

**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A-1002-MA-2012(O&M)
Reserved on :28.02.2023.
Date of Pronouncement: 22.05.2023.**

Mohinder Singh ...Applicant

VS.

State of Punjab and others ...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. S.S.Swaich, Advocate
For the applicant.

Mr. M.S.Bajwa, DAG, Punjab.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate
for respondents No.3 and 4.

N.S.Shekhawat J.

1. Challenging the legality and correctness of the impugned judgment dated 11.09.2012 passed by the learned Additional Sessions Judge, Hoshiarpur, whereby the respondents were acquitted of the charge under Sections 306/34 Indian Penal Code (for short 'IPC'), the appellant/complainant has preferred the instant application before this Court. The applicant has assailed the findings recorded by the learned trial Court, whereby it was held that the prosecution had miserably failed to prove the allegations of abetment to suicide against any of the accused.
2. Shorn of unnecessarily details, the brief facts of the present case are that the FIR in the instant case was got registered by Mohinder Singh, S/o

Joginder Singh (since deceased). On 02.12.2007, Mohinder Singh alongwith Sham Singh, Sarpanch approached the police and stated that Parkash Kaur was his mother and Joginder Singh (since deceased) was his father, who committed suicide on 26.11.2007 on a railway track. Mohinder Singh, complainant was married with Shalini Saini (respondent No.3) daughter of Harish Chander Rai (Respondent No.4) on 03.12.2004 and a son, namely, Gurransh was born out of their wedlock, who was aged about two and a half years. After 2 months of the marriage, his wife Shalini Saini, accused started quarrelling with him and his parents and asked them to give share from the property. He tried to avoid the confrontation by stating that his other brother was staying abroad, consequently, it was not possible for him to leave the old parents. However, Shalini Saini-respondent No.3/his wife did not agree to the said proposal and left the matrimonial home and went to her parents in May, 2005 without informing him and got a false case registered against him and his parents regarding demanding of dowry and harassing her. However, the matter was compromised with the intervention of the respectable.

3. On 27.05.2005, he brought his wife back to the matrimonial home, but again in April, 2006, she left the matrimonial home without any justification. He informed the police officials in this regard. Shalini Saini, accused got a false case registered against him, his sister and his parents. In December, 2006, the complainant was arrested by the police and his sister also obtained bail after returning from England and the case was pending before the Court. On 25.11.2007, his father went alone out of the house and on 26.11.2007, his dead body was found on the railway track and since his wife

had filed a false application against his parents, his father had committed suicide. His father died as he was harassed by Shalini Saini as well as her parents in connivance with Dr. Pradeep Singh, who had since died. On 02.12.2007, he produced one suicide note before the police, which was written by his father.

4. The investigation was conducted after the registration of the FIR. The suicide note was sent to the FSL and as per the report of the FSL, it was written by Joginder Singh, (since deceased). The necessary investigation was conducted by the police and ultimately, the final report under Section 173 Cr.P.C. was presented before the Competent Court.

5. Ultimately, the learned trial Court considered the contents of challan and it was *prima facie* held that the accused had committed the offence under Section 306/34 IPC and the respondents No.2 to 4 were ordered to be charge-sheeted accordingly. The respondents No.2 to 4 pleaded their false implication and stated that they were innocent and claimed trial. To prove the charge against the respondents No.2 to 4, the prosecution examined six witnesses and thereafter, the evidence was ordered to be closed.

6. The prosecution examined PW-1 Dr. Pramodh Rishi, MO, Civil Hospital, Dasuya, who had conducted the post-mortem examination on the dead body of Joginder Singh and as per him, the cause of death in the present case was extensive damage to the brain which was sufficient to cause death in ordinary course of nature. He further opined that the injuries could be result of railway accident. The prosecution further examined Mohinder Singh, complainant as PW-2. As per him, his marriage was solemnized with Shalini

Saini on 03.12.2004 and a son, namely Gurransh Saini was born. After two months of marriage, his wife started harassing his parents and him and pressurize them to transfer the land of his father i.e. Joginder Singh (since deceased) in her favour. She compelled them to purchase a house at Chandigarh for residence, after selling the land of his father. He advised his wife to mend her ways, but she used to quarrel with him. He and his father moved complaints to the police at Hoshiarpur as well as Gurdaspur against his wife due to her conduct. In April, 2006, his wife left the matrimonial home without informing him. He informed her father on phone, but he also started threatening him to get implicated him and his family including his father in a false case. He had written to the higher police officials and also gave a CD regarding the threat extended by his father-in-law, but no action was taken. Even a Panchayat was held in the last week of October, 2006, where Shalini Saini along with her parents i.e. respondents No.2 and 4 and Dr.Pradeep Saini alongwith Panchayat came to their house. His wife admitted her guilt, but she refused to touch the feet of his parents and used derogatory words. Joginder Singh, his father felt insulted in front of Panchayat. On 21.08.2006, his wife moved application against him and his parents before SSP, Hoshiarpur and the inquiry was pending in that matter. Second application was moved by Shalini Saini, on the basis of which a case was registered against his parents, sister, brother and his wife on 15.12.2006 and it was a false case. His family members got released on anticipatory bail. After registration of the criminal case, Shalini Saini, respondent No.3/his wife lodged Domestic Violence Act complaint against his parents and other family members. He supported the case of the

prosecution as mentioned in the FIR. He also produced the suicide note Ex.PC written by his father to the police. The prosecution further examined PW-3 Sham Singh, Sarpanch, who also supported the case of the prosecution, as narrated by PW-2-Mohinder Singh. The prosecution further examined Inspector Makhan Singh as PW-4, who conducted the investigation initially. HC Hardeep Singh was examined as PW-5, who was part of the investigation of the present case. The prosecution examined PW-6 Taranjit Singh (Retd.) Sub-Inspector, who had initially conducted the investigation. He alongwith other police officials had reached on the site at the railway track, where dead body was found. The inquest report was prepared and the statements of various witnesses were recorded and the proceedings under Section 174 Cr.P.C. were done. On 02.12.2007, one suicide note of Joginder Singh was handed over to him by Mohinder Singh, complainant and was taken into possession vide recovery memo Ex.PC/1. In his cross-examination, he admitted that the deceased had committed suicide on the railway track. He stated that Mohinder Singh met him on 26.11.2007 but did not give any suicide note and he gave the suicide note on 02.12.2007. He further admitted that the name of Shalini and her mother i.e. respondents No.2 and 3 were not mentioned in the suicide note. The name of Dr. Pradeep figured in the note, however, Dr. Pradeep had already died and consequently, the investigation was not conducted against him. Even he came to know that Shalini Saini had filed a complaint under Section 406, 498-A IPC against Joginder Singh and the complainant. She had also filed application under Section 125 Cr.P.C and also filed domestic violence complaint against them.

7. After the closure of the prosecution evidence, the incriminating evidence was put to all the three accused/respondents No.2 to 4 in the shape of the statement under Section 313 Cr.P.C. and all of them stated that they were innocent and had been falsely implicated in the present case. No defence evidence was led by respondents No.2 to 4.

8. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

9. Learned counsel for the appellant vehemently argued that there was cogent, unimpeachable and legally admissible evidence on record to prove that Joginder Singh (deceased) committed suicide on the night intervening 25/26-11.2007 and all the accused had abetted its commission and were liable to be convicted under Section 306/34 IPC. Still further, the suicide note was proved on record as Ex.PC, which was legally admissible under Section 32 of the Evidence Act and qualified as a dying declaration. The suicide note was duly proved on record and the handwriting of Joginder Singh (deceased) was found by the Forensic Science Laboratory Report Ex.PW-6/G. From the suicide note Ex.PC itself, the offence is proved against the respondents No.2 to 4. Still further, the learned trial Court was totally oblivious of the fact that while, malicious and defamatory allegations were levelled by the complainant against respondents No.2 to 4 in the said complaint, which instigated Joginder Singh to take the extreme step of suicide. Still further, apart from the allegations levelled in various complaints, Joginder Singh (since deceased) was publicly humiliated in a Panchayat held in a village and the circumstances clearly established the commission of the offence of abetment of suicide by respondents No.2 to 4.

Apart from that, the prosecution had examined the complainant Mohinder Singh as PW-2, whose testimony remained unchallenged and un-rebuted and was duly corroborated by the statement of PW-3 Sham Singh, Sarpanch. Consequently, it was prayed that the impugned judgment was liable to be set aside by this Court.

10. Countering the said submissions, learned Senior counsel appearing on behalf of the private respondents vociferously argued that no offence under Section 306 IPC was made out against any of the respondents. Neither the prosecution could establish the *mens rea* on the part of respondents No.2 to 4 nor the ingredients of Section 306 IPC were fulfilled in the present case. Learned Senior counsel further submitted that there was no evidence regarding the instigation by respondents No.2 to 4 and after due appreciation of evidence and law, learned trial Court has correctly acquitted respondents No.2 to 4.

11. The offence of abetment of suicide is defined in Section 306 of IPC, which 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.”

“The expression ‘abetment’ within the meaning of the penal code is defined in Section 107 of IPC, which is as follows:-

“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 authorised 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 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 facilitates the commission thereof, is said to aid the doing of that act.”

12. The word ‘abetment’ has not been explained in Section 306 of IPC and has to take its meaning as provided under Section 107 IPC. 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. Sometimes the instigation is expressed, sometimes it may be by implied conduct. In order to prove the abetment, it must be shown that the

accused kept on urging or annoying the deceased by words, taunts until the deceased react. A causal remark or something said in routine or usual conversation or invoking the legal remedies should not be misunderstood as ‘abetment’.

13. It has been held by the Hon’ble Supreme Court in the matter of **“Geo Varghese vs. State of Rajasthan”, 2021 SCC Online, SC 873** as follows:-

“13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which 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.”*

14. Though, the IPC does not define the word ‘Suicide’ but the ordinary dictionary meaning of suicide is ‘self-killing’. The word is derived from a modern latin word ‘suicidium’, ‘sui’ means ‘oneself’ and ‘cidium’ means ‘killing’. Thus, the word suicide implies an act of ‘self-killing’. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same. Abetment is defined under Section 107 of IPC which reads 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 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.

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 facilitates the commission thereof, is said to aid the doing of that act.”

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of **Ramesh Kumar v. State of Chhattisgarh** has defined the word ‘instigate’ as under:—

“Instigation is to goad, urge forward, provoke, incite or encourage to do an act.”

17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of **S.S. Cheena v. Vijay Kumar Mahajan**, it was observed as under:—

“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 the Supreme 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

14. It was further held by the Hon’ble Supreme Court as under:-

“19. In the case of **M. Arjunan v. State**, Represented by its Inspector of Police, a two-Judge Bench of this Court has expounded the ingredients of Section 306 IPC in the following words:—

“The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of

instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

20. At this stage, we may also refer to another recent judgment of a two-Judge Bench of this Court in the case of Ude Singh v. State of Haryana, which elucidated on the essential ingredients of the offence under Section 306 IPC in the following words: —

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to

induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

21. We may also refer to a two-Judge Bench judgment of this Court in the case of Narayan Malhari Thorat v. Vinayak Deorao Bhagat, wherein the judgment rendered by the High Court quashing the FIR under Section 482 was set aside. In the said case, an FIR was registered under Section 306 IPC stating that the son and daughter-in-law were teachers in a Zila Parishad School where

the accused was also a teacher used to make frequent calls on the mobile of the daughter-in-law, and used to harass her. Despite the efforts of the son of the informant in trying to make the accused see reason and stop calling, the accused continued with his activity. On 09.02.2015, there was a verbal altercation between the son of the informant and the accused and on 12.02.2015, he committed suicide leaving a note stating that his family life has been ruined by the accused who should not be pardoned and should be hanged. Under Section 482 Cr.PC, a petition was filed by the accused challenging the FIR, which was allowed by the High Court and thereafter, was challenged before this Court. The appeal was allowed by this Court and made the following observations:—

“We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation. The record shows that 3-4 days prior to the suicide there was an altercation between the victim and the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abate the commission of suicide. At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have

gone into the aspect whether there was requisite mental element or intention on part of the respondent.”

15. Keeping in view the afore-stated principles of law, this Court is required to address whether there has been abetment of suicide in the present case or no. Mere allegations of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit a suicide, a conviction in terms of Section 306 IPC would not be sustainable. There has to be a positive action that creates a situation for the victim to put an end to the life. In the present case, the prosecution had examined PW-2 Mohinder Singh/complainant, who stated that after marriage, Shalini Saini had harassed him and his family. She left in the matrimonial home in April, 2006, whereas Joginder Singh (since deceased) had committed suicide on the night intervening 25/26.11.2007 by jumping in front of a train and his dead body was found on the railway track. PW-2 Mohinder Singh stated that in the last week of October, 2006 his wife alongwith parents i.e respondents No.2 to 4 and Dr. Pradeep Saini had come to their house along with a Panchayat and had humiliated his father and his father felt insulted in the presence of a Panchayat. On 21.08.2006, his wife moved an application against him and his parents before SSP Hoshiarpur and the inquiry in the said case remained pending on the request of respondent No.4. On presentation of second application by Shalini Saini, respondent No.3, a case was registered against his parents, sister, brother on 15.12.2006. A false case was registered against him and his parents and he was arrested and released on bail under Section 498-A IPC. However, it is apparent from his statement that Joginder Singh, since

deceased was granted the concession of anticipatory bail. Thereafter, Shalini Saini, respondent No.3 filed a complaint under Domestic Violence Act to falsely involve his family and bald allegations were levelled against Joginder Singh, his father (since deceased) and as a result of which, his father felt insulted. Consequently, his father had written a suicide note Ex.PC, wherein he had named Harish Chander Rai, respondent No.4 and Dr. Pradeep Saini as the persons, who had instigated his suicide. It requires mention that respondents No.2 and 3 were not named in the suicide note Ex.PC. PW-2 Mohinder Singh also admitted that he and his father had moved complaints to the police at Hoshiarpur as well as at Gurdaspur against his wife i.e. respondent No.3 due to her conduct.

16. From the above referred discussion, it is apparent that both the parties had initiated legal proceedings against each other before the police and the courts of law. The prosecution could not lead any evidence to show that the accused had by their acts and continuous course of conduct created such a situation as a consequence of which Joginder Singh, since deceased was left with no other option except to commit suicide. The learned trial Court has discussed the evidence in detail in this regard and the findings recorded by the learned trial Court are liable to be upheld.

17. Apart from that, it is apparent that Shalini Saini and her family members had initiated their complaints/cases several months prior to the suicide by Joginder Singh, father of the complainant. Even Shalini Saini had left the matrimonial home in April, 2006. Apart from that, it is the admitted case of the prosecution that in the suicide note, Joginder Singh (deceased) had named only

Harish Chander Saini and Dr. Pardeep Saini as the persons, who had instigated his suicide. Whereas as a matter of fact, most of the cases in the present case were filed by Shalini Saini, who felt aggrieved on account of harassment at the hands of PW-2 Mohinder Singh and his father Joginder Singh (since deceased). Simply because of the fact that she had initiated the legal proceedings against Joginder Singh, it can never be stated that she or any of her family member had abetted the suicide of Joginder Singh, since deceased, in any manner. Apart from that, it is also admitted fact that Joginder Singh (since Deceased) was granted the concession of anticipatory bail, as admitted by PW-2, Mohinder Singh. Thus, the learned trial Court has recorded well-reasoned findings, which do not suffer from any material irregularity or perversity and are liable to be upheld by this Court.

18. Apart from that, it is evident that the present appeal has been preferred before this Court against the judgment of acquittal passed by the learned trial Court. No doubt, the Appellate Court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an Appellate power in a case of acquittal, the Appellate Court should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Court below in support of its order of acquittal, it must express its reasons in judgment which led it to hold that the acquittal is not justified. This Court cannot lose sight of the fact that the trial Court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is doubled by the order of acquittal. If on the basis of same evidence, two views are reasonably possible and the view favouring the accused is

accepted by the Court below, i.e. sufficient for upholding the order of acquittal. The Appellate Court can set aside the judgment of acquittal only if it comes to a firm conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, which is not the case here.

19. In view of the findings recorded above, this Court finds no ground to interfere with the impugned judgment dated 11.09.2012 passed by the learned Additional Sessions Judge, Hoshiarpur and the appeal is, accordingly, ordered to be dismissed.

20. Pending applications, if any, are also disposed off, accordingly.

21. Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

22.05.2023
hemlata

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No