

Neutral Citation No. 2024:PHHC:076056

2024:PHHC:076056



**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRA-S-3254-2023 (O&M)
Reserved on : 05.04.2024
Pronounced on : 28.05.2024**

Vikram @ Vicky @ Dhandu

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Vasundhara Dalal Anand, Advocate
for the appellant.

Ms. Nidhi Garg, AAG, Haryana.

Mr. Ajay Singh, Advocate
for respondent No. 2.

MANISHA BATRA, J.

1. The instant appeal has been preferred against the judgment of conviction dated 11.09.2023 and order on quantum of sentence dated 15.09.2023, as passed by the learned Additional Sessions Judge, Jhajjar, in Sessions Case bearing CIS No. SC/244/2021, titled as ***State vs. Vikram @ Vicky @ Dhandu***, arising out of FIR No. 155 dated 18.12.2020, under Sections 354 and 306 of IPC, registered at Police Station Machhroli, District Jhajjar, whereby the appellant had been held guilty for commission of offence punishable under Section 306 of IPC and was sentenced to undergo rigorous

imprisonment for a period of 05 years. He was also sentenced to pay a fine of Rs. 50,000/- and in default of payment of fine, was ordered to undergo rigorous imprisonment for a period of 06 months. However, the appellant was acquitted of the charge framed against him under Section 354 of IPC.

2. For the sake of coherence and continuity, the parties hereinafter shall be referred to as per their original nomenclature as given during trial.

3. The brief contours of the case as set up by the prosecution in this case are that on 18.12.2020, on receipt of a telephonic information from Virat Hospital, Rewari regarding death of one Kamlesh due to consumption of some poisonous substance and during the course of her treatment, a police party rushed to the hospital, wherein a written complaint was submitted by the complainant Suraj son of the victim Kamlesh alleging therein that his father had died about 10 years back. Accused Vikram, who is son of his uncle (*Tau*), used to sexually harass his mother and in this regard, his mother had previously filed a complaint at Police Station Women, Jhajjar but the accused had apologized at that time. He alleged that despite resistance by his mother, the accused used to do obscene acts with her by extending threats to her every time and even in the morning of 17.12.2020, he had done so. He alleged that feeling harassed due to the act and conduct of the accused, his mother consumed some poisonous substance on the intervening night of 17/18.12.2020 and while noticing that she was vomiting in wee hours of 18.12.2020, he woke up and found that froth was coming out of the mouth of his mother and on asking, she told that she had consumed some poisonous substance. He stated that he had prepared a video recording of the

conversation made by him with his mother while she was taken to hospital, who told him that she was being tortured by the accused and alleged that the accused was responsible for her death. A case under Sections 354 and 306 of IPC was registered. Investigation proceedings were initiated. Inquest proceedings and postmortem examination of the dead body of the victim was conducted. As per FSL report, Aluminum Phosphide was detected in the viscera contents of the dead body of the victim. The accused was arrested and interrogation, he suffered disclosure statement admitted his involvement in the subject crime. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court. Copies of the *challan* was supplied to the accused free of cost. The case was committed to the Court of Sessions.

4. On finding a *prima facie* case for commission of offences punishable under Sections 354 and 306 of IPC, the accused had been chargesheeted accordingly. He pleaded not guilty to the charge and claimed trial.

5. To substantiate its case, the prosecution examined 16 witnesses in all, besides placing reliance upon certain documents and thereafter, learned Public Prosecutor closed the prosecution evidence.

6. Statement of the accused was recorded under Section 313 of Cr.P.C., wherein the accused abjured his guilt and pleaded innocence. However, no defence evidence was adduced by him.

7. On appraising the evidence produced on record and after considering the contentions raised by both the sides, the trial Court, while acquitting the accused under Section 354 of IPC, convicted him for commission of offence punishable under Section 306 of IPC and sentenced him in the manner as indicated above. Feeling aggrieved by the impugned judgment of conviction and order on quantum of sentence, he has filed the present appeal.

8. It is submitted in the grounds of appeal and learned counsel for the appellant has vehemently argued that the impugned judgment of conviction and order on quantum of sentence are liable to be set aside as the findings as given by the trial Court were not based on proper appreciation of the evidence produced on record. The trial Court did not apply its judicious mind and passed a cryptic and non-speaking order. He further argued that that the trial Court failed to appreciate the fact that the accused was 17 years younger to the victim. In fact, they were having a consensual relationship. The accused had produced the photographs showing himself and the victim in intimate position and reflecting their mutual relationship. Even the complainant and other two sons of the victim had accepted the relationship of their mother with the accused and this fact was well proved by the evidence available on record. No suicide note had been left by the victim. The video recording Ex. PW-5/G as claimed to have been shot by the complainant rather showed that it was the complainant, who was putting his words into the mouth of the victim. All the private witnesses had turned hostile and did not support the prosecution version. There was nothing on record to show that the suicide

by the victim was instigated or abetted by the accused. The testimony of the complainant also did not inspire any confidence for proving this fact. However, the trial Court, by ignoring all these circumstances, had wrongly arrived at the conclusion that the suicide by the victim had been abetted by the accused while ignoring that there was no presumption and live link between the suicidal death of the victim and any act of the accused. with these broad submissions, it has been urged that the impugned judgment and order on quantum of sentence are liable to be set aside; the appeal deserves to be accepted and further that the appellant/accused deserves to be acquitted of the charge framed against him under Section 306 of IPC. To fortify his argument, learned counsel for the appellant has relied upon authority cited as ***Gurcharan Singh vs. State of Punjab : 2017 (1) RCR (Criminal) 118.***

9. *Per contra*, learned State counsel, assisted by learned counsel for respondent No. 2/complainant, has argued that there was sufficient, cogent, convincing and overwhelming evidence on record to prove that the accused used to sexually harass the victim and feeling highly disturbed due to his act and conduct, the victim was compelled to end her life. She further argued that the statement of the victim was got recorded by the complainant on his mobile and was produced on record as Ex. PW-5/G and the said recording amounted to dying declaration of the victim and was sufficient to prove the complicity of the accused in the subject crime. Therefore, she has urged that the appeal, being devoid of any merit, is liable to be dismissed.

10. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

11. The trial Court, while recording the findings of the guilt of the appellant qua commission of offence punishable under Section 306 of IPC relied upon the testimonies of PW-5/complainant Suraj and PW-6 Sourav as well as Ex. PW-5/G, DVD containing the video clip of the victim, which was treated by learned trial Court as her dying declaration. PW-5 Suraj, son of the victim, deposed that while he was taking the victim to the hospital in a vehicle after she had consumed poisonous substance, he had shot a video of his mother stating that she had consumed poison due to being fed up by the accused. The trial Court observed that since this video clip had been duly proved on record, the statement of the deceased recorded in the video could be taken as her dying declaration. The question that arises before this Court for consideration is as to whether the trial Court had rightly treated the video as shot by the son of the victim and recording of the statement of the victim made therein as dying declaration ?

12. Before delving into this point, it will be proper to discuss the law relating to the dying declaration. It is well settled proposition of law that a dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice, provided the communication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, necessarily depends upon the facts and circumstances of each particular case. What is essentially required is that the person, who records the dying declaration, must be satisfied that the deceased was in a fit state of mind. In

Atbir vs. Govt. of NCT of Delhi: (2010) 9 SCC 1, Hon'ble Supreme Court had laid down following guidelines with regard to admissibility of the dying declaration :

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
- (viii) Even if it is a brief statement, it is not to be discarded.
- (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
- (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent,

there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

13. On testing the findings given by the trial Court on the anvil of the afore-discussed position of law, this Court is of the considered opinion that the statement shown to have been made by the victim to her son PW-5 Suraj does not deserve to be accepted as her dying declaration. The trial Court had observed that the DVD containing the video clip of the statement made by the victim and recorded in the mobile phone of her son stood duly proved on record and the complainant had also issued a certificate under Section 65-B of Indian Evidence Act and had also brought the mobile phone for perusal of the Court as well as by the defence, therefore, the said video could be taken as proved in accordance with law. To appreciate the validity of Ex. PW-5/G DVD containing the video clip of the victim, this Court has requisitioned original record and has seen the video of the victim contained in the DVD, recorded by the PW-5 while the victim was being taken to hospital. On perusal of the same, it is revealed that PW-5 was asking certain questions to the victim. The questions so asked by PW-5 and the answers given thereto by the victim are reproduced as under:

- The first question which can be heard and seen to be asked by him is that why she had consumed poison and she can be heard and seen while saying that it was because of torture given by Dhandu (appellant).
- Then PW-5 is heard to be asking the question as to who coerced, tortured and blackmailed her and she can be seen saying that yes it was because of accused who defamed her.

- The last question which he is shown to be asking her is that she had consumed poison because of accused and she is shown to be saying that yes, while her eyes lying closed.

14. On a close scrutiny of the aforesaid conversation, this Court finds that the victim had mostly answered the suggestions given to her by her son, though in affirmative with regard to the appellant being responsible for consumption of poison by the victim. Of course, there was no opportunity for seeking certification of some doctor as to the fitness of the victim. However, as reflected from the aforesaid DVD, this Court is satisfied that by no stretch of imagination, the victim could be stated to be in a fit state of mind and rather, it clearly appears that at the time of making the statement made by her, the complainant was trying to put his words into her mouth and it cannot be considered to be her true and voluntary statement, which could be considered as a basis of conviction of the appellant. Rather, a very strange thing that has been noticed by this Court is that the victim was in a critical condition at that time when she was being taken to the hospital. PW-5, on the other hand, is shown to be recording her statement with a very calculated and composed state of mind and it clearly appears that he was extracting a statement from her that the cause of her consuming poison was the torture given by the appellant. Further, he is shown to be putting his words into her mouth that she was blackmailed by the appellant. On a close scrutiny of this recording, this Court is not at all satisfied that the statement made by the victim was true and free from any effort to induce her to make such statement nor it can be stated to have been made with a fit state of mind. Therefore, this Court has no

hesitation to hold that the reliance as placed by the trial Court upon this statement as an important piece of incriminating evidence as against the appellant is totally misplaced.

15. The next aspect which is required to be addressed is whether Section 306 of IPC gets attracted in this case or not? Learned counsel for the appellant has argued that even assuming the allegation to have been proved, it would not come within the ambit and scope of Section 306 of IPC as there is no abetment. For the sake of convenience, Section 306 of IPC is reproduced as under:-

“Section 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.”

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

“Section 107. Abetment of a thing.—A person abets the doing of a thing, who— First. — Instigates any person to do that thing; or Secondly. —Engages with one or more

other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration— A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.” “Abetment”, thus, means certain amount of active suggestion or support to do the act.

17. Analyzing the concept of “abetment” as found in Section 107 IPC, Hon’ble Supreme Court in ***Chitresh Kumar Chopra v. State (Government of NCT of Delhi) : (2009) 16 SCC 605*** has held as under:

“13. As per the section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of

that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of “abetment”. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.

x x x x x

15. As per clause Firstly in the said section, a person can be said to have abetted in doing of a thing, who “instigates” any person to do that thing.”

18. The word “instigate” is not defined in IPC. The meaning of the said word was considered by Hon’ble Supreme Court in ***Ramesh Kumar v. State of Chhattisgarh : (2001) 9 SCC 618***. The word “instigate” literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

19. The word “urge forwards” means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to “goad” or “urge forward” the

latter with the intention to provoke, incite or encourage the doing of an act with a latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as “abetment”.

20. Reference can further be made to ***Randhir Singh and another v. State of Punjab : (2004) 13 SCC 129***, wherein Hon’ble Supreme Court has observed as under:-

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.”

21. Reference can also be had to ***Praveen Pradhan v. State of Uttaranchal & another : (2012) 9 SCC 734***, wherein Hon’ble Supreme Court has ruled as under:-

“18. In fact, from the above discussion, it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn

from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. ...”

22. In *Amalendu Pal alias Jhantu v. State of West Bengal : (2010) 1 SCC 707*, Hon’ble Supreme Court, while referring to the authorities in *Randhir Singh’s* case (supra), *Kishori Lal v. State of M.P. : (2007) 10 SCC 797* and *Kishangiri Mangalgiri Goswami v. State of Gujarat : (2009) 4 SCC 52*, has held as under:-

“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.”

23. On applying the ratio of law as laid down in the above-cited authorities to the peculiar facts of the instant case, it emerges that the prosecution version mainly rests upon the testimonies of PW-5 and PW-6, who are the sons of the victim as PW-1, PW-2 and PW-3, who are also the

relatives of the victim, had turned hostile. So far as PW-5 and PW-6 are concerned, the same are also inconsistent on some material points. PW-6 Sourav stated that on 17.12.2020 at about 06 AM, the accused was found standing outside their house, when he heard her mother asking him as to why he was giving signals to her and standing there. He stated that on hearing the conversation between them, he had woken up and in the meanwhile, the accused after entering into their house hurled abuses to his mother and then left their house. He further stated that on the same evening, when he along with his brothers came back home, he saw that the accused was sitting besides his mother, who was chopping vegetables, and then his mother asked him as to why he was sitting there. He further stated that all his family members had gathered there and then the elder brother of the accused had taken him away and on the same night, his mother had consumed some poisonous substance. Whereas, PW-5 Suraj did not utter even a single word with regard to accused giving any signal to his mother, entering into their house, hurling abuses to his mother and then about his second visit in his house and sitting with his mother in the same evening. He simply stated that his mother had met the accused on 17.12.2020. This inconsistency cannot be stated to be a minor one. Rather, the same is material inconsistency, which goes to the root of the matter and in view of the contradictions in the statements of PW-5 and PW-6 on this point, it is not proved that the accused had come to the house of the complainant on 17.12.2020 and had done any such act, which instigated or provoked his mother to take the drastic step of committing suicide.

24. On going through the testimony of PW-6 Sourav, it is revealed that he was not a witness to the fact of his mother making any statement that she had consumed poison due to the accused as he stated that his mother had told his brother that she had consumed poison after being fed up from the accused and did not say that he was present there at that time or any such statement was made by her mother before him. The defence as set up by the accused is that he was having a love affair with the victim. The trial Court had observed that in the bail application filed by the accused, he had taken a plea that he was having a love affair with the victim and had also placed on record some photographs showing intimacy between them. It may be so. However, the question is that the accused having any affair with the victim could not be stated to be having any intention to provoke, urge or encourage her to commit suicide. The fact that on 17.12.2020, he had come to the house of the victim, despite her resistance, has not been proved beyond doubt in view of the inconsistency in the statements of PW-5 and PW-6. None of the other material witnesses, i.e. PW-1, PW-2 and PW-3, who are also close relatives of the victim as well as the accused, have supported the prosecution version at all and have not implicated the accused in commission of abetment of suicide by the victim. Mere allegations that the victim was tortured or harassed by the accused without there being any evidence as to any positive action in proximity to the time of occurrence on the part of the accused that led the victim to commit suicide, his conviction in terms of Section 306 of IPC is not sustainable. The casual remarks that the accused used to torture the victim does not come within the purview of instigation. The prosecution was required

to show that there was any positive action on the part of the accused that created a situation or compelled the victim to end her life. No active role in tarnishing the image of the victim or defaming is proved to have been committed by him. Therefore, it cannot be stated that any specific act on the part of the accused had induced the victim to extinguish her life spark.

25. Accordingly, in view of the discussion as made above, the present appeal is allowed. The impugned judgment of conviction and order on quantum of sentence, as passed by the trial Court, are set aside. The appellant is acquitted of the charges framed against him. He be released forthwith, if not required in any other case. Intimation to the jail authorities/Court concerned be also sent accordingly.

28.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes