

108.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2995-SB-2018

Date of decision: 13.09.2019.

SUBE SINGH

... Appellant

versus

SONU KUMAR AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Manoj K. Tanwar, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-complainant has filed the present appeal against the judgment dated 17.05.2018 passed by the learned Additional Sessions Judge, Narnaul whereby in FIR No.142 dated 19.05.2015 registered under Section 306 of IPC with Police Station Nangal Chaudhary, respondent No.1-accused, was acquitted of the charges framed against him.

Briefly stated, the aforesaid FIR was registered at the behest of appellant. As per FIR, the complainant has three children including Babita (since deceased), aged about 16 years. She was studying in 10th class. She had informed the complainant and his family members with regard to harassment caused to her by the co-villager boy, namely, Sonu (respondent No.1 herein). For quite some time, the complainant formerly exhorted the accused Sonu, but still he did not mend his ways. On 19.05.2015, when the deceased had gone to her school in the morning and at about 11/12.00 noon,

the complainant got an information with regard to flopping of deceased in the street near to Baniya's house. He rushed to the spot, where he noticed that his daughter was lying unconscious and respondent No.2-Sonu was sitting at a short distance from her. He shifted his daughter to General Hospital, Nangal Choudhary, but considering her serious condition, the doctor referred her to General Hospital, Narnaul. However, when she was being evacuated to General Hospital, Narnaul, she breathed her last on her way to hospital. Before her death, the deceased had told the complainant and his family members that the accused Sonu was constantly tormenting her on the pretext of love and therefore, she opted to end her life by consuming some poisonous substance.

Investigation was carried out, report under Section 173 Cr.P.C. was filed and as required under Section 207 Cr.P.C., copy of challan was supplied to the accused. Thereafter, the case was committed to the Court of Sessions vide order dated 03.08.2015.

After appreciating the evidence on record, the learned trial Court acquitted the accused for the charge framed against him vide order dated 17.05.2018.

Aggrieved against the order of acquittal dated 17.05.2018, the appellant-complainant has filed the present appeal.

Counsel for the appellant has submitted that on 19.05.2015, the complainant's daughter Babita had gone to school and at about 11/12.00 o'clock, he got an information that his daughter was lying unconscious in the *gali* near to Bania's house and when he reached to his daughter, she was asking for water. When he (complainant) enquired his daughter about this,

she disclosed that the accused-Sonu dragged her in a dilapidated house and tried to commit rape upon her. She further disclosed that the accused had administered some liquid by pressing her nose, as she hated him. Thereafter, he took his daughter to CHC Nangal Chaudhary for treatment but on the way at Bus Stand Nangal Chaudhary, she breathed her last. He made a complaint Ex.PW5/A to the police.

Counsel has argued that the trial Court has not properly appreciated the provisions of Section 306 IPC during the trial. Despite not rebutting that the accused was 'unrequited lover' of the deceased, he had continuously stalked, tortured and harassed the deceased by offering marriage proposals to her and repeatedly solicited her to elope with him regardless of exhibiting her displeasure. The conduct of the accused was so unbearable, which compelled the deceased to commit suicide. No plausible reason has been given by the trial Court while acquitting the accused. The evidence adduced by the prosecution has been declined without sufficient reason. The respondent is guilty for commission of offence under Section 306 IPC, as at the time when the deceased was dying, the accused was very much present at the scene of occurrence and was stalking her. It is because of the accused, the deceased committed suicide and, therefore, the respondent-accused is liable to be held guilty for commission of offence under Section 306 IPC and to be sentenced accordingly.

Counsel has further argued that no women would take such extreme step unless there is unbearable torture or harassment and has crossed the threshold of tolerance. The accused had created such a situation for the deceased to take the extreme step.

I have heard counsel for the appellant and perused the judgment of the trial Court carefully.

The crucial witness in the case is none else but the complainant/appellant-Sube Singh himself who is father of the deceased and author of the FIR. While appearing as PW5, this witness has deposed that the accused Sonu persuaded and threatened his deceased daughter for fleeing with him, otherwise, he would commit rape upon her and due to that, his daughter was afraid of him (accused). The complainant made to understand the accused, his father and his uncle, not to harass or threat his daughter, but all in vain. On 19.05.2015, when his daughter-Babita had gone to school, at about 11/12.00 O'clock, he got an information that his daughter was lying unconscious in the *gali* near to Bania's house. Thereafter, he went to see her, but on the way, the family members of the accused Sonu met him along with Prem, Sajjan Singh, Naresh, Tara, Maya, Subhetra, Poonam, Asha, Nisha and Gola. The complainant told them to run away, otherwise, he would point their names in the complaint and they all fled away. Thereafter, he reached to his daughter who was demanding water. He enquired from his daughter about the condition, who disclosed that the accused Sonu dragged her to a dilapidated house and tried to commit rape upon her. She further disclosed that the accused administered some liquid by pressing her nose, as she hated him. Thereafter, he took his daughter to CHC Nangal Chaudhary for treatment, but on the way at Bus Stand Nangal Chaudhary, she breathed her last. He made a complaint Ex.PW5/A to the police.

In the evidence, it has come on record that there was some occurrence dated 14.05.2015, but this occurrence was never informed to the

police and the pleaded ground for such non-reporting is that as the grandmother of the complainant had expired on 17.05.2015, therefore, he could not move such application before the police regarding the occurrence dated 14.05.2015. Interestingly, in complaint Ex.PW5/A, the complainant has failed to point out such allegations as made in his statement while appearing as PW5, which includes threat by the accused that either she (the deceased daughter of the complainant) should run away with him, otherwise he would commit rape upon her and for this reason, the daughter was afraid of the accused. Similarly, he has not mentioned the fact that at the time when the complainant reached at the spot, the deceased was lying conscious. Though in the statement, he has submitted that when he was going to attend the deceased daughter, the family members of the accused-Sonu i.e. Prem, Sajjan Singh, Naresh, Tara, Maya, Subhetra, Poonam, Asha, Nisha and Gola were found there and they fled away on his reaching there, but there is no such reference of these persons in the FIR. In the similar manner, the complainant has made a statement that his daughter had disclosed him regarding her dragging in a dilapidated house and attempt to commit rape upon her by the accused. There is no such allegation in the FIR that the deceased ever disclosed to the complainant that the accused administered some liquid by pressing her nose. Further, in his statement, it has come on record that there was some occurrence dated 14.05.2015, but the matter was never reported to the police and the pleaded ground is that his grandmother had expired on 17.05.2015. But in evidence, it has come on record that Bhagli, who died on 17.05.2015, was not his real grandmother, rather she was sister of the grandmother of the complainant, thus in distant relations.

PW8-Dr. Jag Mohan, who was one of the members of the Board of Doctors, while appearing as a witness, has stated that he and Dr.Vartika had conducted autopsy on the dead body of Babita (Ex.PW8/B) and Chemical Examiner report (Ex.PW8/C) was obtained, which shows positive test for aluminium phosphide. He opined that the cause of death was due to poisoning of aluminium phosphide. He further deposed that three injuries were found on the person of the deceased i.e. *(i) clotted blood present on forehead. No external injury seen; (2) 2 x .7 cm incised looking wound on right fronto temporal area, bony deep. No bony fracture; and (3) 1 x 1 cm bony deep lacerated wound on right Occipital area. No bony fracture seen.* Though, in his cross-examination, this witness stated that all the injuries on the person of deceased were ante-mortem, but at the same time, he failed to specify the duration of the injuries.

There is no dispute as far as the death of Babita is concerned and as per the FSL report, she died because of poisoning with aluminium phosphide. But the question, which was required to be determined by the trial Court, whether the prosecution could succeed in proving the charge under Section 306 IPC as framed against the accused. It is not in dispute that the complainant had reached the place where the deceased was lying unconscious and when he reached, he noticed the family members of the accused-Sonu Kumar, namely, Prem, Sajjan Singh, Naresh, Tara, Maya, Subhetra, Poonam, Asha, Nisha and Gola, but interestingly, the complainant has not disclosed the fact that as to who informed him with regard to flopping of his daughter in the street near to Bania's house, though in his statement while appearing as PW5, he has disclosed the fact that when he

went to see his daughter, on the way, the family members of the accused met him along with the persons mentioned in the statement. When he reached the spot, his daughter was demanding water and on enquiry, she disclosed the complainant that the accused Sonu dragged her to a dilapidated house and tried to commit rape upon her when she was going to school and also he administered some liquid by pressing her nose, as she hated him. Thus, on the basis of cross-examination of this witness, it has come on record that at the trial, the prosecution sought to make out a case that the deceased was conscious at the time when PW5 reached to her after getting information and she had narrated the circumstances under which she was poisoned by the accused. However, when PW5 was confronted with his statement made in complaint Ex.PW5/A, it was found that he had not stated the aforementioned facts i.e. consciousness of his daughter, demanding water from him, narrating the circumstances of her deteriorating health due to poisoning and dragging to commit rape upon her in a dilapidated house by the accused in the course of investigation before the police. Thus, there seems to be a substantial improvement in his initial version as stated before the police and while appearing as PW5 during the trial.

Considering the contents as made in complaint (Ex.PW5/A) wherein it has been alleged that the accused used to say to his daughter Babita that he loves her, and he had been harassing her for a long time and thereafter, the complainant made him (accused) to understand several times, but the accused did not mend his ways, can amount to abetment to suicide, was an issue to be decided by the trial Court.

Section 107 of IPC which defines “Abetment of a thing” reads as under:-

“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.”

In order to bring out a case within Section 107 of IPC, the prosecution has to prove that the accused had instigated the deceased to commit suicide or he had intentionally aided by any act in the suicide of deceased. To constitute 'instigation', a person, who instigates another, has provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward.

Section 306 of IPC which is relevant in the case, is reproduced 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.”

A person, who instigates the deceased to commit suicide must do some act by words, deed or willful omission or conduct which may even

be a willful silence, in order to irritate or annoy the deceased until he reacted. Alternatively, the person who instigates the deceased must push or force the deceased by deed, words, or willful omission or conduct which may even be a willful silence to make the deceased to move forward more quickly in a particular direction. Or, he must strongly persuade or advise the other to do some act. While acting so, the person who instigates the other must also have the intention to provoke, incite, urge or encourage the latter to commit suicide.

*In **Rajesh Versus State of Haryana- Criminal Appeal No.93 of 2019 (arising out of SLP (Crl.) No.8667 of 2016, decided on 18.01.2019)**,* the Hon'ble Apex Court has held that abetment to commit suicide is not sustainable on mere allegation of harassment without there being any positive action proximate to the time of occurrence on the part of accused which led or compelled the person to commit suicide. So, therefore, in order to bring the case within the purview of Section 306 IPC, there must be a case of suicide and in commission of said offence, a person, who is said to have abetted commission of suicide, must have played active role by act of instigation or by doing certain act to facilitate commission of suicide. Thus, conviction under Section 306 IPC is not sustainable on the ground of allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide. Para Nos.8 and 9 of the judgment, which are relevant, are reproduced as under:-

“8. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive

*action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, 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. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See **Amalendu Pal alias Jhantu v. State of West Bengal, (2010) 1 SCC 707**).*

9. *The term instigation under Section 107 IPC has been explained in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi, (2009) 16 SCC 605: (2010) 3 SCC (Cri.) 367** as follows:*

*“16. Speaking for the three-Judge Bench in **Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088]**, 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.

17. Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage the 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 Edn.).”

While acquitting the accused, the trial Court has observed as under:-

“49. the allegation of harassment are without specific particulars with regard to time, date, place and manner of committing harassment, which are essential to determine the frequency of such act and conduct of the accused. Thus, omnibus allegations made qua the accused are not sufficient to nail down him under the provisions of Section 306 IPC. Even assuming for the sake of argument that there was harassment by the accused, it cannot be said to be a positive act on his part that the deceased should commit suicide.

50. Further, the prosecution remained mysteriously silent over the alleged ingestion of unknown substance by accused Sonu. A perusal of MLR Ex.PX reveals that the accused Sonu was also brought to CHC Nangal Choudhary with alleged history of ingestion of unknown substance on 19.05.2015 at 10:31 AM i.e. on the day of alleged incident. The Investigating Officer ASI Sajjan Kumar did not utter a single word in his evidence before this court despite this fact that he mentioned in his endorsement Ex.PW11/A that two MLRs pertaining to

Babita daughter of Sube Singh and Sonu son of Prem Chand along with one Rukka received in the police station. He testified that he did not investigate about procurement of poison. The prosecution has not explained the ingestion of unknown substance by the accused as well as possession and procurement thereof. I may further observe that PW-8 Dr.Jag Mohan has proved three injuries, as noted in foregoing paragraphs.23 & 37, on the person of deceased and it were ante-mortem, but PW5 did not say anything with regard to presence of such injuries on deceased. It is significant to note here that initial medico-legal report Ex.PW11/B of deceased is also silent about said injuries. Now question arises that when initial MLR of deceased and PW5 did not speak out presence of any sort of injury on the person of deceased then how it inflicted on the person of the deceased. The prosecution has not put forth any explanation at all and therefore concealed the material facts from this court, which clearly indicates that the story projected by the prosecution is not either true or there was something else, which was vital in nature, but against the story of prosecution and therefore such facts were deliberately withheld by the prosecution. Hence, adverse inference is drawn qua the prosecution that its version is not true version. Further, it appears that the accused had also either attempted or caused to commit suicide or someone else had administered him unknown substance to eliminate him from this world. It indicates that the deceased Babita and accused Sonu were in love, but some persons dislike their love and therefore it seems to me, that the accused and deceased were harassed, beaten, or tortured on this account. Thus, in these circumstances, it cannot be said that the accused had intentionally abetted the deceased to commit suicide. If the deceased had taken her life out of any frustration then it would not amount to abetment to commit suicide by the accused Sonu.”

In view of above and taking into consideration the fact that there is apparent improvement in the initial version recorded at the behest of complainant Ex.PW5/A and in the statement while appearing as PW5, this Court does not find any illegality in the judgment of the court below.

Dismissed.

(HARI PAL VERMA)
JUDGE

13.09.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No