

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 22nd November, 2018
Judgment delivered on: 08th January, 2019

+ CRL. REV. P. 330/2017

MS SHIKHA GUPTA

..... Petitioner

versus

STATE (GNCT OF DELHI)

....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Lohit Ganguly, Advocate.

For the Respondents: Mr. Hiren Sharma, APP for the State with SI Dev Kumar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CRL. REV. P. 330/2017 & Crl.M.A.7381/2017 (stay)

1. Petitioner impugns order on charge dated 15.03.2017, whereby, the Trial Court has held that *prima facie* material exists against the accused for framing of charge under Section 306 Indian Penal Code, 1860 (IPC for short).

2. Petitioner was the wife of the deceased. They were married according to Hindu rights and ceremonies on 25.02.2015. From the wedlock, a female baby has been born, which is in the custody of the

petitioner. Disputes between the parties arose. Subsequently, on 20.05.2015, the petitioner left her matrimonial home.

3. A complaint was lodged against the deceased and her in-laws by the petitioner on 14.07.2015 with the Crime Against Women Cell, Gurgaon.

4. On 31.07.2015, as per the case of the prosecution, the parties attended the hearing at the Crime Against Women Cell, Gurgaon. It is alleged that the petitioner slapped her husband, the deceased, in front of the family members.

5. As per the prosecution, on 02.08.2015, the husband of the petitioner attempted to commit suicide and was taken to the hospital. Subsequently, he expired on 03.08.2015. An alleged suicide note was allegedly recovered from the bed of the deceased. Subject FIR No.393/2015 under Sections 306/34 IPC has been registered.

6. As per the FIR, the deceased committed suicide as he was very upset because he had been slapped by the petitioner in front of the family members.

7. By the impugned order on charge dated 15.03.2017, the Trial Court has held that it is on record that the accused petitioner had slapped the deceased on 31.07.2015 and the deceased committed suicide on 02.08.2015. Father of the deceased had stated that the

deceased was feeling shamed due to the act of the accused and committed suicide.

8. Trial Court was of the view that proximity of committing suicide with the alleged act of the accused and the fact that the accused committed suicide as a direct consequence of the slap given by the petitioner was a matter of trial. In view of said facts, Trial Court was of the view that *prima facie* material existed against the accused for framing of charge under Section 106 IPC.

9. Learned Counsel for the Petitioner submits that the trial court has erred in not appreciating that there is no material to suggest that the petitioner instigated the deceased to commit suicide or in any manner aided or abetted the commission of suicide.

10. 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.”

11. Under Section 306 IPC, whoever abets commission of suicide is held liable for abetment of suicide.

12. Section 107 IPC defines abetment 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 willful misrepresentation, or by willful concealment of a material fact which 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, willfully 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.”

13. In terms of Section 107 IPC, a person abets the doing of a thing, who instigates any person to do that thing or engages with one or more persons in any conspiracy for the doing of that thing or intentionally aids, by any act or illegal commission the doing of that thing.

14. In the case of suicide, a person is liable for abetment if the person has *inter alia* instigated the deceased for committing suicide or has engaged in any conspiracy for committing suicide or intentionally aided the commission of suicide.

15. Reference may be had to the judgment of the Supreme Court in *Ramesh Kumar vs. State of Chhattisgarh*: (2001) 9 SCC 618, wherein, the Supreme Court laid down as to what conduct would amount to incitement or instigation:-

“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.

21. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that 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 her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

(underlining supplied)

16. Reference may also be had to the judgment of the Supreme Court in *Pawan Kumar vs. State of H.P.*: (2017) 7 SCC 780, wherein, the Supreme Court elaborated upon the expression *abetment* as under:-

“34. The word “abetment” has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element. Such a requirement can be perceived from the reading of Section 107 IPC. Section 107 IPC reads as under:

*“107. Abetment of a thing.******

“Abetment”, thus, means certain amount of active suggestion or support to do the act.

35. Analysing the concept of “abetment”, as found in Section 107 IPC, a two-Judge Bench in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* [*Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] has held: (SCC p. 610, paras 13 & 15)

“13. 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 IPC.

15. 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 IPC. The meaning of the said word was considered by this

Court in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] .”

In the said authority, the learned Judges have referred to the pronouncement in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] .

36. The word “instigate” literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The word “urge forward” means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to “goad” or “urge forward” the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as “abetment”.

38. *Analysing further, in Randhir Singh v. State of Punjab [Randhir Singh v. State of Punjab, (2004) 13*

SCC 129 : 2005 SCC (Cri) 56] , the Court has observed thus: (SCC p. 134, para 12)

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

(emphasis supplied)

39. In Praveen Pradhan v. State of Uttaranchal [Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734 : (2013) 1 SCC (Cri) 146] , it has been ruled: (SCC p. 741, para 18)

“18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket 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. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. ...”

(emphasis supplied)

40. In *Amalendu Pal v. State of W.B.* [*Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , the Court, after referring to the authorities in *Randhir Singh* [*Randhir Singh v. State of Punjab*, (2004) 13 SCC 129 : 2005 SCC (Cri) 56] , *Kishori Lal v. State of M.P.* [*Kishori Lal v. State of M.P.*, (2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] and *Kishangiri Mangalgi Goswami v. State of Gujarat* [*Kishangiri Mangalgi Goswami v. State of Gujarat*, (2009) 4 SCC 52 : (2009) 2 SCC (Cri) 62] , has held: (*Amalendu Pal* case [*Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , SCC p. 712, para 12)

“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 led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

41. A two-Judge Bench in *Netai Dutta v. State of W.B.* [*Netai Dutta v. State of W.B.*, (2005) 2 SCC 659 : 2005 SCC (Cri) 543] , while dwelling on the concept of

abetment under Section 107 IPC especially in the context of suicide note, observed: (SCC p. 661, paras 6-7)

- “6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.*
- 7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal.”*

42. At this juncture, we think it appropriate to reproduce two paragraphs from Chitresh Kumar Chopra [Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] . They are: (SCC p. 611, paras 16 & 19)

“16. Speaking for the three-Judge Bench in Ramesh Kumar case [Ramesh Kumar v. State of Chhattisgarh, (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.

19. As observed in Ramesh Kumar [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , 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.”

(emphasis in original)

This Court again observed: (SCC pp. 611-12, para 20)

20. ... The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours 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 to end his

own life, which may either be an attempt for self-protection or an escapism from intolerable self.”

(emphasis in original)”

(underlining supplied)

17. In the present case, the allegation against the petitioner is that she had slapped the deceased 3 days prior to the deceased committing suicide. There is nothing to suggest that the petitioner instigated, conspired or aided in commission of suicide by the deceased. There is no allegation against the petitioner that the petitioner instigated or exhorted the deceased to commit suicide.

18. The allegation is that the petitioner slapped the deceased in presence of others. Even if one were to consider the incident of alleged slapping as instigation then one has to keep in mind that the alleged conduct should be such as to drive any normal prudent person into committing suicide. Mere act of slapping the husband in presence of others would not under normal circumstances instigate a husband to commit suicide.

19. Further, alleged suicide note relied on by the prosecution does not refer to any incident of slapping. On the other hand, the suicide note alleges that the father of the petitioner had not revealed about the deformity in the back of the petitioner on account of which the deceased's life had become a joke. The suicide note alleges that the accused had made allegations about the relationship between the

deceased and his sister-in-law (brother's wife) and had also alleged that the deceased's brother was mentally unsound. The suicide note does not make any reference to any incident of slapping.

20. Even if the suicide note was to be taken on its face value, the allegation in the suicide note does not show that any conduct per se amounts to instigation to the deceased to commit suicide.

21. For a charge to be framed not only suspicion but grave suspicion of the accused having committed the offence is necessary. The facts and allegations do not show that there is any instigation or abetment on the part of the petitioner which could have instigated the deceased to commit suicide. Clearly, investigation has not revealed any conduct on the part of the petitioner which would raise grave suspicion of the petitioner having committed the offence under Section 306 IPC of abetment to suicide.

22. The prosecution initiated against the petitioner would only result in sheer harassment to the petitioner without any fruitful result. The Trial Court has clearly erred in holding that *prima facie* material exists against the accused for framing of charge under Section 306 IPC. There is absolutely no ground to proceed against the petitioner.

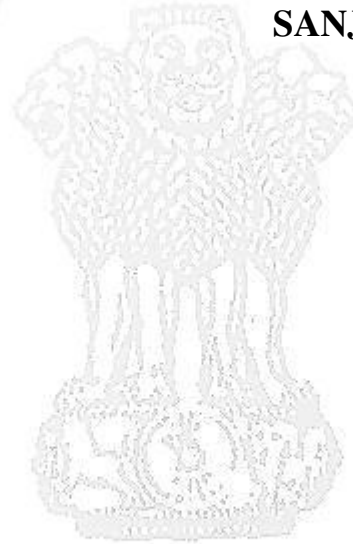
23. In view of the above, the impugned order dated 15.03.2017 as also the charge framed on 30.03.2017 against the petitioner under Section 306 IPC is clearly not sustainable.

24. In view of the above, the petition is allowed. The impugned order on charge dated 15.03.2017 and the charge framed on 30.03.2017 are set aside. The petitioner is discharge of the offence under Section 306 IPC.

25. Order *Dasti* under signatures of the Court Master.

JANUARY 08, 2019
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SANJEEV SACHDEVA, J



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