

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

CRA-S No.602-SB of 2005 (O&M)

Decided on: 22.08.2017

Satpal Singh and another

....Appellants

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. C.M. Munjal, Advocate
for the appellants.

Mr. Randeep S. Khaira, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

The present appeal has been filed by the appellants/accused – Satpal Singh son of Gurcharan Singh and Veer Singh son of Ajmer Singh, challenging the judgment of conviction and order of sentence dated 23.03.2005 vide which both the appellants were held guilty for offence punishable under Section 306 of the Indian Penal Code, 1860 (in short 'IPC') in FIR No.145 dated 29.08.2003 registered at Police Station Guruharshai, District Ferozepur.

As per the prosecution version, the deceased – Hardip Singh son of Gajjan Singh resident of village Kahan Singh Wala was working as a Salesman in the Jhanduana Agricultural Co-operative Society (hereinafter to be referred as 'the Society'). On 04.08.2003 Hardip Singh consumed poison in order to commit suicide. Before consuming poison he had been telling his wife – Veerpal Kaur and others that both the accused were owing money towards him and whenever he demanded money from them, they were threatening him to

get him suspended from the service. After consumption of poison the deceased was firstly shifted to Hakim Kishori Lal Hospital at Gurharsahai. Veerpal Kaur found suicide note in the pocket of the deceased which reads as under when translated into English:-

“I Hardip Singh son of Gajjan Singh resident of village Kahan Singh Wala was working as a Salesman in the Jhanduana Co-operative Society Limited. Satpal Singh, Secretary was also working with me. I am to receive cheques to the tune of Rs.2,50,000/- from him regarding fertilizers. He is putting off the matter till now. I am asking him to account for the money but he refused and had been threatening me that he would get me suspended if I demanded cheques from him. There is one Vice President of our Society whose name is Veer Singh son of Ajmer Singh resident of village Jhanduana. He was also rendering threats to me. He also owned a sum of Rs.20,000/- towards me but now because of harassment I am committing suicide. I am in full senses at this time.

*Hardip Singh
Dt. 4.8.03.*

The deceased was later shifted to CMC and Hospital, Ludhiana. He died on 19.08.2003.

On receiving the information regarding death of Hardip Singh, ASI Bhajan Singh, the Investigating Officer registered the FIR on 29.08.2003 and thereafter, the investigation was conducted by SI Palwinder Singh. The appellants/accused were arrested as they had suffered extra judicial confession before PW9 – Rachpal Singh that they owed money from the deceased and were ready to pay the same to his wife.

After the challan was presented, charges were framed against both the appellants/accused under Section 306 IPC.

During the course of trial, the prosecution examined PW1 – SI Palwinder Singh who stated that on 05.08.2003, he received an information regarding admission of deceased – Hardip Singh in the hospital and he moved an application Ex.P1 to know the condition of the injured and the attendant doctor declared him unfit to make statement. Again on 06.08.2003, he visited the hospital and on his application Ex.P2, the doctor again opined him to be unfit to make the statement. On 06.08.2003, Veerpal Kaur wife of Hardip Singh was present in the hospital and she gave an application Ex.P3 for taking action against the accused persons and she also produced a photocopy of suicide note of the deceased. On the basis of the application, the daily diary report was entered and later on, after the death of Hardip Singh, FIR was registered on 29.08.2003 on the basis of aforesaid application Ex.P3. On 30.08.2003, he recorded statement of Dr. Gurmit Singh and Rachpal Singh and later on, on 31.08.2003, he visited the village of deceased where his wife – Veerpal Kaur handed over the original death note Ex.P5 duly laminated and he recovered the same vide memo Ex.P6. After arresting the accused persons, he also took into possession the records of the Society from the Manager of Co-operative Bank. PW2 – ASI Bhajan Singh deposed that on 19.08.2003 he visited the hospital and prepared the inquest report Ex.P22 regarding the dead body of the deceased. He further submits that even on 16.08.2003 on his application Ex.P2, the doctor has opined that the injured was unfit to make the statement. PW3 – HC Parveen Kumar deposed about handing over the dead body for postmortem before the doctor and on 21.08.2003, the viscera and envelope were handed over to him in the

office of chemical examiner, Patiala. PW4 – Chinder Singh, Peon of the Society deposed that he has produced the leave application Ex.P7 of deceased – Hardip Singh before the police and he identified his signatures on this application. PW5 – HC Gurjant Singh deposed that on 04.08.2003, he had visited the hospital to obtain the opinion of the doctor Ex.P26 and Ex.P27 and the doctor declared him unfit to make statement. PW6 – Dr. Dalit Singh Kochar, Medical Officer, Civil Hospital, Ludhiana deposed that he conducted the postmortem on 19.08.2003 and as per the postmortem report Ex.P28, chemical examiner report Ex.P29 and his opinion Ex.P30, the cause of death was due to consumption of chloro compound group of poison. PW7 – Engineer E. Rai Singh, Chief Medical Board Officer, CMC and Hospital, Ludhiana proved the intimation letters given to the police as well as the medico legal report and the patient's file Ex.P35 showing that the deceased remain admitted from 15.08.2003 to 19.08.2003 when he died.

PW8 – Veerpal Kaur, widow of the deceased reiterated the entire prosecution version regarding the commission of crime by the deceased as well as the abetment on the part of the accused for her husband to commit the suicide. She also deposed about giving an application Ex.P3 to the police and handing over a copy of death note to police on 06.08.2003 and handing over the original death note Ex.P5. Later on, she also identified the handwriting and signatures of her husband on various documents.

PW9 – Rachpal Singh deposed that he was the Ex-President of the society and he knew the deceased as well as the

accused persons. He identified the signatures and handwriting of the deceased on the death note Ex.P5 and also corroborated the prosecution version. He further deposed that both the accused suffered extra judicial confession before him after the death of deceased regarding owing money to him and that they requested him that they are ready to pay the amount to his wife.

PW10 – Manjul Talwar, an employee of the hospital proved the medical records as well as the intimation given to the police. PW11 – Parkaram Singh, Assistant Manager, Co-operative Bank, Guruharsahai deposed that he had handed over certain cheques to the police which were in the handwriting of the deceased.

In additional evidence, the prosecution proved the FIR Ex.P40 on record to show that the accused – Satpal Singh was facing a trial under the Prevention of Corruption Act and Section 409 IPC.

In the statement recorded under Section 313 Cr.P.C., both the accused admitted that deceased was working as a Salesman in the society whereas accused – Satpal Singh and Veer Singh were working as a Secretary and Vice President of the Society, respectively. However, they denied all the evidence put to them in prosecution evidence and pleaded false implication. It was set up in defence that the accused never owed any money to the deceased and they had no dispute with him regarding the fertilizers. It was also denied that they never threatened Hardip Singh to get him suspended and submitted that they have been implicated falsely on account of party faction in the society.

In defence, the appellants/accused examined DW1 – Inspector Sarabjit Singh, SHO P.S. Guruharsahai who deposed that in a

complaint titled as *Kahan Singh vs Satpal Singh*, he had held investigation as per the order of Additional Chief Judicial Magistrate, Ferozepur and proved his report Ex.D3, which he had submitted to the Court after recording statement of the witnesses. This witness also deposed that similar enquiries were conducted by Munish Chawla, the then Senior Superintendent of Police and by Balwinder Singh Chapa, the then Deputy Superintendent of Police (Detective) regarding the allegations of complaint Ex.D2 and proved their report as Exs.D11 and D12, respectively. DW4 – Rajinder Kumar, Inspector Co-operative Society produced the attested copies of resolution Ex.D13 dated 25.06.2002. Lastly, DW5 – Nirjin Singh deposed that the resolution Ex.D13 was passed in his presence and according to this witness there was no cash transaction regarding the sale of fertilizers by the society through its members. After supply of fertilizers, the members made payment in the form of cheques directly in the name of the society and thus, the cheques were handed over to the Salesman. This witness further deposed that two enquiries were conducted by the police in which the deceased – Hardip Singh who was working as a Salesman was found at fault.

The trial Court, thereafter, vide its judgment dated 23.03.2005 held both the accused guilty for offence punishable under Section 306 IPC and convicted them to undergo rigorous imprisonment for a period of 06 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months each.

The present appeal has been filed challenging the aforesaid

judgment passed by the trial Court.

It is submitted on behalf of the appellants that the trial Court has failed to maintain an equilibrium in the appreciation of the prosecution evidence and the defence evidence. It is submitted that the accused/appellants have duly proved that they never owed any money to the deceased and the deceased himself was facing enquiries in which he was held primarily liable by the police in the enquiry report Exs. D11 and D12, respectively proved by DW1 – Inspector Sarabjit Singh, SHO P.S. Guruharsahai. It is also submitted that perusal of these reports would show that the deceased was wanted by the police in case of embezzlement of funds of members of the society and, therefore, he was under pressure from the police and not from the appellants, therefore, the appellants have been falsely implicated. It is contended that the suicide note Ex.P5 is a suspicious document. It has come in the statement of PW8 – Veerpal Kaur, widow of the deceased coupled with the statement of PW1 – SI Palwinder Singh that the police was visiting the hospital from 04.08.2003 to 06.08.2003 and was obtaining the opinion of the doctor if, the deceased was fit to make statement. It was only on 06.08.2003 that a photocopy of the note was handed over to PW1 – SI Palwinder Singh and the laminated original note was produced only on 31.08.2003 whereas DDR was already registered on 06.08.2003 and the FIR was registered on 29.08.2003. Thus, it is submitted by counsel for the appellants that there is every possibility of forging and fabricating of this document in connivance with the police. It is also submitted that there is no documentary evidence on record led by the prosecution to show that the appellants/accused owed any money

to the deceased regarding the sale of fertilizers. It is also submitted that PW8 – Veerpal Kaur deposed that she never deposed before the police that her husband told her during his lifetime that accused owed any money towards him. Counsel for the appellants has further submitted that neither any suit for recovery of any amount was filed nor any complaint before any authority under the Co-operative Societies Act was filed and even no receipt of any payment showing amount due towards the appellants has been produced and, therefore, the story put forward by the prosecution that the appellants owed any amount is not at all proved. It is further contended by counsel for the appellants that even from the statement of PW9 – Rachpal Singh before whom it is alleged that the appellants have made extra judicial confession is not trustworthy as this witness is proved to be an interested witness because PW8 – Veerpal Kaur in her cross-examination admitted that this witness is related to her husband from paternal side. He has further relied upon the certified copy of the judgment dated 15.02.2011 passed by the Special Judge, Ferozepur, which is taken on record as Mark – X, vide which the appellant – Satpal Singh was acquitted in the FIR Ex.P40 produced by the prosecution.

It is further argued that abetment on the part of the appellants is not at all proved as the deceased, even if had to recover some amount from the appellants, had his legal remedy to recover the same and mere threat to get him suspended is an afterthought as no complaint was made by the deceased to any of the higher authorities/officers as the appellants were not in a dominating position over the deceased to get him suspended. Counsel for the appellants in

support of his arguments has referred to the judgments ***“Mangat Ram vs State of Haryana”***, 2014(2) RCR (Criminal) 389, ***“M. Mohan vs State Tr. Dy. Supdt. of Police”***, 2011(2) RCR (Criminal) 272 and ***“Basti Ram vs State of Haryana and others”***, 2016(3) RCR (Criminal) 767.

The Hon'ble Supreme Court of India in M. Mohan's case (supra) while discussing the concept of abetment has held as under:-

“37. We would like to deal with the concept of 'abetment'. Section 306 of the Code deals with 'abetment of suicide' which 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."*

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. 'Abetment of a thing' has been defined under section 107 of the Code. We deem it appropriate to reproduce section 107, 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 places 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."

41. *Learned counsel also placed reliance on yet another judgment of this court in **Ramesh Kumar v. State of Chhattisgarh, 2001(4) R.C.R.(Criminal) 537 : (2001)9 SCC 618**, in which a three-Judge Bench of this court had an occasion to deal with the 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. This Court in paragraph 20 has examined different shades of the meaning of "instigation". Para 20 reads 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."

42. *In the said case this court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide*

by Seema (appellant's wife therein) may necessarily be drawn.

43. In *State of West Bengal v. Orilal Jaiswal & Another*, 1994(3) R.C.R.(Criminal) 186 : (1994)1 SCC 73, this Court has cautioned that the Court 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 charged of abetting the offence of suicide should be found guilty.

44. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, 2009(4) R.C.R.(Criminal) 196 : 2009(5) R.A.J. 278 : 2009(16) SCC 605, had an occasion to deal with this aspect of abetment. 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.

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.”

Similarly, in ***Mangat Ram's case (supra)***, the Hon'ble Supreme Court has held as under:-

“Section 306 Indian Penal Code reads as under :

"306. 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."

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 Indian Penal Code, abetment must attract the definition thereof in Section 107 Indian Penal Code. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 Indian Penal Code that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.”

In *Basti Ram's case (supra)* this Court has held that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence.

On the other hand, it is argued by counsel for the State that the trial Court has rightly convicted the appellants on the basis of evidence which is sufficient to prove their guilt and prays for dismissal of the appeal.

After hearing the learned counsels for the parties, I find that there is merit in the appeal as the prosecution has not been able to prove the abetment on the part of the appellants beyond doubt. Firstly, it has come in the evidence that much prior to the death of the deceased – Hardip Singh, who was a Salesman of Jhanduana Agricultural Co-operative Society, was facing enquiries before the police as is proved from the statement of DW5. It has come on record that on the basis of complaint filed by one Kahan Singh Ex.D2, Additional Chief Judicial Magistrate, Ferozepur ordered the SHO, P.S. Guruharshai to conduct an enquiry. This witness has also proved two reports Exs.D11 and D12 respectively, submitted by the then Superintendent of Police and Deputy Superintendent of Police (Detective) regarding the complaint Ex.D2 and found that the appellant – Satpal Singh was not guilty and in fact it was deceased – Hardip Singh who was found guilty of embezzlement of funds of members of the society. Thus, it is apparent that the deceased was under pressure from the police with regard to the aforesaid two reports.

So far as the abetment on the part of the appellants is concerned, it is apparent that the appellant – Satpal Singh was the

Secretary and the appellant – Veer Singh was the Vice President whereas the deceased – Hardip Singh was working as a Salesman, therefore, in the ordinary course of business each of them was well aware of the day to day functioning of the society as well as the amount, if any, payable by any of them/members towards the society. It has also come on record that vide resolution Ex.D13, on which the deceased was also a signatory, the society has decided that there will be no cash transaction regarding the sale of fertilizers by the society through its members and after supply of fertilizers, the members were to make payment in the form of cheque in the name of the society, thus, the allegations against the appellants/accused that they owed money to the deceased – Hardip Singh on account of the payment made by members of the society is not proved as the payments by the members were made by cheques in ordinary course and, therefore, there was no pressure or coercion on the part of the appellants exerted on the deceased which may be turned as abetment as defined under Section 107 IPC.

Looking from another angle, even in the death note, it is mentioned that the deceased was to receive cheques to the tune of Rs.2,50,000/- regarding the fertilizers which would mean that the cheques which were given by members of the society were to be received by him from the accused persons, therefore, it cannot be held that the accused persons owed any money towards the deceased. With regard to the amount of Rs.20,000/-, there is no document produced on record, either from the record of the society, bank or any receipt executed by accused persons, to indicate that they had taken this

amount from the deceased. The evidence led by the prosecution neither proves any *mens rea* on the part of the accused persons to commit the offence nor proves any active act or direct act which led the deceased to commit suicide seeing no option; or that the action of the accused persons has to put the deceased in such a position that he committed suicide. The entire prosecution evidence indicate that through the departmental enquiries/police enquiries, the accused persons were resorting to the legal remedy and, therefore, there is no evidence on record to prove the abetment for commission of suicide. Since, the prosecution has failed to establish the requisite intention of the accused persons that they forced the deceased to commit suicide, they cannot be held guilty for offence punishable under Section 306 IPC especially when the allegations against the accused persons are that they had not handed over the cheques of members of the society to the deceased which itself do not constitute any abetment on the part of the deceased to commit suicide.

For the reasons recorded hereinabove, the appeal is allowed, the impugned judgment and order of conviction is hereby set-aside and the appellants are acquitted of the charges framed against them.

(ARVIND SINGH SANGWAN)
JUDGE

22.08.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No