

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-805-SB of 2011 (O&M)
Date of Decision: 30.10.2018

Rajbala and another

.....appellants

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Shailender Mohan, Advocate
for the appellants.

Ms. Mahima Yashpal, AAG, Haryana.

Mr. Radhey Sham Sharma, Advocate
for the complainant.

ANITA CHAUDHRY, J

Both the appellants have been convicted and found guilty under Section 306 IPC and were sentenced to undergo rigorous imprisonment for three years along with fine of Rs. 10,000/- each. In default of payment of fine, they were to further undergo rigorous imprisonment for six months. Besides these two appeals, there were some more accused who were tried by the Juvenile Court and they have filed revisions which are also fixed today.

The case of the prosecution may briefly be stated as under:-

The unfortunate incident occurred on 25.9.2008. The daughter of the complainant jumped in the Bhakra canal. Someone saw the child jumping into the canal. The school bag was found on the banks of the canal.

The complainant was informed who reached the spot. On reaching, he found that the police was already present there. Search was carried out but they could not recover the body. The body was recovered on 28.9.2008. It is on 28.9.2008 that complaint Ex. P3 was given. In this complaint, the allegations were that the wife of the complainant namely Bhateri had an altercation with their neighbour Rajbala upon which Rajbala's son started following the complainant's daughter. The complainant's daughter confided in her father and told him that Vicky and Ravi were harassing her. Wanting to find the truth, the complainant did not go for work and kept an eye on his daughter. He found that the boys were indeed following his daughter and when he went after them, they ran away. Complainant Roop Singh met the uncle of the boy and apprised him of this and told them to control their sons. The allegations are that the uncle instead of counselling the boys, produced a letter and stated that his daughter had written the letter to one of them and on account of this harassment and being upset, the girl jumped into the canal.

On the next day, complaint Ex. P-1 was given to the DSP by the same complainant where he named Ravi, his mother Rajbala, Billa @ Baljeet and Vicky. The narration therein was that 7-8 days earlier, Rajbala and Baljeet had come to their house and an altercation ensued upon which the complainant's wife asked Rajbala that her sons should not come to her house as their conduct would spoil her children. The allegations were that Rajbala and her husband's brother Baljeet visited the complainant's house on 23.9.2008. At that time, Ravi and his friend Vicky accompanied her. Accused Rajbala is said to have shown a letter to the complainant claiming that it was sent by his daughter to her son and accused the girl of enticing

her son. When the altercation was going on, their loud voices attracted the neighbours and the complainant's brother. The complainant in their presence called his daughter and enquired about the letter and she swore that she had not written the letter. The allegation were that the accused continued to blame and defame the girl and left after sometime. The complainant further mentioned that he, his brother and wife again made enquiries from the deceased about the letter but the girl insisted that the letter was not written by her and on 25.9.2008 he received information and message on his phone that his daughter had jumped into Bhakra canal. Along with this complaint, the letter was handed over to the police.

During investigation the police took into possession the notebooks of the girl which were handed over by her father. They also collected the notebooks of Ravi and Vicky and sent the letter to the Forensic Science Laboratory for comparison.

After completion of investigation, challan was presented against accused Rajbala and Baljeet and a separate challan was filed against Ravi and Vicky who were found to be juvenile.

The main witnesses for the prosecution were Roop Singh complainant and Banta Ram, brother of the complainant. The rest of the witnesses were the official witnesses and the medical officers.

The FSL report was tendered in evidence. It was reported that the writing did not match with the writing of the deceased or the accused.

In the statement recorded under Section 313 Cr.P.C., the accused pleaded false implication and they examined two witnesses. Both of them had stated that Baljeet was a labourer and was working from 9.00 A.M. to 6.00 P.M. in the Haryana Warehousing Corporation and was not at

home.

Roop Singh and Banta Ram had made a statement that Rajbala and Baljeet had come to their house and had levelled allegations against his daughter and Ravi and his friend were also with them and the letter was shown and the complainant had confronted his daughter and she had denied that she had written the letter but the accused was blaming her for the letter and therefore she jumped into the canal when she went to school that morning. They stated that the accused had raised a finger on her character.

The trial Court convicted both the accused and sentenced them to the imprisonment mentioned hereinbefore.

I have heard both the sides.

The submissions on behalf of the appellants mainly are that there was delay in lodging of the FIR and the FIR had been lodged three days after the girl jumped in the canal. It was urged that the parents had got the information that their daughter was missing and had any occurrence taken place on 23.9.2008, the report would have been lodged the same day. It was urged that the FSL report has been received according to which the letter was not written by the boys or either by the girl and this letter was not presented with the first complaint. It was urged that the letter was presented by the complainant and the first version was that it was the uncle of one of the boys who had presented the letter and the police did not take any action on the complaint Ex. P-3 and therefore another complaint was given and some more people were named and the letter was presented on 29.9.2008. The counsel further submits that there are contradictions as to whether the complainant had gone to the house of Rajbala or the accused had gone to the house of the complainant. It was urged that to record conviction under

Section 306 IPC it was necessary for prosecution to prove that there was abetment, instigation or that any of the accused had intentionally aided. It was urged that as per the prosecution version, the complainant had accused the appellants of defaming the daughter but he did not produce the letter on that day and it is also doubtful whether the complainant had gone to the house of the accused. It was urged that none of the witnesses have mentioned that after the altercation on 23.9.2008 any of the accused had met the daughter of the complainant and 24.9.2008 was a holiday and on the next day the girl got ready and went to school in the van and the allegations are that she got down from the van and went to the Bhakra canal and jumped into the canal. The counsel submits that the complainant knew about the fact that his daughter had jumped into the canal and had any incident occurred on 23.9.2008, the complainant would have immediately lodged a complaint and the complainant has improved upon his version and a story has been introduced in the second complaint roping in more accused. It was urged that there were some more private witnesses which were cited by the prosecution including the mother who were given up as they could not stand the test of cross-examination. It was urged that there was no evidence of instigation or abetment and the girl was sensitive and it could be that she was annoyed with her family. It was urged that there is no positive act on the part of the accused of instigation. It was urged that the prosecution had also failed to examine the driver who could have disclosed whether the girl had got down on the way. The counsel further submits that no evidence had been led to show as to whether the girl had attended school on the day of incident. Reliance was placed upon ***Madan Mohan Singh versus State of Gujarat and another 2010(8) SCC 628, S.S.Chheena***

versus Vijay Kumar Mahajan and another 2010(4) RCR (Criminal) 66, M.Mohan versus State Tr. Dy. Supdt. of Police 2011(2) RCR (Criminal) 272, Gangula Mohan Reddy versus State of Andhra Pradesh 2010(1) SCC 750, Sohan Raj Sharma versus State of Haryana 2008(2) RCR (Criminal) 810, Sharanjit Kaur and others versus State of Punjab and another 2010(25) RCR (Criminal) 205 and Chitresh Kumar Chopra versus State (Govt. of NCT of Delhi) 2009(4) RCR (Criminal) 196.

Counsel for the complainant urges that the parents had confronted their daughter with the letter and had scolded her and it is normal when such accusations are made but the girl jumped into the canal as she had been humiliated and the presence of her family and the witnesses speak about the visit of the family of the accused to their house and they have pushed her into taking her life. Reliance was placed upon ***Chitresh Kumar Chopra versus State (Govt. of NCT of Delhi) 2009(4) RCR (Criminal) 196*** and ***Hem Karan and others versus State of Haryana 2008(3) RCR (Criminal) 267.***

The State counsel supported the judgment of the trial Court.

It would be necessary first to refer to the relevant provisions.

Section 306 I.P.C. 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.”

The twin requirements for an offence under section 306 IPC.

Are (1) Suicide and (2) Abetment to commit suicide.

In Section 306 IPC., the word 'abetment' has not been defined or explained. In Concise Oxford English Dictionary (XI Edition 2004), 'Abetment' (Abet, Abets, Abetting, Abetted, Abettor) has been explained as 'encourage or assist (someone) to do something wrong in particular to do crime'.

In Indian Penal Code, in Chapter V (Abetment), in Section 107 'abetment of a thing' has been explained. Though the word 'abetment' has not been defined in Section 306 I.P.C., to understand its meaning, we can refer to Section 107 I.P.C.

Section 107 I.P.C. Reads as under:

“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 thing.'

Explanation: 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 facilitates the commission thereof, is said to aid the doing of that thing.”

It is seen that in statutorily explaining the word 'abetment' (See Section 107 IPC.) what the word abetment connotes in general English has been kept in view.

In ***Randhir Singh and Another v. State of Punjab AIR 2004 SC 5097 : (2004) 13 SCC 129*** the Hon'ble Supreme Court observed as under:-

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

In ***Ramesh Kumar v. State of Chhattisgarh AIR 2001 SC 3837*** 'instigation' has been explained by the Hon'ble Apex court as under:

“20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

In ***S.S.Chheena versus Vijay Kumar Mahajan and another***

2010(4) RCR (Criminal) 66 the Hon'ble Apex Court observed that:

“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 the Supreme 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.”

In **Amalendu Pal @ Jhantu v. State of West Bengal (2010) 1**

SCC 707 the Hon'ble Apex Court has opined as under:-

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which let or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

The offence of abetment requires 'mens rea'. There must be intentional doing/aiding or goading the commission of suicide by another.

Otherwise, even a mere casual remark, something said in routine and usual conversation will be wrongly construed or misunderstood as 'abetment'.

In ***Gangula Mohan Reddy versus State of Andhra Pradesh 2010(1) SCC 750***, it was held that to attract Section 306 I.P.C., there must be clear '*mens rea*' to commit offence.

In ***M.Mohan versus State Tr. Dy. Supdt. of Police 2011(2) RCR (Criminal) 272*** the Hon'ble Supreme Court observed as under:

“44. 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.

45. The intention of the Legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

There is no suicide note in this case. The prosecution case is that an altercation had taken place between the wife of the complainant and their neighbour Rajbala upon which the complainant's wife asked Rajbala that their sons should not visit them as it have a bad influence upon which the accused produced a letter alleging that it was the complainant's daughter who was pursuing their son. In the first complaint the letter is said to have been produced by Ravi's uncle. The case of the prosecution further was that the complainant called his daughter and confronted her with the letter in the

presence of the accused and she denied having written that letter. Two days later, the girl got ready and went to school as usual. She took the van to the school, got down on the way and jumped into the canal. The school timings are early, around 8.00 A.M. Someone had seen the girl jumping into the canal at about 1.00 P.M. It is not clear whether the girl had attended school, whether she had boarded the van ?

The question would be as to whether the ingredients of abetment are attracted in the present case and whether it was a case which would fall under Section 107 IPC.

The case of the prosecution is that the accused side had presented a letter said to have been written by the girl to the juvenile and when the parents confronted her with the letter, she denied it. The police in order to find who the author was, sent the letter to the FSL. The police had also taken into possession the note books of both the juveniles as well as the deceased. The report was inconclusive. It states that the hand writing did not match with the hand writing in the note books. The position is that the hand writing does not match with the hand writing of the deceased. The hand writing also does not match the hand writing of the accused. This letter was handed over to the police on 29.9.2008.

None of the accused were in touch with the girl after the altercation on 23.9.2008. The deceased was with her family the whole day i.e. on 24.9.2008. It was a holiday that day. She wore her uniform and went to school the next day. The photographs placed on record show that she was in her school uniform when her body was recovered on 28.9.2008. The accused were challaned for abetment, instigation and aiding in committing suicide. In order to prove the ingredients of Section 306 IPC, the

prosecution was required to prove active or a direct act which led the deceased to commit suicide. The act must have been intended to push the deceased into such a position that she commits suicide. In the instant case, there is no positive act on the part of the accused which would prove that there was any instigation. In order to convict a person under Section 306 IPC, there has to be clear *mens rea* to commit suicide. There is absolutely no evidence.

In the instant case the deceased was undoubtedly hyper sensitive. It could be that the parents were doubting her or could be they accused her and not able to bear the false allegations, and she being hyper sensitive ended her life by jumping in the canal. There is no evidence to show that the accused had instigated her or had aided her and without a positive act on the part of the accused, conviction cannot be sustained. It has to be kept in mind that behaviour in human beings are complex and multifaceted and different individuals in the same situation may react differently and it depends upon the personal meaning they add to any event thus accounting for individual vulnerability to suicide. In the light of the material on record it cannot be said that the appellants had instigated the deceased to commit suicide. There is no ground for even presuming that it was a case of abetment or aiding. The girl was hyper sensitive and could not take any accusation which was being heaped upon her. Therefore, she chose to end her life by escaping from intolerable self.

After having critically examined the facts and in the light of the settled position, the conclusion is obvious that no conviction could have been recorded. There was no credible evidence or material against the appellants.

As such, the appeal is allowed. The appellants are acquitted of the charges framed against them. Consequently, the impugned judgment/order of conviction and sentence of the appellants dated 28.2.2011 and 1.3.2011 are set aside.

(ANITA CHAUDHRY)
JUDGE

October 30, 2018

Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes