

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

Criminal Appeal No. 1073 SB of 2013 (O&M)
Date of Decision: May 29th, 2018

Kuldeep Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Navkiran Singh, Advocate with
Ms. Harpreet Kaur, Advocate,
for the appellant.

Mr. Siddharth Sanwaria, DAG, Haryana.

JAISHREE THAKUR, J.

1. The appellant/accused—Kuldeep Singh, has preferred the present appeal against the judgment dated 5.3.2013 passed by the learned Additional Sessions Judge, Sirsa, vide which he was convicted for the offence under Section 306 IPC and was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹5,000/-, in default of payment to further undergoing rigorous imprisonment for three months.

2. The prosecution story, in brief, is that on 18.6.2011 SI Ram Kumar (PW5) received a telephonic message that one woman has committed suicide in government quarter, Mini Secretariat, Sirsa. The lock of the said quarter was broke open and the police found dead body of Kavita lying near

the bed. One litre spray bottle, one steel glass, one bottle containing tablets, one mobile phone make Nokia, having SIM No. 94168-46721 were found present there. As per SMS of the mobile, a suicide note, containing two pages, was recovered from the almirah.

3. Thereafter, Jai Kishan—complainant (father of deceased Kavita) got recorded his statement (Ex.PA) alleging that the marriage of his daughter Kavita was solemnized with the appellant—Kuldeep, who was working as a Peon, about six years ago. In the marriage, he had given sufficient dowry articles, including fourteen tolas of gold, furniture, clothes, beddings, a motorcycle and ₹81,000/- in cash. Six months after the marriage, the in-laws of his daughter sold the jewellery of Kavita and the motorcycle and started demanding a car. After four years of marriage, the deceased gave birth to a girl child. Kavita was residing with her husband and mother-in-law Shakuntla in the government accommodation. It was alleged that the accused-appellant and his mother used to harass the deceased for not bringing a car. On 17.6.2011, Sandeep, brother of Kavita, came to her house. She asked her brother Sandeep to provide a car to her in laws otherwise, they would kill her and on the very next date i.e. 18.6.2011, the complainant came to know that her daughter had died in the aforesaid government quarter.

4. On the basis of the statement of the complainant (Ex. PA), formal FIR Ex. PA/2 was recorded. The Investigating Officer summoned ASI Dharam Pal, government photographer (PW8), who took the photographs of the spot and the dead body. Dr. Joginder Singh, Incharge

Scene of crime also reached the spot and inspected the same. Inquest proceedings (Ex. PW5/A) were conducted by SI Ram Kumar (PW5) and took into possession insecticide-bottle of one litre, one stainless steel glass and one Nokia phone having SIM No. 9416150323 and 12 tablets in a vial from the spot, vide separate recovery memo Ex. PW5/B. The Investigating Officer prepared a rough site plan of the place of recovery Ex. PW5/C. Thereafter, the dead body of the Kavita was handed over to ASI Sukhdev Singh for conducting postmortem examination. A Board of Doctors consisting of Dr. Subhashni Gupta, Dr. Virender Kaur and Dr. Bharat Bhushan conducted the postmortem examination of Kavita, vide report Ex. PW4/A.

5. On 20.6.2011, the accused/appellant was taken out from the police lock up. On interrogation, accused/appellant made a disclosure statement Ex. PW12/A, on the basis of which dowry articles were recovered and taken into possession, vide recovery memo Ex. PW5/G. On 21.6.2011, the accused/appellant made a fresh disclosure statement Ex. PW5/H and got recovered the dowry articles, which were taken into possession vide recovery memo Ex. PW5/J. Rough site plan of the place of recovery Ex. PW12/B was also prepared.

6. On 22.8.2011 Inspector Ajaib Singh (PW13) took into possession of marriage card (Ex. PW13/B), vide recovery memo Ex. PW13/A. The accused/appellant's mother Shakuntla Devi was arrested on 11.9.2012. The parcel containing viscera of the deceased, bottle of one liter of spray and the sealed glass bottle containing tablet were sent to Chemical

Examination, which submitted its report Ex. PX. On police application Ex. PC, after receiving the Chemical Examination report, the Medical Board headed by Dr. Subhashni Gupta opined (Ex. PD) that the cause of death was poison.

7. The suicide note, one exercise book and Haryana Govt. Calendar of 2011 recovered from the from the house of the accused/appellant and sent to Forensic Science Laboratory for comparison of handwriting of deceased. After completion of the investigation, challan was put in before the JMIC, Sirsa, who committed the same to the Court of Session.

8. On appearance of the accused, in the court, copies of all the documents sent along with the police report and relied upon by the prosecution were supplied to him, as per the mandatory requirements of Section 207 Cr.P.C.. From the perusal of those documents and after hearing PP for the State and the accused in person, the learned Additional Sessions Judge found sufficient grounds for presuming that the accused committed offence and charged him accordingly, to which he pleaded not guilty and claimed trial.

9. To prove the guilt of the accused, the prosecution examined Jai Kishan, complainant (PW-1), Indraj son of Talsa Ram (PW-2), Sandeep, brother of the deceased (PW-3), Dr. Subhashni Gupta, SMO (PW-4), Ram Kumar, Retired Sub Inspector (PW-5), Constable Suresh Kumar (PW-6), SI Suresh Kumar (PW-7), ASI Dharamvir (PW-8), EHC Dharam Pal (PW-9), ESI Sadhu Ram (PW-10), Radhey Sham Draftsman (PW-11), Inspector

Maha Singh, SHO (PW-12), Inspector Ajaib Singh (PW-13) and Inspector/SHO Suresh Pal (PW-14) and also tendered Chemical Examiner reports Ex .PX and Ex. PY .

10. After the close of the prosecution evidence, the accused was examined by the trial court and his statement was recorded under Section 313 of the Code. All the incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his false implication. Accused/appellant submitted that he has been falsely implicated in this case. He was posted as Peon in D.C. Office, Sira. He and his wife Kavita used to reside at Mini Secretariat Sira. His mother was residing in village Mangalia. His wife was 10+2 pass at the time of marriage. He got her higher education of B.Sc., M.Sc and course of food technology. He never made any demand of dowry. His father-in-law had not given any motorcycle to him. He also did not contribute for purchase of scooty in the name of his wife Kavita. His wife Kavita was social and was of good nature. She came in contact of co-students of higher families during her studies and she remained under tension being the wife of a peon. They loved each other and there was no ill will between them. He never demanded any dowry and allegations of demands of dowry are false. In his defence, the accused has examined Bhagirath as DW1.

11. After going through the evidence, so produced and hearing PP for the State and the learned defence counsel for the accused, the learned Additional Sessions Judge convicted and sentenced the accused, as

aforesaid.

12. I have heard learned counsel for both the sides.

13. The entire thrust of argument by the learned counsel for the appellant is that the suicide note Ex. D.3 has not been read and appreciated in its true context. It is argued that the suicide note is silent as to any cruelty, demand of dowry or harassment that could be attributed to the appellant herein. In fact, the said suicide note has been addressed by the deceased to her minor child and in a way expresses her emotions regarding the degree of dissatisfaction with the current situation in her life. It is argued that the ingredients of “instigation” or “abetment” are not made out to convict the appellant herein under Section 306 IPC.

14. Per contra, learned State counsel appearing on behalf of the respondent—State, while referring to the evidence produced by the prosecution, submits that the guilt of the accused stands proved beyond a reasonable doubt and he was rightly convicted and sentenced for the aforesaid offence. He further submits that a reading of the suicide note clearly reflects that the appellant herein had subjected his wife to cruelty and unhappiness in her life, which resulted her in taking her life and therefore, there is no infirmity or illegality in the order so passed.

15. The term “cruelty” has been explained in Section 498-A IPC, which means “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (which is mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any

person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”, whereas Section 306 IPC provides that 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 and Section 107 IPC defines “instigation”.

16. The facts, as emerged on reading of the suicide note, which is the only crucial document that has to be taken into consideration, would reveal that it is a suicide note addressed by the deceased to her daughter expressing her love for her. Apart from professing her extreme love for her minor daughter, the deceased also stated that she has not been able to meet any person in her life who could support her and love her with full faith. She could not get support in her life either from her father, mother or brother nor from Kuldeep. The suicide note also stated that there is no other person with whom she could share her thoughts and could tell the difficulties being faced in her life. She felt lonely and it is this loneliness that she could not bear and on account of loneliness she chose to commit suicide. Further reading of the suicide note would also reflect that she felt that Kuldeep Singh, her husband, and she had differences in their thoughts. She tried to mould herself according to her husband but he never tried to find out as to what she was thinking or what her choice would be. The suicide note again reiterated that they (both husband and wife) are different from each other. In the said suicide note, there is also a line reflecting that Kuldeep Singh, her

husband, is a nice person and any girl would be happy to have a husband like him. She could not tolerate, being a house wife, the stalemate in her life, after she left her studies.

17. Even though an attempt has been made to reproduce the suicide note correctly, it does not capture the true essence of the said suicide note, which is in Hindi. The true translation of the same reads as under:-

“I love you a lot my child. I do not want to leave you, but I have no option other than this since I am left with no option.

My love Devika

I love you a lot my child. Today, I am writing this letter and you are too small at this moment. Perhaps you do not even understand the meaning of word “Mother”. I love you a lot my child. You are one of the precious things in my life. I wanted to fulfill your all desires and dreams. In my lifetime, I have bestowed my so much love only on your father (Kuldeep) and you. I wanted to facilitate you to reach best status of your life. I wanted to give as much as possible happiness in your life. Unfortunately, I failed to do so. Today, I am missing you a lot my daughter. Please forgive me my child. I am leaving you at this age and in such dangerous world. I would have failed to do so, if you would have been with me, today. Earlier too, several times, I had tried to do so, but you had melted down my heart by saying “Mummy-Mummy” to me. But, today, I have become so much hard hearted; perhaps you are not with me. Even today, I am seeing you everywhere since it do not matter to anyone, if I live or die. Perhaps, you would feel my absence during some point of your life in future. But, at that moment, I would not remain present there with you. Perhaps, you would think at that moment that had my mother been alive today, it would not have happened with me. Several times, I made up my

mind that I should take you away with myself, but I failed to muster enough courage to kill you my child. I failed to fulfill the expectations of any of my relatives in my lifetime. My relations with my relatives i.e. from the level of younger one to elder one e.g. with your father, maternal grandmother, grandmother, "Buaa" (father's sister) and with Alka kept on crumbling.

I did not get such person in my life, who could understand my feelings, love me with true heart and trustful nature and judge me as to whether I am happy or sad today, if it were so, what is the reason. I missed true support (सच्चा साथ) in my lifetime since neither I got support from my father nor from mummy nor from brother nor from Kuldeep. There is no such person in my life, with whom I could share my feelings, problems and shortcomings in my life. I am feeling loneliness in my life. It does not matter to anyone whether I laugh or cry. Now, I cannot tolerate this loneliness, following which I am going to commit suicide. No one bothers about it other than you. As you are very small, you would fail to understand it. Perhaps, after my death, the life of your father and grandmother could improve, which has crumbled owing to me. My child, I on my part tried a lot to satisfy your father – to become a good wife and "Bahu" (daughter-in-law). I am sorry I failed to do so. Kuldeep has always been in distress because of me. I failed to fulfill the criteria of Kuldeep and I want to let myself go out of his life forever, considering myself as the reason behind the misery of Kuldeep. We never agreed on any point. There is a huge difference between our thoughts. The choice of both of us is very different too. I tried my best to change myself according to Kuldeep. But Kuldeep has never tried to know and understand my choice, my thinking, my heart's desire. We both are very different from each other.

Kuldeep is a very good person. Any girl will be very happy after getting such a husband. But I wanted to be successful and achieve the goal of my life. Therefore, I could not tolerate the halt in my life by leaving my studies behind and doing household work instead of that. Many times, I thought that I would leave my studies and go to Mangalia to become a homemaker but my heart was not ready to accept this. Had I done that, I would have probably become a “zinda laash” [dead but still alive (emphasis supplied)]. And, had I turned so, it would have made Kuldeep more depressed and I do not know how he would have reacted. In case of Kuldeep’s death, lives of many people may get disturbed. But my death will not make any difference in anyone’s life. That is why I feel it right that I should leave. I have never loved Kuldeep’s money and property. I have just loved Kuldeep. I have always wished that Kuldeep should love me too from the core of his heart but perhaps I had no such ability that I could create love for myself in his heart. My child Dev, people love to show off and this is what matters a lot in life. But, sadly, I do not know how to do that. Your grandmother and Darshana “Buaa” (father’s sister)) are having these qualities. You must learn these qualities from them. It will help you a lot in your life.

I miss u my child.

I love u my baby.

My child Dev, until my last breath goes out, you will be in front of my eyes.

Forgive me my child.

Your unfortunate mother,

Sd/- Kavita

(In English)”

18. For the appellant to be convicted under Section 306 IPC, there

has to be a case made out regarding abetment, which is totally missing in the present case. The tone and tenor of the suicide note would reveal that the deceased was unhappy with the circumstances surrounding her in her life. She seems to have been depressed on account of the fact that she feared that no one understood her or supported her. This feeling of not being “understood” or “loved” was also attributed to her parents and not to the husband alone. There is no indication in the said suicide note that there was any overt act or conduct of the appellant which could be termed as cruelty or an act of instigating which led the deceased to commit suicide. The appellant had also been summoned under Section 498-A IPC in which he has been acquitted by the trial court, meaning thereby there was no evidence to establish that he had not treated the deceased with cruelty.

19. On the other hand, it is the difference of opinion and thought process between the two (husband and wife) that made her unhappy. It is also clear that she was unhappy at donning the role of a home maker, whereas she would have preferred to become successful in life. Could these circumstances be read as an act of constituting an offence under Section 306 IPC and the obvious answer, would be in the negative.

20. In **Chitresh Kumar Chopra Versus State (Govt. of NCT of Delhi) report as 2009 (16) SCC 605**, the Supreme Court had the occasion to deal with Section 306 IPC as well as parameters of “abetment” as provided under Section 107 IPC. It came to be held that the presence of mens rea is the necessary concomitant of investigation and each individual's suicidability pattern depends on his inner subjective experience of mental

pain, fear and loss of self-respect. Different individuals in the same situation react and behave differently and onus is cast on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. While also holding that a person can be said to have *abetted* in doing of thing, if he *instigate* any person to do that thing.

21. The term “instigation” has not been defined in the Indian Penal Code. However, as per Black's Law Dictionary “instigate” means: to goad or incite (someone) to take some action or course. Further as per Concise Oxford English Dictionary “instigate” means: bring about or initiate (instigate someone to/to do something) incite someone to do something.

22. To satisfy the ingredients of “instigation” there must be action or conduct of the instigator which creates circumstances that leaves the deceased with no option except to commit suicide. The Apex Court in **Chitresh Kumar Chopra (supra)**, while dealing with the aspect of “abetment” and “instigation” held as under:-

“12. As per the Section, 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. Explanation to Section 107 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 Indian Penal Code?.

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14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who “instigates” any person to do that thing. The word “instigate” is not defined in the IPC. The meaning of the said word was considered by this Court in **Ramesh Kumar Vs. State of Chhattisgarh**⁴. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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.

15. Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage 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” (See: Concise Oxford English Dictionary); “to keep irritating or annoying somebody until he reacts” (See: Oxford Advanced Learner’s Dictionary – 7th Edition). Similarly, “urge” means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular

*direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or “urge forward” the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in **Ramesh Kumar’s** case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.”*

23. Similarly in **Gurcharan Singh Versus State of Punjab 2017**

(1) R.C.R. (Criminal) 118, the Apex Court, while dealing with Section 306

IPC held as under:-

20. A plain perusal of the above quote also reveals that apart from an omnibus grievance against her in-laws to be responsible for their death, for which according to her, they ought to be punished, there is no reference or disclosure of any specific incident in support thereof. The suicide note divulges her ownership of lands and house which per se belies the charge that she had been denied the share of her husband in the family property. Noticeably, no attempt was made by the prosecution to prove the author of the text through an expert

and both the courts below solely based their conclusion, in this regard on the evidence of PWs 5 and 6, the brothers of Surjit, who identified the contents to be that of hers again on eye estimation.

21. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:

“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.”

22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

Section 107 IPC defines abetment and is extracted hereunder:

“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 the doing of that thing; or Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 – A person, who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that doing.

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.”

24. The judgments of Apex Court in **Hans Raj Versus State of Haryana 2004 (2) R.C.R. (Criminal) 58**, **Bhagwan Das Versus Kartar Singh and others 2007 (3) R.C.R. (Criminal) 87**, **Surender Versus State of Haryana 2007 (1) R.C.R. (Criminal) 288**, **Kishangiri Mangalgiri Goswami Versus State of Gujarat 2009 (1) R.C.R. (Criminal) 947**, **Madan Mohan Singh Versus State of Gujarat and another 2010 (4) R.C.R. (Criminal) 207**, **Parveen Pradhan Versus State of Uttranchal and another 2012 (4) R.C.R. (Criminal) 724** and **Heera Lal and another Versus State of Rajasthan 2017 (2) R.C.R. (Criminal) 839**, have held that 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 abetted.

25. Therefore, without even referring to the statement of the

appellant recorded under Section 313 of the Code of Criminal Procedure and on a close scrutiny of the record and bare reading of the suicide note (Ex. D3), it is apparent that the appellant did not instigate the deceased to commit suicide; nor he created any such circumstances that the deceased was left with no other option except to commit suicide. On the contrary, it appears that the deceased was not happy with her life, as enumerated by her in the suicide note. In the suicide note, there is nothing to suggest that the appellant either provoked, incited or encouraged the deceased to take the extreme step of taking her own life. The ingredients of Section 306 IPC are not satisfied to warrant a conviction.

26. Consequently, the appeal is allowed. The appellant is hereby acquitted of the charge. If the appellant is in custody he shall be released forthwith, unless wanted in some other case. If he is on bail, his bail bond shall stand discharged.

May 29th, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No