

Before Manjari Nehru Kaul, J.

SURJIT KAUR AND OTHERS—Appellants

versus

STATE OF PUNJAB—Respondent

CRA-S No.993-SB of 2005

March 08, 2019

Indian Penal Code, 1860—Ss. 107 and 306—Appellants, the mother-in-law and wife of deceased were convicted by trial Court for abetting his suicide—Prosecution case was that persistent demand by the appellants asking for the deceased's separate residence from his parents led him to take extreme step—Inter alia noticing that there was delay in lodging the FIR, High Court in appeal concluded that ingredients of S.107 and 306 IPC were missing in the prosecution version—Holding that there was no mens rea and also concluding from the facts that the deceased appeared to be oversensitive to ordinary petulance, the Court allowed the appeal and set aside the conviction, as no active role in instigating the deceased was attributed to the appellants—Appeal allowed.

Held that I find substance in the contentions of the learned counsel for the appellant that the essential ingredients of Section 306 IPC are missing in the case in hand. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The accused must have been shown to have provoked, incited or induced the deceased to end his life and his act should have been such, which left the deceased with no other alternative but to commit suicide. Undoubtedly a person would not commit suicide without any reason or cause, whether real or imaginary. However, the moot question which would arise is whether or not, the same could be labelled as 'abetment' under Section 107 IPC.

(Para 10)

Further held that a bare reading of Section 107 IPC makes it evident that presence of *mens rea* is an essential ingredient and concomitant of instigation. If the same is absent, it would not be correct to hold a person guilty of abetment. Words which may be uttered in a fit of rage or emotion cannot be labelled as instigation in the absence of any intention. One cannot however lose sight of the fact that the degree of sensitivity and even individual temperament varies from person to person. In a nutshell, it is not what the deceased 'felt' but what the

accused 'intended' by his act would be the clincher. Therefore, in the case in hand, the question which arises for consideration is whether the *mens rea* to abet the suicide was there or not? The deceased seemed to be over sensitive to ordinary petulance and an ill fated thought coupled with his seemingly frail psychology drove him to end his life. A hypersensitive person may resort to the extreme step of ending his life on account of discord or disturbed marital life as compared to a similarly

situated person who may on the contrary take it in his stride and rather stand up to the same. Even assuming that the appellants had indeed been pressurizing the deceased to move out and start staying separately from his mother, it could not be said to be such a compelling circumstance much less an act of harassment for him to end his life. It is in this background that the *mens rea* on the part of the accused shall have to be culled from the facts and circumstances of the case which is *prima facie* missing in the instant case.

(Para 11)

G.K.Mann, Advocate
for the appellants.

Jaspreet Kaur, A.A.G, Punjab.

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred against the impugned judgment dated 17.05.2005 passed by the Addl. Sessions Judge (Ad), Amritsar, vide which the accused/appellants were convicted under Section 306 IPC and sentenced to undergo rigorous imprisonment for seven years and also to pay fine of `1000/-each and in default of payment of fine, to further undergo rigorous imprisonment for one month each.

(2) As per statement Ex.PH on 25.10.2004 made by complainant-Prem Lata to the police, her son deceased Mahesh Kumar @ Johni had got married to appellant No.2 Kawaljit Kaur about 1-1/2 years prior to the occurrence. The relations between the couple had turned a little sour as the deceased was continuously being pressurized by the appellants to move out of his parents house and start living independently with his wife(appellant No.2) to which the deceased was not agreeable. As a consequence thereof, the deceased had slipped into depression. A day prior to the occurrence, the appellant Surjit Kaur, mother-in-law of the deceased, came to the house of the deceased and yet again pressurized him to start living separately from his mother. On

24.10.2004 the deceased and the appellant-wife went to the parental house of the latter in a car which was driven by PW5 Rasal Singh. After dropping both the deceased and appellant Kawaljit Kaur, Rasal Singh PW5 came back to the complainant with a message that the deceased had sent for her. While the complainant and PW5 Rasal Singh were going in a car towards the house of appellant Surjit Kaur, they saw the deceased alongwith one Jagir Singh and Angrej Singh (brothers-in-law of appellant-wife) coming on a scooter. Rasal Singh stopped the car and made the deceased sit with him, who then disclosed that he had consumed poison being fed up with the behavior of the accused appellants. He was rushed to the hospital by the complainant where he died the following morning. A formal FIR Ex.PH/2 was registered on the statement of complainant-Prem Lata on 25.10.2004.

(3) On completion of the investigation, the appellants were charged for an offence punishable under section 306 IPC to which they pleaded not guilty and claimed trial.

(4) The prosecution in support of its case, examined as many as 12 witnesses and tendered the report of Chemical Examiner (Ex.PE).

(5) All the incriminating circumstances appearing against the accused under Section 313 Cr.P.C. were put to them wherein they denied the charges and pleaded to have been falsely implicated in the case.

(6) I have heard learned counsel for the parties and perused the evidence as well as other material on record.

(7) The learned counsel for the appellants vehemently argued that there was an inordinate and unexplained delay in the lodging of the FIR which was used by the complainant party to fabricate a false version against the appellants. She drew my attention to the fact that vide Ex.PB, the doctor attending on the deceased had informed the police about his admission in the hospital and the police in turn too had reached the hospital on 24.10.2004 itself yet strangely the FIR was lodged by the complainant only on 25.10.2004 at about 11:40 A.M. She further urged that the essential ingredients of an offence under Section 306 IPC were clearly amiss in the case in hand. In fact the allegations on the face of it were totally vague and general in nature coupled with the fact that there were improvements and material contradictions in the testimony of the prosecution witnesses.

(8) The learned State counsel on the contrary prayed for dismissal of the appeal by arguing that the deceased had been subjected

to persistent harassment by the appellants which compelled him to commit suicide by consuming sulphas tablets. She also drew my attention to the testimony of PW Rasal Singh, who was a star witness inasmuch as he had driven the deceased and his wife on the fateful day and was thus a witness to the taunts which had been allegedly hurled on him by the appellants.

(9) It is undisputed that the deceased indeed died an unnatural death. The cause of death of the deceased was Asphyxia as a result of consumption of aluminium phosphide. The case of the prosecution is that the deceased was got admitted in the hospital by none other but his mother and brother. It is indeed very strange that though PW9 ASI Ajit Singh had reached the hospital on 24.10.2004 on being intimated by PW1 Dr. Jatinder Singh Pannu vide Ex.PB about the admission of the deceased, yet for the reasons best known to them the complainant party who were very much present in the hospital chose not to give any statement to the police qua the circumstances which compelled the deceased to consume poison. Rather the complainant gave her first statement Ex.PH to the police only on 25.10.2004 and that too after almost 6 hours of the death of the deceased. It was in this statement that for the first time allegations qua harassment were levelled against the appellants. This delay in reporting the matter to the police does cast a shadow of doubt on the prosecution version and the possibility of an embroidered version cannot thus, be ruled out.

(10) I find substance in the contentions of the learned counsel for the appellant that the essential ingredients of Section 306 IPC are missing in the case in hand. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The accused must have been shown to have provoked, incited or induced the deceased to end his life and his act should have been such, which left the deceased with no other alternative but to commit suicide. Undoubtedly a person would not commit suicide without any reason or cause, whether real or imaginary. However, the moot question which would arise is whether or not, the same could be labelled as 'abetment' under Section 107 IPC. It would be relevant to reproduce Section 107 IPC which defines abetment 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 ny 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 doing of that thing.

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.”

(11) A bare reading of Section 107 IPC makes it evident that presence of *mens rea* is an essential ingredient and concomitant of instigation. If the same is absent, it would not be correct to hold a person guilty of abetment. Words which may be uttered in a fit of rage or emotion cannot be labelled as instigation in the absence of any intention. One cannot howeverlose sight of the fact that the degree of sensivity and even individual temperament varies from person to person. In a nutshell, it is not what the deceased 'felt' but what the accused 'intended' by his act would be the clincher. Therefore, in the case in hand,the question which arises for consideration is whether the *mens rea* to abet the suicide was there or not? The deceased seemed to be over sensitive to ordinary petulance and an ill fated thought coupled with his seemingly frail psychology drove him to end his life. A hypersensitive person may resort to the extreme step of ending his life on account of discord or disturbed marital life as compared to a similarly situated person who may on the contrary take it in his stride and rather stand up to the same.Even assuming that the appellants had indeed been pressurizing the deceased to move out and start staying separately from his mother, it could not be said to be such a compelling circumstance much less an act of harassment for him to end his life. It is in this background that the *mens rea* on the part of the accused shall have to be culled from the facts and circumstances of the case which is *prima facie* missing in the instant case.

(12) It would be also relevant to reproduce the pith and purport of Section 306 IPC as enunciated by the Supreme Court in **Randhir Singh** versus *State of Punjab*¹ as under:-

¹ 2004 (4) R.C.R. (Criminal) 740

“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.

13. In *State of W.B. versus Orilal Jaiswal, 1994 (3) R.C.R. (Criminal) 186: (1994) 1 SCC 73*, 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.”

(13) As a sequel to the above discussion, I hold that no offence under Section 306 IPC is made out against the appellants. Accordingly, the appeal is allowed and the impugned judgment dated 17.05.2005 passed by the Addl. Sessions Judge (Ad.), Amritsar, is set aside. The appellants be set at liberty forthwith if not already on bail and if not required in any other case.

P.S. Bajwa