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

CRA-S- 2036-SB-2003
Date of Decision : NOVEMBER 15, 2016

Amarjit Kaur and others
.... Appellants

Versus

State of Punjab
.... Respondent

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present Mr. Sukhdeep Singh Sidhu, Advocate,
for the appellants.

Mr. Yogesh Kumar Gupta, AAG, Punjab
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 17.10.2003 passed by learned Additional Sessions Judge, Bathinda whereby the appellants were convicted under Section 306 IPC and were sentenced as under:-

Under Section	Sentence	In default
Section 306 IPC	to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.1000/- each	to further undergo RI for one year.

2. Relevant facts for the purpose of decision of this appeal; that on

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9.5.1999, DDR No. 61 [Ex. PJ] was entered regarding death of a person having been crushed under the train. On this information, the Investigating Officer visited the spot and complainant Sarup Singh made statement [Ex.PF] on the basis of which FIR [Ex. PF/2] was registered. As per the complainant, he has two sons and a daughter. He was serving in the police department and later on got employed his son Harjinder Pal Singh in the Punjab Police and his younger son is Gurinder Singh and daughter Kiran is married in village Bilaspur District Moga. Earlier, his elder son, Harjinder Pal Singh was killed by his relations – Sohan Singh son of Nazar Singh and a case was registered against them. Sohan Singh, Nazar Singh and others with a view to take revenge moved certain applications in the Police Station, Kotfatta that Gurinder Singh [son of the complainant] had committed theft and many a times said Nazar Singh and others called them with bad names and stated that they would not allow them to live and would kill him as they had already killed his son. As per complainant Sarup Singh, his son, Gurinder Singh [since deceased] was afraid of them and because of mental tension, he had been residing with his maternal uncle in village Sandoha. Gurinder Singh [since deceased] used to narrate his tale of woes to his maternal uncle, Jarnail Singh and to the complainant that the accused persons, who are appellants before this Court, would kill him and it was not worth living in such a situation and he would die.

3. On 9.5.1999, when the complainant alighted at the Bus Stand, people from the village informed him that his son, Gurinder Singh had committed suicide and he reached the spot and found the dead body of his

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son Gurinder Singh. As per the complainant, his son committed suicide because of tension created by the accused-persons and fear created at the hands of Nazar Singh son of Sher Singh, Sohan Singh son of Nazar Singh, Pawanjit alias Bablu and Amarjit Kaur wife of Nazar Singh. His son, Gurinder Singh had come to the village one day earlier and had committed suicide because of moving of applications with the above narrated facts. On the basis of said statement, FIR Ex. PF/2 was registered.

4. During investigation starting from search of the dead-body; recovery of cash worth Rs.72/-; letter written by the deceased to DSP Talwandi Sabo; one coloured photograph of the brothers of the deceased in Police uniform; four photographs were taken into police custody vide recovery Memo Ex. PG.; post mortem examination of the dead body was got done. Note book, [Ex. P1] containing handwriting of Gurinder Singh [since deceased] was taken into police custody vide recovery memo Ex. PE which was duly attested by the witnesses. Application given by Amarjit Kaur wife of Nazar Singh against the complainant and others and photostat copies of the telegrams were also taken into police possession. After completion of investigation formalities, challan was presented in the Court for trial.

5. During trial, learned Court below completed various proceedings of trial including framing of charge under Section 306 IPC against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, the trial Court held the appellants guilty and

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convicted them for commission of offence punishable under Section 306 IPC and sentenced them on 17.10.2003. However, during trial, accused Nazar Singh died and proceedings against him were dropped.

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 while pleading for innocence of the accused-appellants contended that there is absolutely no material or evidence available on the file that Gurinder Singh [since deceased] had committed suicide because of abetment on the part of present appellants. On this point, the prosecution has placed reliance upon the testimony of PW-3 Sarup Singh, complainant (father of the deceased) and PW-4 Roop Singh (brother of Sarup Singh and uncle of the deceased). Remaining witnesses are more or less formal witnesses.

8. Learned counsel for the appellants also contended that the prosecution case mainly rests upon recovery of suicide note [Ex. P-2]. However, the existence of the suicide note and recovery thereof from the possession of the deceased itself is disputed, rather not proved on the file. There is no date on the suicide note Ex. P-2. The writing of suicide note as well as signatures of Gurinder Singh [since deceased] do not tally with each other and this fact can be observed with naked eyes.

9. Learned counsel for the appellants further contended that the dead body of Gurinder Singh was found on the side of railway tracks and at that time he was wearing underwear and *baniyan* only. No other wearing apparel was found near the dead body nor any such recovery was effected

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from the possession of the accused, if the entire statement of Investigating Officer is taken into account. The recovery of suicide note has been manipulated because of the previous inimical relations between the parties and the complainant and his family members being employed in the police department had an easy access to manipulate the investigation. More so, complainant PW-3 Sarup Singh himself is involved in so many cases and he had every reason to falsely implicate the appellants because of such relations.

10. Plea was also taken by learned counsel for the appellants that Gurinder Singh [since deceased] had left the village 7 months ago and as such there was no question of being under mental pressure or torture giving an occasion or creating circumstance for Gurinder Singh to commit suicide because of abetment or harassment at the hands of the present appellants. Learned trial Judge has completely ignored these facts while recording the judgment of conviction and the present appeal deserves to be accepted and judgment of conviction and order of sentence be set aside.

11. Mr. Yogesh Kumar Gupta, learned State counsel contended that certain facts are not disputed in any way that Gurinder Singh [since deceased] had committed suicide as his body was found near the railway tracks and DDR [Ex. PJ] was recorded to that effect. His dead body was identified by complainant Sarup Singh and post-mortem examination was got done. PW-3 Sarup Singh and PW-4 Roop Singh have supported the prosecution case. The recovery of suicide note establishes the prosecution case and supports the version of PW-3 and PW-4. Apart from that, report of

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FSL establishes that the suicide note was in the hands of Gurinder Singh [since deceased] and learned trial Judge has rightly held the accused appellants guilty and the judgment of conviction and order of sentence are liable to be upheld.

12. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that there is no dispute on the basic facts that Gurinder Singh died and his dead body was found near the railway tracks and DDR [Ex. PJ] was record on 09.05.1999. To establish the offence punishable under Section 306 IPC, the prosecution is required to prove that the accused had in fact, abetted the deceased to commit the suicide. The abetment has been defined in Section 107 IPC which reads 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 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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does

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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.”

13. The above provisions of law makes it ample clear that to hold any person guilty for commission of offence under Section 107 IPC, prosecution shall be required to prove that accused persons had instigated or engaged in any way any conspiracy to do some illegal act intentionally aided to do any act. For establishing offence of abetment, the abettor must be shown to have intentionally aided the commission of offence. Mere proof that the death had taken place, does not establish the offence of abetment at the hands of the accused persons. For ascertaining the nature of offence, alleged against the appellants, the Court is bound to see and appreciate the material and evidence available on the file. Certainly statement of PW-3 Sarup Singh - complainant is the most material evidence available on the file who is none else but the father of the deceased. He has levelled allegations against the appellants that they were inimical towards him as well as his family members and they used to advance threats to his son Gurinder Singh also to eliminate him and not to allow to survive him, but to support this, there is no material or evidence available on the file. There is no reason to disbelieve even this part of the statement of the complainant but in the light of the background that Sarup Singh is inimical to the present appellants, the same puts the Court on caution to scrutinize his statement with greater care and caution. If we proceed further to scrutinize his statement, including his cross-examination minutely, it can be certainly observed that he was making statement against the accused-appellants because of his inimical relations

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alone. Undisputedly, Gurinder Singh [since deceased] was living with his maternal uncle at a distant village for the last 6 -7 months. In those circumstances, there were no chances of any abetment at the hands of appellants. Complainant, Sarup Singh, during his cross-examination had gone to the extent of saying that he had made various complaints to the Police through the Panchayat in writing against the accused-persons, but he could not produce copy of any such complaint or material or document in support of that. He could not even tell the number of such complaints being 50 or 100. He has also admitted that he had filed various cases against the accused-appellants. So, it is quite unsafe to convict the present appellants solely on the basis of statement of PW-3, Sarup Singh. On the same line, testimony of PW-4, Roop Singh also cannot be made the basis for the conviction of the appellants and he was not in a position to explain precisely what was the circumstance leading to abetment to suicide on the part of the accused persons.

14. The most important fact in this case is that the prosecution has placed reliance upon the suicide note [Ex. P2], but the scrutiny of evidence available on the file shows that no such suicide note was actually recovered from the spot. It had come in the cross-examination of Sarup Singh itself that when he visited the spot, the dead body of Gurinder Singh [since deceased] was lying at the railway tracks and at that time, same was not covered with any cloth. He was not having any wearing clothes. On this point, the statement of PW-10, Ram Iqbal, Gangman is most relevant as he was on duty at Gate No. 227-B on 9.5.1999. when the occurrence had taken

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place. Immediately after stoppage of the train, he had gone near the railway-tracks and after some time, he could find that one unknown person was lying in-between the track. He informed the Station Master on duty and then the police reached on the spot. Further police proceedings were taken and his statement was recorded by the Police. During cross-examination, his testimony was consistent. The man, who was lying, was wearing only underwear and *baniyan*. The dead-body was not having any shirt or pant and therefore, the theory of recovery of the suicide note from the possession of the deceased is unbelievable and there was no reason for the trial Judge to ignore the testimony of PW-10, who was in fact, the first informant, who had witnessed the scene of crime and reported the matter to the Police. More so, the alleged suicide note [Ex. P2] is not free from suspicion. Though, the prosecution case rests upon the report of F.S.L. so as to establish that the suicide note was at the hands Gurinder Singh [since deceased], yet if we have a look at the document itself, it establishes that the body i.e., writing part as well as signatures of the author of the document are not of one and the same person and the source of origin of this document is also not authentic. For placing reliance upon such a suicide note, first of all the original source must be authentic and the prosecution case must establish that the suicide note was in the hands of the deceased himself and the same was recovered from his possession. All these ingredients have not been proved in this case and the trial Judge has completely ignored these facts while recording the judgment of conviction. As such, the judgment of conviction and order of sentence passed by the trial Judge deserve to be set-

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aside.

15. Resultantly, the appeal is accepted and the judgment of conviction and order of sentence dated 17.10.2003 passed by learned Additional Sessions Judge, Bathinda are set-aside and the appellants are acquitted of the charge. The appellants are on bail. The bail/surety bonds shall stand discharged in this case.

(SHEKHER DHAWAN)
JUDGE

November 15, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes