

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

Crl. Appeal No.S-2913-SB of 2014

Date of Decision: 03.03.2016

Basti Ram

....Appellant

Versus

State of Haryana 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. J.P. Sharma, Advocate
for the appellant.

Ms. Trishanjali Sharma, A.A.G., Haryana
for the respondent-State.

Mr. Ajit Sihag, Advocate
for Mr. Saurabh Dalal, Advocate
for respondents No.2 to 4.

DAYA CHAUDHARY, J.

This appeal has been filed to challenge the impugned judgment dated 05.05.2014 passed by Additional Sessions Judge, Jhajjar, whereby, the accused-respondents have been acquitted of the offence under Section 306/34 of the Indian Penal Code by giving them the benefit of doubt.

Briefly, the facts of the case are that FIR No.469 dated 27.10.2012 was registered under Section 306/34 IPC at Police Station Sadar, Bahadurgarh on the basis of complaint made by the present

appellant against accused-respondents, namely, Ram Chander, Imrati and Manoj, stating therein, that a VT message was received in the police station on 26.10.2012 to the effect that Neelam (since deceased) had been hospitalized in General Hospital, Jhajjar and thereafter, she was referred to PGIMS, Rohtak. On getting said information, Vijay Pal, ASI along with Azad Singh, Head Constable reached at the General Hospital and thereafter, he went to PGIMS Rohtak. An opinion was sought regarding the fitness of Neelam to make statement but the attending doctor declared her unfit to make statement and ultimately, she died in PGIMS, Rohtak during medical treatment. After that, Basti Ram met Head Constable Azad Singh made a statement that his daughter Neelam was married with Manoj on 27.11.2001 and in spite of giving sufficient dowry at the time of marriage, she was being harassed by Manoj and his parents Ram Chander, Imrati and his other family members as they were not satisfied with the dowry. He even stated that a *panchayat* of relatives and other persons was also convened on several occasions but all efforts went in vain. Subsequent, thereto, FIR No.262 dated 28.04.2012 was got registered by him under Section 498-A IPC but thereafter, the matter was got settled in *panchayat* with the intervention of respectables. However, in spite of that compromise arrived at between the parties, still his daughter was harassed and on 26.10.2012 at about 7.30 a.m, deceased Neelam consumed some poisonous substance because of constant harassment by her husband and his family members. All these things were disclosed to Basti Ram when his daughter regained consciousness during her treatment. It was also mentioned in the statement by the complainant that on receiving the information regarding the consumption of poisonous substance by his daughter, he went to General Hospital, Jhajjar and thereafter to PGIMS, Rohtak but ultimately, his daughter died. After completing necessary formalities, the challan was

presented and charge was also framed for offence punishable under Section 306/34 IPC.

The prosecution examined as many as 16 witnesses. Thereafter, the statements of the accused were recorded under Section 313 Cr.P.C, wherein, they denied all the allegations levelled against them and claimed innocence in the matter. The trial Court, on appreciation of evidence and by recording its finding, acquitted all the accused of the charge vide its judgment dated 05.05.2014, which is under challenge before this Court.

Learned counsel for the appellant submits that the judgment of acquittal is not based on proper appreciation of evidence and as such, the finding of the trial Court is contrary to the evidence available on record. The deceased committed suicide, which is also proved from the statement of the complainant as well as other prosecution witnesses. Earlier to the death, she was constantly harassed by accused persons and a *panchayat* was also convened on various occasions and the matter was compromised. It was also proved on record that FIR No.262 dated 28.04.2012 was registered under Section 498-A IPC at Police Station Jhajjar against respondents No.2 to 4. Thereafter also, the daughter of the appellant was harassed due to which she committed suicide.

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

The factum of marriage of the deceased and statement of the complainant are not disputed. The daughter of the appellant was married with Manoj on 27.11.2001. Deceased Neelam was admitted in the General Hospital due to consumption of poison and thereafter, she was referred to PGIMS, Rohtak. As per allegations levelled in the statement of the

complainant, his daughter was being harassed by the accused-respondents for demand of dowry. With the intervention of respectables, a compromise was arrived at between the parties in the *panchayat* but subsequently also, she was being harassed. Ultimately, because of constant harassment, she consumed some poisonous substance and breathed her last in PGIMS, Rohtak. Her statement could not be recorded as she was not in a position to make statement at that time. Postmortem report was kept pending awaiting chemical analysis report from FSL, Madhuban. During investigation of the case, accused Kartar, Sheela, Mamta, Rashmi and Mausam were found innocent and were kept in column No.2. Challan was presented against accused-respondents No.2 to 4 on 13.12.2011. The offence, being punishable under Section 306 IPC was to be tried by the Court of Sessions and hence, it was committed to the Sessions Court and the accused-respondents were charge sheeted for offence punishable under Section 306/34 IPC.

The trial Court acquitted the accused respondents on the ground that the marriage of accused was solemnized with deceased Neelam about 11 years prior to the occurrence of the incident and they were also blessed with two children. The death occurred due to consumption of *Aluminium phosphide* on 26.10.2012 but during *autopsy*, no injury was noticed on the body of deceased-Neelam by the Medical Officer, namely, Dr. Kamal Singla-PW-13. He has also admitted in his cross-examination that the clothes of deceased were intact. The complainant, while appearing in the Court, has also admitted in his cross-examination that no complaint was ever made to the police against accused persons for harassment and has sent his daughter-Neelam with Manoj immediately after marriage and whenever she used to visit Jhajjar, she used to come with her husband and used to return with him. He has

also admitted that on hearing the complaints from Neelam, sometimes Neelam was kept at their house and sometimes they called the relatives of Manoj and tried to counsel them. PW-1 could not tell the date, month and the year, when the relatives of Manoj were called by him to intervene in the matter. Complainant has also admitted that he did not convene any *panchayat* from his own village to counsel the accused. Whenever any dispute arose, he used to ask Manoj to call his parents but he used to say that the matter was related to him and there was no use of calling them.

On perusal of statement of the complainant, it appears that not only the material contradictions but serious inconsistencies are there in the same. As per the statement of the complainant, he was present in General Hospital as well as in PGIMS, Rohtak with his daughter but no complaint was made to the police, whereas, the police post was also there in PGIMS, Rohtak. No explanation, whatsoever, has been given by him during his examination/cross-examination as to why he did not consider it necessary to bring it to the notice of the police. As per statement of the complainant, the police came in the hospital for the first time at 11.00 a.m and on second time at about 3.00 p.m. He has also stated that he received the information about the occurrence at about 9.00 a.m and he met his daughter at PGIMS, Rohtak at about 9.45 a.m, whereas, she died at 7.40 p.m on 26.10.2012. The complainant has further stated in his statement that her daughter-Neelam regained consciousness for a short while and she pointed towards accused Manoj and Imrati, who were also present there. In his statement Exhibit PW1/A, it was stated by the complainant that when Neelam regained consciousness during treatment, she did not tell that the poison was administered by her husband Manoj and forced her to take it on that day. If the statement recorded in the Court is to be believed then only the husband and mother-in-law could be accused of the offence, whereas,

in the statement given by the complainant to the police, Neelam has implicated her husband, mother-in-law and other family members as well. As per opinion given by the doctor, on police request Exhibit PW14/B on 26.10.2012 at about 1.00 p.m, the deceased was not fit to make statement and the statement of the complainant was got recorded by the police at about 9.00 a.m on 27.10.2012 in PGIMS, Rohtak. The time, date of death and unfitness of deceased to make any statement, is contrary to evidence on record.

It has also come in cross-examination of the complainant that accused Manoj and Neelam were having separate house with separate ration card and electric metre. He has also admitted that two daughters of accused-Ram Chander were already married before the marriage of Neelam while the age of third daughter was 7/8 years at the time of marriage of Neelam with Manoj and his other son Kartar (younger brother of Manoj) was a student of 10+2 at the time of marriage and was unmarried. The deceased gave birth to four children, out of which, two had died. Even during the period with effect from the date of compromise in FIR No.262 dated 28.04.2012 to 26.10.2012, the complainant did not visit the house of in-laws of the deceased. The deceased committed suicide on 26.10.2012 i.e after a period of more than 11 years and the presumption under Section 113-A of the Indian Evidence Act was not available to the prosecution and in the absence thereof, the prosecution was to prove its own case by leading cogent evidence. Nothing has come on record to prove that the accused persons abetted the commission of suicide for any reason. Moreover, even no convincing evidence of any of the PWs has come on record to show as to how the deceased was abetted by the accused persons to commit suicide. The statement of prosecution witnesses including the complainant finds corroboration from the statement

of DW-1 as well that Manoj and deceased were residing separately from other family members.

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. ‘*Su*’ 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 vs Orilal Jaiswal and another 1994(3) RCR (Crl.) 186***, 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 "goading". 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 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 related 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 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. 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.

The marriage of accused-Manoj was solemnized with Neelam (deceased) about 11 years prior to the alleged occurrence and they were also blessed with four children, out of which, two are alive. Neelam died in PGIMS, Rohtak and during *autopsy*, no injury was found on the person of Neelam as per opinion of Medical Officer PW-13 Dr. Kamal Singla. Not only the contradictions and discrepancies are there in the statement of PW-1 but the allegations mentioned in the complaint were contrary to the statement recorded before the trial Court. Neither any specific instance of demand of dowry or harassment nor any specific role of the accused was mentioned by the complainant in his statement.

On perusal of statements of prosecution witnesses as well as other evidence available on record, it could not be proved that there was any abetment on the part of the accused respondents. The judgment of the

trial Court is well reasoned and the accused-respondents have been acquitted of the charge by giving a specific finding by the trial Court, which is based on evidence available on record.

Accordingly, no interference is required and the appeal, being devoid of any merit, is hereby dismissed.

03.03.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE