

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.543 of 2019

Arising Out of PS. Case No.-127 Year-2012 Thana- GANDHIMAIDAN District- Patna

Anshu Tiwari @ Archana Kumari Wife Of Late Rahul, Resident Of Om Raj
Apartment, Flat No.205, Jamal Road, Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 19-11-2024 Heard the learned counsel for the appellant; Shri
Ashish Giri and the learned APP for the State; Shri Sujit Kumar
Singh.

2. This appeal has been filed for setting aside the judgment and sentence dated 30.01.2019 passed by the learned Additional District & Sessions Judge-VIII, Patna in Sessions Trial No. 1241 of 2012 arising out of Gandhi Maidan P.S. Case No. 127 of 2012 by which the appellant has been convicted for the offence under Sections 306 of the Indian Penal Code and has been directed to undergo 3 years rigorous imprisonment and also to pay Rs. 5,000/- fine and directed to suffer rigorous imprisonment for two months in default of payment of fine.

3. As per the prosecution case, the informant Ram Rati Devi (PW 5) gave a written report to S.H.O. Gandhi



Maidan that she had one son named Rahul aged about 25 years and two daughters. Her son was a dancer. In this course her son fell in love with Anshu Tiwari @ Archana Kumari. Anshu Tiwari also used to dance. Anshu Tiwari and Rahul got married on May 27, 2011 in Hotel Republic. Anshu Tiwari before solemnization of marriage with Rahul, had a 5 years old child whom she claimed was of Dr. Raja,. The marriage of Anshu Tiwari was solemnized by her uncle Sunil Kumar Sinha. Since then, they were living happily. Anshu Tiwari generally used to go outside for dance leaving Rahul Kumar in the apartment. Sometimes Rahul used to come to the parental house in Mithapur. Sunil Kumar Sinha threatened her on mobile. On 28.4.2012 at about 7.00 Sunil Kumar gave message on mobile of Ram Rati Devi (PW 5) that if Rahul does not come to his house, then he will bring him to Meethapur On this, she sent her son Rahul Kumar to Om Raj Apartment, Jamal Road. Sunil also told that Anshu is ready to take poison. Later on, she came to know that due to the torture of Anshu Tiwari and Sunil Kumar, her son Rahul hanged himself to death.

4. On the basis of the written statement, the F.I.R. was instituted against the appellant and the other co- accused under sections 302/34 of IPC. Thereafter, charge-sheet was



submitted against the appellant on 18.08.2012 under section 306/34 of Indian Penal Code. Cognizance was taken against the appellant and the other co-accused on 25.09.2012 under section 306/34 of IPC. During trial, the prosecution has examined 7 prosecution witnesses in support of its case. On behalf of the defence, no witness was examined. The names of the seven prosecution witnesses are as follows:-

(a) PW-1 is Jai Prakash Kumar (Brother-in-law of deceased)

(b) PW-2 is Rajshree Devi (Sister of deceased)

(c) PW-3 is Anil Paswan (Brother-in-law of deceased)

(d) PW-4 is Rajesh Kumar (Guard of Om Raj Apartment)

(e) PW-5 is Ramrati Devi (Informant and mother of deceased)

(f) PW-6 is Sapna Kumari (Maternal niece of deceased)

(g) PW-7 is Raj Bindu Prasad (Inspector).

5. The learned counsel for the appellants has further submitted that the prosecution has also exhibited certain documents that are Ext. 1/1 is the Inquest Report, Ext. 2/1 is the Written report, Signature on the Written Report as Ext.- 2/2, Formal FIR as Ext.-3. On behalf of the defence no document has been exhibited. He further submitted that during the course of trial the co-accused Sunil Kumar Sinha was acquitted whereas by the judgment and sentence dated 30.01.2019, the



court of Additional District & Sessions Judge-VIII, Patna has convicted the appellant for offence under section 306 of IPC and has directed her to undergo 3 years rigorous imprisonment and fine of Rs. 5,000/- and in default of payment of fine further to undergo rigorous imprisonment for 2 months.

6. Learned counsel for the appellant has next submitted that the impugned judgment of conviction is wholly perverse and without any direct, indirect or circumstantial evidence against the appellant and is based on surmises and conjunctures. The prosecution has miserably failed to prove the offences alleged against the appellant beyond any reasonable doubt. The conviction of the appellant for abating the suicide of the deceased Rahul Kumar has been based only on the ground that the accused would go out for dance without the consent of the husband due to which there was tension and quarrel between them and earlier also the deceased had taken poison and for that the same does not constitute any ingredients of offence under section 306 of IPC and hence, the appellant could not have been convicted.

7. Learned counsel for the appellant has next submitted that the learned Trial Court has failed to appreciate that none of the statement of the prosecution witnesses discloses



or makes out a case of abetment of suicide under section 306 of IPC in absence of which no conviction could have been made. The law in relation to offence under section 306 of IPC has been settled by various pronouncements of Hon'ble Apex Court which requires that the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Abetment involves mental process of instigating a person or intentionally aiding the person in doing of a thing. It is imperative to ascertain whether cruelty had been meted out to the victim and that the same induced the person to end his life by committing suicide.

8. Learned counsel for the appellant has next submitted that there has to be a clear *mens rea* to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide being left with no option and for that the temperament of the person committing suicide is also a deciding factor. In the present case, none of the above-stated ingredients have been proved but in fact from the statement of prosecution witnesses it is evident that there is no allegation against the accused of having threatening the deceased with a *mens rea*, so as to induce him to commit suicide. In fact the statement of the witnesses merely says that the parties had



solemnized love marriage and thereafter, there were some misunderstanding and fights between them as to the accused going out to dance without the permission of the husband. Thus, this by itself does not constitute any offence under section 306 of IPC. In fact from the statement of PW-5 i.e. the informant herself, it is evident that she has been declared hostile by the prosecution on the point of torture. In fact in her cross-examination, she denies the *factum* of any allegation against the accused of having tortured her husband to the extent of him committing suicide.

9. Learned counsel for the appellant has next submitted that the statement of PW-6 also shows that at the time of suicide the accused was not in fact at home and in was the deceased who came and told P.W.-6 that he was going to hang himself and subsequently thereafter, the accused came to the flat. In fact from the deposition of witnesses, it is apparent that the temperament of the deceased was also very sensitive and he had earlier also had tried to commit suicide and thus this factor has been totally ignored by the court below. There is no allegation or description of any incident by the witnesses to show that the accused had subjected the deceased with cruelty with intention to induce him to commit suicide. Thus in absence



of the same, the conviction under section 306 of IPC becomes unsustainable in law.

10. The learned counsel for the appellants has relied upon a judgment of Hon'ble Supreme Court in the case of ***Rohini Sudarshan Gangurde V/s State of Maharashtra and Anr*** reported in ***2024 SCC OnLine SC 1701***.

11. The learned APP for the State; Shri Sujit Kumar Singh has supported the impugned judgment of conviction and has submitted that the prosecution has not been able to prove beyond the reasonable doubt. He further submits that the deceased has been died because of the torture meted out to him by his wife i.e. the appellant.

12. The Hon'ble Supreme Court in the case of ***Rohini Sudarshan Gangurde (Supra)*** has held as follows:-

“7. Having heard the arguments of both the counsels and after perusing the record, we find that the only question that needs to be determined in the instant case is whether the alleged conduct of the appellant-accused *prima facie* attracts Section 306 of IPC, to continue the proceedings of Trial Court against the appellant.

Section 306 and Section 107 of IPC read as:

“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.

It must be read with Section 107 of IPC which explains the meaning of Abetment, which reads as:

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.”

8. Reading these sections together would indicate that there must be either an instigation, or an



engagement or intentional aid to 'doing of a thing'. When we apply these three criteria to Section 306, it means that the accused must have encouraged the person to commit suicide or engaged in conspiracy with others to encourage the person to commit suicide or acted (or failed to act) intentionally to aid the person to commit suicide.

9. In *S.S. Chheena v. Vijay Kumar Mahajan*², this court explained the concept of abetment along with necessary ingredient for offence under Section 306 of IPC as under:

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

10. In *Amalendu Pal v. State of W.B.*³, this court explained the parameters of Section 306 in following words:

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and



harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

11. In *Ramesh Kumar v. State of Chhattisgarh*, while explaining the meaning of ‘Instigation’, this court stated that:

“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. 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.”

12. These principles and necessary ingredients of Section 306 and 107 of Penal Code, 1860 were reiterated and summarized by this court in recent case of *Gurucharan Singh v. State of Punjab*[5](#).

13. After carefully considering the facts and evidence recorded by the courts below and the legal position established through statutory and judicial pronouncements, we are of the view that there is no proximate link between the marital dispute in the marriage of deceased with appellant and the commission of suicide. The prosecution has failed to collect any evidence to substantiate the allegations against the appellant. The appellant has not played any active role or any positive or direct act to instigate or aid the deceased in committing suicide. Neither the statement of the complainant nor that of the colleagues of the deceased as recorded by the Investigating Officer during investigation suggest any kind of instigation by the appellant to abet the commission of suicide. There is no allegation against the appellant of suggesting the deceased to commit suicide at any time prior to the commission of suicide by her husband.”

13. In this case though the informant i.e. P.W-5 has supported the prosecution case but she has been declared hostile on the issue of committing torture. She is none other but the mother of the deceased who had initially levelled the allegations.



14. The only witness who was present in the house is a child witness (P.W-6) aged about 10 years. In her deposition also, I find that there is nothing to whom that the appellant instigated the deceased which led to the suicide of the deceased. There is some dispute between the husband and the wife which is common in a marriage. The witnesses which includes the security guard of the apartment also have not said anything about any instigation by the appellant to abet the commission of suicide. No evidence has been led by the prosecution to prove that the appellant has instigated the deceased to commit suicide.

15. The suicidal tendency of the appellant has come in the evidence of P.W-5; the informant. She has deposed that deceased had tried to commit suicide earlier also. There is total lack of evidence to connect the appellant with the suicide committed by the deceased. The prosecution has failed to prove the ingredients of abetment to suicide.

16. In view of the above discussions, this appeal is allowed. Accordingly, the judgment and sentence dated 30.01.2019 passed by the learned Additional District & Sessions Judge-VIII, Patna in Sessions Trial No. 1241 of 2012 arising out of Gandhi Maidan P.S. Case No. 127 of 2012 is hereby set aside..



17. This appeal stands allowed and the appellant is
acquitted of all charges.

(Sandeep Kumar, J)

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