

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 519 of 2017

**Pinky Singh
Vs.
The State of West Bengal .**

**For the Appellant : Mr. Kallol Mondal, Adv
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.**

**For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Sayati Datta, Adv.**

Heard on : 18.02.2022 & 21.02.2022.

Judgment On : 21.02.2022.

Bibek Chaudhuri, J.

The instant appeal filed by the convict of Sessions Trial No.06(06) 2013 corresponding to Sessions Case No.126 of 2013 arising out of Bizpur Police Station Case No.307 of 2012 dated 26th September, 2012 is against the order of conviction and sentence under Section 306 of the

Indian Penal Code, IPC for short. The appellant was sentenced to suffer rigorous imprisonment for 5 years and also to pay fine of Rs.2,000/- with default clause for the offence under Section 306 of the IPC. The said judgment and order of conviction and sentence is assailed by the appellant in the instant appeal.

Bizpur Police Station case No.307 of 2012 dated 26th September, 2012 was registered on the basis of a written complaint submitted by one Gopal Singh alleging, inter alia, that the appellant is his second wife. He has one son and one daughter in the wedlock of his first marriage. The first wife of Gopal left with another person and Gopal married to the appellant when his daughter was aged about 8 years and the son was about 5 years old. It is further alleged that the appellant being the stepmother of her daughter Prerthana used to torture regularly on flimsy ground. Prerthana complained of her stepmother to her father. On 26th September, 2012 at about 8 a.m. the appellant again tortured her, as a result of which Prerthana could not bear such torture and committed suicide on the verandah of their house. Thus, the appellant abetted Prerthana to commit suicide by hanging.

Investigation culminated in filing of charge sheet against the appellant under Section 306 IPC. In order to bring the charge, prosecution examined 12 witnesses. Certain documents were marked exhibits. The learned Trial Judge on consideration of the evidence on

record, both oral and documentary, convicted the appellant and sentenced him accordingly. The instant appeal is assailing the order of conviction and sentence.

Mr. Kallol Mondal, learned Advocate for the appellant at the outset submits that in order to prove a charge under Section 306 of the IPC, the prosecution is under obligation to prove the ingredients of Section 107 of the IPC. Section 107 runs thus:-

“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 .

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."

Plain reading of the above provision shows that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. In case of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing is 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 of the IPC. A person abates the doing of a thing when

- (1) he instigates any person to do that thing;
- (2) engages with one or more than other persons in any conspiracy for doing of that thing or;
- (3) intentionally aiding by act or illegal omission, doing of that thing.

These things are essential to complete abatement as a crime.

It is submitted by Mr. Mondal that the witnesses on behalf of the prosecution deposed that the deceased was subjected to torture by her stepmother. She was not allowed to continue her studies and on the contrary, she was compelled to household work during the whole day. On the date of occurrence also, it is deposed by P.W.5 that he heard Prerthana saying that she would not be able to do household work and wanted to complete her studies. Immediately thereafter, the witnesses either found or heard that the deceased committed suicide by hanging.

It is further pointed out by Mr. Mondal that even assuming that the victim was tortured by her stepmother regularly. This does not bring home the charge under Section 306 of the IPC. Something more is required to be proved, viz, the accused committed some positive act for other than mere torture aiding or abetting or committing of suicide. Thus, the prosecution is under obligation to prove that the accused had the mens rea to aid and abet commission of suicide by the deceased and along with such mens rea, the actus reus must correspond to prove the guilt of the accused. In support of his argument, Mr. Mondal refers to a decision of this Court in the case of ***Annakali Dutta Vs. State***, reported in **1990 2 CHN 38**. In the said report this Court relying on a Division Bench judgment in ***Pratima Dutta v. State*** reported in **81 CWN 713** was pleased to hold that ill treatment or torture might produce a state of mind favourable to suicide but evidence of such torture or ill-treatment

would not by itself be sufficient to sustain a charge under Section 306 of the IPC, 1860 unless there is evidence of incitement to end his life. According to the Division Bench, there must be some evidence from which it can be said that the commission of suicide was the immediate effect of incitement. Owing to occasional torture and ill-treatment, someone may decide to take one's own life. In such a case, the persons who meted out such torture and ill-treatment may not be said to have abetted the commission of suicide. But if someone actively suggests or goads another to the act by express solicitation, insinuation or encouragement, it would certainly amount to abetment of the act. It is of course true that it may be difficult to prove such element of abetment of commission of suicide but then without proof no person can be convicted. It is in that context that the legislature has enacted the provisions of Section 113A of the Evidence Act but then as that section has no manner of application in this case and as there is no material whatsoever to prove abetment of the commission of suicide, the charge under Section 306/34 of the IPC cannot be allowed to stand.

Mr. Mondal further refers to a decision of the Hon'ble Supreme Court in the case of ***Sanju alias Sanjay Singh Sengar Kumar and others Vs. State of M.P.*** reported in ***(2002)5 SCC***. In this decision also, the Hon'ble Supreme Court observed that presence of mens rea is the necessary concomitant of instigation.

The word "instigate" denotes excitement or urging to do some drastic or inadvisable action or to stimulate or incite. The words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. The Hon'ble Supreme Court relied on the following observation in **Ramesh Kumar vs. State of Chhattisgarh** reported in **(2001) 9 SCC 618**. The said observation runs thus:-

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 similarity 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 for abetting the offence of suicide should be found guilty."

Mr. Mondal also refers another decision of this Court reported in **(2006) 3 CHN 651 (Subha Narayan vs. State of West Bengal and others)**. A Co-ordinate Bench of this Court while dealing with the scope of Section 306 of the Indian Penal Code held that it cannot be denied that to constitute an offence under Section 306 of the Indian

Penal Code, it is not enough that the victim was subjected to some harassment or used to be criticized but something more than it is necessary. It is necessary to establish that the instigation was the proximate cause for commission of offence. On the same score Mr. Mondal also refers to a decision of this Court in the case of ***Sridevi Shil alias Mamoni vs. Bimal Sarkar and Anr.*** reported in **2015 SCC Online Cal 7506**. The said report of this Court is in relation to quashing of a proceeding under Section 306 of the Indian Penal Code. However, while disposing of the said criminal revision the Court reiterated the ingredients of offence under Section 306 of the Indian Penal Code and the essential ingredients to be proved by adducing evidence in such case. Same is the decision of this Court in ***Bishnu Chakraborty vs. State of West Bengal*** reported in **2007 (3) CHN 754**. Placing reliance on ***Madan Mohan Singh vs. State of Gujarat and Anr.*** reported in **(2010) 8 SCC 628** which is an appeal before the Hon'ble Supreme Court against refusal of the prayer for quashing of F.I.R. under Section 482 of the Code of Criminal Procedure it is submitted by Mr. Mondal that the facts of the said report states that the driver of the accused committed suicide leaving a suicidal note making a specific allegation against the accused persons. The Hon'ble Supreme Court on appreciation of the suicide note found that it was an anguish expressed by the driver who felt that his boss had

wronged him. The suicide note and the F.I.R. did not impress the Hon'ble Supreme Court at all. It was observed that they could not be depicted as expressing anything intentional charge of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it would be difficult for every superior officer even to work. Mr. Mondal also refers to the decision of the Hon'ble Supreme Court in ***M. Arjunan vs. State (represented by its Inspector of Police)*** reported in **(2019) 3 SCC 315** and ***Amalendu Pal alias Jhantu vs. State of West Bengal*** reported in **(2010) 1 SCC 707**.

The learned Prosecutor, on the other hand, has supported the impugned judgment and placing reliance on the decision of ***Chitresh Kumar Chopra versus State (Government of NCT of Delhi)*** reported in **(2009) 16 SCC 605** submits that perpetration of torture for a long period of time and denial of the accused to continue with the studies of the deceased and forcibly engaging her in household works for which she committed suicide are the instances of instigation by the accused resulting in aiding or abetting the commission of suicide.

In support of his contention he refers to paragraphs 17 to 19 of the aforesaid decision which is reproduced below:-

- "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.)*
- 18. 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, 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.*
- 19. As observed in Ramesh Kumar, 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."*

It is not in dispute that in the F.I.R. the de facto complainant alleged that the appellant used to torture his daughter Prerthana regularly. On 26th September, 2012 she also tortured her and failing to bear such torture she committed suicide. From the evidence of

P.W.1 Babul Mondal it is ascertained that she was taking bath under the municipal tap water situated between the house of the de facto complainant and him at about 8 A.M. At that time the deceased came there to take water. After sometime she heard Prerthana shouting, "Hum Khana Nehi Banaye Hume Padne Do" (I would not prepare food. Let me have my studies.). Subsequently, after one and half hours P.W.1 found that many people assembled in front of the house of Gopal Singh. He then came to know that Prerthana committed suicide. From the evidence of the de facto complainant (P.W.2) it is ascertained that he was not present at the relevant point of time. Immediately before and after commission of suicide of Prerthana when he came to the house on the date of occurrence he found Prerthana hanging on the veranda of his house with the help of a scarf. She was taken to P.W.3 Dr. Abhijit Ghosal who declared her dead. P.W.4, P.W.5, P.W.6, P.W.7 and P.W.8 are the neighbours of Gopal Singh. All the witnesses stated that the deceased was subjected to humiliation and torture by the appellant. She also did not allow her to complete her studies. From the evidence of P.W.9, younger brother of deceased, it is found that the appellant used to assault and rebuke the deceased and forced her to do household work. On 26th September, 2012 she committed suicide due to torture by the

appellant. Other witnesses are of little importance except P.W.12 who is the Investigating Officer of the case.

If the evidence on record is carefully scrutinized and scanned it is found that the deceased was subjected to torture by the appellant. It is also found that the appellant did not allow her to complete her studies. There is, of course, no evidence that the appellant instigated the deceased to commit suicide. If a girl commits suicide due to torture by her stepmother who insisted upon her to do all household works of the house and she commits suicide, it transpires to the Court that the victim was hypersensitive to ordinary petulance, discord and differences in domestic life. It is very common to the society that a stepmother wants her stepdaughter to be engaged in household works.

Instance of torture, assault etc. for non-performance of household works is not directly associated with the commission of suicide.

We get a picture as to what had happened on 26th September, 2012 at 8 A.M. P.W.1 saw the deceased taking water from municipal tap. After sometime she heard the deceased state that she would not prepare food and she would complete her studies. Importantly enough nobody heard the utterances of the appellant after the deceased denied to prepare food. There is absolutely no evidence as

to whether the appellant then instigated her to commit suicide. It is held by the Hon'ble Supreme Court that if an accused abuses the victim out of anger to go and die, such utterances also do not constitute instigation of offence to commit suicide because there was no mens rea of the accused inducing the victim to commit suicide. There are instances and occasions for torture or ill treatment by the appellant to the deceased and it may lead the victim to decide to terminate her life. But the person who meted out such torture and ill treatment may not be said to have abetted the commission of suicide. In ***Gangula Mohan Reddy vs. State of Andhra Pradesh*** reported in ***(2010) 1 SCC 750***, the Hon'ble Supreme Court was pleased to hold that 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 sustained. 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 committed suicide.

In the instant case, the evidence of mens rea of the deceased was absent. The learned trial Judge has committed an error in holding that as the appellant used to torture the deceased both physically and mentally, she aided and instigated the victim to commit suicide.

For the reasons stated above, the impugned judgment and order of conviction and sentence is liable to be set aside.

Accordingly, the appeal is **allowed** on contest.

The judgment and order of conviction and sentence passed in Sessions Trial No.06(06) of 2013 arising out of Sessions Case No.126 of 2013 dated 21st August, 2017 and 22nd August, 2017 is set aside.

The appellant be discharged from his bail bond.

Let a copy of this judgment be sent down to the learned Court below along with the lower Court record.

Urgent photostat certified copy of this judgement, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

