

A SOHAN RAJ SHARMA
v.
STATE OF HARYANA
(Criminal Appeal No. 1464 of 2007)

APRIL 7, 2008

B [DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C *Penal Code, 1860: s. 306 – Abetment of suicide – Suicide committed by wife – Allegation against husband that he was sexually pervert and was trying to defame her – conviction by trial court as well as High court – On appeal, held: In cases of abetment of suicide there must be proof of direct/indirect acts of incitement to the commission of suicide – Mere fact that husband treated the wife with cruelty not sufficient proof – In the facts of the case offence not made out – Hence acquitted.*

D *ss. 107 and 109 – Abetment – Ingredients for commission of – Discussed.*

E *Words and Phrases – ‘Instigate’ – Meaning of in the context of s. 107 IPC.*

F **FIR was lodged against appellant-accused alleging that he was responsible for the circumstances which compelled his wife to consume poison causing her death. The allegation was on the basis of a letter written by the deceased wherein she had stated that she poisoned her two children and consumed poison herself because her husband used to torture her for having sex in pervert ways. Accused was tried u/s 306 IPC. Trial Court found him guilty and convicted him. Conviction was upheld by High Court. Hence the present appeal.**

G **Allowing the appeal, the Court**

HELD: 1.1 In the facts of the instant case, it is clear that the accused has been described as a sexual pervert

and that he had behaved like an animal and the deceased had tolerated the insulting manner in which he behaved. They were married in court. It was stated that the accused was impotent and he was trying to defame the deceased for having relationship with ladies. On the facts of the case, it cannot be said that the ingredients of Section 306 IPC have been established. Therefore, the conviction as recorded cannot be maintained. [Paras 12 and 14] [1206-B, C, F, G]

1.2 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. [Para 9] [1205-A, B, C, D]

State of West Bengal v. Orilal Jaiswal AIR 1994 SC 1418 – relied on.

1.3 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. [Para 11] [1206-A]

Mahinder Singh v. State of M.P. 1995 AIR SCW 4570 – referred to.

2. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence

A 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
B 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
C 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
D 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.
[Para 10] [1205-D, E, F, G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
E No. 1464 of 2007.

From the final Judgment/Order dated 9.1.2007 of the High
Court of Punjab and Haryana at Chandigarh in CrI. A. No. 419-
SB/1993

F B.D. Sharma for the Appellant.

Rajeev Gaur 'Naseem', Rajesh Ranjan and T.V. George
for the Respondent.

The Judgment of the Court was delivered by

G **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to
the order passed by a learned Single Judge of the Punjab and
Haryana High Court upholding appellant's conviction for offence
punishable under Section 306 of the Indian Penal Code, 1860
(in short 'IPC') and sentence of 7 years RI.

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2. Background facts in a nutshell are as follows:

First Information Report lodged by Shri Rajiv Lochan Jain (PW4) was to the effect that Jyoti (hereinafter referred to as the 'deceased') had written in her letter that her husband Sohan Raj Sharma the accused-appellant was torturing him for sex in many different ways, mostly pervert and tired of the same, she had poisoned her children, and had consumed poison herself. The FIR is further to the effect that appellant-Sohan Raj Sharma, because of the circumstances, had compelled Jyoti to consume poison. The first endorsement of the Investigating Officer ASI Rohtash Singh (PW10) on the statement Ex.PL of Shri Rajiv Lochan Jain (PW4) is Ex.PL/1 and it is to the effect that on his reaching B.K. Hospital Faridabad alongwith other police officials, Shri Rajiv Lochan Jain had handed him over one letter (Ex.PX) of eight pages which was taken into possession of the police vide memo Ex.PM and from the statement of Shri Rajiv Lochan Jain and the letter produced by him, the allegations of commission of offences punishable under Section 306 IPC on the part of the Sohan Raj Sharma were made out. Statement Ex. PL/1, the statement Ex. PL alongwith endorsement Ex.PL/1 was sent to the police station for registration of the case on which formal FIR was recorded. During investigation, the incriminating evidence in the form of medical evidence regarding death of Jyoti, Pinki and Gudiya having been caused due to consumption of poison surfaced. Further the report regarding letter (Ex.PX) and other oral evidence of the witnesses regarding circumstances connected with the occurrence were collected. Accused Sohan Raj Sharma was put on trial for offence punishable u/s 306 IPC, he was challaned by the police and was committed to the court of Sessions for trial by the Illaqa Magistrate.

3. Prosecution examined 11 witnesses and exhibited several documents. Most vital one is purported suicide note Ex.PX. Appellant took the stand during examination under Section 313 of the Code of Criminal Procedure, 1973 (in for 'Code') that he was never married to the deceased officially. It

A also alleged that he was a lesbian and in proof of this stand, one Anita Parmar was examined as DW1. The Trial Court found the contents of Ex.PX satisfied ingredients of Section 306 IPC. Accordingly, the appellant was found guilty and convicted and sentenced as aforesaid.

B 4. In appeal before the High Court, the stand taken before the Trial Court that ingredients of Section 306 IPC have not been fulfilled was reiterated. Stand of the prosecution was that the ingredients have been established.

C 5. The High Court found that Ex.PX was sufficient to show as to what was the reason for deceased committing suicide.

6. Learned counsel for the appellant submitted that letter Ex.PX in no way establishes that the appellant had abetted the suicide. As a matter of fact, the fact that the deceased took the lives of two innocent children and then committed suicide without any doubt establishes that she was mentally unsound. The letter at the most describes the accused as a sexual pervert, but his behaviour, if any, cannot be taken to be an act of abetting the suicide. It is pointed out that in Ex Px she has clearly stated that she wanted to take appellants' life.

7. Learned counsel for the respondents-State on the other hand supported the judgment of the courts below.

F Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

“306 ABETMENT OF SUICIDE.

G 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.”

H 8. 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 IPC.

9. In *State of West Bengal v. Orilal Jaiswal* (AIR 1994 SC 1418) 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.

10. Section 107 IPC 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.

A 11. 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)].

B 12. When the factual scenario is examined, it is clear that the accused has been described as a sexual pervert and that he had behaved like an animal and the deceased had tolerated the insulting manner in which he behaved. They were married in court. It was stated that the accused was impotent and he was
C trying to defame the deceased for having relationship with ladies.

13. The most significant part of the letter the deceased had written is as follows:

D "I desired to kill you alongwith us but no, if you have any sense of shame you will die as a result of the sequence of events. But it do not make any difference for shameless person because these abuses will sound as correct if you realize your capacity. You have not spent even eight days in a period of eight years in peace with me. You yourself
E are responsible for death of these children. Flowers had been prayed for from the deities of your family regarding whom you disclosed "they are not mine they are with me from my friend. (girl friend) on, you, the condemned the day children will be born as a result of co-habitation of a woman with woman, a woman will stop giving birth to man
F like you."

(Underlined for emphasis)

G 14. Above being the factual scenario, it cannot be said that the ingredients of Section 306 IPC have been established. Therefore, the conviction as recorded cannot be maintained. The order of the High Court is set aside. The appellant be released forthwith unless required in connection with other case.

K.K.T.

Appeal allowed.

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