

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

**CRA-S-3617-SB-2014 (O&M)
Date of Decision: 20.02.2018**

Bal Kishan

...Appellant(s)

Versus

Chhota Ram and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Madan Pal, Advocate
for the appellant.

Mr. Saurabh Sammi, Advocate
for respondent no.1.

Ms. Mahima Yashpal, AAG, Haryana,
counsel for respondent no.2-State.

ANITA CHAUDHRY, J.

Delay condoned.

This appeal is by the complainant aggrieved by the
acquittal recorded by the Court below.

Chhota Ram was married to Pinki in December 2004.
They had two children. The unfortunate incident occurred on
04.03.2012. The husband is a teacher. The couple were living
separately in a rented accommodation, away from the parents. The
complaint was lodged by the father on 05.03.2012 i.e. a day after the
incident alleging that within 2 months of the marriage the husband and
his family members started taunting his daughter for bringing less
dowry and his daughter had returned and lived with him for 2½ years

and several Panchayats were held and as per the Panchayat decision he had sent his daughter back. It was also stated that he had given a sum of Rs.2 lacs in May 2011. It was also disclosed that for the last 1½ year his daughter, husband and both children were living in a rented house in Cheeka and the husband was a Master in Government School Balbehda and he had developed illicit relations with some other lady and he used to beat his daughter. This fact was disclosed by her daughter and she used to object to the relationship on which she was beaten up. The complainant had disclosed that on 04.03.2012 he got a missed call on his mobile and called back and his daughter disclosed that she was being harassed by her husband on the instigation of his mother, brother and his wife and Baba Subhash Panchal and her life had been made miserable. She had also disclosed that she would give him the details when she meets them. The complainant disclosed that he was preparing to leave for Cheeka with his son in the evening when he got a call from the Sarpanch that his daughter was admitted in Amar Hospital. On this information he and his son and some others went to the hospital and found her daughter dead. The allegations were that Chhota Ram had killed his daughter on the instigation of his parents and his daughter has been forced to commit suicide.

The police filed the challan under Section 306 IPC only against the husband. Charge was framed and the trial had started but an application was moved under Section 319 Cr.P.C. for summoning the remaining persons named by the complainant. That application was dismissed.

The prosecution examined 15 witnesses.

In the statement recorded under Section 313 Cr.P.C., the accused pleaded that the deceased was hyper sensitive and her father used to interfere in the family matters and she was annoyed with him and she used to take medicines from Dr. Harish Tulli, Amar Hospital, Patiala for depression and she was never harassed for dowry. He had also stated that Pinki was disturbed on account of the death of her brother in April 2010.

By way of defence, the accused had examined the Medical Officer and the landlady.

The trial Court on minute examination of the evidence acquitted the accused.

I have heard the counsel for both the parties.

The submissions on behalf of the appellant is that the incident had taken place some time in the afternoon and the husband did not inform the family and it was the Sarpanch who had made a call to the family informing them of the incident. It was urged that several Panchayats had been held and they had led evidence to show that no call was made by the husband to inform them about the incident and the trial Court had rejected the evidence on the ground that there was delay in lodging the FIR but mere delay in lodging the FIR cannot be fatal as the family was in shock and people react differently and the delay had weighed in the mind of the Court and no consequence should have been attached to the delay. The counsel further submits that the father had spoken about the constant beatings and the accused did not immediately

inform the parents and his conduct remains un-explained. It was urged that it was a case of abetment of suicide and it has been established beyond doubt that the husband has pushed his wife to such a state that she was forced to consume poison. Reliance was placed upon ***Ravinder Kumar and another Vs. State of Punjab AIR 2001 SC 3570, Parveen Kumar Vs. State of Himachal Pradesh 2011(4) RCR (Criminal) 640, Naveen Kumar Vs. State of Haryana 1998(3) RCR (Criminal) 564, Mukhtiar Kaur Vs. State of Punjab 2010(1) RCR (Criminal) 776, Sucha Singh Vs. State of Haryana 2011(2) PLR 158, State of Rajasthan Vs. Girdhari Lal 2013SC (Cri) 2245 and Vajresh Venkatray Anvekar Vs. State of Karnataka AIR 2013 SC 329.***

On the other hand, the submission on behalf of the accused is that the girl was suffering from depression and she was taking treatment since 2011 and they have examined the treating doctor. The counsel points out that the complainant has not referred to any Panchayat after 2008 and there was no complaint for the last four years and the couple was living in a rented accommodation and they have examined the landlady who did not find anything amiss and there is no evidence of instigation, goading or abetment. It was urged that the complainant has gone to the extent of naming the other relatives who were not challaned but the complainant again named them in the Court and filed an application under Section 319 Cr.P.C., which was dismissed. It was urged that the Investigating Officer had made a statement that when the police was informed, SI Surinder Singh had contacted the complainant but he refused to make a statement then but

he waited for a day to make the complaint. It was urged that there was a delay and the complainant had concocted a story and the death had taken place after 8 – 9 years of marriage.

It would be profitable to set out Section 306 of IPC. It reads as under:-

Section 306 in The Indian Penal Code

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.

Abetment has been defined under Section 107 of IPC and is reproduced as under:-

Section 107 in The Indian Penal Code

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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.

In Chitresh Kumar Chopra v. State (Govt. of NCT of

Delhi) 2009 (11) SCALE 24 the apex Court had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "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 others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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 ordered.

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 this act must have been intended to push the deceased into such a position that he/she committed suicide.

What has to be examined in this case is whether the accused intended or engineered the suicide by his words or actions. The incident has taken place on 04.03.2012 in the afternoon. The husband

was not home. He is a Master in a school in a nearby village. The couple was not residing with the in-laws but in a rented accommodation. The landlady also lives in the same building. The couple had two children, who are now with their father. The couple had been married in 2004 and incident occurred in March 2012 i.e. much beyond 7 years. No suicide note was left. The parents have alleged that a missed call was given by their daughter and when the father returned that call, his daughter had informed that she was being harassed and she would give details when they meet and they were preparing to go to meet their daughter in the evening when information was received from the Sarpanch that their daughter was admitted in the hospital at Patiala. The husband admittedly was not at home when the incident occurred. Therefore, the prosecution had to show that something had happened which forced the girl to commit suicide. The prosecution was required to lead evidence to show that it was a case of abetment or instigation. The witnesses had claimed that the girl was being harassed on account of dowry but there was no Panchayat or any complaint after 2008. The evidence does show that in the initial years of marriage there were some issues and the girl had returned to her parent's house and had stayed with them for over 2 years but thereafter she joined her husband. Thereafter she had two children. No complaint was made to any authority after 2008. There is no evidence that the deceased had been beaten up earlier. Therefore, it was imperative for the prosecution to lead evidence to show the involvement of the husband. None of the witnesses have spoken that some incident had occurred during the day.

The prosecution did not examine the child from the marriage and he/she could have given some information and had been held back. The landlady of the house was not cited as a witness and she could have given some vital clues to the police. As against it, the defence had examined the landlady and she did not find anything wrong in the relationship. The Medical Officer was produced by the defence to show that the deceased was under his treatment and she was taking medicines for depression.

Before the offence under Section 306 IPC can be proved, the presence of *mens rea* is of utmost importance. The evidence of instigation and abetment is clearly missing. No evidence could be led by the prosecution to show that the accused was in the illicit relationship. The prosecution failed to explain why the matter was reported on the next day when the father had reached the hospital few hours after the incident. He took time to deliberate and then make a complaint. If his daughter was being harassed, his immediate reaction would have been to lodge the complaint the same evening. The trial Court for numerous reasons recorded in judgment and gave the benefit of doubt to the accused. I find no infirmity in the judgement.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

20.02.2018

Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No