

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

**Crl. Appeal No. S-214-SB of 2004
Date of decision : 09.08.2018**

Vikas Garg

... Appellant

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Paras Talwar, Advocate
for the appellant.**

Mr. Jagmohan Ghuman, DAG Punjab.

ANITA CHAUDHRY, J.

By way of aforesaid appeal, a challenge has been laid to the judgment of conviction and sentence dated 14.1.2004 vide which the appellant has been held guilty under Section 306 IPC. He had been sentenced to undergo rigorous imprisonment for five years and pay a fine of Rs. 1000/-. In default of fine, he was required to undergo further rigorous imprisonment for one year.

The appellant and his parents were tried for causing the dowry death of Vandana. The prosecution case was that Vandana was married to appellant on 25.02.2001. The appellant and his parents were not satisfied with the dowry and they consistently harassed and maltreated her for bringing more dowry. According to prosecution Vandana was found dead in her matrimonial home on 12.06.2001.

The prosecution was launched on the basis of complaint made by Sudarshan Kumar, father of the deceased. The accused were arrested and

put to trial. The brother-in-law was juvenile. He was sent to the Juvenile Justice Board for trial separately.

At the trial, prosecution produced eleven witnesses, including the father and the mother of the deceased as PW6 and PW7 respectively. Both of them deposed on the lines of prosecution case. The other witnesses were the photographer, the witnesses relating to the investigation of the case and the medical evidence.

The accused adjured the trial. They took the stand that the deceased was having relations with some boy which she continued even after the marriage. This fact came in the knowledge of members of in-laws family and she put an end to her life as she had been exposed and felt guilty.

They examined nine witnesses in defence.

After analyzing the evidence on record, the trial Court acquitted the parents-in-law and found it not to be a case of dowry death, but held the appellant guilty under Section 306 IPC for having abetted the suicide and sentenced him in the manner indicated above.

Dis-satisfied with the same, appellant has preferred the instant appeal. The State has chosen not to file any appeal.

I have heard learned counsel for the parties and have gone through the records carefully.

Learned counsel for the appellant had submitted that the trial Court had erred in convicting and sentencing the appellant under Section 306 IPC. According to him, there was no evidence on record to prove the complicity of the appellant for having abetted the suicide. He had further submitted that the relatives came to know about the extra marital affairs of

the deceased and feeling ashamed she committed suicide and there was no role of the appellant.

Learned State counsel supported the judgment rendered by the trial Court. According to him, the appellant was rightly convicted and sentenced.

The deceased was married to the appellant on 25.02.2001. She died within four months of the marriage in the matrimonial home. The cause of death in the post mortem report is asphyxia due to hanging. Her death was unnatural and is not in dispute. The stand taken by the defence is that she committed suicide as her illicit relations came to the knowledge of in-laws.

In the circumstances, it has to be examined, whether the appellant by his act and conduct drove Vandana to commit suicide.

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."

From a bare reading of the provision, it is clear that to constitute an offence under **Section 306** IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under **Section 306** would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in **Section 107** of the IPC, which defines abetment of a thing. A person can be said to have abetted in doing 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. The explanation appended thereto states that any willful misrepresentation or willful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under [Section 306](#) of the IPC.

In *Chitresh Kumar Chopra v. State (Government of NCT of Delhi)*, AIR 2010 SC 1446, Hon'ble Apex Court while dealing with the term 'instigation' held:

“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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

To constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or ‘urging forward’. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action; provoke to action or reaction.....to keep irritating or annoying somebody until he reacts.”

The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under [Section 107](#) IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. ([State of Punjab v. Iqbal Singh](#), AIR 1991 SC 1532; [Surender v. State of Hayana](#), (2006) 12 SCC 375; [Kishori Lal v. State of M.P.](#), AIR 2007 SC 2457; and [Sonti Rama Krishna v. Sonti Shanti Sree](#), AIR 2009 SC 923.)

From the above, it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. The case is required to be considered in the light of aforesaid settled legal propositions

The star witnesses of the prosecution were the parents of the deceased who stepped in the witness box as PW6 and PW7. They had deposed about the maltreatment and harassment being meted out to the deceased for want of dowry. The trial Court held that giving of gifts on festival and demand of money due to business losses cannot be termed as dowry. It was held that a young daughter had died and it was obvious for the parents to depose especially when the relations became strained. In the enquiry by the Senior Police Officer, the allegation of demand of dowry was

found not substantiated. There is no challenge to these findings. But the fact remains that Vandana had died unnatural death and she was married for only three and a half months.

The trial Court had adverted to the conduct of the appellant which had caused mental cruelty to the deceased which compelled her to end her life. The evidence led by the defence when read in juxtaposition with the stand taken by them, makes it evident that the appellant was suspecting the fidelity of the deceased from the beginning. Just twenty days of the marriage, the husband moved an application to the Telephone Department asking them to put his phone on observation. The relevant observations made by the trial Court in Para No.38 of judgment which clinches the issue and read as under:-

“38. ... The testimony of this defence witness also tends to prove that accused Vikas Garg was suspecting fidelity of his wife i.e. Vandana deceased. This conclusion further find corroboration from the testimony of DW2 Harinder Singh SDO Tehelphone, Jagraon. From the statement of this witness, it is clear that an application dated 16.03.2001 was received in their office on 20.3.2001 for observation on telephone No. 23416 i.e. Telephone of the accused and the same was put under observation. The marriage took place on 25.02.2001 and whereas application for keeping the telephone under observation was moved on 16.3.2001 just after about 20 days of the marriage. So, this fact clearly suggests that accused Vikas Garg was suspecting fidelity of his wife Vandana due to receipt of some telephone calls from one boy. This fact further find corroboration from the testimony of DW-5 Jyoti Jain and DW-7 Anju Bala Garg. Both these witnesses have deposed about receipt of some suspicious telephone call by Vandana during Kitty party.

Once it is found that accused Vikas Garg was suspecting the fidelity of his wife Vandana and even got kept the telephone in the house under observation just 20 days after the marriage it clearly suggest that the relations between them must have become strained. This must have caused mental cruelty to the deceased forcing her to commit suicide. So, in these circumstances, only Vikas Garg accused is responsible for the suicide of his wife Vandana.”

The above findings leave no manner of doubt that it was the appellant who, by his act and conduct, had caused mental harassment to the deceased immediately after the marriage and the mental trauma which the deceased underwent before her death can be understood from the fact that she was left with no other option, except to end her life. Doubting the chastity of a woman without any basis constitutes mental agony and it was enough to disturb the mental equilibrium of the deceased. The Apex Court in [Ramesh Kumar v. State of Chhattisgarh](#), AIR 2001 SC 3837 observed that what constitutes ‘instigation’ must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide. The trial Court has rightly held him guilty for abetment of suicide by Vandana. There is no scope for interference in the findings, which are based on evidence on record.

The trial Court has already taken a lenient view while sentencing him to imprisonment for five years. No interference in the matter of sentence is called for.

For the reasons given above, the appeal merits dismissal. The judgment and order of conviction and sentence of the appellant is affirmed. The appeal is dismissed. The bail bonds and surety bonds stand cancelled. The appellant is directed to surrender before the CJM Ludhiana within 30 days from today to undergo the remaining part of the sentence. In case he fails to surrender before the Court within the stipulated time, the CJM would take appropriate steps in the matter. A copy of this order be sent to the CJM, Ludhiana for strict compliance.

August 09,2018

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No