HIGH COURT OF MADHYA PRADESH

BENCH INDORE

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

Criminal Appeal No.689/1999

…….....Appellant: Motilal

Vs.

…….....Respondent: State of Madhya Pradesh

None for the appellant.

Ms. Mamta Shandilya, learned Public Prosecutor for the respondent/State.

Date of hearing : 02/08/2018

Date of Judgment : 20/08/2018

Whether approved for reporting: Yes

J U D G M E N T
(20/08/2018)

This case was listed on 16/04/2018 but no one appeared, therefore, the case was adjourned and it was directed to be listed after two weeks. Thereafter, this case was listed on 02/08/2018 and on that date also no one appeared on behalf of the appellant.

2. The appellant was granted bail on 19/07/1999, even in the absence of counsel for the appellant.

3. From the order-sheets, it is clear that this case was listed thrice prior to 02/08/2018. On 21/06/1999, when the case listed for the first time before the Court, Shri I.B. Singh counsel for the appellant appeared and record was requisitioned.

Thereafter, it was listed on 19/07/1999 and none appeared for the appellant, despite that, after considering the allegations levelled against the appellant, this Court granted bail and sentence awarded to the appellant was suspended. Thereafter, on 16/04/2018 also no one appeared for the appellant. On 02/08/2018 also none appeared for the appellant. It appears that after obtaining bail, counsel for the appellant has not been interested in arguing the case.

4. Under these circumstances, in the light of the judgment passed by the Supreme Court in the matter of **Surya Baksh Singh vs. State of Uttar Pradesh** reported in **2014 (14) SCC 222**, this Court has no option, but to go through the record and decide the appeal on merits. Accordingly, case was heard on 02/08/2018.

5. This criminal appeal under Section 374 of Cr.P.C. has been filed challenging the conviction and sentence dated 04/05/1999 passed by 1st ASJ, Dewas in S.T. No.40/1998 by which the appellant has been convicted under Section 306 of IPC and has been sentenced to undergo the rigorous imprisonment of 5 years and a fine of Rs. 2000/- with default imprisonment.

6. The necessary facts in short are that on 30/05/1997 one Kailashchand was found dead having committed suicide by consuming poisonous substance. It is also undisputed that almost all the prosecution witnesses are members of the same family and prior to 15-20 days of the incident, Govind (PW/1) had beaten the appellant. Similarly, on the report of Laxmibai (PW/6) criminal case was instituted against the appellant Motilal for offence under Section 294, 323, 506 (Part-II) of IPC

and appellant was convicted by the trial Court vide judgment dated 05/11/1998 and criminal appeal No.137/1998 was pending before the Court of II ASJ, Dewas.

7. On 30/05/1997, the deceased Kailash committed suicide by consuming poisonous substance. Merg enquiry was registered under Section 174 of Cr.P.C. On the basis of statements of the witnesses, the offence under Section 306 of IPC was registered against the appellant Motilal and co-accused Yusuf @ Irshad. During investigation, it was found that as appellant and co-accused Yusuf @ Irshad were harassing the deceased Kailash for recovery of money, as a result of which, Kailash committed suicide by consuming poisonous substance. During investigation, 10 tablets of sulphas were recovered from the spot, where the dead-body of the deceased was lying and one diary of the deceased Kailash containing details of different money transactions was produced by Rakesh Patidar, son of the deceased. Dead-body was sent for postmortem and after collecting the material against the appellant and co-accused Yusuf @ Irshad, police filed charge-sheet for the offence under Section 306 of IPC.

8. The Trial Court vide order dated 09/09/1998 framed charge under Section 306 of IPC against the appellant as well as against co-accused Yusuf @ Irshad.

9. Appellant as well as co-accused Yusuf @ Irshad abjured their guilt and pleaded not guilty.

10. The prosecution in order to prove its case, have examined Govind Singh (PW/1), Dineshchand (PW/2), Moolchand Patidar (PW/3), Ashok (PW/4), Dr. K.N. Tripathi (PW/5), Laxmibai (PW/6), Ramchand (PW/7), J.K. Namdeo

(PW/8), Babulal (PW/9), Ramcharitra Dubey (PW/10), M.S. Chouhan (PW/11) and Premnarayan (PW/12).

11. The appellants examined Takesingh (DW/1) and Taj Mohd. (DW/2) in their defence.

12. The Trial Court vide judgment dated 04/05/1999, passed in S.T. No.40/1998 convicted the appellant Motilal for the offence under Section 306 of IPC and sentenced him to undergo rigorous imprisonment of 5 years and fine of Rs.2,000/- with default imprisonment, whereas acquitted the co-accused Yusuf @ Irshad of all the charges. The acquittal of co-accused Yusuf @ Irshad has not been challenged either by the State or by the complainant. Thus any reference of the co-accused shall be only for the purpose of considering the allegations and prosecution case against the appellant.

13. It is mentioned in the memo of appeal that there were money transactions between the appellant and the deceased and since the appellant was demanding his money back from the deceased, therefore, it cannot be said that he has abetted the deceased to commit suicide. It is further mentioned in the memo of appeal that all the witnesses are interested witnesses, and therefore, their evidence is subjected to minute scrutiny and they are not reliable witnesses. It is further mentioned in the memo of appeal that the diary Ex.P/4 which, according to the prosecution, was in the hand-writing of the deceased, does not contain the name of appellant nor it is mentioned that appellant was harassing the deceased by demanding money.

14. *Per contra*, it is submitted by learned Public Prosecutor that it is clear from the evidence of all the witnesses, the deceased had already repaid the loan amount to the appellant

and had also paid the amount of Rs.3,00,000/- in addition to loan amount and appellant was still demanding further amount of Rs.2,00,000/- and since the entire amount was already repaid and appellant was illegally pressurising the deceased Kailash to pay the additional amount of Rs.2,00,000/-, thus, it is clear that appellant Motilal had created a situation before the deceased Kailash, where has left with no other option except to commit suicide.

15. Considered the grounds raised in the memo of appeal as well as the submissions made by learned Public Prosecutor for State.

16. The first question for determination is that whether the death of deceased Kailash was homicidal, Suicidal or was Natural Death.

17. Dr. K.N. Tripathi (PW/5) had conducted postmortem of dead-body of the deceased Kailash. Dr. K.N. Tripathi PW/5 did not find any external injury on the body of the deceased and according to his opinion the cause of death was asphyxia. The postmortem report is Ex.P/6.

18. In the examination-in-chief, this witness has further stated that asphyxia could be caused because of consumption of poisonous substance. The FSL report was received by the Court during pendency of the trial, however, it has not been exhibited.

19. This witness was cross-examined by the appellant and in the cross-examination, this witness has admitted that it is not mentioned in the Post Mortem Report that cause of asphyxia was due to consumption of poisonous substance.

20. Thus, considering the evidence of this witness as well as

postmortem report, this Court is of the considered opinion that no external injury was found by Dr. K.N. Tripathi (PW/5). There is nothing to suggest that the deceased died a natural death. The cause of death was asphyxia and it is not the case of prosecution that the deceased died a homicidal death. Thus it is proved beyond reasonable doubt that the death of the deceased was suicidal as 10 tablets of sulphas and vomiting was also found near the dead-body of the deceased.

21. The next question for consideration is that whether the appellant in any manner abetted the deceased to commit suicide or not ?

22. Govind Singh (PW/1) is Uncle of the deceased Kailash, Dineshchand (PW/2) is the younger brother of the deceased Kailash, Moolchand Patidar (PW/3) is uncle of the deceased Kailash, Ashok (PW/4) is son of the deceased Kailash, Laxmibai (PW/6) is the wife of the deceased Kailash and Ramchand (PW/7) is father of the deceased Kailash. Similarly, Babulal (PW/9) had admitted that deceased Kailash was related to him. Thus, it is clear that all the witnesses who have deposed against the appellant Motilal, are closely related to deceased Kailash.

23. The Supreme Court in the case of **Mahaviar Singh Vs. State of M.P.** reported in **(2016)10 SCC 220** has held as under :

> "18. The High Court has attached a lot of weight to the evidence of the said Madho Singh (PW 9) as he is an independent witness. On perusal of the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same accused.

> This being the fact, it is important to analyse the jurisprudence on interested witness. It is a settled principle that the evidence of interested witness needs to be scrutinised with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy. Here we may refer to chance witness also. It is to be seen that although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted.
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> 19. A contradicted testimony of an interested witness cannot be usually treated as conclusive."

The Supreme Court in the case of **Harbeer Singh Vs. Sheeshpal** reported in **(2016) 6 SCC 418** has held as under :

> "18. Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.
> 19. In Darya Singh v. State of Punjab, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)
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> > "6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. … But where the witness is

> a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. … If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."

20. However, we do not wish to emphasise that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.

21. Further, in Raghubir Singh v. State of U.P., it has been held that: (SCC p. 84, para 10)

> "10. … the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. … In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival

> village factions when spirits on both sides are running high has to be borne in mind."

The Supreme Court in the case of **Vijendra Singh Vs. State of U.P.** reported in **(2017) 11 SCC 129** has held as under:

> "31. In this regard reference to a passage from Hari Obula Reddy v. State of A.P. would be fruitful. In the said case, a three-Judge Bench has ruled that: (SCC pp. 683-84, para 13)
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> > "[it cannot] be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."
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> It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in Kartik Malhar v. State of Bihar has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason."

The Supreme Court in the case of **Raju Vs. State of T.N.** reported in **(2012) 12 SCC 701** has held as under :

> "20. The first contention relates to the credibility of PW 5 Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the

son of Marudayi, both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW 5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

21. What is the difference between a related witness and an interested witness? This has been brought out in State of Rajasthan v. Kalki. It was held that: (SCC p. 754, para 7)

> "7. … True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'."

22. In light of the Constitution Bench decision in State of Bihar v. Basawan Singh, the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In Basawan Singh, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held: (AIR p. 506, para 15)

> "15. … The correct rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same

way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

23. The wife of a deceased (as in Kalki), undoubtedly related to the victim, would be interested in seeing the accused person punished—in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in Kalki is too narrow and generalised and needs a rethink.

24. For the time being, we are concerned with four categories of witnesses—a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

25. In the present case, PW 5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the

appellants. His evidence, therefore, needs to be scrutinised with great care and caution.

26. In Dalip Singh v. State of Punjab this Court observed, without any generalisation, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused—each case has to be considered on its own facts. This is what this Court had to say: (AIR p. 366, para 26)

> "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

27. How the evidence of such a witness should be looked at was again considered in Darya Singh v. State of Punjab. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities

taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said: (AIR p. 331, para 6)

> "6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. … [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may

> name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

28. More recently, in Waman v. State of Maharashtra this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon Sarwan Singh v. State of Punjab, Balraje v. State of Maharashtra, Prahalad Patel v. State of M.P., Israr v. State of U.P., S. Sudershan Reddy v. State of A.P., State of U.P. v. Naresh, Jarnail Singh v. State of Punjab and Vishnu v. State of Rajasthan it was held: (Waman case, SCC p. 302, para 20)

> "20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care."

29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard

of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words: (Sarwan Singh case, SCC p. 376, para 10)

> "10. … The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

The Supreme Court in the case of **Jodhan Vs. State of M.P.** reported in **(2015) 11 SCC 52** has held as under :

> "24. First, we shall deal with the credibility of related witnesses. In Dalip Singh v. State of Punjab, it has been observed thus: (AIR p. 366, para 25)
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> "25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan."
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> In the said case, it has also been further observed: (AIR p. 366, para 26)
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> > "26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless

> the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. In Hari Obula Reddy v. State of A.P., the Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduce a passage from the said authority: (SCC pp. 683-84, para 13)

> "13. … an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be

rejected. That apart, when a witness has a motive or makes false implication, the court before relying upon his testimony should seek corroboration in regard to material particulars."

The Supreme Court in the case of **Yogesh Singh Vs. Mahabeer Singh** reported in **(2017) 11 SCC 195** has held as under :

"24. On the issue of appreciation of evidence of interested witnesses, Dalip Singh v. State of Punjab is one of the earliest cases on the point. In that case, it was held as follows: (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. Similarly, in Piara Singh v. State of Punjab, this Court held: (SCC p. 455, para 4)

"4. … It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

26. In Hari Obula Reddy v. State of A.P., a

three-Judge Bench of this Court observed: (SCC pp. 683-84, para 13)

> "13. … it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

27. Again, in Ramashish Rai v. Jagdish Singh, the following observations were made by this Court: (SCC p. 501, para 7)

> "7. … The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witness is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it,

> regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See Anil Rai v. State of Bihar, State of U.P. v. Jagdeo, Bhagaloo Lodh v. State of U.P., Dahari v. State of U.P., Raju v. State of T.N., Gangabhavani v. Rayapati Venkat Reddy and Jodhan v. State of M.P.)."

Thus, it is clear that a witness cannot be disbelieved, only on the ground that either he is an interested witness or he is a related witness, however, the evidence of such witness is subjected to minute scrutiny and the conviction can be recorded on the testimony of related or interested witness, provided, their evidence inspire confidence.

24. If the evidence of witnesses is considered in the light of the above mentioned judgments, then it would be clear that Govind Singh (PW/1), Dineshchand (PW/2), Moolchand Patidar (PW/3), Ashok (PW/4), Laxmibai (PW/6), Ramchand (PW/7) and Babulal (PW/7) have clearly stated that deceased had taken certain money on loan from the appellant. Thus one thing is clear that there were some money transactions between the appellant and deceased Kailash and the appellant had lend money to the deceased.

25. However, it is the case of prosecution that the deceased Kailash had repaid the entire loan amount to the appellant and not only that, he had also paid the additional amount of Rs.3,00,000/- after selling his agricultural land and inspite of that, the appellant was demanding a further amount of Rs.2,00,000/- from the deceased Kailash and was harassing

him, due to which, the deceased Kailash committed suicide by consuming poisonous substance.

26. The moot question for consideration is that whether the appellant Motilal was demanding any additional and unreasonable amount from the deceased Kailash or was demanding his own money back.

27. One thing is clear that all the witnesses are closely related to the deceased. Undisputedly there were criminal cases also between the parties on earlier occasion and undisputedly the appellant Motilal had given certain amount by way of loan to the deceased Kailash.

28. Govind Singh (PW/1), Dineshchand (PW/2), Moolchand Patidar (PW/3), Ashok (PW/4), Laxmibai (PW/6) and Ramchand (PW/7) have stated in one voice that although there were some loan transactions between deceased and appellant Motilal and about 2 years back Rs.1,50,000/- was repaid by the deceased but inspite of that, the appellant Motilal had demanded further amount of Rs.3,00,000/- and had extended a threat that in case the additional amount is not paid, he would kill the deceased, as result of which deceased after selling his land had paid, an additional amount of Rs.3,00,000/- to the appellant Motilal but still appellant was demanding further amount of Rs.2,00,000/-. All these witnesses have stated that the entire amount has been repaid and no loan amount had remained unpaid but still the appellant was insisting for payment of additional amount, as a result of which, the deceased committed suicide, as the appellant was constantly pressuring and demanding the further amount of Rs.2,00,000/-.

29. Now the next question for consideration is that whether

these statements of witness are reliable or not?

30. Inquest report is Ex.P/1 and crime detail form containing spot map is Ex.P/2, seizure memo is Ex.P/3 by which 10 tablets of sulphas, loose earth containing vomiting of the deceased were seized. One diary was produced by son of the deceased Kailash, which was seized vide seizure memo Ex.P/4. Co-accused Yusuf @ Irshad was identified during Test Identification Parade and memo is Ex.P/5. Postmortem report of the deceased Kailash is Ex.P/6. A judgment passed by JMFC, Dewas in criminal case No.346/1996 by which the appellant was convicted for the offence under Section 294, 323, 506 (Part-II) of IPC on the report of Laxmibai PW/6 is Ex.P/7. Arrest memo of co-accused Yusuf @ Irshad is Ex.P/8. Case-diary statements of Ramchand, Laxmibai and Babulal are Ex.P/8-A, P/9 and P/10 respectively. Seizure memo of kidney, liver, lungs, spleen, stomach, large intestine of deceased is Ex.P/11. Merg intimation given by Govind Singh (PW/1) with regard to the death of the deceased Kailash is Ex.P/12. FIR lodged at Police outpost is Ex.P/13 and FIR is Ex.P/15 and the application for conducting postmortem of deceased Kailash is Ex.P/14. Report of hand-writing expert is Ex.C/1 and C/2.

31. Unfortunately, diary of the deceased containing details of certain money transaction, has not been exhibited, and even Rakesh Patidar, the son of the deceased, who had made the diary of the deceased available to the police, was also not examined.

32. Thus, it is clear that although dairy allegedly in the hand-writing of the deceased Kailash was produced before the trial Court, as the same was made available by Rakesh Patidar to

the police but for the reasons best known to the prosecution, the said diary was not got proved. In absence of any evidence to the effect that dairy containing the details of any transactions was in relation to the money transactions between the appellant and deceased, therefore, the diary relied upon by the prosecution is of no assistance.

33. Further, it is the case of prosecution that the deceased Kailash had paid an additional amount of Rs.3,00,000/- by selling his agricultural land. However, the prosecution has not filed copy of such sale-deed showing that the deceased Kailash had sold his agricultural land. Even the purchaser has not been examined as witness. Thus, it is clear that although it is the prosecution case that the deceased Kailash had taken loan from the appellant Motilal but except the oral evidence to the effect that the entire loan amount was repaid and in order to pay the additional amount of Rs.3,00,000/-, the deceased had sold his property, the prosecution has not filed any documentary evidence to corroborate the ocular evidence, although the registration and execution of sale-deed is necessary, if the value of the immovable property is more than Rs.100/-. When the documentary evidence is available and if the prosecution had decided not to rely on the best evidence available with it, then an adverse inference can always be drawn against the prosecution. Thus, it is clear that although the interested witnesses have stated that the entire loan amount was repaid and additional amount of Rs.3,00,000/- was also paid and since the appellant Motilal was demanding further amount of Rs.2,00,000/- and as such the deceased Kailash was being harassed by the appellant Motilal but in view

lack of any corroborative piece of evidence, which could have been made available by the prosecution, this Court is of the considered opinion that in absence of any documentary evidence in support of the allegation of prosecution, it cannot be held, that the appellant Motilal was demanding an additional amount of Rs.2,00,000/- inspite of the fact that the entire loan amount was already repaid by the deceased Kailash. Thus, it is clear that the appellant Motilal was demanding his own money back from the deceased Kailash and because of that pressure, the deceased Kailash committed suicide.

34. Thus, in order to consider that whether the act of the appellant in asking for refund of his money, would amount to abetment or not, it would be appropriate to consider the provisions of Section 107 and 306 of I.P.C. SectionS 306 and 107 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.
>
> 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 lakes 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."

From a reading of the Clause Firstly of Section 107 of I.P.C., it is clear that a person who instigates another to do a thing, abets him to do that thing. A person is said to instigate another when he goads, provokes, incites, urges forward or encourage another to commit a crime. A serious question that has arisen in this case is whether there is any material suggesting that the petitioner had incited the deceased to commit suicide? The allegations that the appellant had demanded his money back, cannot be said that the appellant had goaded, provoked, incited, urged or encouraged the deceased to commit suicide.

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 'goading' 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) I SCC 750** needs mentioned here. In which Hon'ble Apex Court has held that:

> "abetment 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."

In the case of **Ghusabhai Raisangbhai Chorasiya v. State of Gujarat**, reported in **(2015) 11 SCC 753**, the Supreme Court has held as under :

> "21. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the

> deceased had told her sister that there was severance of status and she would be going to her parental home after the “Holi” festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in Pinakin Mahipatray Rawal (2013) 10 SCC 48 ,but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with Appellant 4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A IPC which includes cruelty to drive a woman to commit suicide, would not be attracted.”

35. 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.

36. If the facts of the case are considered in the light of the law laid down by the Supreme Court in the above mentioned cases, then it would appear that the appellant had lend certain money to the deceased and he was demanding his money back from the deceased, as a result of which, the deceased committed suicide. In absence of any corroborative piece of evidence, the evidence of the witnesses to the effect that the

entire loan amount was already repaid by the deceased, but still the appellant had overcharged Rs. 3,00,000/- from the deceased and still the appellant was demanding further amount of Rs. 2,00,000/- cannot be accepted. Thus, if a person has demanded his money back from the deceased, then it cannot be said that the accused had in any manner abetted the deceased to commit suicide.

37. Considering the facts and circumstances of the case, this Court is of the considered opinion that prosecution has failed to establish the guilt of appellant beyond reasonable doubt for holding him guilty for offence under Section 306 of IPC, accordingly he is acquitted of the charge under Section 306 of IPC.

38. Accordingly, the conviction and sentence dated 04/05/1999 passed by I ASJ, Dewas in S.T. No.40/1998 is hereby set-aside. The appellant Motilal is acquitted of the charge under Section 306 of IPC.

39. The appellant Motilal is on bail. His bail bond and surety bond are hereby discharged. Thus, appeal succeeds and is accordingly allowed.

(G.S. Ahluwalia)
Judge

Arun*

HIGH COURT OF MADHYA PRADESH

BENCH INDORE

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

CRIMINAL APPEAL NO.689/1999

.....Appellant: Motilal

Versus

.....Respondent : State of M.P.

Judgment post for 20/08/2018

(G.S. Ahluwalia)
Judge
16/08/2018