

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

**Crl. Appeal No. S-95-SB of 2004
Date of decision : 17.01.2018**

Yashwanti Devi & Ors.

... Appellants

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Subhash Godara, Advocate for
Mr. S.S. Dinarpur, Advocate
for the appellants.**

Ms. Dimple Jain, AAG Haryana.

ANITA CHAUDHRY, J.

By way of aforesaid appeal, a challenge has been laid to the judgment of conviction and sentence dated 29.11.2003 vide which the appellants have been held guilty under Sections 306/34 and 498-A IPC. They had been sentenced to undergo rigorous imprisonment for five years and pay a fine of Rs.10,000/- each under Section 306 read with Section 34 IPC. In default of fine, they were required to undergo further rigorous imprisonment for one year. They were sentenced to undergo rigorous imprisonment for 2 years and fine of Rs.4000/- each under Section 498-A IPC. In default whereof, they were to undergo further rigorous imprisonment for six months. Both the sentences were ordered to run concurrently.

The appellants are the parents-in-law and husband of deceased Mukesh. Mukesh was married to Rajesh on 25.07.1996. She died an

unnatural death (by hanging) on 01.04.2003 i.e. within seven years of her marriage. Allegations are that there were persistent demand of dowry by the accused. The deceased was harassed and treated with cruelty due to non-fulfilment of demands. On the complaint of Birkha Ram (PW9), father of the deceased, case was registered, he suspected that either his daughter had been killed by the accused or she had committed suicide fed up by the persistent demands. Autopsy was carried out. The cause of death was stated to be asphyxia due to hanging.

The appellants were arrested and put to trial.

Charge under Section 304-B read with Section 34 IPC was framed. Alternate charge under Sections 302 read with Section 34 IPC and under Section 306/ 34 IPC was framed.

At the trial, the prosecution produced 12 witnesses, including complainant Birkha Ram (PW9), Ramesh (PW10), brother of the deceased, PW11 Sanjay, cousin and PW12 ASI Ram Niwas, the investigating officer.

The incriminating circumstances led by the prosecution were put to the accused in his statement under Section 313 Cr.P.C., which were adjured. The parents-in-law took the plea of alibi; separate mess from the couple and no demands, while according to Rajesh, neither any dowry was given in the marriage nor there were any demands. He took the stand that the deceased developed illicit relations with their tenant Roshan Lal. On coming to know about it, Roshan Lal was asked to vacate the house, but on the fateful day he(Rajesh) came to the house and found Roshan Lal. Roshan Lal fled from the house. He told Mukesh that he would tell her parents and left for the shop. It is in his absence Mukesh committed suicide.

In defence, the appellant examined four witnesses.

On appraisal of the evidence produced on record, the trial Court disbelieved the evidence so far as offence under Sections 304-B and 302 read with Section 34 IPC is concerned, but, as noticed above, held the appellants under Sections 306 read with Section 34 IPC and under Section 498-A IPC in the manner indicated above.

Dis-satisfied with the same, the appellants have filed the present appeal.

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

Before proceeding further, it is apposite to mention here that the trial Court held that the marriage took place on 25.07.1995 and not on 25.07.1996, as projected by the prosecution. The death was beyond seven years of marriage and presumption under Section 113 B of Evidence Act was not available to the prosecution. There was no mark of violence or forceful strangulation on the body. Relying upon the testimony of PW1 Dr. Ravi Kanta, who had conducted post-mortem examination, it was concluded to be a case of suicide by hanging and not homicidal. There is no challenge by the State to these findings of trial Court.

The trial Court held that the appellants raised demands after three years of the marriage and she was treated with cruelty and there was willful conduct of the part of the appellants which drove the deceased to commit suicide. Accused Rajesh has also taken the stand that Mukesh had committed suicide. In the circumstances, it has to be examined, whether the appellants treated the deceased with cruelty and abetted suicide by Mukesh.

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 wilful misrepresentation or wilful 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 “goad” 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 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 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 charge against the appellants is that they, in furtherance of common intention, maltreated Mukesh for dowry and abetted her to commit suicide. There is force in the contention of learned counsel for the appellant that there is nothing on record by which it can be gathered that the accused instigated the deceased to commit suicide. In the case in hand, the prosecution examined PW8 Birkha, the father of the deceased, PW10 Ramesh, the brother and PW10 Sanjay, the cousin. A perusal of their testimony suggest that they had attempted to project that immediately after the marriage there had been demands of cash by the accused for business expansion of Rajesh and at different times Rs.18,000/- and Rs. 20,000/- were given, but the harassment continued and at one occasion she was sent to her matrimonial home with Rs.2000/-. Their testimony would reveal that not even a single instance had been disclosed by them that immediately preceding the suicide by Mukesh they had created such a situation which forced her to take the extreme step of ending her life. PW9 Birkha had

admitted that no complaint was made to the police about the alleged maltreatment by the accused. They had tried to project that few days earlier to the occurrence, PW10 Ramesh had visited the house of Mukesh and she told that accused persons had told her some bad things, but Ramesh failed to explain as to what bad thing were said to the deceased. Though, PW8 Birkha deposed that he was told by Ramesh that 5-7 days prior to the occurrence Mukesh told him about giving of beatings by the accused, but Ramesh was silent on this aspect. This time also the matter was not reported to the police or to the Panchayat. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life, but the evidence of record falls short of the requirement. Except the saying of bad things, as disclosed by PW10 Ramesh, there is no concrete evidence to show that the accused instigated the deceased to commit suicide.

The prosecution story about demand of dowry, as mentioned in the complaint and disclosed in the Court, seems to be result of deliberations. It has come in the statements of PW9, PW10 and PW11 that they received information about the death of Mukesh at about 4 PM on 01.04.2003 and had reached the matrimonial house of Mukesh at around 9 PM and the police reached early morning of 02.04.2003 and the statement of complainant was recorded on 02.04.2003 at 5:30 AM and the FIR was registered and a copy thereof reached the Magistrate at 7:00 AM. The investigating officer also deposed that he reached the spot at 6:15 AM on 02.04.2003. It was projected that the police received information about the death of Mukesh on 02.04.2003 early morning and then FIR was lodged.

Their depositions were falsified by PW4 Const. Surinder Singh,

photographer who deposed that he took the photographs of the body at mid night, meaning thereby the police was already in receipt of the information about the death of Mukesh. Time was taken to deliberate and the FIR was registered after due consultations.

There are other reasons also to disbelieve the story put forth by the prosecution about demands. There was difference in the financial status of the families. The father of Mukesh was a casual labour and admittedly, he was dependent upon the availability of work and was earning Rs.1000-1200 per month. Appellant Sat Narain, the father-in-law was admittedly a Kanugo in the revenue department and appellant Rajesh was selling bags at his shop. The complainant and his son admitted that they were not having any land in their names nor they had maintained bank account. There was no occasion for the appellants to ask for the dowry from the complainant, who was a casual labour. In the complaint there was no mention about entrustment of dowry nor any list was provided by the complainant and it was a simple marriage where the cards were not printed and no photographs were clicked, as admitted by PW10. The difference in the financial status negates the plea of dowry demand.

The stand of the defence, from the beginning, was that the deceased had illicit relations with a tenant, who later on was thrown out and on the fateful day appellant Rajesh saw the tenant in his house and he told the deceased that he would tell her parents and it could be that due to this she committed suicide. They had put this suggestions to all the witnesses, which were denied. No evidence had been led by the defence in this regard, but the aspect of the matter is that the story of demand of dowry and harassment is not acceptable as per reasons recorded above and there is no

evidence to prove that the accused abetted the suicide. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviour in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability, which may either be an attempt for self-protection or an escapism from intolerable self.

For the reasons recorded above, it is held that the prosecution has failed to prove the case against the appellants beyond shadow of reasonable doubt and the trial Court had erred in convicting and sentencing the appellants. The appeal is allowed. Judgment of conviction and sentence is set aside. Appellants are acquitted.

January 17,2018

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No