

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.44 of 2011

1. Md. Jafar @ Jafar, S/O Maqbool,
2. Md. Makbul, S/O Late Kalaroo
Both R/O Village-Gandras, P.S.-Dagaruwa, Distt.-Purnea
... .. Appellant/s

Versus

The State of Bihar
... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate.
For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 08-05-2018

Heard learned counsel for the appellants as well as learned counsel appearing on behalf of the State.

2. The present appeal is directed against judgment of conviction and sentence dated 28.12.2010 passed by the learned Additional Sessions Judge, F.T.C. No.-2, Purnea in S.T. No. 248 of 2009, whereby both the appellants, being found guilty committing offence of abetment of suicide under Section 306/34 of I.P.C., have been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years coupled with fine of Rs. 5000/- each and in case of default of making payment to further undergo rigorous imprisonment for six months.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and sentence, both the appellants have preferred the present appeal.

4. The prosecution case, as per the written information of



Abdul Rakib (PW-2) the informant of the case is that his daughter Raijun Khatoon's Nikah was performed with Md. Jafar 10 years back, out of their wedlock, three girl children were borne, presently aged about 07 years, 04 years and 02 years respectively. However, after marriage, his daughter was never happy in matrimonial relationship because on one pretext or other, she was tortured by her husband, father-in-law, mother-in-law and brother-in-law. Further allegation is that two months prior to the occurrence, his son-in-law Md. Jafar had gone to Punjab to earn livelihood, thereafter her mother-in-law, father-in-law and brother-in-law used to torture his daughter. It is alleged that only three days back, she informed him that her husband Jafar had pronounced Talaque, thrice so after receiving the information he reached to her matrimonial home and tried to talk to his son-in-law on phone but could not get connected. Again he went there on the next day and talked with his son-in-law on mobile and informed him that as he had divorced his wife so he was taking back her along with him but his son-in-law replied that he had not given divorce and asked him not to take back his daughter, even Md. Makbul, father-in-law, also told him that his son had not given her Talaque, so does not take away his daughter, thus, he returned back alone, but on the next day, in the evening, he got information about his daughter having committed suicide. The informant alleged that due to torture committed by the accused persons, his daughter Raijun Khatoon out of frustration committed



suicide.

5. On the basis of written information, police instituted Baisi P.S.Case No. 135 of 2008 under Section 306/34 of I.P.C. and later on also added Section 498A of I.P.C. The police, finding the case true, submitted charge sheet under Sections 306 and 498A/34 of the I.P.C. On the basis of police report, the Magistrate, after taking cognizance, committed the case to the court of sessions for trial and both the appellants have been convicted under Section 306/34 of I.P.C. however, acquitted from the charge framed under Section 498A of I.P.C. as not found guilty for subjecting his wife to cruelty.

6. Learned counsel appearing on behalf of the appellants submits that the trial court has not found any evidence of committing cruelty to the deceased by her husband, father-in-law or any other accused at all in connection with demand of dowry or cruelty of such nature to compel or drive her to commit suicide or causing grave injury to her, limb or health, mental or physical. The next submission is that no ingredient of abetment of suicide, as per section 107 of the I.P.C., has been established by the prosecution and has placed reliance on two decisions, namely, (i) *Amlendu Pal @ Jhantu vs. State of West Bengal* reported in *2010(1) East Cr.C.79(Jhr.)*, (ii) *S.S.Chheena vs. Vijay Kumar Mahajan & Anr.* reported in *2010(4) East Cr.C.1(SC)*.

7. Learned counsel appearing on behalf of the State submits that informant's daughter, wife of appellant no. 1, committed



suicide out of frustration because her husband had pronounced three-Talaque, so charge of abetment under Section 306/34 of I.P.C. has been proved by the prosecution.

8. Having considered the rival submissions, it is necessary to analyse evidence on record. The Court finds that altogether 16 prosecution witnesses have been examined by the prosecution but only relevant evidence is of PW-2, Abdul Rakib, informant, father of the deceased, who committed suicide. PW-10 Dr. Vishnu Prasad Agrawal has conducted postmortem over the dead body and rest other witnesses have either turned hostile or they have only stated that the informant's daughter died at her matrimonial home rendering their evidence of no relevance an fact in issue.

9. PW-2, Abdul Rakib, admitted in his cross-examination in para-9 that prior to the occurrence, matrimonial life of his daughter was rather peaceful, only on petty issues they used to quarrel as normally happening in between couple. Evidence of PW-2 also indicates that appellant no. 1 married with his daughter ten years back and their matrimonial life was peaceful, his testimony does not even indicate any instance of cruelty or torture committed against Raijun Khatoon, wife of appellant no. 1, by her husband and rest other family members. On account of lack of evidence showing cruelty committed to the deceased, prior to the occurrence, either in connection with any demand of dowry or committing any cruelty to drive her to commit suicide or causing any grave injury or any kind



of torture to her life, limb, health, mental or physical, was ever done by any of the family members. The only cause being shown for committing suicide in the evidence is so-called pronouncement of three-Talaque by her husband telephonically. PW-2 categorically indicates that when he talked to his son-in-law appellant no. 1, he denied to have pronounced three-Talaque to his wife and also requested him not to take back his wife along with him. Even other family members and appellant no. 2 denied that the appellant no. 1 had divorced his wife and they also requested him not to take her back. The evidence available on record suggests that no divorce was pronounced by the husband to his wife, daughter of the informant (PW-2).

10. Abetment of an offence is defined under Section 107 of I.P.C. which reads as follows:

“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 doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of the thing.”

11. This section envisages three situations showing abetment of a crime, first is instigation done by accused to the person concerned for doing that offence. In the present case for doing suicide, the literal meaning of word ‘instigate’ is to incite someone to



commit suicide;so, if anyone does any action inciting someone to commit suicide or instigating to do the act of suicide then it comes within the purview of abetment of suicide. Second ingredient is coming into conspiracy or doing particular thing with someone person and does something illegal or makes any illegal omission in order to the doing of a thing. Third aspect that any one intentionally aids any act in committing suicide of a person then he to will be accused of making abetment for committing suicide. Hence in order to constitute abetment and to prove its ingredients, there must be positive evidence on record to establish that accused has intentionally instigated, incited or entered into conspiracy with other persons in order to achieve the said result or intentionally added in commission of act of suicide as in the present case.

12. In the case of *S.S.Chheena* (supra), the Apex Court referring the case of *State of West Bengal vs. Orilal Jaiswal, (1994) 1 SCC 73*, held as follows:

“26. 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 differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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.”

13. In the case of ***S.S.Chhena*** (supra), the Apex Court has referred another case of ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi); (2009) 6 SCC 605***, of which paragraphs 27 and 28 are reproduced hereinbelow:

“27. This Court had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “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 other. Each person has his own ideal of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. 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. The intention of the Legislature and the ratio of the cases decided by this Court is clear 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

14. In the case of ***Amlendu Pal @ Jhantu*** (supra), the Apex Court, referring another case of ***Randhir Singh v. State of Punjab; (2004) 13 SCC 129***, has observed as follows:

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing.



In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that 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.”

15. The Apex Court has emphatically laid down the principle that intention of the Legislature and ratio of the cases decided by the Apex Court is clear that in order to convict a person under Section 306 I.P.C., there has to be a clear *mens rea* to commit the offence, further coupled with an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he or she has left with no other option but to commit suicide. However, in the present case, evidence of the deceased father, PW-2 undoubtedly shows that matrimonial relationship of the deceased was cordial and harmonious with her husband, appellant no. 1, except normal bickering as it happens in the family in between husband and wife. PW-2 had also talked with the appellant no. 1 whether he had given any divorce to his wife or not but the same was denied moreover; there were three children out of their wedlock. PW-2 was also ready to give her support, so there is complete absence of any instigation by the appellant or intentionally aiding the deceased to commit suicide. The trial court too has not even proved any evidence of cruelty to the deceased prior to occurrence, so charge under Section 498 of IPC has failed.



16. Thus, the Court, in view of evidence on record, does not find any positive evidence on record showing appellants doing any such action, any instigation, incitement or in any manner intentionally adding for committing suicide by wife of appellant no. 1. There is also evidence on record as PW-2, father of the deceased in his deposition, states that his daughter was mentally not sound enough and she was suffering from some kind of incurable disease and there was normal relationship between his son-in-law and daughter. So in absence of any positive evidence showing involvement of the appellants in instigating, inciting or intentionally adding in commission of suicide by deceased Rajjun Khatoon, their conviction under Section 306 of I.P.C. is unwarranted. Trial court has convicted them without any positive evidence of abetment on record. Hence, both the appellants are acquitted of charge under Section 306/34 of Indian Penal Code. As both the appellants are on bail, so they are directed to be discharged from the liabilities of their respective bail bonds.

17. In the result, the appeal stands allowed.

(Arun Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	2/08/2018
Transmission Date	2/08/2018

