

2023:PHHC:041611 -1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1556

CRA-S-1536-SB-2007 (O&M)

Date of Decision: 22.03.2023

State of Haryana

...Appellant

Versus

Darshan Lal and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Sheenu Sura, DAG, Haryana.

Mr. S.P. Arora, Advocate with
Mr. Himmat Singh Sidhu, Advocate
for the respondent.

N.S.SHEKHAWAT, J.

Challenging the correctness and legality of the impugned judgment dated 29.11.2006 passed by the learned Additional Sessions Judge (Adhoc) cum-Presiding Officer, Fast Track Court No. III, Faridabad, whereby, the respondents were acquitted of the charge under Section 306/34 IPC, the State of Haryana has preferred the instant appeal before this Court. The learned trial Court held that the prosecution had miserably failed to prove the guilt of the respondents/accused up to the hilt and by extending them benefit of doubt, they were ordered to be acquitted. The said findings have been assailed by the prosecution on various grounds by preferring the instant appeal.

Shorn of unnecessary detail, the facts, which would be necessary for the effective adjudication of the present case are that the prosecution was launched in the instant case on the basis of complaint made by Sunder Dass, father of (since deceased). He, *inter-alia*, stated that he was a doctor and had two sons and two

daughters. As per him, the marriage of his eldest daughter (since deceased) was solemnized with Dr. Darshan Lal Makkar, respondent No. 1/accused in the year 1984 as per Hindu rites and ceremonies and at that time age of (since deceased) was 41 years. Even though, he had given dowry beyond his capacity, still after seven days of marriage, his daughter came with respondent No. 1 to meet him and told that respondent No. 1 wanted to divorce her. After advice, he sent both of them back to her matrimonial home. It was further alleged that whenever (since deceased) came to Faridabad, she always complained that she was being harassed by her husband Darshan Lal Makkar, father-in-law Madan Lal, mother-in-law Vidya Rani and brothers-in-law, namely, Surinder Kumar and Harish Kumar. They were forcing her to bring more dowry from her parents. On her refusal, she was beaten up by Darshan Lal and she disclosed the said facts to the complainant in the presence of his eldest son and wife. They pacified (since deceased) and after giving her Rs.5000/-, she was sent back to her husband. Even three years back, his son Gulshan Kumar and Ram Nath brother-in-law had visited her and she had told that respondent No. 1 had kept another lady Pushpa Sharma. She was beaten up by Darshan Lal respondent No. 1, when she raised the protest. Even she made complaints to her parents-in-law and brothers-in-law and they also maltreated her. About one week ago, the complainant, his wife and son Gulshan Kumar had visited (since deceased) and she had informed that the respondent No. 1 and his family members were harassing her. They had raised a

demand of Rs. 3 lacs for installing a fake drugs factory. The respondent No. 1 had threatened that in case the money was not paid within a period of four days, they would put end to the life of (since deceased). While leaving, they all gave Rs.1500/- to (since deceased). At about 02.00 p.m. on 09.07.2002, maternal uncle Darshan Lal, respondent No. 1 told them that had passed away and on hearing this, he alongwith his other family members came to Faridabad. (since deceased) had committed suicide due to torture by parents-in-law, brothers-in-law and the husband and she had consumed poisonous substance to put an end to her life. With these broad allegations, the FIR in the instant case was got registered by PW2 Sunder Dass father of (since deceased).

In support of the charge under Section 306/34 IPC, the prosecution examined PW1 Constable Rajesh Kumar, PW2 Sunder Dass, PW3 Ram Nath Juneja, PW4 Sunita, PW5 Gulshan, PW6 ASI Vinod Kumar, PW7 ASI Ram Kishan, PW8 Constable Daya Nand, PW9 Constable Ombir Singh, PW11 ASI Ajeet Singh and PW12 Draftsman Ashok Kumar and, thereafter, the learned public prosecutor made statement and closed the evidence.

When the incriminating evidence was put to the respondents and other co-accused in the shape of their statements under Section 313 Cr.P.C., they denied the allegations and claimed that they had been falsely implicated in the instant case.

In defence, respondents examined DW1 Dr. T.C. Goel and DW2 Saheb Singh and vide separate statements, the accused closed their defence evidence.

I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

The learned State counsel vehemently argued that the learned trial Court had failed to apply its judicious mind, while examining both the oral as well as documentary evidence on record, which unerringly pointed towards the guilt of the respondents and the charge was proved conclusively against the respondents. Learned State counsel further submitted that eleven prosecution witnesses were examined and they had supported the case of the prosecution. The statement of PW2 Sunder Dass complainant was duly corroborated by the testimonies of PW3 Ram Nath Juneja, PW4 Sunita and PW5 Gulshan and it was proved that all the accused had maltreated and tortured (since deceased) and instigated to commit suicide. However, the learned trial Court completely overlooked the evidence in this regard and the impugned judgment is legally unsustainable.

Learned counsel appearing on behalf of the respondents while refuting the said submissions, strenuously argued that the respondents never subjected (since deceased) to cruelty, maltreatment or harassment due to insufficiency of dowry and the couple was residing happily for the last about 18 years. They were even blessed with two sons, who had grown up well in the family. Still further, even from the testimonies of PW2 Sunder Dass, PW3

Ram Nath Juneja, PW4 Sunita and PW5 Gulshan, who were close relatives of (since deceased), it was apparent that vague and unfounded allegations had been leveled against the respondents. Apart from that, it is unbelievable that a lady would be harassed in connection with demand of dowry after 18 years of marriage and the ingredients of the offences under Section 306 IPC were completely missing in the instant case.

Section 107 of the Indian Penal Code defines abetment and the same has been reproduced below:-

“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 authorized 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 facilitate the commission thereof, is said to aid the doing of that act.

In the instant case, the respondents have been charged for the offence punishable under Section 306 of the Indian Penal Code and the same has been reproduced below:-

“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”.

The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language or maltreatment will not, by itself, constitute the abetment of suicide. The prosecution is obliged to prove and lead sufficient evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. It is manifest when the offence punishable is one of abetment of commission of suicide by any person, predicating existence of a live link or nexus between two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to

aid or instigate the commission of the suicide is imperative. Any severance or absence of any of these constituents would militate against the indictment.

It has been held by the Hon'ble Supreme Court in the matter of Sanju @ Sanjay Singh Sengar Vs. State of Madhya

Pradesh AIR 2002 SC 1998 as follows:-

10. In Mahendra Singh v. State of M.P., 1995 Supp. (3) SCC 731, the appellant was charged for an offence under Section 306 Indian Penal Code basically based upon the dying declaration of the deceased, which reads as under :
"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

11. This court, considering the definition of 'abetment' under Section 107 Indian Penal Code found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of the abetment are attracted on the statement of the deceased.

12. In Ramesh Kumar v. State of Chhattisgarh, (2001)9 SCC 618 : 2001(4) RCR (Criminal) 537 (SC), this Court while considering the charge framed and the conviction for an offence under section 306 Indian Penal Code on

the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said :

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 for abetting the offence of suicide should be found guilty."

Keeping in view the above said principles of law and adverting to the facts of the instant case, it can be safely held that the learned trial Court has recorded well reasoned findings in the present case and are liable to be upheld by this Court. In support of the charge, the prosecution had examined PW2 Sunder Dass, who was the main witness of the prosecution. He stated that he had performed

marriage of his daughter (since deceased) with Darshan Lal respondent No. 1 in the year 1984. In his cross-examination, he admitted that during the 18 years of subsistence of her marriage with respondent No. 1, no complaint or application alleging maltreatment or misbehavior by respondent No. 1 with her husband was made by Smt. or by him. Even, he could not give exact date, time, month and year of demand of Rs. 5,000/- as alleged. He had never gone to the police complaining about demand of car by respondent No. 1. He could not give exact date of coming of the accused to his house in order to make any demand against which he was aggrieved. Even he admitted that (since deceased) had left behind two children, who were growing up well in the matrimonial home. He further admitted that no dowry demand was made by the respondents/accused at the time of marriage. Even respondent No. 1 earlier used to run a shop of doctor but now he had started manufacturing some medicines as well. Similarly, PW3 Ram Nath Juneja also could not give any exact date, when he visited the house of (since deceased) and respondent No. 1 for the compromise between them and could not state any fact with regard to the harassment of the deceased in connection with demand of dowry.

The prosecution had further examined PW4 Sunita mother of the deceased, who had also admitted in her cross-examination that she had not preferred any application to any authority against the maltreatment of (since deceased) by respondent No. 1 during 18 years of her married life.

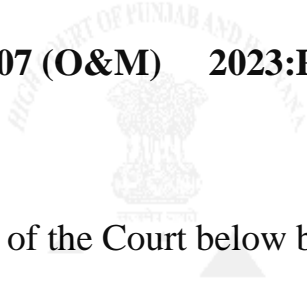
Even, she had leveled general and vague allegations regarding demand of dowry against both the respondents. Even, the statement made by PW5 Gulshan was of no help to the case of the prosecution.

Thus, it is evident from the above discussion that the prosecution witnesses had leveled vague and general allegations against the respondents and could not withstand the test of cross-examination. Even, simply because of the fact that the wife (deceased) committed suicide in matrimonial home, itself does not make her in-laws and husband liable for harassment and abetment to commit suicide. Even there was no concrete or conclusive evidence against her in-laws and her husband to prove their complicity in the commission of the crime. In fact, the 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 *mens rea* to commit the offence is a *sine qua non* to convict a person under Section 306 IPC.

In view of above discussion, the appeal preferred by State of Haryana is without any substance and is liable to be dismissed. Accordingly, the impugned judgment dated 29.11.2006 passed by the learned Additional Sessions Judge (Adhoc) cum-Presiding Officer, Fast Track Court No. III, Faridabad, is upheld and affirmed.

All pending applications, if any, are disposed off, accordingly.

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Records of the Court below be sent back.

22.03.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No

