

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

CRA-S-796-SB-2014 (O&M)

Date of decision : 18.07.2017

Jaswant Kaur

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the applicant-appellant.

Mr. N.K. Banka, DAG, Punjab

Mr. H.S. Diwana, Advocate
for respondent Nos.2 to 6.

JITENDRA CHAUHAN, J. (Oral)

This appeal is directed against the impugned judgment dated 07.12.2013, passed by learned Sessions Judge, Fatehgarh Sahib, whereby accused-respondent Nos.2 to 6 (hereinafter referred as 'private respondents') were acquitted of the charges framed against them under Section 306 read with Section 34 of IPC.

It has been averred in the appeal that deceased, Gurjit Kaur daughter of the appellant had committed suicide due to the harassment and beatings of respondent Nos.2 to 6, which she herself disclosed to the appellant that due to the maltreatment of the private respondents, she wanted to finish her life. The harassment and maltreatment by the private

respondents was due to the partition of the property. The learned trial Court has ignored these material facts which otherwise clearly establish the offence against respondent Nos.2 to 6 under Section 306 of IPC.

On the other hand, the learned State counsel and the learned counsel for the private respondents have supported the impugned judgment and state that respondent Nos.2 (husband of the deceased), 3 and 5 are brothers and they are living separately. During the partition of property, since the father of respondent Nos.2, 3 and 5 was residing with respondent No.2 and her wife i.e. deceased-Gurjit Kaur, respondent No.2 had received more share to that of other brothers. Therefore, the private respondents have no role in the death of deceased, Gurjit Kaur.

I have heard the learned counsel and carefully perused the entire record on file.

The allegations against the private respondents are that over the partition of land they allegedly harassed the daughter of the appellant and gave beatings to her and due to the said act of private respondents, deceased had consumed the poisonous substance. In this way, private respondents have instigated the deceased to commit suicide. The appellant alleged that respondent No.2 gave beatings to her daughter (since deceased) as he had received less share in the property. However, during the cross examination the appellant had herself stated that respondent No.2 and his wife i.e. daughter of the appellant had received the more property. Therefore, it is unbelievable that respondent No.2 had harassed the

deceased for the less share. The more property was given to respondent No.2 to that of his other brothers as he was taken care of his father. Further, there is material contradiction in the statement of the appellant and PW5- Baldev Singh, brother of the appellant with regard to incident that took place one month prior to the alleged occurrence. There is material improvement in the statement of the appellant regarding the receiving of information qua the alleged occurrence. After the incident, respondent No.2 had taken the deceased to the hospital and the treating doctor, i.e. Dr. Neeraj Kakkar in his statement had deposed that when he attended the deceased, she was conscious and disclosed to him that she had taken the poisonous substance by mistake instead of taking some medicine.

Abetment has been explained by this Court in **Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh 2002 (2) RCR (Criminal) 687**, wherein it is observed that Section 107 I.P.C defines the abetment to mean that a person abets the doing of a thing if he firstly, 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. Reference, in this regard, may further be made to **Sohan Raj Sharma Vs. State of Haryana 2008(2) RCR (Criminal) 810**, wherein Hon'ble Apex Court has observed at page 811 that the offence of abetment is committed when the person abetting

instigates any person to do that thing; (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) Intentionally aids, by act or illegal omission, the doing of that thing. Further, in **Labh Singh and others Vs. State of Punjab 2013(4) RCR (Criminal) 1016**, it has been held by this Court that in order to attract the penal provisions of Section 306 IPC, there should be a positive evidence on record that appellants have intentionally hatched a conspiracy or actually/actively aided and abetted in such a manner, leaving no option for victim to commit suicide, while holding further that each person's sensitivity and sociability pattern is different from the others and each person has his own idea of self esteem and self respect. Without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. There has to be a clear *mens rea*, active participation or direct act and intention to provoke, incite or encourage to do an act by the accused, which led the deceased to commit suicide.

In view of above discussed settled proposition of law, if this Court go through the case in hand, there is no evidence, worth the name, which may prove that the accused persons, at any point of time, instigated the deceased to commit suicide or conspired for such suicide by the deceased or aided the deceased intentionally in committing suicide.

Reference, in this regard, may be made to **Cyriac and another Vs. The S.I. of Police 2005(4) RCR (Criminal) 525** wherein it is observed that '*mens rea*' has to be established on record to prove that the

accused had abetted the suicide.

Reference is further made to **Ramesh Kumar Vs. State of Chhatisgarh 2001(4) RCR (Criminal) 537**, wherein it has been held that the ill treated at the hands of the accused/husband and even beating his wife on one occasion at odd hours of night may amount to cruelty under Section 498A IPC but does not amount to abetment of suicide under Section 306 IPC, if the wife ends her life. It is observed that it is very material for the purpose of recording finding on the question of abetment, to ascertain as to what happened on the date of the occurrence. In **Ravinder Pal Singh Vs. The State of Punjab 2008(2) RCR (Criminal) 47**, it is observed that to prove the abetment for commission of suicide, it is to be proved that the words of gestures used by the accused so as to bring the person abetted, to such a stage and under such circumstances that he could think nothing more except to end his life and compelled by the circumstances to such an extent that he could do nothing else but to end his life.

Hon'ble Supreme Court, in **Bhagwan Dass Vs. Kartar Singh and others 2007(1) RCR (Criminal) 87**, has observed that mere harassment of wife by husband due to differences per se does not attract Section 306 IPC read with Section 107 IPC, if the wife commits suicide. Where there is no *mens rea* and the husband actually does not want the wife to end her life, her abetment to commit suicide is not made out.

In **State of Haryana Vs. Anup Singh 2015(4) RCR (Criminal) 53**, where wife had committed suicide, it has been held by this

Court that in order to prove the abetment of suicide, the act of the accused must have been intended to push the deceased into such a position that he commit suicide. The respondent cannot be held guilty simply on the ground that there must be something wrong, otherwise, there was no reason for her to commit suicide. In order to fasten the criminal liability, the ingredients of the offence should be established beyond shadow of reasonable doubt. A person cannot be convicted merely on the basis of inferences and presumptions.

To bring home the guilt to private respondents under Section 306 IPC, the appellant was required to lead some cogent and convincing evidence, but she failed to do so. Therefore, without any positive act on the part of private respondents to instigate or aid in committing suicide; and in view of the contradictory stand of the appellant, they cannot be convicted. In such circumstances, this Court on re-appreciation of the evidence and having regard to the language of Section 306 IPC came to the conclusion that the prosecution evidence did not establish the ingredients of the section, and that there was no evidence to show that any of the accused-respondent Nos.2 to 6 were guilty of abetment.

Keeping in view the above, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting respondent Nos.2 to 6, this Court feels that learned Sessions Judge, Fatehgarh Sahib, has passed the impugned judgment dated

07.12.2013, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the instant appeal is dismissed.

18.07.2017
ashok

(JITENDRA CHAUHAN)
JUDGE

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