

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

Crl. Appeal No.S-3854-SB of 2013
Date of Decision: 28.05.2016

Jaswant Singh

....Appellant

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. G.B.S. Dhillon, Advocate
for the appellant.

DAYA CHAUDHARY, J. (ORAL)

This appeal has been filed to challenge the judgment dated 30.08.2013 passed by the Additional Sessions Judge, Amritsar, whereby, respondents No.2 and 3 have been acquitted of the charge framed against them.

Briefly, the facts of the case, are that the daughter of appellant, namely, Harpreet Kaur, was married to Gurcharan Singh @ Sonu (respondent No.2) in the year, 2005 and out of the said wedlock, a son was born through major operation. Harpreet Kaur was not able to conceive another child and thereafter she was being harassed and tortured by respondents No.2 and 3. Left with no option, she even gave a call to the appellant on his mobile complaining that she was unable to bear the taunts

and harassment of mother-in-law and husband i.e respondents No.2 and 3. The appellant immediately reached the house of his daughter but she was not found. Subsequently, her dead body was recovered from minor canal of Kot Mit Singh. On the basis of statement made by appellant, the FIR, in question, was registered under Section 306 IPC at Police Station Sultanwind, District Amritsar against respondents No.2 and 3. On completion of investigation, the challan was presented against respondents No.2 and 3 under Section 306 IPC and the case was committed to the Court of Sessions and thereafter, the charges were framed against respondents No.2 and 3 under Section 306 IPC.

The trial Court acquitted respondents No.2 and 3 vide its judgment dated 30.08.2013 as prosecution could not prove its case beyond reasonable doubt and no offence under Section 306 IPC was made out.

The said judgment of acquittal of respondents No.2 and 3 is under challenge in the present appeal.

Learned counsel for the appellant submits that there were specific allegations against respondents No.2 and 3 of causing harassment to daughter of the appellant as she was not able to give birth to second child as her earlier son was born through major operation. A message was also sent to the appellant on his mobile stating therein that she was being harassed by respondents No.2 and 3. Learned counsel also submits that the trial Court has not properly appreciated the evidence, whereas for attracting Section 306 IPC, the abetment need not to be active only but it could also be passive. The deceased was compelled by the act and conduct of respondents No.2 and 3 as such circumstances were created, which forced the daughter of the appellant to commit suicide. The statement of the appellant was not taken into consideration, whereas, it was a clear cut case

of ***mens rea***, active participation and direct act by respondents No.2 and 3 which led the daughter of the appellant to commit suicide. Learned counsel also submits that the judgment of acquittal passed by the Additional Sessions Judge, Amritsar may be set aside.

Heard the arguments of learned counsel for the appellant and have also perused the judgment of the trial Court as well as other documents available on the file.

The factum of lodging of FIR at the instance of appellant and death of daughter of the appellant are not disputed. Respondents no.2 and 3 have been acquitted by the trial Court by giving a finding that a mere taunting on the part of the husband or the mother-in-law was not a case of compelling circumstances for the deceased to end her life.

The trial Court by relying upon the judgments of Hon'ble the Apex Court in cases ***Bhagwan Das vs Kartar Singh and others 2007(3) RCR (Criminal) 87, State of West Bengal vs Orlilal Jaiswal 1994(3) RCR (Criminal) 186 and Mahendra Singh and another vs State of M.P. 1995 Supp. (3) SCC 731***, acquitted respondents No.2 and 3 as there was no clear ***mens rea***, active participation or direct acts or intention to provoke, incite or encourage the deceased to do an act by the accused which led the deceased to commit suicide. The relevant portion of judgment of the trial Court is reproduced as under :-

“20. In the case in hand even if it is assumed that the accused had taunted or harassed the deceased for not having been able to bear second child, yet there is nothing on record to suggest that there was any ***mens rea*** on the part of the accused that the deceased should end her life. In fact, it is not the version of the prosecution that the accused had ever suggested, the deceased to end her life. This court feels that even if the

husband and the mother-in-law had passed any such remark to the deceased that had she not undergone a major operation, she would have been able to conceive a second child, even then it does not suggest that accused had created such like circumstances for the deceased to be left with no other option but to end her mind. The deceased was an educated woman. She was the master of her own life. She was required, to deal with the situation. A mere taunting on the part of the husband or the mother-in-law, assuming the version of the prosecution to be correct for the sake of arguments did not create such compelling circumstances for the deceased to end her life. She was blessed with a male child. It cannot be expected that the accused would have actually compelled or tortured the deceased to bear another child. This Court is of the view that law laid down by the Hon'ble Apex Court in ***Bhagwan Dass's*** case is applicable to the circumstances of the given case. A mere harassment of the wife by the husband due to differences in understanding or matrimonial discord does not attract Section 306 IPC read with Section 107 IPC if the wife commits suicide. It is not the version of the prosecution that the suicide was due to demand of dowry soon before the death. The law laid down by the Hon'ble Apex Court in ***State of Haryana vs Ishawar Singh's*** case is applicable to the circumstances of the given case. There is no clear ***mens rea***, active participation or direct acts or intention to provoke, incite or encourage the deceased to do an act by the accused which led the deceased to commit suicide seeing no option. There is no such circumstances in this case to suggest that any act of the accused was intended to push the deceased in to such a grave position that she committed suicide. As regards the pronouncements of law made by the Hon'ble High Court in case ***Sukhavasi Sivaiah vs State rep. by its Public Prosecutor, High***

Court of A.P. Hyderabad 2010(1) CCC 933 (A.P) and Hon'ble Apex Court in case *Namdeo vs State of Maharashtra 2007(2) RCR (Criminal) 893* relied upon by the prosecution, this Court does not" dispute the prepositions of law laid down therein. There is no dispute on the preposition of law that evidence of a solitary witness can be accepted if it is wholly reliable. This court has accepted and relied upon the version of PW Jaswant Singh and has concluded the above decision on the basis of the version of PW Jaswant Singh. It is only after accepting the version of PW Jaswant Singh as a gospel truth that the court has come to the conclusion that the provisions of Section 306 IPC read with Section 107 IPC are not attracted."

Section 306 of the Indian Penal Code deals with 'abetment of suicide', which is reproduced 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."

The word 'suicide' in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. '**Sui**' means '**self**' and '**cide**' means '**killing**'. From meaning itself, it shows that it is a killing of self. It can be said that in case, a person commits suicide, it is committed by himself, irrespective of the means employed by him. '**Abetment of a thing**' has been defined under Section 107 of the Indian Penal Code, which is reproduced as under :-

"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 aides, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with Section 107 reads as under :-

“ **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 facilitate the commission thereof, is said to aid the doing of that act.”

The ingredients for abetment for suicide would thus be satisfied only if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide. 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.

The word “**instigation**” has been examined by three-Judge Bench of Hon’ble the Apex Court in ***Ramesh Kumar vs State of Chhattisgarh 2001(9) SCC 618***, which is reproduced as under :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that

actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

In said judgment, Hon’ble the Apex Court has held that there is no evidence and material available on record, wherefrom, an inference of the accused-appellant having abetted commission of suicide by deceased may necessarily be drawn.

Similarly, in another judgment of Hon’ble the Apex Court in case ***State of West Bengal's*** case (supra), it has been held 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 appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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 charge of abetting the offence of suicide should be found guilty.

Same view was also taken in another judgment of Hon’ble the Apex Court in ***Chitresh Kumar Chopra vs State (Govt. of NCT of Delhi)***

2009(4) RCR (Crl.) 196. The court dealt with the dictionary meaning of the word “**instigation**” and “**goad**ing”. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances. **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 to aid in committing suicide, conviction cannot be sustained.

In ***Randhir Singh and another vs State of Punjab AIR 2004 (SC) 5097***, the Hon’ble Apex Court held that **abetment** involves a mental process of instigating a person or intentionally aiding that person in doing of a 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.

In ***State vs Sunil Kumar Kanaiyalal Jani 1997 Crl. L.J., (Guj.) 2014***, it was held that where the married life of the husband and the wife was quarrelsome and it led to the dejection and mortification of the wife, resulting into her committing suicide, it could not be said that the husband abetted the wife to commit suicide.

In ***Mahinder Singh vs State of M.P. 1995 AIR SCW 4570***, the Hon’ble Supreme Court held that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband was related to the deceased-wife with cruelty is not enough.

In *Swamy Prahaladdas vs State of M.P. 1995 SCC (Crl.) 943*,

the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked to the deceased “**to go and die**”. Hon’ble Supreme Court was of the view that mere words uttered by the accused to the deceased “**to go and die**” were not even prima-facie enough to instigate the deceased to commit suicide.

It has been held in various judgments of this Court as well as judgments of Hon’ble the Apex Court 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 led the deceased to commit suicide. The act must have been intended to push the deceased into such a position/situation that he/she committed suicide. The act or conduct of the accused, however, may be insulting and abusive but that is not sufficient to constitute abetment of commission of suicide unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Even, in case, the words uttered by the accused are as such or his conduct in public is such to humiliate the deceased, then also, it cannot be said that he drove the deceased to commit suicide. In short, it can be said that it is not what the deceased ‘**felt**’ but what the accused ‘**intended**’ by his act which is more important in reference of Section 306 IPC. It is only after establishing the requisite intention of the accused that he forced the deceased to commit suicide, then it may become relevant. There should be a nexus between the acts of the accused which pushed the deceased to commit suicide then only, it would be justified. In case, the allegations against the accused are that they used to harass the deceased for demand of dowry, then it cannot be said that they abetted the deceased to commit suicide.

Hon'ble the Apex Court in case *M. Mohan vs State Tr. Dy. Supdt. of Police 2011(3) SCC 626* has observed in paras No.38, 39, 45 and 46 as under :

“38. The word ‘suicide’ in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. ‘Sui’ means ‘self’ and ‘cide’ means ‘killing’, thus implying an act of self – killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

39. In our country, while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under section 309 of Indian Penal Code.

40 to 44. xxx xxx xxx xxx

45. 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.

46. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 Indian Penal Code there has to be a clear **mens rea** to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

In another judgment of Hon'ble the Apex Court in case *Ramesh Kumar vs State of Chhattisgarh 2001(4) RCR (Criminal) 537*, A three-Judge Bench had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered “***you are free to do whatever you wish and go wherever you like.***” Thereafter, the

wife of the appellant Ramesh Kumar committed suicide. Hon'ble the Apex Court in para No.20 has examined different shades of the meaning of “**instigation**”, which is reproduced as under :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act.” To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

In the present case, only the allegations are there in the complaint made by the appellant that his daughter was being harassed by respondents No.2 and 3. At the most, it could be said that the daughter of the appellant was dissatisfied with the conduct of respondents No.2 and 3 but there is no evidence on record to suggest that at any point of time, the accused had instigated the deceased to end her life.

It has been observed in various judgments of Hon'ble the Apex Court as well as judgments of this Court that words uttered in a quarrel or in the spur of the moment or in anger cannot be treated as constituting ***mens rea***. Even in a case where the accused had said to the deceased “***to go and die***” then also it would not amount to a case of Section 306 IPC read with Section 107 IPC as there was no element of ***mens rea***. In case, the accused had taunted or harassed the deceased for not having been able to

bear second child, there is nothing on record to prove or suggest that there was any ***mens rea*** on the part of the accused that the deceased should end her life. A mere taunting on the part of the husband or mother-in-law did not create such compelling circumstances for the deceased to end her life. Even no such compelling circumstances have been proved to suggest that any act of the accused was intended to push the deceased in such a grave situation that she committed suicide.

Accordingly by considering the facts of the case and the judgments on the issue in dispute, there is no infirmity or illegality in the findings recorded by the trial Court while acquitting respondents No.2 and 3 and as such, the present appeal, being devoid of any merit, is hereby dismissed.

28.05.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE