

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

CRA-S No. 1242-SB of 2004 (O&M)

Date of decision : April 18, 2017

Ganga Saran

.....Appellant

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Girdhar, Advocate
for the appellant.

Ms. Aditi Girdhar, Amicus Curiae.

Mr. Sanjay K. Saini, AAG, Haryana.

LISA GILL, J.

Appellant – Ganga Saran has been convicted for the offence punishable under Section 306 IPC by the learned Additional Sessions Judge, Panipat vide judgment dated 28.05.2004. He has been sentenced to undergo rigorous imprisonment for three years, besides, pay a fine of ₹5,000/- and in default thereof undergo simple imprisonment for a period of three months for commission of the offence punishable under Section 306 IPC, vide order dated 29.05.2004. Aggrieved from his conviction and sentence, the appellant has preferred this appeal impugning judgment dated 28.05.2004 and order dated 29.05.2004 passed by the learned Additional Sessions Judge, Panipat convicting him under Section 306 IPC and

sentencing him as above.

Brief facts of the case are that the complainant – Des Raj (PW6) (father of the deceased) lodged a report (Ex.PC) with ASI Ranbir Singh (PW5). The complainant stated that he was running a restaurant at the Grand Trunk road Samalkha under the name and style of Aneja Hotel. The deceased – Janak Kumari his daughter was married to the appellant in the year 1987. Janak Kumari was working on the post of Clerk in the Post and Telegraph Department since the year 1983-84. She was posted at General Post Office, Panipat. Three children were born out of this wedlock, namely a daughter Parul aged 13 years, a daughter 10 years old and a son Shivam four years old. The complainant stated that about one and a half year (1½) prior to the incident in question on 17.03.2002, the appellant started suspecting the deceased regarding her fidelity towards him. She was subjected to physical abuse on this account. The complainant's daughter came to his restaurant and told him as well as his son Rakesh Kumar about the above said fact. She further revealed that the appellant was accusing her of meeting of her boy friends on the pretext of attending duty. About a year prior to the occurrence, the complainant alongwith his wife Krishna Devi and nephew Sanjiv went to the house of the appellant and tried to make him to see reason. They also offered that in case he suspected Janak Kumari's character, she can be asked to leave the job. However, the appellant retorted that he would apprehend the deceased red-handed when she was with her boy friends. The appellant did not mend his ways and continued to physically abuse his daughter. The complainant's daughter complained about this on 5 or 6 occasions when she came to his restaurant. Despite the same, the complainant asked his daughter to settle the matter with the

appellant. The complainant stated that the deceased Janak Kumari came to his restaurant on 16.03.2002 at about 6.00 p.m. and told him in the presence of his son Rakesh Kumar (brother of the deceased) that the appellant had started beating her mercilessly. However, the complainant still asked her to go back to her matrimonial home and told her that he would visit them on the next day to talk to the appellant. The complainant revealed that he received a telephonic call from his son Rakesh on 17.03.2002 at about 2.30 p.m. that his daughter Janak Kumari had been killed. The complainant proceeded to the house of his son Rakesh, who had already left for the appellant's house. They found the dead body of the complainant daughter lying in the lobby of the house in a burnt condition. There were no clothes on her body. Inquiries were made by the complainant from the neighbours. They found that his daughter had been killed by the appellant by setting her on fire after pouring kerosene oil on her. The complainant left his son Rakesh with the dead body and came to lodge the report.

Formal FIR (Ex.PF) was initially lodged under Section 302 IPC. A photographer was summoned by ASI Randhir Singh, who proceeded to the spot alongwith the complainant. Inquest proceedings were conducted. Inquest report (Ex. PC) was prepared. An application (Ex.PA) was moved for conducting the post mortem of the dead body. A pair of chapals (Ex. PG)/(Ex.PH) was taken in custody. Rough site plan (Ex. PE) of the place of occurrence was prepared. The post mortem was conducted by Dr. K.L. Chopra (PW2) alongwith Dr. S.C. Nawal on 18.03.2002. The following injuries were found present:-

“ There were burns of various degree on the whole body except scalp, small area on back and both arms and soles. The burns were about 90%. There was singeing of scalp hair and

hair on other parts of body including eye brows, eye lashes, axillae, body hair, pubic hair, legs and arm were burnt. At places skin was peeled of. There was reddish line between un-burnt and burnt area of skin. There was faint smell of kerosene.”

The cause of death was extensive burns which were ante mortem in nature and sufficient to cause death in the ordinary course of events. The probable duration between burns and death was variable while between death and post mortem between 6 to 30 hours. A copy of the post mortem report is Ex. PB.

The appellant was arrested on 18.03.2002. Statement of Parul, the daughter of the deceased and the appellant, under Section 164 Cr.P.C. was recorded on 19.03.2002. She has not raised a finger against her father, the appellant. Investigation was carried out and it was found that an offence punishable under Section 306 IPC was made out against the appellant. The challan/final report under Section 173 Cr.P.C. was presented. Charge for the offence punishable under Section 306 IPC was framed against the appellant. The appellant pleaded innocence and claimed trial.

The prosecution examined as many as ten (10) witnesses to prove its case against the appellant. Statement of the accused appellant under Section 313 Cr.P.C was recorded. He denied the incriminating material and evidence put to him. The appellant pleaded innocence and stated that on the day of occurrence his wife was cooking meals in the kitchen whereas he was sitting in the room alongwith his three children. The deceased was serving meals to him whereas his children were watching television. She sustained injuries in the kitchen while preparing the meals.

When they heard her shrieks, he alongwith other persons took Janak Kumari

to the doctor but she succumbed to her injuries on the way. Therefore, they brought back the dead body of Janak Kumari. He denied that he ever suspected his wife's character or ever taunted her in this regard. He pleaded false implication for extraneous considerations.

Learned trial Court on considering the facts and circumstances of the case as well as the entire evidence on record, concluded that the prosecution had proved its case against the appellant beyond reasonable doubt.

Consequently, the appellant was convicted for the offence punishable under Section 306 IPC and sentenced as detailed above.

Aggrieved from his conviction and sentence, the appellant has filed this appeal.

Learned counsel for the appellant has vehemently argued that the deceased and the appellant were married for about 15 years. There are three children out of this wedlock. There is admittedly no complaint whatsoever against the appellant in all these years. It is not disputed that the deceased was working even prior to her marriage. Therefore, the said fact was not something new to the appellant that he would suddenly develop the suspicions as projected by the complainant. Furthermore, there is no evidence on record to show that the deceased was ever subjected to any kind of physical abuse by the appellant.

Learned trial Court has grossly erred in not considering the vital fact that PW8 Priyanka, daughter of the appellant and the deceased, has not supported the prosecution case. The other daughter namely Parul had suffered a statement under Section 164 Cr.P.C. on 19.03.2002 itself, clearly stating that relations between the deceased and the appellant were cordial.

The children had never seen their parents quarrelling with each other. The death of the appellant's wife has been held to be suicidal by the learned trial Court. However, there is not an iota of evidence to show that the ingredients of Section 306 IPC are present in this case to inculcate the appellant. The father and the brother of the deceased have tried to falsely implicate the appellant for extraneous considerations. Three children of the deceased were being looked after by them and they were all living together in a peaceful and cordial atmosphere. The children are still being looked after by the appellant and not the family of the deceased. Therefore, this appeal be allowed and the impugned judgment dated 28.05.2004 and order dated 29.05.2004 be set aside, consequently, acquitting the appellant of the charge against him.

Learned counsel for the State has, however, submitted that there is clear cut and cogent evidence on record to prove the guilt of the appellant in this case. The deceased died of 90% burns. The complainant (PW6) and Rakesh (PW7), the brother of the deceased have supported the prosecution version to the hilt. They have revealed that the deceased was subjected to physical abuse because the appellant suspected her character. Therefore, she was driven to commit suicide. Therefore, this appeal be dismissed and the well reasoned judgment dated 28.05.2004 and order dated 29.05.2004 should be maintained.

I have heard learned counsel for the parties and have gone through the record with their assistance.

The appellant was charged for the offence punishable under Section 306 IPC. It has been held by the learned trial Court that the death of the appellant's wife was suicidal and not homicidal. Faint smell of kerosene

was detected on the dead body of the deceased at the time of post mortem as revealed by PW2 Dr. K.L. Chopra. As per report (Ex. PK) of the Forensic Science Laboratory, kerosene residues were found on the partially burnt clothes of the deceased. It has been correctly held by the learned trial Court that the deceased herself poured kerosene oil and thereafter set herself ablaze. PW8, Priyanka (daughter of the appellant and the deceased) has specifically deposed that the appellant was having his meals. He was present in the same room in which she alongwith her siblings Parul and Shivam were watching television.

The question, which arises for consideration in this case, is whether the appellant is guilty of the offence punishable under Section 306 IPC. Section 306 IPC reads 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.

Section 107 IPC which spells out the ingredients of abetment 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.

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.

In the present case, PW6 Des Raj has deposed that the appellant suspected his daughter's character. This was revealed to him nearly one and a half year prior to the occurrence. The complainant alongwith his wife and nephew had proceeded to his daughter's matrimonial home and tried to make the appellant understand and request him not to trouble their daughter. They also stated that the appellant can ask his wife to leave his job in case he has any suspicion. However, the appellant proclaimed that he would apprehend her red-handed. It is further stated by the complainant that his daughter came to his hotel on two or four occasions and revealed the same facts again. She complained of physical abuse at the hands of the appellant. His daughter came to his hotel on 16.03.2002 after her working hours and revealed that the accused had decided to eliminate her and she should be saved. The complainant, however, told her to go back to her matrimonial home and they would try to patch up the matter on the next day. He then went to his village. The complainant received a call from his son Rakesh on 17.03.2002 that Janak Kumari had been done to death, though in his cross examination, he has stated that he did not have any telephone connection at his residence at the time of occurrence neither did he have a telephone connection at his hotel which he had taken on rent. He proceeded to the appellant's house and discovered his daughter lying dead.

The mother of the appellant was present at home. It is, however, admitted by

the complainant that his daughter was working in the Post and Telegraph department prior to her marriage. It is not denied that the children of the appellant and his daughter are still being looked after by the appellant. PW7, Rakesh Kumar deposed on similar lines. PW7 has stated that he was present in the hotel on 17.03.2002 when one Sunil Kumar Bhatla informed that his sister had been burnt to death by the appellant. Rakesh Kumar telephonically informed his father at the village. His father came from the village and they together went to the house of the appellant where his sister was found lying dead. Rakesh Kumar has further stated that his sister was either murdered by the accused or had committed suicide due to the ill-treatment meted out by the appellant. He has admitted that no application/complaint whatsoever was moved against the appellant prior to the occurrence neither was any Panchayat convened during the period of one and a half year prior to her death. He was unable to reveal the specific time or date or even month of the events i.e. in relation to the grievance put forth by his sister.

It is pertinent to note that Sunil Kumar Bhatla who allegedly informed the deceased's brother that she had been set afire by the appellant has not been examined. It is admitted by PW7, Rakesh Kumar that the said Sunil Kumar Bhatla was his co-villager and was very much alive.

PW8 Priyanka, the daughter of the deceased and the appellant did not support the prosecution version. She stated that her parents alongwith her siblings were present in their home on 17.03.2002. Their mother was preparing meals while they were watching television. Her father was having his meals. They suddenly heard cries of their mother. They saw that she had suffered burn injuries. No quarrel whatsoever had taken place

between her parents prior to the incident. She stated that her father, paternal grand mother and some others took her mother to the hospital. It is stated that there is a stove of kerosene in the kitchen. Her father's shop is there on the ground floor of the building and on the first floor they had their residence. She has clarified that when the dead body of the mother was brought back from the hospital, it was placed on the ground floor in the courtyard.

PW10 Sanjay, who took the photographs (Exs. P1 to P12) of the scene of crime, stated that a number of persons were present when he went to the spot. The appellant was present at that time.

PW4 Rajesh Kumar, Draftsman has testified that the place of occurrence is a double storied building. There was a shop on the ground floor and residence at the first floor towards the western side of the shop. On the ground floor there was a lobby. The stairs were going up to the first floor from the lobby. It is stated that the place of occurrence was situated in a thickly populated area. There were various houses and shops around.

PW5 ASI Randhir Singh has testified that the complainant came to the police station. His statement was recorded. He proceeded to the spot of occurrence. The photographer was taken alongwith him. The dead body was lying on the ground floor but he did not inquire as to who had brought the dead body on the ground floor and for what reason. Statement under Section 164 Cr.P.C. by Parul was recorded before the learned Illaqa Magistrate. Copy of the said statement (Ex. DB) was obtained. PW5 has stated that he did not bring PW8 Priyanka alongwith Parul for the purpose of recording her statement under Section 164 Cr.P.C. Ten (10) or eleven (11) persons were present at the spot of the occurrence, however, they were

not joined in the investigation.

There is nothing on record of this case to prove that the appellant by his acts or omissions or by his continuous course of conduct created such circumstances that the deceased was left with no other option except to commit suicide. The deceased was admittedly working even prior to her marriage. There is no evidence to prove the allegations raised by the complainant and the brother of the deceased. One of the daughters of the appellant and the deceased, namely, Parul in her statement recorded under Section 164 Cr.P.C., at the very outset, stated that there was no dispute between her parents. There was nothing lacking in their house. She stated that her mother was cooking meals in kitchen. Her father was taking his meals. When she heard the cries of her mother, she alongwith her siblings and their father rushed out of the room and saw that her mother was ablaze. Her mother was taken to the hospital. Parul stated that she had no idea as to how her mother caught fire. The other daughter of the deceased and the appellant, PW8 Priyanka, has not supported the prosecution version. She has denied that she ever stated before the police that her parents were not on speaking terms or her mother was subjected to physical abuse at the hands of her father. Her father, paternal grandmother (Dadi) and 2-3 other persons had taken her mother to the hospital. It is stated by PW8 Priyanka that she alongwith her sister and brother were being looked after by their father. The presence of the appellant at the spot when the police arrived is proved by the statement of PW10 Sanjay i.e., the photographer taken to the spot by the police officials.

Reference to the statement of PW9 SI Atma Ram, CIA Staff, Samalkha by learned counsel for the State to say that the dead-body was not

taken to any hospital, does not advance the prosecution case. This is so for the reason that as per the specific case of the accused, the deceased was being taken to the hospital but she passed away on the way itself before they could reach the hospital. Therefore, the dead-body was brought back home. In this situation, non-production of any documents to show admission of the deceased at any hospital does not in any manner advance the prosecution case.

Furthermore, there is no evidence, whatsoever, to prove that the deceased was subjected to physical abuse at the hands of the appellants. As noted above, there are no details regarding the illicit relations which the appellant suspected the deceased to have. The death of the appellant's wife is concluded to be suicidal in nature. There is nothing on record to prove that the appellant intentionally abetted or instigated his wife to commit suicide. The Hon'ble Supreme Court in **Ramesh Kumar v. State of Chhattisgarh**, 2002 SCC(Cri) 1088 has held that:

“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.”

It has been held by the Hon'ble Supreme Court in **Mahinder Singh vs. State of M.P. 1995 AIR SCW 4590** that in case 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 to the deceased-wife with cruelty is not enough.

This Court in **Basti Ram versus State of Haryana and others 2016 (3) RCR (Criminal) 767** observed as under:-

“ 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.”

Keeping in view the entire evidence on record and the factual matrix of the case, not an iota of evidence has been adduced by the prosecution to prove abetment or instigation of the deceased by the appellant for committing suicide. The prosecution has miserably failed to prove the commission of an offence punishable under Section 306 IPC qua the appellant. The prosecution has utterly failed to prove any active or direct act or omission on the part of the appellant which led the deceased to commit suicide finding no other option. The allegations raised against the appellant are that he suspected the fidelity of the deceased towards him and he had threatened the deceased to catch her red-handed. The complainant has in fact stated that his daughter had disclosed to him on 16.03.2002 that the appellant had decided to eliminate her and on the very next day she was done to death. It is reiterated the death of the appellant's wife has been held to be suicidal. It is settled that the act or conduct of the accused, however, insulting or abusive by itself is not sufficient to constitute abetment of commission of suicide unless such act or conduct is reasonably capable of suggesting that the accused intended by such acts the consequence of suicide. The prosecution has failed to prove any act of the appellant as 'goading or instigating' the deceased to commit suicide. The learned trial Court has clearly erred in convicting the appellant for the offence punishable under Section 306 IPC in the absence of proof of the vital ingredients/constituents of the said offence.

Keeping in view the facts and circumstances of the case, the present appeal is allowed. The impugned judgment and order dated 28.05.2004/29.05.2004 passed by the learned Additional Sessions Judge,

Panipat are set aside. Consequently, the appellant is acquitted of the charge against him. The appellant is in custody. He be released forthwith if not required in any other case.

(Lisa Gill)
Judge

April 18, 2017
rts

Whether speaking/reasoned : Yes

Whether reportable : Yes/No