

HIGH COURT OF MADHYA PRADESH**BENCH GWALIOR****SINGLE BENCH:****HON'BLE SHRI JUSTICE G.S. AHLUWALIA****Criminal Appeal No.489/2011****.....Appellant: Kalyan Singh****Versus****.....Respondent : State of M.P.**

Shri D.S. Tomar, Counsel for the appellant.

Shri R.V.S. Ghuraiya, Public Prosecutor for the
respondent/State.

Date of hearing : 04/10/2018

Date of Judgment : 12/10/2018

Whether approved for reporting: Yes

J U D G M E N T**(12/10/2018)**

This Criminal Appeal has been filed against the judgment and sentence dated 25.4.2011 passed by Additional Judge to the Court of 2nd Additional Sessions Judge (Fast Track Court), Ganjbasoda, District Vidisha in Sessions Trial No.215/2010, by which the appellant has been convicted under Section 306 of I.P.C. and has been sentenced to undergo the rigorous imprisonment of 7 years and a fine of Rs. 500/- with default imprisonment.

The necessary facts for the disposal of the present appeal in short are that the deceased Biharilal was an old and infirm person and had two daughters and they were already married and were residing in their matrimonial

home. The deceased had 5 Bigha of land which was being cultivated by Ballu, Puran and Bihari. It is the prosecution case that the daughter-in-law of the deceased as well as the wife of the appellant, had contested the election for the post of Sarpanch, and both of them lost. On this issue, the appellant used to abuse the deceased. On 1.6.2010, at about 4-4:30 P.M., the appellant was abusing the deceased and his brother Sokal. When the deceased objected to it, the appellant slapped him and also assaulted him by fists and blows. As a result of beating given by the appellant, the deceased felt insulted and humiliated and started provoking the appellant to beat him. Thereafter, the deceased committed suicide by jumping into well. The nephew of the deceased, namely Ballu had gone to attend a marriage and when he came back on 2-6-2010, then he came to know about the incident of beating. He searched for the deceased, but he could not be found. Thereafter, his dead body was found in the well, and accordingly, the complaint was made by Ballu. The inquest enquiry was conducted. The dead body was sent for postmortem. The spot map was prepared. 100 M.L. of water from the well was seized. The bone of the deceased was sent for diatom test. The police registered the Crime No.125/2010 for offence under Section 306 of I.P.C. The statements of the witnesses were recorded, and after completing the investigation, the police filed the charge sheet against the appellant for offence under Section 306 of I.P.C.

The Trial Court framed charge under Section 306 of I.P.C.

The appellant abjured his guilt and pleaded not guilty.

The Prosecution in order to prove its case, examined

Ramesh @ Ballu (P.W.1), Smt. Neema Bai (P.W.2), Ram Sewak Shukla (P.W.3), Prahlad Singh (P.W.4), Rajiv Kumar (P.W. 5), Amarlal (P.W.6), Chunnilal (P.W.7), Dr. Vijay Singh (P.W.8), R.K. Singh (P.W.9), and Gopal (P.W.10). The appellant did not examine any witness in his defence.

The Trial Court by judgment and sentence dated 25.4.2011, passed in S.T. No.215/2010, convicted the appellant for offence under Section 306 of I.P.C. and sentenced him to undergo the rigorous imprisonment of 7 years and a fine of Rs. 500/-, with default imprisonment.

Challenging the conviction and sentence, recorded by the Trial Court, it is submitted by the Counsel for the appellant, that even if the entire allegations are accepted as they are, then it would be clear that no offence under Section 306 of I.P.C. is made out. Merely because, the appellant is said to have beaten the deceased by fists and blows, would not amount to abetment of suicide.

Per contra, it is submitted by the Counsel for the respondent/State, that when the deceased felt insulted and humiliated, then it was the duty of the appellant to stop the deceased from committing suicide and in spite of the request made by Smt. Neema Bai (P.W.2) to stop the deceased from committing suicide, the appellant simply replied that the deceased may die and no one can harm him. It is submitted that thus, it is clear that the appellant, not only had beaten the deceased, but in spite of the request made by Smt. Neema Bai (P.W.2), did not try to stop the deceased from committing suicide, therefore, it is clear that the appellant had abetted the deceased to commit suicide.

Heard the learned Counsel for the parties.

Before considering the allegations made against the appellant, this Court feels it appropriate to consider that what does "abetment" mean.

Section 306 of I.P.C. reads as under:-

"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."

"Abetment" is defined under Section 107 of I.P.C. which reads 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 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 authorised 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 facilitates the commission thereof, is said to aid the doing of that act.”

The Supreme Court in the case of **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** reported in **(2009) 16 SCC 605** while dealing with the term “instigation” held as under :

“16. ... 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.

17. Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by ‘goad’ or ‘urging forward’. The dictionary meaning of the word ‘goad’ is ‘a thing that stimulates someone into action; provoke to action or reaction’ ... to keep irritating or annoying somebody until he reacts....”

The Supreme Court in the case of **Praveen Pradhan Vs. State of Uttaranchal** reported in **(2012) 9 SCC 734** held as under :

“17. The offence of abetment by instigation

depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. (2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554)

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. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC."

The Supreme Court in the case of **Sanju @ Sanjay Singh Sengar Vs. State of M.P.** reported in **(2002) 5 SCC 371** has held as under :

"6. Section 107 IPC defines abetment to mean that a person abets the doing of 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.”

Further, in para 12 of the judgment, it is held as under:

“The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.”

The Supreme Court in the case of **Gangula Mohan Reddy Vs. State of A.P.** reported in **(2010) 1 SCC 750** needs mentioned here. In which Hon'ble Apex Court has held that:

“abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing – Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained – In order to convict a person under section 306 IPC, there has to be a clear mens rea to commit offence – It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide – Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty– Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the

ingredients of offence under Section 306 made out – Hence, appellant's conviction, held unsustainable”.

In the case of **State of W.B. Vs. Orilal Jaiswal**, reported in **1994 (1) SCC 73**, the Supreme Court has held as under:-

“This Court has cautioned that the Court 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 appears 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 that accused charged of abetting the offence of suicide should be found guilty”

The Supreme Court in the case of **M. Mohan Vs. State represented by the Deputy Superintendent of Police** reported in **AIR 2011 SC 1238** has held as under :

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

The Supreme Court in the case of **Kishori Lal vs. State of M.P.** reported in **(2007) 10 SCC 797** has held in para 6 as under:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. 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."

In the case of **Amalendu Pal @ Jhantu vs. State of West Bengal** reported in **(2010) 1 SCC 707**, the Supreme Court 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 their 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.

14. The expression 'abetment' has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea

as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"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."

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC."

The Supreme Court in the case of **Amit Kapur Vs. Ramesh Chander** reported in **(2012) 9 SCC 460** has held as under :

"**35.** The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* ((2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in *Ramesh Kumar v. State of Chhattisgarh* ((2001) 9 SCC 618) to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to

instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence."

Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

The next question for determination is that whether the death of the deceased Biharilal was homicidal in nature or was accidental.

Dr. Vijay Singh (P.W.8) had conducted the postmortem of the dead body of Biharilal and had found that the dead body was decomposed and the cause of death was drowning and the duration was within a period of 7 days. This witness had further opined in his postmortem report, Ex. P.10, that the death was accidental in nature. This witness in his evidence has also stated in para 2 of his examination-in-chief, that the death was accidental in nature. This finding given by Dr. Vijay Singh (P.W.8) was not challenged by the prosecution. However, whether a person has jumped into a well or he had accidentally fell into the well, can be ascertained only from the surrounding circumstances. Thus, this opinion of Dr. Vijay Singh (P.W.8) that the death of the deceased Biharilal was accidental in nature, will have to be considered in the light of the surrounding circumstances.

No body had seen the deceased jumping in the well. According to the prosecution case, the well was situated on a public place near the road. There is nothing on record that whether the well had any boundary wall or not? However, from the spot map, Ex. P.12, it is clear that the sleepers of

the deceased were found just adjoining to the well. If the deceased had fallen in the well accidentally, then the sleepers of the deceased would not have been found outside the well. The fact that the sleepers of the deceased were found outside the well, indicates that the deceased might have committed suicide by jumping in the well, after leaving his sleepers outside the well. Thus, it is held that although nobody had seen the deceased committing suicide, but the circumstances indicate that the death of the deceased was not accidental but it was suicidal.

Thus, the only moot question for determination is that whether by beating the deceased, the appellant had abetted him to commit suicide or not?

Ramesh @ Ballu (P.W.1) has admitted that the deceased Biharilal was his Uncle. The deceased Biharilal had two daughters who were already married and he had 5 bighas of land. In para 10 of his cross-examination, this witness, initially admitted that the father of this witness, was telling the deceased Biharilal to transfer his lands in the name of this witness and his siblings. However, immediately thereafter this witness, resiled from his admission. In para 14 of his cross-examination, this witness had further admitted that the deceased had poor eye vision.

Smt. Neema Bai (P.W.2) has stated that on the date of incident, the appellant was abusing the deceased and when he objected to it, the appellant assaulted him by fists and blows. The deceased was constantly provoking the appellant to assault him. Thereafter, the deceased said that since, the appellant has insulted him therefore, he is going to commit suicide. This witness requested the appellant to pursue the deceased and to stop him from committing the suicide, but

the appellant declined to pursue the deceased and said that he may commit suicide, if he so desire. This witness in her cross-examination has admitted that the deceased was an old person and had two daughters. The wife of the deceased had already expired. It was also admitted by this witness, that the deceased was being looked after by her family.

Amarlal (P.W.6) has turned hostile and did not support the prosecution case. He was cross-examined by the Public Prosecutor, and in his cross-examination, this witness admitted that the appellant had abused the deceased, but denied that the appellant had beaten the deceased.

Chunnilal (P.W.7) has turned hostile and did not support the prosecution case.

Thus, even if the entire prosecution case is accepted, then it can be said that the appellant was abusing the deceased, which was objected by him. The appellant thereafter, assaulted the deceased by fists and blows. The deceased had also provoked the appellant to assault him. Thereafter, the deceased said that since, the deceased has insulted him, therefore, he would die. Smt. Neema Bai (PW-2) also requested the deceased to come back and not to die, then he replied, that he would die and Smt. Neema Bai (P.W.2) may depose against the appellant. Thereafter, it is the prosecution case, that Smt. Neema Bai (P.W.2) requested the appellant that since, the deceased is going to die because of humiliation and insult caused to him because of beating given by the appellant and therefore the appellant must stop him, then the appellant replied that the deceased if so desire, may die and no body could cause any harm to him. So far as the words that "nobody could cause any harm to him" are concerned, there is an omission in case

diary statement of this witness, Ex. D/2 and she also could not explain any reason for the same.

Thus, if the entire allegations are considered, then it would be clear that Smt. Neema Bai (P.W.2) is the only witness, who had seen the incident of beating given by the appellant. She has stated that after suffering beating at the hands of the appellant, the deceased felt insulted and humiliated as he was beaten at such an advanced age, therefore, he expressed his willingness to die, which was objected by this witness, but he refused to accept the same and it is alleged that the deceased told this witness, that he would die and this witness may depose against the appellant. However, one thing is clear that when this witness had realised that the deceased is going to die, then she neither raised any hue and cry, nor try to stop him from doing so. She even did not follow him. It appears that this witness, even after coming to know about the desire of the deceased that he is going to die, stayed in her house. Thus, it is clear that either this witness is not a reliable witness with regard to the allegation of expressing the desire by the deceased, or this witness, herself had no apprehension that the deceased may commit suicide. Furthermore, it has been admitted by Ramesh @ Ballu (P.W.1) that the deceased had two daughters, who were already married and were residing in their matrimonial house and the father of Ramesh @ Ballu (P.W.1), who is the real brother of the deceased, was insisting that the deceased should transfer his land in the name of his nephews. Even Smt. Neema Bai (P.W.2) has accepted that the deceased was being looked after by her husband and father-in-law. Thus, it is clear that Ramesh @ Ballu (P.W.1) and Smt. Neema Bai (P.W.2) were in a position

to grab the land of the deceased and thus, they are interested witnesses. It is well established principle of law, that the evidence of a witness cannot be discarded merely on the ground that such a witness is an interested witness, but the evidence of such a witness is liable to be scrutinized very minutely. As already held that Smt. Neema Bai (P.W.2) did not do anything for stopping the deceased from committing suicide, thus, it is clear that either Smt. Neema Bai (P.W.2) has not seen any incident, as alleged by her, or she herself might had no apprehension, that the deceased would commit suicide.

Otherwise also, even if the entire allegations are accepted, it would be clear that no case of abetment of suicide is made out. The deceased appears to be of a hypersensitive nature. The Supreme Court in the case of **Gangula Mohan Reddy (Supra)** and **Orilal Jaiswal (Supra)** has held that if a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. Thus, this Court is of the view that even if the entire allegations as made against the appellant are considered to be true, it would be very difficult to hold that the appellant had abetted the deceased to commit suicide. Merely because, the appellant did not intervene in the matter and did not try to convince the deceased not to commit suicide and did not accept the request made by Smt. Neema Bai (P.W.2) to

convince the deceased that he should not commit suicide, would not mean that the appellant, in any manner, had abetted the deceased to commit suicide. Accordingly, the appellant is held not guilty of committing offence under Section 306 of I.P.C. and consequently, he is acquitted of the charge under Section 306 of I.P.C.

Resultantly, the judgment and sentence dated 25.4.2011 passed by Additional Judge to the Court of 2nd Additional Sessions Judge (Fast Track Court), Ganjbasoda, District Vidisha in Sessions Trial No. 215/2010, is hereby set aside.

The appellant is on bail. His bail bonds and surety bonds are hereby discharged.

The appeal succeeds and is hereby **Allowed.**

(G.S. AHLUWALIA)
Judge
12/10/2018

(alok)