

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i)

CRA-S-685-SB-2014

Binder @ Balwinder Singh

..... Appellant

Versus

State of Punjab

..... Respondent

(ii)

CRA-S-3805-SB-2013

Ram Pal @ Ram Phal

..... Appellant

Versus

State of Punjab

..... Respondent

(iii)

CRA-S-4318-SB-2013

Paramjit and others

..... Appellants

Versus

State of Punjab

..... Respondent

Pronounced on : 10.02.2023

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Kunal Mulwani, Advocate (Legal Aid Counsel)
for the appellant in CRA-S-685-SB-2014.

Mr. L.S.Sekhon, Advocate
for the appellant in CRA-S-3805-SB-2013.

Mr. Lalit Garg, Advocate
for the appellants in CRA-S-4318-SB-2013.

Mr. Arjun Sheoran, Deputy Advocate General, Punjab
for the respondent-State.

VIKRAM AGGARWAL, J

appeals, all directed against the judgment of conviction dated 14.10.2013, passed by the learned Addl. Sessions Judge, Patiala vide which the appellants were convicted under Section 306 IPC. Vide order of sentence of even date, the appellants were sentenced to undergo rigorous imprisonment for a period of 04 years alongwith fine of Rs.1,000/- each, in default of payment of which, further rigorous imprisonment for a period of 02 months each was imposed. The accused-appellants are the wife Mohindro Bai, mother-in-law Kaushalaya Bai, sister-in-law (wife's sister) Lali Bai, brothers-in-law (wife's brothers) Paramjit and Ranjit of Bhajan Lal and two other persons namely Binder @ Balwinder Singh and Ram Pal alias Ram Phal.

2. On 07.07.2010, one Bhajan Lal set himself ablaze. He was rushed to PGI, Chandigarh, where his statement was firstly recorded by PW7 Sub Inspector Bhagwan Dass and thereafter by PW8 Ms. Palvinderjit Kaur, posted as Judicial Magistrate Ist Class at the relevant time. In the statement, Bhajan Lal stated that his marriage had been solemnized with Mohindro Bai around 15 years prior to the incident. Three children were born out of the said wedlock. As per him, he was being pressurized by his in-laws to sell his land situated in Village Gulahar and to shift to Village Jansua i.e. the village where his in-laws resided. Since he did not agree, his wife used to quarrel with him and on 5-6 occasions, she went to her parental house after quarrelling with him. Every time he brought her back. However, around 4-5 months prior to the incident, his wife Mohindro Bai alongwith his children went to her parental house at Village Jansua. The telephonic calls made by Bhajan Lal would be responded by abuses from his brother-in-law Ranjit. On 06.07.2010, Bhajan Lal went to Village Jansua to bring his wife and children back. His mother-in-law, sister-in-law and brothers-in-law alongwith his wife gathered in the house. One Binder had also been called.

Instead of hearing Bhajan Lal, the appellants gave beatings to him and forcibly

tried to get his thumb impressions on a blank paper to use the same for selling his land. When he refused and tried to run away, Paramjit assaulted him with a hand pump handle and Ranjit threw a brick bat which luckily did not hit him. He fled to the house of his sister Parkasho Bai where he was followed by Paramjit, Ramphal and Binder. However, they left when people gathered there and while leaving, they also gave threats. Bhajan Lal came back to his village on 07.07.2010 and narrated about the incident to his mother Lachho Bai. He was feeling deeply hurt and aggrieved on account of the behaviour of his in-laws and the beatings given to him on account of which he poured kerosene on himself and set himself ablaze.

3. On the basis of the statement of Bhajan Lal, FIR was registered and investigation commenced. Bhajan Lal, however, expired on 10.07.2010 on account of the burn injuries suffered by him. On the completion of investigation, final report under Section 173 Cr.P.C. was submitted. Charges were framed and trial was commenced.

4. The prosecution examined eight witnesses whereas the accused examined three witnesses in defence.

5. After conclusion of the trial, the appellants were convicted and sentenced in the manner referred to in the opening paragraph of the judgment.

6. Aggrieved by the decision of the trial Court, the present appeals have been preferred.

7. I have heard learned counsel for the parties and with their assistance, have perused the record of the trial Court.

8. Learned counsel for the parties have contended that the trial Court gravely erred in convicting the appellants under Section 306 IPC. It has been argued that the ingredients of abetment of suicide were not present. Reference has been made to the provisions of Sections 107 and 306 IPC. It has been contended

that the alleged incident of beatings etc. took place on 06.07.2010 whereas Bhajan

Lal committed suicide on 07.07.2010 and, therefore, the case of the prosecution that the appellants had abetted the suicide of Bhajan Lal falls to the ground on this account alone. Learned counsel have referred to the statements of the witnesses examined by the prosecution and have pointed out certain inconsistencies in the same.

9. It has been submitted that no reliance can be placed upon the alleged dying declaration of Bhajan Lal because it is quite improbable that a person who had suffered 90% burns would give a statement in the narrative form. Learned counsel have contended that the statement should have been in question and answer form and that PW8 Ms. Palvinderjit Kaur erred in not following the procedure. It has been argued that it has come in the evidence that Bhajan Lal had suffered 95% burns and, therefore, the prosecution would have to explain as to under what circumstances, there were thumb impressions on the alleged dying declaration Ex.PW8/1. It has been contended that even the expert i.e. PW2 Dr. Murali G, Senior Resident, Department of Forensic Medicine, PGIMER, Chandigarh had deposed that there was no ink on any thumb of Bhajan Lal and, therefore, the presence of thumb impression on the alleged dying declaration becomes all the more suspicious.

10. It has been argued that there was no abetment on the part of the appellants and that it was a failed marriage due to which Bhajan Lal could not take the pressure and implicated everyone while giving the statement. It has been contended that Bhajan Lal was not mentally stable and had remained admitted in the mental hospital at Amritsar in 2005. Reference in this regard has been made to the admission of PW1 Sarwan Kumar, who is the brother of deceased Bhajan Lal. Reference has also been made to the statement of DW3 Paramjit Singh, Clerk, Punjab Mental Hospital, Amritsar who also deposed that Bhajan Lal had remained

counsel have also referred to the statement of DW1 Pammi Bai, daughter of Bhajan Lal, who duly stepped into the witness box and deposed that there had been no harassment to Bhajan Lal by the appellants and that it was Bhajan Lal who used to beat up her mother and that he was an alcoholic. It has been submitted that the trial Court erroneously discarded this statement by observing that DW1 Pammi Bai was a tutored witness. Reference has also been made to the statement of PW3 Parkasho Bai and it has been submitted that she totally faltered in the cross-examination and could not even tell the basic dates and time.

11. Learned counsel have submitted that the witnesses who had deposed against the appellants especially PW5 Kulwant Rai were interested witnesses and, therefore, no reliance could have been placed upon their deposition. Learned counsel have lastly submitted that appellants Binder @ Balwinder Singh and Ram Pal @ Ram Phal were not family members and, therefore, the question of any abetment by them does not arise.

12. In support of their contentions, learned counsel for the appellants have placed reliance upon the judgments of Hon'ble Supreme Court in **Mahendra Singh and another vs. State of M.P. 1996 CRL. L.J. 894**, **Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh 2002 (2) R.C.R. (Criminal) 687**, and **Lella Srinivasa Rao vs. State of Andhra Pradesh 2004 (2) R.C.R. (Criminal) 63**; judgments of this Court in **Surinder Kumar and ors. vs. The State of Punjab 1984 (1) R.C.R. (Criminal) 593**; **Raj Kumar vs. The State of Punjab 1983 (1) R.C.R. (Criminal) 553**; **Shiv Lal vs. The State of Haryana 1983 (2) R.C.R. (Criminal) 317**; **Mohinder Singh vs. State of Punjab 1986 (1) R.C.R. (Criminal) 540** and **State of Haryana vs. Inderjit Singh alias Babli and ors. 1992 (1) R.C.R. (Criminal) 260**; as well as judgment of Andhra Pradesh High Court in **Shaik Mahaboob Basha vs. State of A.P. 2004 (3) R.C.R. (Criminal) 234**.

there is no illegality or infirmity in the judgment of conviction and order of sentence. Learned State counsel has referred to the judgment of the trial Court, the statements of the witnesses examined by the prosecution and the documents produced by the prosecution during the course of the trial. It has been argued that the case in hand is a clear cut case of abetment of suicide and, therefore, the judgment of the trial Court deserves to be upheld.

14. It is extremely unfortunate that a family consisting of a husband, wife and three children suffered a tragedy of the kind wherein the bread winner of the family set himself ablaze. Nobody can deny the fact that Bhajan Lal must have been in an extremely troubled state of mind as to take one's own life is not an easy task and that too by setting oneself ablaze leaving behind a wife and three children. However, the question to be determined would be as to whether Bhajan Lal set himself ablaze on account of the harassment meted out to him by the appellants and as to whether the appellants can be said to have abetted the suicide of Bhajan Lal. To answer this, we would have to examine the principles which would have to be kept in mind while deciding as to whether it is a case of abetment of suicide or not.

15. The issue to be determined, therefore, is as to whether the accused can be said to have abetted the suicide of Bhajan Lal. Before going into this question, it would be important to examine the principles which have to be kept in mind while examining a case of abetment of suicide. Section 107 IPC defines abetment and lays down 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 an act or illegal omission, the going of that thing.

Explanation 1. - A person who, by willful misrepresentation, or by willful 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 facilitate the commission thereof, is said to aid the doing of that act.”

16. Now it has to be determined as to whether in a particular case, an offence of abetment can be said to have been made out. What are the parameters and what are the principles is to be seen. In the case of **Kishangiri Mangalgi Goswami Vs. State of Gujarat, 2009(1) RCR (Criminal) 947**, the Hon'ble Supreme Court was dealing with an appeal against a judgment of conviction under Sections 306 and 498A IPC. In that case, a lady committed suicide by burning herself. Her husband was alleged to have inflicted mental and physical torture on account of having brought inadequate dowry. Fed up with the harassment, she committed suicide. The accused was convicted by the trial Court and the conviction was maintained by the Hon'ble High Court of Gujarat. The Hon'ble Supreme Court, however, reversed the judgment and acquitted the accused. It was held by the Hon'ble Supreme Court as under:-

“9. 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 it required before a person can be said to be abetting the commission of offence under Section 306 of Indian Penal Code.

10. In **State of West Bengal v. Orilal Jaiswal, 1994(3) RCR(Criminal) 186** this Court has observed that the courts 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.

11. Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The

word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence

12. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. [See ***Mahinder Singh v. State of M.P., (1995 AIR SCW 4570)***].”

17. In the case of **Chitresh Kumar Chopra Vs. State (Govt.of NCT of Delhi), 2009(16) SCC 605**, the Hon'ble Supreme of Court of India upheld the framing of charge under Section 306 IPC. In that case, the accused and the deceased were doing business in partnership. The accused was alleged to have mentally tortured the deceased and made him to sign a settlement, wherein share of profit of the deceased was reduced. The accused also asked the deceased that if he wanted to live in the society, he should sign the agreement or should die by taking poison. Soon thereafter, the deceased committed suicide. The Hon'ble Supreme Court 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.

13. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 Indian Penal Code ?

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 Indian Penal Code. The meaning of the said word was considered by this Court in ***Ramesh Kumar v. State of Chhattisgarh, 2001(4) RCR(Criminal) 537 : (2001)9 SCC 618***. 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 "goad" 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.

16. In the background of this legal position, we may advert to the case at hand. 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.*

17. In the present case, the charge against the appellant is that he along with other two accused "in furtherance of common intention", mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. *Prima facie*, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and, therefore, clause firstly of Section 107 of the Indian Penal Code was attracted. Briefly dealing with the material available on record, in the order directing framing of charge against the appellant, the learned trial court has observed as under:

"In the present case the evidence shows threatening given to the deceased. One witness called Kartar Singh says that CK Chopra was heard saying to the deceased that the deceased had become dishonest because he was

refusing to sign a paper in which the share in some joint property was shown to be 10%. On another occasion Chopra was heard by this witness to say that Chopra would ruin the deceased if he did not give up his claim for 25% and did not agree to accept 10%. Witness Padam Bahadur has stated inter alia that he overheard Jahoor and Mahavir telling the deceased that Chopra had asked them to say that this was the last opportunity to sign the document and that if he wanted to live in the society he should sign the agreement or should die by taking poison. Soon thereafter the deceased committed suicide.

Thus the evidence is not of a mere quarrel in which one person told the other go and die without actually suggesting that the opponent should commit suicide. In the present case the evidence collected by the investigation suggest that the deceased had been actually pushed to the wall and the escape by committing suicide was suggested by the accused persons."

18. In **S.S.Chheena Versus Vijay Kumar Mahajan, 2010(4) RCR (Criminal) 66**, Hon'ble Supreme Court observed as under:-

"16. In order to properly comprehend the scope and ambit of Section 306 Indian Penal Code, it is important to carefully examine the basic ingredients of Section 306 Indian Penal Code. The said section 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."

17. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

20. In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under Section 306 Indian Penal Code. 21. "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, 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 2 which has been inserted along with Section 107 reads as under :

"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."

22. The learned counsel for the appellant has placed reliance on a judgment of this Court in **Mahendra Singh v. State of M.P., 1995 Supp. (3) SCC 731**. In Mahendra Singh, the allegations levelled were as under : (SCC p. 731, para 1)

"1.... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

23. The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 Indian Penal Code merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

24. The learned counsel also placed reliance on another judgment of this Court in **Ramesh Kumar v. State of Chhattisgarh, 2001(4) R.C.R.(Criminal) 537 : (2001) 9 SCC 618**. In this case, a three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"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."

25. In this case, the court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant- accused having abetted commission of suicide by Seema may necessarily be drawn.

26. In **State of West Bengal v. Orilal Jaiswal, 1994(3) R.C.R. (Criminal) 186 : (1994) 1 SCC 73**, 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 the life by committing suicide. If it appears 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.

27. This Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009(4) R.C.R.(Criminal) 196 : 2009(5) R.A.J. 278 : (2009) 16 SCC 605**, had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goad". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self- esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be **decided** on the basis of its own facts and circumstances.

28. 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 Indian Penal Code 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.”

19. In the case of **Amalendu Pal alias Jhantu Versus State of West Bengal, 2010(1) RCR (Criminal) 643**, it has been observed by the Hon'ble Supreme Court as under:-

“13. The legal position as regards Sections 306 Indian Penal Code which is long settled was recently reiterated by this Court in the case of **Randhir Singh v. State of Punjab, 2004(4) RCR (Criminal) 740 : 2004(3) Apex Criminal 683 : (2004)13 SCC 129** as follows in paras 12 and 13 :

"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 Indian Penal Code.

13. In **State of W.B. v. Orilal Jaiswal** this Court has observed that the courts 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 the 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."

15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, 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 their 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 Indian Penal Code is not sustainable.

16. 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. 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 Indian Penal Code.”

20. In the case of **Gangula Mohan Reddy Versus State of Andhra Pradesh, 2010(1) RCR (Criminal) 603**, Hon'ble Supreme Court dealing with

Section 306 - Indian Penal Code, Section 107 i.e. Abetment of suicide held as under :-

“1. In order to convict a person under Section 306 Indian Penal Code 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.

2. 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.

3. There should be intention to provoke, incite or encourage the doing of an act by the latter - Each person's suicidability pattern is different from the others - Each person has his own idea of self esteem and self respect - Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases - Each case has to be decided on the basis of its own facts and circumstances. 2009(4) RCR(CrL.) 196 (SC) relied.”

21. In the case of *Mariano Anto Bruno & Anr. vs. The Inspector of Police 2022 AIR (Supreme Court) 4994*, the marriage of Mariano Anto Bruno and one Dr. Amali Victoria was solemnized on 08.09.2005. In 2007, a male child was born. On 05.11.2014, the wife is said to have collapsed in the bathroom of the home in which the couple was living. The husband reached the spot and found that his wife had no pulse. Efforts to resuscitate her went in vain and Dr. Amali Victoria passed away. The postmortem examination revealed that death was on account of asphyxia due to external compression of the neck. After three weeks of her death, her mother submitted a complaint against the husband of the deceased and his mother alleging harassment for dowry and abetment of suicide. It was alleged that after the marriage, since her daughter did not have a child for 1½ years, her husband and his mother used to abuse her. Even after the birth of a male child in 2007, she was subjected to mental torture and was pressurized to have a second child. Extreme harassment led her to commit suicide.

22. The trial Court convicted the appellants and sentenced them to undergo rigorous imprisonment for a period of 03 years each **alongwith fine** under

Section 498-A IPC and 07 years each **alongwith fine** under Section 306 IPC. The question again before the Hon'ble Supreme Court was as to whether it was a case of abetment of suicide. After examining the entire law on the subject which includes the judgments referred in the preceding paragraphs, the Hon'ble Supreme Court held that both the trial Court and the High Court erred in convicting the appellants for abetment of suicide. While declaring so, the Hon'ble Supreme Court of India has held as under:-

42. It is well settled that the Courts ought to 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 the life by committing suicide. Reference may be made to the judgment of a three-Judge Bench of this Court in Ramesh Kumar v.. State of Chhattisgarh (2001) 9 SCC 618, wherein this Court set-aside the conviction of the accused for the offence under Section 306 IPC as ingredients of Section 306 IPC were not satisfactorily proved. It was observed as under :-

"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 West Bengal v. Orilal Jaiswal and Anr. (1994) 1 SCC 73, 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 the 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."

(emphasis supplied)

43. Accordingly, the facts and evidence in the present case which have not been squarely analysed by both the Trial Court as well as the High Court can be summarised as follows:-

1. The complaint against the appellants was filed after 3 weeks of the death of the deceased.
2. There is not a shred of evidence with respect to offence alleged under Section 498A of the IPC meted out to the deceased by the Appellants.
3. There has been no marital discord between Appellant No. 1 and the deceased during their 9 years of married life.
4. There have been several e-mails exchanged between Appellant No. 1 and sisters of the deceased whereby the Appellant No. 1 was showered with praises for taking care of the deceased in the best possible manner and credit was also given to his parents for supporting the deceased in her career. Further, it was the sister of the deceased, who herself sent a mail to Appellant No. 1 saying "amali is fighting a disorder"
5. The deceased was suffering from bipolar disorder and also had suicidal ideas from few days before suicide. Further, the deceased was also undergoing treatment for depression as she was showing major symptoms of depression like tiredness, poor sleep pattern, demoralised feeling to name a few. The fact that deceased was suffering from bipolar disorder was concealed from the Appellant family during their marriage.
6. The Trial Court as well as the High Court did not take the evidence of PW-9, Psychiatrist into consideration while

convicting the Appellants under Sections 306 and 498A of IPC.

7. The conviction of the appellants is solely based on the oral evidence of mother and sister of the deceased, who are interested witnesses.

8. The post mortem report does not give the cause of the death but on 15.12.14, the cause of the death is shown as Ashpyxia due to external compression.

23. Reverting to the present case, the same shall have to be tested on the touch stone of the principles laid down by the Hon'ble Supreme Court of India in the judgments referred to in the preceding paragraphs. The facts are not in dispute. It is proved from the record that the relations between deceased Bhajan Lal and his wife Mohindro Bai were strained. This is proved from the fact that from the last 4-5 months preceding the incident, she alongwith her three children had been living at her parental home in Village Jansua whereas Bhajan Lal was living in his house at Village Gulahar. It so stands proved from the statement of Bhajan Lal (Ex.PW8/1) itself. There is also no dispute that Bhajan Lal committed suicide by setting himself ablaze. His statement Ex.PW8/1 shows and proves that he was in a disturbed state of mind. It is extremely tough for a human being to end his life and that too by setting onself ablaze and more so when one has a family which would have to undergo the ordeal of having lost its main member in such an incident. It also stands proved that the financial condition of the family was not good. At best, Bhajan Lal was a labourer having about 5-6 kanals of land, though his own daughter Pammi Bai, while appearing as DW1, has stated in so many words that Bhajan Lal was not doing anything. It has also come in the evidence that his wife Jogindro Bai and daughter Pammi Bai (DW1) used to work in various landlords to make their two ends meet.

24. This Court has not found anything suspicious in the statement of Ex.PW8/1 and the objections raised by learned counsel for the appellants that the

same was in a narrative form or that how it was thumb marked by Bhajan Lal when there was no ink on his thumb etc. are devoid of merit. The statement was recorded by PW8 Ms. Palvinderjit Kaur, who was a Judicial Magistrate Ist Class, at the relevant time. She duly stepped into the witness box as PW8 and deposed about her having recorded the statement of Bhajan Lal. There is a certain level of responsibility which is attached to the office of a Judicial Officer and unless and until there is something extremely glaring there would be no occasion for the Court to have any kind of suspicion on a statement recorded in the presence of the Magistrate. Even otherwise, the requirements of law were also followed. There is satisfaction of the doctor with regard to fitness of Bhajan Lal to make the statement. There was no one else near Bhajan Lal when the statement was made. It, therefore, means that till that time Bhajan Lal was in a position to give a statement. It has to be borne in mind that Bhajan Lal had suffered burns on his body but his internal organs were working fine till that time. The absence of ink on the fingers at the time of postmortem examination is not relevant because in case of burn injuries, the ink may not be at all visible and during two days of treatment so many medicines must have been administered and further by the time the postmortem examination was conducted, *rigor mortis* etc. also sets in. Under the circumstances, no fault can be found with the statement Ex.PW8/1 or the manner in which it was recorded.

25. The only question which has to be determined is as to whether the appellants can be said to have abetted the suicide of Bhajan Lal. If this Court considers the facts of the case and the principles of law laid down by the Hon'ble Apex Court, the answer to this question is in the negative. First of all, there is no evidence of intentional instigation on the part of the appellants. It has not been proved that the *mens rea* was there. The incident which took place on 06.07.2010

Bhajan Lal. It all depends upon the response of a particular person to a particular situation. However, this alone does not prove that it were the appellants who had instigated or goaded Bhajan Lal to commit suicide or had aided in the commission of suicide by Bhajan Lal. The statements of PW1 Sarwan Kumar & PW3 Parkasho Bai, brother and sister of deceased Bhajan Lal respectively as well as the statement of PW4 Gopi Ram, Ex.-Panch of Village Gulahar with regard to the incident in question are not relevant because they were not present at the spot. In the cross-examination also, there are certain inconsistencies which are also not of much relevance. In the opinion of this Court, the learned trial Court gravely erred in not placing reliance on the statement of DW1 Pammi Bai stating that she was a tutored witness. She was major at the time of deposition and had lost her father in a sad incident. She cannot be termed to be a tutored witness merely because she was living with her mother in the paternal home of her mother. She stated in so many words that her father was a drug addict and alcoholic and used to beat up her mother and the children on account of which they were living in the house of their maternal grand parents. Nobody lives away from one's own home out of choice. This Court finds the statement of DW1 Pammi Bai to be truthful and consistent. It is not that this Court is relying only upon the statement of DW1 Pammi Bai. Her statement is corroborated from the record produced by DW3 Paramjit Singh, Clerk, Punjab Mental Hospital, Amritsar. This record, it appears, was not brought to the notice of the learned trial Court also. DW3 Paramjit Singh produced three documents on record i.e. DW3/A which was a letter of authority, DW3/B which was the record pertaining to Bhajan Lal and DW3/C which was a copy of the outdoor patient register. DW3/B runs into seven pages. Page No.4 and 5 thereof are very relevant. These are notes of the doctors when Bhajan Lal was admitted in Dr. Vidya Sagar Institute of Mental Health, Amritsar.

disclosed to the doctors which are impaired sleep and restlessness. It has been mentioned that the patient gets abusive, violent, throws and breaks household articles, suspects his wife of having relations with other people, keeps cursing her and accusing her and to top it all, is addicted to opium, sukha etc. This corroborates the statement of DW1 Pammi Bai that Bhajan Lal was addicted to drugs. It also shows that he had behavioural problems. No doubt, there is no medical record after 2005 and the incident took place in 2010. However, the statement of DW1 Pammi Bai and the medical record Ex.DW3/B definitely create a dent in the case of the prosecution. The moment a dent is created in the case of the prosecution, the benefit of the same has to go to the accused.

26. It is, therefore, clear that there was no intentional aiding or goading or incitement on the part of the appellants. It seems to be a case of a person living in penury, addicted to drugs and alcohol, with his family also having left him, not being able to manage the stresses of life and on finding himself having been driven to the wall, sadly ending the same by setting himself ablaze. For this, the appellants cannot be held liable. They could have been held liable for assault and simple hurt etc. but no charges were framed. The appellants have undergone some amount of imprisonment also and they have also been facing the ordeal of trial for the last almost 13 years from the date of the incident.

27. I have gone through the judgments relied upon by learned counsel for the appellants also. They also come to the aid of the appellants in view of the facts and circumstances discussed in the preceding paragraphs.

28. Keeping in view the totality of the facts and circumstances and the law on the subject, this Court is of the considered opinion that the learned trial Court erred in holding the appellants guilty of having committed the offence of abetment of suicide. The judgment of conviction and the order of sentence are not

sustainable. The appeals are, therefore, allowed. The judgment of conviction and

order of sentence passed by the learned trial Court are set aside and the appellants are acquitted of the charges framed against them. The bail bonds and surety bonds stand discharged.

(VIKRAM AGGARWAL)
JUDGE

10.02.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No