

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

Crl. Revision 3756 of 2013 (O&M)
Date of decision: December 19, 2018

Jasbir Kaur @ Jasvir Kaur @ Sheero

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Rajni Gupta, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. Challenge in the instant revision is to the order dated 28.7.2011 passed by the Additional Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the petitioner has been charged for the offence under Section 306 IPC.

2. In brief, the facts as alleged are, that FIR 37 dated 1.5.2010 under Sections 302 and 120-B IPC was registered against one Mohinder Singh and his other family members, namely, Kulsia, Rustam Singh @ Kala, Kiran and Rakhi, on the allegations that Munish Devi deceased was killed, who was real daughter-in-law of Mohinder Singh. The FIR came to be registered at the behest of Kuldeep Singh with the allegations that his sister Munish Devi was married in the year 1996 with Shamsher Singh @ Gora son of Mohinder Singh. Out of this wedlock three children were born. About

two years ago (prior to the registration of the FIR on 1.5.2010), the husband of the deceased and his family members asked for ₹7 lakhs in order to send the husband of the deceased abroad, which amount would be returned later on. The said amount was given and thereafter the husband of the deceased left for abroad. Once the husband of the deceased went to abroad, his family members, including the father-in-law the present petitioner hatched a conspiracy with the object not to return the money, and started harassing the complainant's sister. Under such conspiracy, on 30.4.2010 at about 9.30 a.m. a telephonic call was received that Gora had remitted money from abroad and the same should be collected. However, after some time, the complainant again received a telephonic call that he should come after 5-7 days. That father-in-law Mohinder Singh, mother-in-law Kaushalaya, brother-in-law Kala, sister-in-law Kiran and Rakhi daughter of Kala, residents of Balachaur conveyed these telephonic messages, while standing near his sister. This way, again at about 10/10.30 p.m. he received a telephonic call from Mohinder Singh that his sister has locked herself inside the room and she is not opening the door asked him to come there. At about 1 a.m. the dead body of his sister was found lying in the room. Based on this complaint, a FIR was registered.

3. After registration of the FIR, Mohinder Singh (father-in-law of the deceased) moved an application to Station House Officer, Police Station Balachaur for registration of a case against the petitioner and her husband Kulwinder Singh @ Bittu @ Dannu for abetting his daughter-in-law deceased Munish Devi to commit suicide. On the representation made by said Mohinder Singh, the matter was re-investigated and the case was

converted from Section 302 IPC to Section 306 IPC against the petitioner, her husband Kulwinder Singh @ Bittu @ Dannu, and Mohinder Singh and the challan was accordingly presented. As already noticed, during the trial charges were framed against the petitioner under Section 306 IPC by order dated 28.7.2011, which is under challenge in the present revision.

4. Learned counsel appearing on behalf of the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, the husband of the deceased had gone abroad through the husband of the petitioner, who was already residing in Manila. The deceased also wanted to send her brother abroad through the husband of the petitioner and on account of this, she was in regular contact with the petitioner's husband and in this process they developed physical relations. On 18.4.2010 Mohinder Singh (father-in-law of the deceased) caught them red handed in a compromising position and on this account the deceased committed suicide on 30.4.2010. It is further contended that if the facts, as mentioned in the suicide note, are taken on their face value as it is, no offence whatsoever is made out against the petitioner, as the ingredients constituting the offence of 'abetment' are absolutely missing therefrom. In fact, there was no 'instigation' or 'abetment' by the petitioner to the deceased to commit suicide.

5. Per contra, learned counsel appearing on behalf of the respondent—State submits that the police after investigation filed charge sheet against the petitioner and others and thus the trial court has rightly framed the charge against the petitioner under Section 306 IPC.

5. I have heard learned counsel for the parties and have carefully gone through the record, including the suicide note.

7. The entire controversy in the present case revolves around the suicide note. Therefore, in order to find out whether the offence under Section 306 IPC alleged to have been committed by the petitioner is made out or not, it would be necessary to re-produce the translated suicide note in its entirety, which reads as under:-

“Kulwinder Kumar @ Bittu @ Danu, Kumar by Caste, r/o Balachaur, who had gone to Manila. In the year 2008, my husband Shamsher Singh @ Shora made discussion with his wife Shero for the purpose of going to Manila, who demanded an amount of Rs 5 ½ lacs in lieu of sending him to Manila. Following that, I sold the land belonging to my maternal family. Then, in the month of July, 2008, I along-with my husband went to the house of Danu’s wife Shero, where we paid complete amount to her. At that moment, Danu was in Manila. On 31.08.2008, my husband Gora reached to Manila, where Danu was residing. Thereafter, in the month of March, 2009, I got delivered an amount of Rs 1 ½ lacs to Danu’s wife Shero from my father-in-law so as to make Gora permanent there. In the month of December, 2009, my brother Kuldip Singh (Neeta) gave an amount of Rs 1 ½ lacs to Shero at her house for the purpose of going to Manila. Then, the deal was clinched at 3 lakh rupees. In the year 2010, Danu came to Balachaur from Manila. On 6 March, he came to my house to give a watch and mobile. He gave these items to me and said that he had come from Manila and Gora had sent these items. At that moment, my children were not present at house and I was also alone. I gave an amount of Rs 1 ½ lacs to him, so that my brother could also go to Manila. After that, Danu left home. On next day, Danu again approached me. At that moment, my children were not present at house, following which I was alone at that moment. At that moment, Danu raped me, forcibly.

Also, he threatened me that if I disclosed the above-mentioned incident before anyone, he would get killed my husband in Manila. He further added that if I kept the above-mentioned matter secret, he would take my brother along-with himself to Manila on above-mentioned payment. He further ensured me that he would not only assure the work/job of my brother, but also make my husband permanent there. On first day, he gave his mobile No.9501672883 to me and asked me to keep on talking to him on phone, adding that he would also keep on talking to me on phone. He used to ask me on phone to come to market, where he would come to meet me. But, I flatly refused to meet him alone. One day, Danu asked me to come to his kothi, so that he could rape me. He also said on phone that the labors were not present in kothi since he had asked them to do not come for work. He asked me to come to kothi. Out of fear, I was going to kothi of Danu. On the way, my father-in-law (Papa Ji) met me. He asked me as to where I was going. Out of fear, I replied that Danu had called me, so as to make discussion about sending my brother to abroad. Thereupon, my father-in-law (Papa Ji) took me to house of Danu. At that moment, Danu and his wife Shero were present at house. They both demanded an amount of Rs 3 lakh rupees for the purpose of sending my brother to Manila, to which my father-in-law replied that Kuldip (Gora's Sala (wife's brother)) had already given an amount of 1 ½ lacs rupees to him and outstanding amount of 1 ½ lacs rupees, he (Papa Ji) would pay himself to him. My Papa Ji further asked Danu to take Kuldip to Manila along. Upon that, Danu replied that he was not going to take Kuldip with himself, adding that he would send Kuldip with someone else. However, Danu had promised me that he would take my brother along. After that, my father-in-law (Papa Ji) came outside. I, Danu and Danu's wife Shero were inside the house. I said to Shero that Danu had not only intimidated me,

but also raped me forcibly. Moreover, he had promised me that he would take my brother along. Now, he refuses to take him along. Then Shero said to me “Don’t talk about it to anyone else. If you disclose it to anyone, then my husband Kulwinder will get your husband Gora killed in Manila. It generally happens to a lady. He has also kept one concubine. What did happen? He has not taken anything away from you. It will malign your as well as our image.” She further said to me, “We will send both of your brothers at Manila if you remain silent and you will be helped with 5/7 lacs of rupees.” Then I came out of Danu’s house and came to my house alongwith Papa ji. Out of fear, I did not disclose about rape to anyone. On 17/04/2000 evening i.e. on Saturday, Papa ji called Danu at the house for giving money. At that time, Danu and his wife Shero came to my house. Both of them took a sum of rupees 1 ½ lacs from Papa ji and left. Next day i.e. on 18/04/2010 morning i.e. on Sunday, Danu visited my house. The children were playing outside. I was alone in the house. Danu came inside and asked me to arrange four photographs and passport of my brother for him and told me that he would take my brother along in the month of May after getting his documents prepared. I told him that it was crop season, therefore, I would give him photographs and passport while getting requisitioned the same after some days. Danu asked me to establish physical relation with him. I refused. At this, he started committing act with me in a forcible manner. My clothes also got ripped off. Even then, he started committing rape upon me. In the meantime, Papa ji came inside and he saw us. Danu fled away after committing rape. Papa ji angrily asked me about rape. I disclosed everything to Papa Ji what I had met with. Papa ji had left. I put off my torn out clothes and placed the same on the bed. Out of shame and defamation, I am taking poison. In case I and my husband die then Kulwinder @ Danu and his wife Shero would

be responsible for our death. I am consuming poison after writing this.

*Sd/-Manisha Rani
(In Hindi)*

Note: - Danu and his wife Shero cheated us and extorted an amount of Rs 11 lacs from us. They outraged my modesty by getting in connived with each other. They did not take my brother outside. I came to know about it that Danu and Shero have shot my husband Gora dead. Danu used to tell me in case he was humiliated then I should take the medicine given by him. My family would be afraid and they would call him for compromise.

*Sd/-Manisha Rani
(In Hindi)”*

8. The facts as unraveled in the suicide note are that the husband of the petitioner Kulwinder Kumar @ Bintu @ Danu had gone to Manila. The petitioner had a talk with the husband of the deceased in the year 2008 for sending him to Manila and the petitioner demanded ₹5-1/2 lakhs for that purpose, which was given in July, 2008 by the deceased along with her husband to the petitioner, after selling the land. On 31.8.2008, the husband of the deceased went to Manila. In the month of March, 2009, the deceased got handed over ₹1-1/2 lakhs through Mohinder Singh, her father-in-law to the petitioner for securing permanent residency for her husband. In December, 2009, brother of the deceased Kuldeep Singh had given ₹1-1/2 lakhs to the petitioner at her house for the purpose of going to Manila and the deal was struck at ₹3 lakhs. In 2010, the husband of the petitioner—Kulwinder Kumar @ Bintu @ Danu came to Balachaur from Manila and on 6th March, and he had visited the house of the deceased and handed over a

watch and a mobile, which were sent by her husband from Manila. At that time the deceased was all alone at home. She gave an amount of ₹1-1/2 lakhs to Danu so that her brother could also go to Manila. On the next day, Danu again approached the deceased when she was alone at home and raped her forcibly. He also threatened the deceased that if she discloses the said incident to anyone, he would get her husband killed in Manila. He also assured that if she keeps the above matter a secret, he would take her brother to Manila on the amount already given and assure the work/job to her brother and would also make her husband permanent there. On the first day, he gave his mobile No. 9501672883 to the deceased and asked her to keep talking to him on phone. He would ask the deceased to come to market, but she flatly refused to meet him alone. One day, Danu asked the deceased to come to his kothi, so that he could rape her and she did so out of fear. On the way, her father-in-law met her. He asked the deceased as to where she was going. Out of fear, she replied that Danu had called her so as to have a discussion about sending her brother abroad. Thereupon, her father-in-law took her to the house of Danu. At the house, the petitioner and her husband Danu were present and they both demanded a sum of ₹3 lakh for the purpose of sending the deceased's brother to Manila, to which her father-in-law replied that Kuldeep (Gora's Sala (wife's brother) had already given an amount of ₹1-1/2 to him and outstanding ₹1-1/2 would be paid by him. Her father-in-law further asked Danu to take Kuldeep to Manila along, to which Danu replied that he would send Kuldeep with someone else. After that her father-in-law came outside. Thereafter, the deceased told the petitioner that Danu had not only intimidated her, but also raped her forcibly and

subsequently refused to take her brother along. On this the petitioner said to her *“Don’t talk about it to anyone else.If you disclose it to anyone, then my husband Kulwinder will get your husband Gora killed in Manila. It generally happens to a lady. He has also kept one concubine. What did happen? He has not taken anything away from you. It will malign your as well as our image.”* She further said to me, *“We will send both of your brothers at Manila if you remain silent and you will be helped with 5/7 lacs of rupees.”* Thereafter the deceased left Danu's house.

9. A bare reading of the suicide note would clearly establish that there are no allegations qua the petitioner creating such or any circumstance which would have compelled the deceased to commit suicide. A certain amount of money was allegedly handed over to the petitioner and her husband Danu by the deceased who wanted to send her brother abroad on the assurance given. As alleged, it was Kulwinder Kumar @ Bintu @ Danu who had committed rape upon the deceased.

10. At this stage, it would be expedient to refer to Section 306 IPC in order to see whether the role attributed to the petitioner constitutes an offence . Section 306 of 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.”

Section 107 of the IPC defines the abetment, which lays down that:

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.

11. Therefore, in order to bring a case within the purview of Section 306 of Indian Penal Code there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

12. 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 *instigates* any person to do that thing.

13. Further, this Court in the case of **Kuldeep Singh Versus State of Haryana 2018 (3) R.C.R. (Criminal 543**, while dealing with Section 306 IPC held as under:-

“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 “goading” 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.”

From a bare reading of the suicide note, produced above, it is abundantly clear that the petitioner neither abetted, intentionally aided, or instigated the deceased to commit suicide; nor played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. At the most it was a case of money exchange/dispute. Resultantly, this court has no hesitation in allowing the petition and quashing charges as framed against the petitioner.

14. Consequently, the present revision is allowed. The impugned order dated 28.7.2011 passed by the Additional Sessions Judge, Shaheed Bhagat Singh Nagar, framing charge under Section 306 IPC qua the petitioner is set aside.

December 19, 2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No