

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

**Crl. Appeal No. S-541-SB of 2002
Date of decision : 21.02.2018**

Surinder Singh

... Appellant

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Sudhir Sharma, Advocate and
Mr. Ram Krishan Rana, Advocate
for the appellant.**

**Mr. Arun Kumar, AAG Haryana.
Mr. Rishan Lohan, Advocate for
Mr. R.N. Lohan, Advocate
for the complainant.**

ANITA CHAUDHRY, J.

Instant appeal has been filed by appellant Surinder Singh challenging the judgment of his conviction and order of sentence vide which he was convicted under Section 306 IPC and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs.3,000/-. In default of fine, he was required to undergo further rigorous imprisonment for one year.

The facts necessary for the disposal of the case are noticed first.

Appellant Surinder Singh was married to Kiran on 17.03.1996 at Jind. It appears that the couple could not adjust with each other. FIR No. 275 dated 15.05.1997 was registered at the instance of Kiran against husband Surinder Singh, mother-in-law Kaushalya and brothers-in-law Devinder and Yoginder.

It has come on record that in April, 1997 a petition under

Section 9 for restitution of conjugal rights was also filed by appellant Surinder Singh and on 24.04.1998 the couple was called for mediation, but it failed. The petition was ultimately withdrawn by Surinder Singh on 19.05.1998. During this period, on 12.11.1997 the wife had also filed a petition seeking divorce on the ground of desertion and cruelty.

On 19.08.1998 Kiran was brought to the Civil Hospital, Jind as a case of poisoning. Ruqa was sent to the police, but Kiran died. Inquest proceedings were carried out on the dead body. Autopsy was done and death was due to consumption of celphos.

On 26.08.1998 Kanwar Singh, father of Kiran submitted a complaint to the police. It was disclosed that after marriage his daughter was harassed for dowry. There was reference of registration of case under Sections 406 and 498-A IPC against the accused. The complaint refers to the fact that at the time of mediation proceedings in the Court in Section 9 HMA Act, the couple was asked to sit alone by the Court. Surinder had made aspersions touching her chastity due to which the girl was perturbed. Surinder started torturing his daughter and made calls and reiterated the allegations and also criminally intimidated her. On 19.08.1998 the accused made a telephonic call to her and thereafter Kiran committed suicide.

On the basis of complaint, FIR No. 523 dated 27.08.1998 was registered against Surinder Singh, under Section 306 IPC at Police Station City, Jind.

The appellant was arrested and put to trial. Charge under Section 306 IPC was framed. At the trial, the prosecution had produced twelve witnesses.

PW1 Dr. J.R. Verma had conducted autopsy on the dead body

on 20.08.1998. On the basis of report of Chemical Examiner, the cause of death was stated to be cardiogenic shock as a result of aluminum phosphide poisoning. PW2 Kanwar Singh, PW3 Rajwanti and PW4 Kuldeep Singh are the father, mother and brother respectively of the deceased. PW5 Harkirat Singh had produced the judicial file pertaining to dowry case. PW6 ASI Lachhman Singh had recorded the formal FIR in the dowry case. PW7 Const. Dharambir had tendered affidavit Ex.PJ in evidence. PW8 Inspector Ram Saran had prepared the final report in the case. PW9 Const. Maya Ram and PW10HC Satyavan Singh tendered their affidavits. PW11 Head Const. Ram Chander had delivered the special report to the Higher Officers. PW12 ASI Darshan Singh was the investigating officer of the case.

The incriminating circumstances led by the prosecution were put to the accused in his statement under Section 313 Cr.P.C., which were adjured. He took the plea that the deceased had deserted her without any reasonable cause and no demand was ever raised. According to the stand taken by the appellant in his statement under Section 313 Cr.P.C., Kiran committed suicide due to the pressure of her parents and relatives. A complaint was made by him against the parents of Kiran and to save themselves, they filed the complaint and falsely implicated him in this case.

In defence, the appellant examined three witnesses.

On appraisal of evidence, the trial Court held the appellant guilty under Section 306 IPC and sentenced him in the manner indicated above.

I have heard learned counsel for the appellant and learned State counsel, assisted by counsel for the complainant and have gone through the records carefully.

Learned counsel for the appellant had urged that the trial Court had misread and mis-interpreted the evidence. Elaborating his submissions, he had urged that the foundation of the prosecution case was laid on the reconciliation meeting of 24.04.1998 where the accused was made to sit with his wife separately and he levelled allegations attacking her character, due to which she was under tension and the accused kept on reiterating the allegations and made calls to the deceased and threatened her and due to the tremendous pressure exerted by the accused, Kiran committed suicide. According to learned counsel, Kiran had committed suicide on 19.08.1998 and she during this period of four months did not complain and the prosecution had failed to establish any nexus between the conciliation meeting of 24.04.1998 and death of Kiran on 19.08.1998 and there was no instigation and the suicide had no direct connect with the victim. He had further urged that none of the witnesses had deposed as to exactly was said by the accused to the deceased during conciliation proceedings. He had further submitted that the prosecution had failed to prove whether any complaint was made against the accused regarding the threats and foul language used on phone. According to him, the deceased had committed suicide in her parental home and there was no positive evidence to prove that the accused had abetted the suicide. He had further urged that the theory of dying declaration is an after-thought, as in the inquest proceedings, PW Kuldeep Singh had not stated about this fact to the police. He had placed reliance upon **Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, M.Mohan Vs. State Tr. Dy. Supdt. of Police 2011(3) SCC 626, Pardeep Kumar Vs. State of Punjab, 2002(4) RCR(Crl.) 748 and Bagdiram Vs. State of M.P. 2006(1) RCR(Crl.) 411.**

Learned State counsel, assisted by counsel for the complainant had supported the judgment of trial Court with vehemence. While taking me through the testimonies of PW2 Kanwar Singh, PW3 Rajwanti and PW4 Kuldeep Singh, the father, mother and brother respectively of the deceased, it was submitted that their statements indicted a series which proved that the accused who, by the act of omission and commission, compelled the deceased to commit suicide and the trial Court has rightly relied upon their testimonies.

In the circumstances, it has to be first examined, whether appellant Surinder Singh abetted suicide by Kiran.

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 case put forth by the prosecution was that during conciliation proceedings on 24.04.1998 the accused levelled allegations on the chastity of the deceased, due to which she was perturbed and later he made threatening calls on telephone and used filthy language and demanded money from her. In support of its case, the prosecution had relied upon the testimonies of PW2 Kanwar Singh, PW3 Rajwanti and PW4 Kuldeep Singh, the father, mother and brother respectively of the deceased. A perusal of

their testimonies would make it apparent that none of them had deposed as to what exactly was said by the accused to Kiran or what was the nature of conversation took place between them or what kind of aspersions were made by the accused regarding her chastity. They simply said that wrong words had been used by the accused. None of them were present at that time, but they had deposed that Kiran told about this to them, but they were unable to state what was said. No complaint was given by the deceased either to the Court or to the police as the matter was pending with the police. The aspersions made on the character of deceased were allegedly made on 24.04.1998 while Kiran had committed suicide on 19.08.1998 i.e. after about four months. There appears to be no nexus between the episode of 24.04.1998 and the suicide committed by the deceased. According to prosecution, the accused made threatening calls to the deceased and used filthy language. An attempt had been made by the defence to get the call records of the telephone installed at the residence of the complainant, but the Communication Department showed its inability to provide the same as the phone was not put on observation. Strangely enough, not even a single complaint had been made to the police about the misconduct on the part of the appellant during the period interregnum. The complainant was a superior Officer of the accused in the same department. No complaint had been shown to have been made to the Department about the conduct of the accused. It cannot be believed that the accused had made threatening calls to the deceased and had demanded money from her, especially when the parties had strained relations and the husband was facing prosecution in a case registered under Sections 406 and 498-A IPC and divorce petition (Ex.DC) had been filed by the deceased. The factum of filing of divorce

petition had been withheld by the prosecution, but the file was summoned from the Court by the defence. Had there been any harassment by the accused on telephone and threats were passed, in such a scenario, it cannot be expected of the deceased, who held a Post Graduate Degree would keep quiet and also her father who was working as a Block Development and Panchayat Officer and on a superior position where the accused a J.E., was working under him in the same Department. According to PW4 the accused started making calls from January, 1997, but its factum was not mentioned in the complaint filed in case registered under Sections 406 and 498-A in May 1997.

The theory of dying declaration by Kiran to PW3 Rajwanti and PW4 Kuldeep Singh, as propounded by the prosecution also does not appeal to reason. As per prosecution, the deceased on the way to the hospital had disclosed to her mother and brother about the receipt of a call from the accused, the same day at 8:30 p.m. In the complaint given by the father after seven days of death of Kiran, on the basis of which FIR was registered, this fact was mentioned. But it gets falsified from the fact that during the inquest proceedings, statement of Kuldeep Singh, brother of the deceased was recorded. The defence produced it as Ex.DA. This was an important fact. Therein, it was nowhere mentioned that the deceased had told him about receipt of a call from the accused at 8:30 a.m. PW Kanwar Singh admittedly was not there when Kiran was shifted to the hospital. Presence of PW Rajwanti seems to be doubtful in the light of the fact that in the post-mortem examination report, presence of Rajwanti was not mentioned and only the names of Bhim Singh and Kuldeep Singh were given. In Ex.DA also, Kuldeep Singh had stated that he brought Kiran to the hospital, meaning

thereby neither Rajwanti nor Bhim Singh had accompanied them at the time Kiran was shifted to hospital. PW12 ASI Darshan Singh, who was the investigating officer of the case specifically deposed that Rajwanti was not there in the hospital. According to PW1 Dr. J.R. Verma, who had attended Kiran, she was conscious, but her BP and pulse were un-recordable and within half an hour she died. Considering the situation of Kiran and the facts referred to above, the version of dying declaration appears to be an after-thought. The prosecution made attempts to withhold the vital piece of evidence, the filing of divorce petition by the wife and the statement of Kuldeep Singh recorded during the inquest proceedings.

It is relevant to mention here that no action was taken by the police on the version given by the brother and uncle of the deceased during inquest proceedings. Nothing was done by the complainant thereafter. It had come on record, as deposed by DW3 that a complaint was given by the appellant against the parents of deceased on 26.08.1998 about the suicide by Kiran. It was only on 27.08.1998 i.e. after seven days of death of Kiran and a day after the complaint made by appellant, Kanwar Singh submitted a complaint to the police against the appellant.

Kiran had a short stay at her matrimonial home that too on intervals. She was living with her parents since 15.10.1996 and on 19.08.1998 she died at the parental home. It has come in the statement of complainant Kanwar Singh that Kiran was taken by the accused to her matrimonial home on three occasions earlier and had there been any harassment and maltreatment, she would not have been sent back with the accused. PW2 and PW3 nowhere stated a car was demanded by the accused.

Bhim Singh, uncle of the deceased had not disclosed about any harassment

and telephonic calls etc. to the police on 20.09.1998 when the inquest proceedings were carried out. It was claimed that Panchayats were convened, but no Panchayat member was examined.

The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life. The evidence available on record falls short of requirement 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.

The judgment of conviction and order of sentence are not sustainable.

For the reasons above, the appeal is allowed. The judgment passed by the trial Court is set aside. Appellant Surinder is acquitted.

February 21, 2018

Jiten

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No