was married to Khazan Singh son of Mohinder Kaur (deceased). The daughter-in-law has been challaned for abetment of suicide on the complaint by her sister-in-law i.e. husband's married sister, Gian Kaur. The deceased was 78 years old.

Dalbir Kaur was married to Khazan Singh for over 28 years. Khazan Singh was employed with Punjab Police. Mohinder Kaur had two daughters, Gian Kaur and Sukhwant Kaur. The allegations were that Dalbir Kaur did not treat her mother-in-law properly and used to beat her and did not provide food and clothing and for that reason, Mohinder Kaur used to stay with her married daughters. For the

was also employed with the Punjab Police. A week prior to the occurrence Khazan Singh brought his mother back to his house. Mohinder Kaur was sleeping in the courtyard on that summer night of 16.06.2001. The incident occurred at 4.00 a.m. Gian Kaur came to know of the incident and she was on her way to Khachian alongwith her husband when she met her brother and together they took the mother to the hospital. The allegations are that Gian Kaur came to know from her mother as to what had happened and Mohinder Kaur had told her that she was fed up with the ill-treatment of Dalbir Kaur and she had poured kerosene oil and set herself on fire. On the way Mohinder Kaur breathed her last. They brought the body back to Village Rattangarh. Thereafter Gian Kaur and her husband were going to Police Station where they met SI Jarnail Singh and her statement was recorded. Inquest proceedings were carried out. The police recovered one burnt carpet, clothes, match box and other articles and arrested the appellant on 22.06.2001. On completion of investigation the challan was presented against the petitioner under Section 306 IPC.

During trial the prosecution examined number of witnesses including Gian Kaur and Niranjan Dev said to be a neighbourer.

Niranjan Dev PW 2 deposed that Dalbir Kaur was not having cordial relationship with her mother-in-law and fed up with the constant quarrels Mohinder went to live with her daughters Gian Kaur and Sukhwant Kaur and had returned 4-5 days prior to the occurrence. In the intervening night of 15-16 June 2001 he heard Mohinder Kaur crying and she was shouting for help from Khazan Singh. He peeped over the wall and saw Mohinder Kaur in flames and crying for help and calling for her son. He saw Khazan Singh taking her in a vehicle. He had stated that Mohinder Kaur had only one son and two daughters. Sukhwant Kaur was employed as Head Constable and that time while Gian Kaur was married and was

residing at a distance of 8 kilometers. He stated that Dalbir Kaur was married about 30 years back. It has also come in the statement that the eldest child of the accused was over 25 years old and youngest was 20 years old.

Gian Kaur PW-3 made a similar statement as made in the complaint. She had stated that her mother had set herself on fire on account of ill-treatment given by accused and Mohinder Kaur also told her that her daughter-in-law used to give her beatings and abuses and that she was turned out of the house many a times. When confronted with the statement given to the police she asserted that she had not made a statement that the accused was giving beatings to her mother. She admitted that she had not told the police that Mohinder Kaur had told her that Dalbir Kaur was ill-treating her. She stated that she had told the police that Mohinder Kaur on the way had told her that she put herself on fire being fed up with the beatings and abuses given by her daughter-in-law. She was confronted with Ex. PA where there was no reference to the beatings, she stated that her mother was being taken to Amritsar in a van and Surinder Singh her uncle had also accompanied them. She admitted that her father owned 2/3-4 killas of land and one of her brother had died and the entire land was in the occupation of Khazan Singh. She denied that Khazan Singh had refused to hand over their share and, therefore, a false case has been registered.

Satwant Kaur PW-4 stated that the accused used to ill-treat her mother and on that account she started living with her and about a week back Khazan Singh brought her to Rattangarh and again she was ill-treated by the accused and she received a call from her sister that her mother had died. She had stated that Khazan Singh was married to the accused about 27 years ago and the elder son was in the Army. She admitted that her husband had died in 1988 and he was employed with Punjab Police was appointed on compassionate grounds and then she married Harjit

Singh and had a daughter in April 1997 and after the birth of her daughter, her mother was living with her.

PW Nirmal Singh was given up as won over by the accused.

Dr. Gurmanjit Rai PW-7 gave the cause of death as burns which were 85% and was sufficient to cause death. Besides her, prosecution had also examined the official witnesses.

In the statement under Section 313 Cr.P.C. the defence was of false implication.

The Additional Sessions Judge while convicting the appellant accepted the statement of the two daughters and observed that even the husband had not stepped into the witness box to support her.

Learned counsel for the appellant very painstakingly urged that in the absence of cogent and reliable evidence to establish abetment the conviction has been recorded which could not be sustained and the trial Court had erred in convicting the appellant. It was urged that there was no evidence of infliction of torture upon the deceased by the appellant immediately prior to the incident and it could not be said that she had incited the deceased to commit suicide. Reliance was placed upon ***Chitresh Kumar Chopra vs. State (Goct. Of NCT of Delhi), 2009(16) SCC 605*** and ***Amalendu Pal @ Jhantu vs. State of West Bengal, 2010(1) SCC 707***.

On the other hand the State counsel supported the judgment of the Court below.

On close scrutiny of the oral evidence it is not in dispute that the appellant was married to Khazan Singh for over 28 years. There was no acrimony between the couple. They have grown up children. The mother-in-law was living with her daughter for the past several years and the reasons which are apparent

marriage and the appellant's mother-in-law had gone to live with her. Both the daughters have stated that their brother Khazan Singh had brought the deceased back to his house 4-5 days prior to the incident. The mother-in-law was sleeping in the courtyard. She committed suicide by pouring kerosene oil on herself and set herself on fire. There was no complaint by the deceased regarding the ill-treatment by the daughter-in-law. Had the appellant been ill-treating the mother, the husband would have lodged the FIR. Interestingly the witnesses have made improvements at the trial. Gian Kaur in her statement in the Court had stated that the deceased on the way to the hospital had told her that she put herself on fire as she was fed up with the beatings and abuses given by her daughter-in-law. The mother-in-law had been away for several years. Had she been ill-treated she would have again gone to her daughters' house. None of the witnesses have spoken of any incident which had occurred prior to the incident of suicide.

It is necessary to refer to Section 306 IPC which deals with abetment of suicide and Section 107 IPC deals with abetment of a thing. They read as under:-

"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 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 the 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."

The legal position as regards Sections 306 IPC which is long settled was recently reiterated in ***Randhir Singh v. State of Punjab (2004) 13 SCC 129*** as follows in paras 12 and 13:

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

*13. In **State of W.B. v. Orilal Jaiswal**, Hon'ble Supreme Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."*

In ***Kishori Lal v. State of M.P., (2007) 10 SCC 797***, Hon'ble

follows in para 6:

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

For the offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of each case and also assess the evidence adduced before it in order to find out whether there was any harassment meted out to the victim and that it had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that mere allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. There is no evidence that the appellant had played any active role by any act of instigation or doing any act to facilitate the commission of suicide. Niranjana Dev had not seen the appellant harassing the deceased. The trial Court had gone wrong when it observed that the the accused had to lead evidence and examine her husband. The prosecution should

support the statement of his sisters and, therefore, chose not to make the statement. It was the prosecution who had to prove its case. Both the daughters of the deceased were in police service and the deceased had good relations with her daughters. Had there been any incident she would have confided in them. No such incident was narrated. There is no evidence of any physical or mental torture.

The prosecution had failed to prove its case and there was no evidence to record a conviction, therefore, the appeal is allowed and the judgment of the trial Court is set aside.

September 07, 2016
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(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No