

GURCHARAN SINGH

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v.

THE STATE OF PUNJAB

(Criminal Appeal No. 40 of 2011)

OCTOBER 01, 2020

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[N. V. RAMANA, SURYA KANT AND
HRISHIKESH ROY, JJ.]

Penal Code, 1860 – ss. 306, 107 – A young married lady with two minor children committed suicide – The Trial Court convicted lady's husband-appellant u/s. 306 IPC and sentenced him to 4 years rigorous imprisonment – The conviction u/s. 306 IPC was upheld by the High Court – On appeal, held: In the instant case, there is no direct evidence of cruelty against the husband or the in-laws – There is nothing on record to show which particular hope or expectation of the deceased was frustrated by the husband – Evidence is also lacking on wilful neglect of the appellant, which led to the suicidal death – To prove the offence of abetment, as specified u/s. 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability – The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous – Both the Trial Court and the High Court never examined whether appellant-husband had the mens rea for the crime, he is held to have committed – The conviction by both the Courts on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case – Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account – The Trial Court and the High Court speculated on the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife – Therefore, the decisions under challenge cannot be legally sustained – Consequently, the appellant's conviction u/s. 306 IPC is set aside and quashed.

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A **Allowing the appeal, the Court**

- HELD:** 1. Insofar as the possible reason for a young married lady with two minor children committing suicide, in the absence of evidence, conjectures cannot be drawn that she was pushed to take her life, by the circumstances and atmosphere in the matrimonial home. What might have been the level of expectation of the deceased from her husband and in-laws and the degree of her frustration, if any, is not found through any evidence on record. More significantly, wilful negligence by the husband could not be shown by the prosecution. [Para 11][747-E-F]
- C 2. As in all crimes, *mens rea* has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove *mens rea*, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the *mens rea* for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account. [Para 15][748-C-F]
- G 3. Proceeding with the above understanding of the law and applying the ratios to the facts in the present case, what is apparent is that no overt act or illegal omission is seen from the appellant's side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased faced persistent harassment from her husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The Trial Court and the High Court speculated on
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the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife. [Para 19][750-C-D] A

SS Chheena v. Vijay Kumar Mahajan (2010) 12 SCC 190 : [2010] 9 SCR 1111 ; Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707: [2009] 15 SCR 836 ; Mangat Ram v. State of Haryana (2014) 12 SCC 595 : [2014] 4 SCR 988 – relied on. B

Case Law Reference

[2010] 9 SCR 1111	relied on	Para 16	C
[2009] 15 SCR 836	relied on	Para 17	
[2014] 4 SCR 988	relied on	Para 18	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 40 of 2011. D

From the Judgment and Order dated 04.03.2010 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 408-SB of 1999. D

R. K. Kapoor, Shoaib Ahmad Khan, Anis Ahmed Khan, Ms. Jaspreet Gogia, Karanvir Gogia, Advs. for the appearing parties. E

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. This Appeal challenges the judgment and order dated 4.3.2010 of the High Court of Punjab and Haryana whereunder, the Criminal Appeal No. 408-SB of 1999 of the convicted appellant was dismissed and the judgment of conviction under section 306 of the Indian Penal Code, 1860 (for short “the IPC”) and the consequential sentence of 4 years RI and fine of Rs. 5000/- imposed by the Learned Additional Sessions Judge, Barnala, was upheld. F

2. The appellant along with his parents was charged under sections 304B and 498A read with section 34 of the IPC. The learned Trial Court ordered acquittal of the appellant’s parents Dulla Singh and Karnail Kaur. However, even while declaring that there is insufficient material to convict anyone under section 304B & 498A IPC, the trial Court opined that although no charge of abetment was framed against G

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- A the husband Gurcharan Singh, he can be convicted for abetting suicide of his wife, under section 306 IPC.
3. The criminal process was set in motion with registration of FIR No. 177 dated 13.8.1997 at P.S. Kotwali, Barnala, under section 304B/34 IPC and under section 498A IPC. The case was registered
- B on the basis of statement made by Jail Singh, father of Shinder Kaur(deceased). The appellant was married to Shinder Kaur and they had a son ($2\frac{1}{4}$ years) and a daughter (8/9 months), when the mother committed suicide on 12.8.1997. According to the prosecution case, Shinder Kaur was harassed after marriage, for insufficient dowry. A few days prior to the occurrence, Shinder Kaur was beaten and was turned out from her matrimonial home by the accused to bring Rs.20,000/- from her parents for purchase of a plot. Then the Complainant had escorted back his daughter to her matrimonial home by pleading with the accused that he was unable to meet their cash demand. On 13.8.1997, the father received a message that *Shinder Kaur* had died in her matrimonial house. On hearing this, the Complainant Jail Singh along with his wife Surjit Kaur and Chand Singh (brother of Surjit Kaur), rushed to Barnala and saw the dead body of Shinder Kaur in the matrimonial home who had died at about 5 P.M. on 12.8.1997. Since, it was an unnatural death, the Complainant alleged that either the accused had caused the death of his daughter by giving her some poisonous substance or she had ingested such substance, due to harassment by the accused.
4. The post mortem report disclosed that death was due to consumption of aluminium phosphide. The husband and the parents-in-law of the deceased were charged and after the case was committed
- F on 28.10.1997, the trial commenced before the Court of Additional Sessions Judge, Barnala.
5. Adverting to the evidence of Jail Singh(PW2), Chand Singh (PW3) and Surjit Kaur(PW4), who were the father, maternal uncle and mother of the deceased respectively, the Court proceeded to determine
- G whether the unnatural death was the result of Dowry demand. The witnesses testified that Rs. 20,000/- was demanded by the accused from the deceased's family as they wanted to purchase a plot and since this demand could not be met, Shinder Kaur committed suicide. The evidence of PW2, the father of the deceased shows that "*cash loan*" of 20,000/- was asked. It is also seen from the evidence that the
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appellant Gurcharan Singh is the only son of his parents and they are the owner of a big house with a vegetable garden. The appellant and his father were drivers with Punjab police. What is also of relevance is that during delivery time, the deceased was admitted in the hospital for 10/12 days in November 1996 and her medical treatment was arranged by the husband and the father-in-law. No evidence of any dispute relating to dowry demand or maltreatment of the deceased, during three years of marriage was seen. On this basis, the Trial Court concluded even if Rs. 20,000/- was asked for purchase of plot three years after marriage and few days later the unnatural death takes place, the death cannot be related to demand of dowry.

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6. The Trial Court then posed a question to itself as to why a young lady with two small children would commit suicide unless she has been pushed to do so, by the circumstances in the matrimonial home. It was then observed that the expectation of a married woman will be love and affection and financial security at the hands of her husband and if her hopes are frustrated by the act or by wilful negligence of the husband, it would constitute abetment within the meaning of section 107 IPC, warranting conviction under section 306 IPC. With such reasoning, the Trial Court concluded that Shinder Kaur committed suicide when her hopes were frustrated by the act of her husband or alternatively, by his wilful neglect. Thus, the Court itself was uncertain on the nature of the act to be attributed to the appellant. Moreover, even while noting that no direct evidence of cruelty against the husband and the in-laws is available, the learned Court assumed that section 306 IPC can be applied against the appellant. With such conjecture, while acquitting all three accused of the charged crime under section 304B and 498A of IPC, the husband was convicted under section 306 IPC.

7. In the resultant Criminal Appeal, the appellant contended that the conviction cannot be justified unless evidence disclosed some positive act or conduct of the accused, which might have compelled the deceased to commit suicide. On the plea of cordial relationship of the deceased with her husband, the appellate Judge conjectured that if such be the situation, the family members (PW2,PW3,PW4) of the deceased, would not have deposed against the husband. The suggestion that the deceased accidentally consumed pesticide kept for the vegetable garden was brushed aside by the learned Judge. Accordingly, the High Court endorsed the Trial Court's view that deceased was pushed to commit suicide by the circumstances and the atmosphere in the matrimonial

- A home. The appeal was accordingly dismissed by the impugned judgment leading to the present appeal.
8. For the appellant, the learned Counsel Mr R K Kapoor focused on the findings of the Trial Court that there is no direct evidence of cruelty towards the deceased, by the husband or parents-in-law. It is
- B then submitted that there is nothing to conclude that the husband had wilfully neglected his wife or had frustrated her, to bring the case within the ambit of abetment. The Counsel argues that the court's conclusion is entirely based on conjectures and not upon any substantial evidence. Since no evidence of dowry harassment was found and the demand of
- C Rs. 20,000/- was ruled out as the cause for suicide, the learned Counsel submits that both Courts erred in concluding that the deceased was pushed to commit suicide, on account of the circumstances or atmosphere created by the appellant. The contrary evidence of care and attention of the deceased by her husband and in-laws is highlighted by the appellant's lawyer to argue that in the matrimonial home, the
- D deceased was treated well. In any case, the degree of love and affection expected of a husband, cannot be measured to base the conviction of abetment. Accordingly, it is contended that the inference without any evidence of vitiating circumstances in the matrimonial home purportedly created by the appellant, is nothing but an inference and conviction cannot be sustained on that basis alone. The Counsel then points out
- E that both children born to the deceased are residing with the appellant and this would also indicate that appellant is a caring and responsible person. The Counsel further submits that the appellant has already undergone sentence for about two years.
9. On the other hand, Ms Jaspreet Gogia, learned counsel for
- F the State of Punjab refers to the evidence of Jail Singh (PW2) and Surjit Kaur (PW4), the parents of deceased, who stated that a week before the incident, the deceased was beaten and was sent to her parental home to bring cash for purchase of a plot. As the parents were unable to pay the demanded sum, the deceased was driven to commit suicide
- G in her matrimonial home on the very day, when her father dropped her back. The Counsel then argues that if not for the circumstances or atmosphere in the matrimonial home, why should a young mother of two children commit suicide, by consuming pesticide.
10. The submissions of the learned Counsel have been
- H considered. In order to give the finding of abetment under section 107

IPC, the accused should instigate a person either by act of omission or commission and only then, a case of abetment is made out. In the present case however, there is no direct evidence of cruelty against the husband or the in-laws. There is nothing on record to show which particular hope or expectation of the deceased was frustrated by the husband. Evidence is also lacking on wilful neglect of the appellant, which led to the suicidal death. Whereas contrary evidence is available to suggest that care and treatment was given to the deceased in the matrimonial home and in the hospital, and during the three years of marriage, there was no instance of maltreatment, attributable to dowry demand. The demand of Rs. 20,000/- for purchase of a plot (in front of the residence which might have incidentally become available for sale just at that time), after three years of marriage, was ruled out by the trial Court as the possible cause for the suicidal death. In any case, PW2 stated that this sum was a "*cash loan*" asked for buying the plot. Thus, a loan may have been sought by the accused which could not be given. But there is nothing to show that the deceased was harassed on this count, in the matrimonial home. In the face of such material, it is difficult to conclude that Shinder Kaur was pushed to commit suicide by the circumstances or atmosphere created by the appellant.

11. Insofar as the possible reason for a young married lady with two minor children committing suicide, in the absence of evidence, conjectures cannot be drawn that she was pushed to take her life, by the circumstances and atmosphere in the matrimonial home. What might have been the level of expectation of the deceased from her husband and in-laws and the degree of her frustration, if any, is not found through any evidence on record. More significantly, wilful negligence by the husband could not be shown by the prosecution.

12. It must also be noted that both children born to deceased are being brought up by the appellant's family ever since the death of the mother on 12.8.1997. The maternal grandparents, even while pointing fingers against the accused, never raised any issue on their grandchildren being brought up in the home where their daughter died an unnatural death.

13. Section 107 IPC defines "abetment" and in this case, the following part of the section will bear consideration: -

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A “107. *Abetment of a thing* – A person abets the doing of a thing, who –

First-Instigates any person to do that thing; or

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B *Thirdly* – Intentionally aids, by any act or illegal omission, the doing of that thing.”

C 14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

D 15. As in all crimes, *mens rea* has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove *mens rea*, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the *mens rea* for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

E 16. The necessary ingredients for the offence under section 306 IPC was considered in the case *SS Chheena Vs. Vijay Kumar Mahajan*¹ where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-

F G “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.”

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17. While dealing with a case of abetment of suicide in *Amalendu Pal alias Jhantu vs. State of West Bengal*², Dr. Justice M.K. Sharma writing for the Division Bench explained the parameters of Section 306 IPC in the following terms:

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“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.

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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.

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18. In the case *Mangat Ram Vs. State of Haryana*³, which again was a case of wife’s unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnan rightly observed as under:-

²(2010) 1 SCC 707

³(2014) 12 SCC 595

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- A “24. We find it difficult to comprehend the reasoning of the High Court that “no prudent man is to commit suicide unless abetted to do so”. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.”
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- C 19. Proceeding with the above understanding of the law and applying the ratios to the facts in the present case, what is apparent is that no overt act or illegal omission is seen from the appellant’s side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased faced persistent harassment from her husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The Trial Court and the High Court speculated on the unnatural death and without any evidence concluded
- D only through conjectures, that the appellant is guilty of abetting the suicide of his wife.

- E 20. In such circumstances, we have no hesitation in declaring that the Trial Court and the High Court erred in concluding that the deceased was driven to commit suicide, by the circumstances or atmosphere in the matrimonial home. This is nothing more than an inference, without any material support. Therefore, the same cannot be the basis for sustaining conviction of the appellant, under section 306 of the IPC.

- F 21. In view of the foregoing, we are persuaded to conclude that the decisions under challenge cannot be legally sustained. Consequently, interfering with the impugned judgment of the High Court and the Trial Court, the appellant’s conviction under Section 306 IPC is set aside and quashed. The appeal is accordingly, allowed.