ABC 2017 (I) 1 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Dipak Misra & Amitava Roy, JJ)
Criminal Appeal No. 1135 of 2016
(Arising Out of S.L.P (Criminal) No. 8764 of 2016)
(From Punjab & Haryana High Court)
Decided On 2 December, 2016

GURCHARAN SINGH ***- Appellant(s).***

Versus

STATE OF PUNJAB ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 306 — Conviction under — Omnibus grievance against in-laws — no reference or disclosure of any specific incident in support thereof— Denial of husbands share in family property — Allegation of — Suicide note — divulges her ownership of lands and house — per se belies the charge— Unproved handwriting — identified by relatives of the deceased on eye estimation— Acquittal. (Para 20)***

(B) Indian Evidence Act, 1872 — Section 3— Hand writing — proving of — No attempt by prosecution to prove through an expert — fatal to prosecution. (Para 20)

(C) Interpretation — Cruelty — any willful conduct which is of such a nature as is likely to drive the woman to commit suicide — or to cause grave injury — or danger to life, limb or health (whether mental or physical) of the woman; — or harassment of the woman, where it is with a view to coercing her — or any person related to her to meet any unlawful demand for any property — or valuable security or is on account of failure by her or any person related to her, to meet such demand. (Para 26)

(D) Criminal Jurisprudence — Indian Penal Code, 1860 — Section 306 — Cruelty — Assessment of — Duty of the Court — Courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to — whether cruelty had been meted out to the victim — & the same had induced the person to end his/her life by committing suicide. (Para 29)

(E) Indian Penal Code, 1860 — Section 306 — Cruelty — Acquittal for — Held, if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in

domestic life — quite common to the society to which he or she belonged — & such factors were not expected to induce a similarly circumstanced individual to resort to such step — the accused charged with abetment could not be held guilty. (Para 29)

(F) Indian Penal Code, 1860 — Section 306 — Convicting a person under — Intention of the legislature — mens rea — presence of — there has to be a clear mens rea to commit an offence — & there ought to be an active or direct act leading the deceased to commit suicide, being left with no option. (Para 30)

(G) Interpretation of Statute — Indian Evidence Act, 1872 — Section 113-A — Object of — to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry. (Para 31)

(H) Indian Penal Code, 1860 — Section 306 — Indian Evidence Act, 1872 — Section 101 — Presumption — Burden of proof — Held, the burden of proving the preconditions permitting the presumption — lay on the prosecution— the prosecution has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged u/s 306 IPC. (Para 31)

Facts:- *As per the facts of the case the husband of the deceased woman abandoned home on account of loss incurred by his factory and nonpayment of the bank loan. He was, thereafter, not to be traced. Following this turn of events, his wife and daughters shifted to another town and started residing in a rented house. It was alleged that they had no source of income and further, they were also deprived of their share in the property and other entitlements, otherwise supposed to devolve on the husband of the deceased woman. They were also not provided with any maintenance by the family members of her husband and instead were ill-treated, harassed and intimidated.*

On the fateful day, being suspicious about prolonged and unusual lack of response by his tenants, the landlord of the house informed the brother of the deceased. Thereafter they broke open the door of the room and found all three lying dead. The police was informed and FIR was lodged. During course of investigation, a suicide note was collected in the handwriting of the deceased woman and her daughter. The suicide note implicated her in-laws as being responsible for their wretched condition, driving them in the ultimate to take the extreme step. A charge was framed u/s 306/34 IPC.

The Trial Court held the appellant herein and another co-accused to be guilty of the charge levelled against them which was upheld by the High

Court. Finding no continuous and proximate conduct of the appellant or his family members with the required provocative culpability or lethal instigative content the appeal was allowed.

Law of relief:- ***The prosecution has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC.***

Held:- A plain perusal of the above quote also reveals that apart from an omnibus grievance against her in-laws to be responsible for their death, for which according to her, they ought to be punished, there is no reference or disclosure of any specific incident in support thereof. The suicide note divulges her ownership of lands and house which per se belies the charge that she had been denied the share of her husband in the family property. Noticeably, no attempt was made by the prosecution to prove the author of the text through an expert and both the courts below solely based their conclusion, in this regard on the evidence of PWs 5 and 6, the brothers of Surjit, who identified the contents to be that of hers again on eye estimation. (Para 20)

This provision, as the quote hereinabove reveals, renders the husband of a woman or the relative of his, punishable thereby with imprisonment for a term which may extend to three years and also fine, if they or any one of them subject her to cruelty. The explanation thereto defining "cruelty" enfolds:

> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman, where it is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her, to meet such demand. (Para 26)

Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing

suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707. (Para 29)

That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Chheena vs. Vijay Kumar Mahajan (2010) 12 SCC 190. (Para 30)

In Pinakin Mahipatray Rawal vs. State of Gujarat (2013) 10 SCC 48, this Court, with reference to Section 113A of the Indian Evidence Act, 1872, while observing that the criminal law amendment bringing forth this provision was necessitated to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry, it was underlined that the burden of proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That the prosecution as well has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC, was emphasised. (Para 31)

Counsel:- ***For Appellant(s):*** *Ms. Kawaljit Kochar, Advocate.*

For Respondent(s): *Mr. V. Madhukar, Advocate.*

Cases Referred:-

1. *Randhir Singh vs. State of Punjab (2004)13 SCC 129. (Para 28)*
2. *State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73. (Para 28)*
3. *Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707. (Para 29)*
4. *S.S. Chheena vs. Vijay Kumar Mahajan (2010) 12 SCC 190. (Para 30)*
5. *Pinakin Mahipatray Rawal vs. State of Gujarat (2013) 10 SCC 48. (Para 31)*

JUDGMENT

AMITAVA ROY, J.: - 1. In assailment is the judgement and order dated 17.12.2014 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. S- 566-SB of 2004,

affirming the conviction of the appellant and co-accused Sukhvinder Singh under Section 306 of the Indian Penal Code (hereinafter to be referred to as "IPC"), as entered by the Trial Court. While by the decision impugned, the conviction has been endorsed, the substantive sentence of six years of rigorous imprisonment awarded by the Trial Court to each of the accused persons has been scaled down to one of five years of the same description. The instant appeal seeks to overturn the concurrent determinations on the charge by the courts below.

2. We have heard Ms. Kawaljit Kochar, learned counsel for the appellant and Mr. V. Madhukar, learned counsel for the respondent.

3. The fascicule of facts, indispensable to comprehend the backdrop of the prosecution, has its origin in the inexplicable abandonment of the deceased Surjit Kaur and her two daughters namely; Geet Pahul and Preet Pahul by Dr. Jaspal Singh, their husband and father respectively, about two years prior to the tragic end of his three family members as above. The prosecution version is that Dr. Jaspal Singh, who was initially in the Government service, had relinquished the same and started a coal factory at Muktsar. He suffered loss in the business and consequently failed to repay the loan availed by him in this regard from the bank. As he and his brother Gurcharan Singh (appellant herein) and others succeeded to the property left by their predecessors, he started medical practice in private.

4. Be that as it may, before leaving his family, he addressed a communication to the concerned bank expressing his inability to repay the loan inspite of his best efforts as he was not possessed of any property in his name. Dr. Jaspal Singh was thereafter not to be traced. Following this turn of events, according to the prosecution, his wife Surjit Kaur and his daughters shifted from Jalalabad where they used to stay to Abohar and started residing in a rented house of one Hansraj (PW3). According to them, they had no source of income and further, they were also deprived of their share in the property and other entitlements, otherwise supposed to devolve on Dr. Jaspal Singh. They were also not provided with any maintenance by the family members of her husband – Jaspal Singh and instead were ill-treated, harassed and intimidated.

5. While the matter rested at that, on 3.10.2000 at about 10.30 p.m., Hansraj, the landlord of the deceased Surjit Kaur, being

suspicious about prolonged and unusual lack of response by his tenants, though the television in their room was on, informed the brother of the deceased Surjit Kaur. Thereafter they broke open the door of the room and found all three lying dead. The police was informed and FIR was lodged.

6. In course of the inquisition, the Investigating Officer collected a suicide note in the handwriting of Surjit Kaur and also subscribed to by her daughter Preet Bahul. The suicide note implicated the appellant, his wife Ajit Kaur and the convicted co-accused Sukhvinder Singh @ Goldy as being responsible for their wretched condition, driving them in the ultimate to take the extreme step. A note book containing some letters, written by deceased Geet Pahul was also recovered. On the completion of the investigation, which included, amongst others the collection of the post-mortem report which confirmed death due to consumption of aluminium phosphide, a pesticide, charge-sheet was submitted against the three persons named hereinabove along with Satnam Kaur under Section 306/34 IPC.

7. Whereas Satnam Kaur died during the committal proceedings, charge was framed against the remaining accused persons namely; Gurcharan Singh (appellant), Ajit Kaur and Sukhvinder Singh @ Goldy under the aforementioned provisions of the Code. As the accused persons claimed to be innocent, they were made to face trial.

8. At the trial, the prosecution examined eight witnesses including the doctor, who had performed the autopsy on the dead body. The accused persons stood by the denial of the charge in their statements under Section 313 Cr.P.C. and also examined five witnesses in defence.

9. The Trial Court, on a scrutiny of the evidence adduced, held the appellant herein and the co-accused Sukhvinder Singh to be guilty of the charge levelled against them and awarded them the sentence as hereto before mentioned. It, however, acquitted the co-accused Ajit Kaur. To reiterate, by the impugned verdict, the conviction of the appellant and the co-accused Sukhvinder Singh has been upheld with the marginal modification in the substantive sentence as aforementioned.

10. Mrs. Kawaljit Kochar, learned counsel for the appellant has emphatically urged that the evidence on record does not furnish the

ingredients of abetment as visualised in Section 306 of the Code and thus, the conviction is manifestly illegal and is liable to be set-aside. It being patent from the materials on record that the deceased Surjit Kaur and her daughters, had been duly accorded their share in the family property and that they had sufficient means to independently maintain themselves with reasonable comfort, the accusation to the contrary, as levelled by the prosecution, is wholly unfounded, she insisted. According to the learned counsel, the in-laws of the deceased Surjit Kaur had throughout been considerate, compassionate and supportive towards her and two daughters and that the suicide committed by them had been on their own volition and not as a result of any torture, harassment and oppression by them, as alleged. The learned counsel has maintained that the suicide note has not been proved in the handwriting of Surjit Kaur as well and thus, there being no evidence whatsoever in corroboration of the charge of abetment, the conviction and sentence is liable to be set-aside in the interest of justice.

11. Per contra, the learned counsel for the respondent, has urged in confutation, that the evidence of the prosecution witnesses, more particularly of (Gurjeet Singh) PW5 and Gaganjit Singh (PW6), the brothers of Surjit Kaur as well as the medical testimony, has proved the imputation against the appellant and co-accused Sukhvinder Singh beyond all reasonable doubt and in the face of concurrent findings recorded by the courts below, on an in-depth appraisal of the materials on record, no interference with the impugned judgement and order is warranted.

12. Though, in the teeth of the sequential findings of guilt of the courts below, normally, reappraisal of the evidence is otherwise uncalled for, we are impelled to embark upon that exercise, having regard to the rival assertions in the unique facts and circumstances of the case. This is more so, as in controversion of the allegation of wilful and deliberate deprivation of the deceased Surjit Kaur and her daughters of their share in the family property, as laid by the prosecution, evidence has surfaced to the contrary, being conceded by her brothers in the course of their testimony at the trial.

13. PW3 Hans Raj, the landlord stated on oath that the deceased Surjit Kaur and her daughters used to reside in the first floor of his house. On the date of the incident, at about 10.00 p.m. his wife reported to him that though the lights of that floor were off, the television was

on. The witness thereafter along with his wife knocked the door of the apartment of the deceased, but there was no response. After waiting for some time, the witness informed Gurjit Singh and Gaganjit Singh, the brothers of Surjit Kaur, and on their arrival, as the same state of affairs continued, they broke open the door and found all the three lying dead. The police was thereafter informed. According to this witness, even after this incident, none of the accused persons or the in-laws of Surjit did come to inquire about the same.

14. In cross-examination, the witness mentioned that all the three deceased used to remain dejected and depressed. They however, often visited the parents and the brothers of Surjit. He disclosed that Surjit had a house at Abohar. He admitted that at no point of time, Surjit and her daughters did complain to him about any threat extended by the accused persons. The witness disclosed that though Surjit had expended substantial amount on the coaching of her daughter, she failed in the examination, for which she was morose and anguished. The witness opined that Surjit and her daughters had committed suicide out of grief for their missing husband/father. According to him, the accused persons were not in any manner responsible for their death.

15. PW4 Dr. Kalra, who had performed the post-mortem examination of Preet Bahul, testified on the basis of the report of the chemical analysis of her viscera that death was due to consumption of aluminum phosphide which was sufficient to cause death in due course of time. To the same effect, is the evidence of PW11 Dr. Thakral vis-a-vis Surjit and her daughter Geet.

16. PW5 and PW6 Gurjit and Gaganjit, the brothers of Surjit Kaur did depose in similar lines. They stated that at the time of their death, Geet and Preet were aged 22 years and 18 years respectively. They reiterated the version narrated in the FIR pertaining to the sudden disappearance of their brother-in-law Dr. Jaspal Singh, husband of Surjit, he having suffered losses in business. They also mentioned that, at that time, Dr. Jaspal Singh had heavy outstanding dues qua the bank. They disclosed as well that after the death of Jaktar Singh, the father of Dr. Jaspal, their brother- in-law along with his brothers inherited the joint property. They also reiterated the narration of the facts preceding the discovery of the dead bodies as recited by PW3. They confirmed the recovery and seizure of, amongst others the diary containing the suicide note. They identified the text

of the suicide note in the hand of their sister Surjit. They identified the signature of Preet also thereon. These witnesses in their examination-in-chief, though alleged that their sister and nieces had committed suicide because they were deprived of their share in the joint properties, and for which they suffered from sustained depression, in cross- examination, they acknowledged a sale deed executed by the appellant Gurucharan in favour of Surjit regarding half share in the house at Abohar, which was also a segment of the family property. They conceded as well that Satnam Kaur, the mother-in-law of Surjit might have issued a cheque of Rs.68,650/- in her name and that she had opened an account therewith in the name of her brother Gagandeep. They admitted that there was a parcel of land in the name of deceased Surjit at Muktsar. When confronted with the statements under Section 161 Cr.P.C., they admitted of not having disclosed to the Investigating Officer, that the share in land of Dr. Jaspal Singh had not been given to Surjit Kaur. They accepted that the main reason for the depression of the deceased was the absence of near and close relatives. They conceded that neither Surjit nor they had ever lodged any complaint with the police against the accused person for the ill-treatment meted out to her or for denying her entitlements in the joint property. They admitted as well that no civil suit had been filed in that regard.

17. PW6, in addition admitted his signature on the sale deed executed by appellant Gurucharan in favour of Surjit. According to PW6, the sale deed was executed in a family settlement after Jaspal Singh had gone missing. This witness disclosed as well that the appellant and the other family members were ready to transfer the share of his brother-in-law to his sister.

18. The evidence on record, to start with, in our estimate, does not substantiate the imputation that Surjit and her daughters had been deprived wholly of their shares in the joint family property as the heirs of Dr. Jaspal Singh. Admittedly, there is no proof of any threat being extended by the appellant or anyone of the in-laws of Surjit so as to reduce them to destitutes in a petrified state. The disappearance of Dr. Jaspal Singh, the husband of Surjit, father of Preet and Geet though unfortunate, the event had occurred about two years prior to the incident. Neither the appellant nor the in-laws of Surjit did have any role in this regard. The absence of any complaint or civil litigation also permits an inference against the denial of the share in the family property to Surjit and her daughters or of any ill-

treatment, torture, oppression meted out to them. There is thus neither any proximate nor remote acts of omission or commission on the part of the appellant and his family members that can be irrefutably construed to be a direct or indirect cause or factor compelling Surjit and her daughters to take the extreme step of self-elimination.

19. The suicide note which transpires to be the sheet anchor of the prosecution case needs extraction for reference as hereunder.

> **"The whole of my land and property should be given to National Defence Fund. The family of my in-laws especially my mother-in-law, Jeth Master Gurcharan Singh, his wife Ajit Kaur and his son Goldy are responsible for our death. My younger daughter is still minor.**
>
> **My husband was also to die by them. Now how can we live when our living is more than a hell.** I pleaded before the Prime Minister, President and Chief Minister but there is no one for me in this society. I also filed a case before the Human Rights Commission. This is our cultured and democratic society**. I struggled continuously for 1 ½ years but now no more. My daughters are so intelligent that one is doing pre-medical test and the second is doing Master of Computer Applications.** This is the reason that I bore all such pains but still remain alive. **If there is any justice in this cultured and democratic society then at least my in-laws should be punished after our death and every common man should get justice.**
>
> **My two biggas land of Diwan Khera, 4 ½ biggas land of Sajrana and 4/5 kanals land at Muktsar should go to Mission Hospital, Muktsar. No body is entitled for my two plots in Bharat Colony Bathinda and my house in Anand Nagri, Abohar.** All the sale deeds of the land are lying by my side. Suicide note of my husband is also lying here which I was forced not to hand over to the police on 22 March 1999 and assurance that I and my children would be looked after in a very good manner.
>
> Sd/ Surjit Kaur"

This is however the translated version of the original which is in Hindi script.

20. A plain perusal of the above quote also reveals that apart from an omnibus grievance against her in-laws to be responsible for their death, for which according to her, they ought to be punished, there is no reference or disclosure of any specific incident in support thereof. The suicide note divulges her ownership of lands and house which per se belies the charge that she had been denied the share of her husband in the family property. Noticeably, no attempt was made by the prosecution to prove the author of the text through an expert and both the courts below solely based their conclusion, in this regard on the evidence of PWs 5 and 6, the brothers of Surjit, who identified the contents to be that of hers again on eye estimation.

21. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:

> "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."

22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the 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 suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

Section 107 IPC defines abetment and is extracted hereunder:

> "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 doing.

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."

23. Not only the acts and omissions defining the offence of abetment singularly or in combination are enumerated therein, the explanations adequately encompass all conceivable facets of the culpable conduct of the offender relatable thereto.

24. Section 113A of the Indian Evidence Act, 1872 permits a presumption as to the abetment of suicide by a married woman by her husband or any relative of his, if it is proved that she had committed the act within a period of seven years from the date of her marriage and that her husband or such relative of his had subjected her to cruelty. The explanation to this Section exposits "cruelty" to have the same meaning as attributed to this expression in Section 498A IPC. For ready reference, Section 113A of the Indian Evidence Act, 1882 is quoted hereunder as well.

"113A. **Presumption as to abetment of suicide by a married woman**—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation—For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)."

25. In the legislative backdrop outlined hereinabove, Section 498A of the Code also demand extraction.

a

"498A. **Husband or relative of husband of a woman subjecting her to cruelty** - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which

b may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is

c likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to

d meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

26. This provision, as the quote hereinabove reveals, renders the husband of a woman or the relative of his, punishable thereby with imprisonment for a term which may extend to three years and

e also fine, if they or any one of them subject her to cruelty. The explanation thereto defining "cruelty" enfolds:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave

f injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman, where it is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is

g on account of failure by her or any person related to her, to meet such demand.

27. Though for the purposes of the case in hand, the first limb of the explanation is otherwise germane, proof of the willful conduct actuating the woman to commit suicide or to cause grave injury or

h danger to life, limb or health, whether mental of physical, is the sine qua non for entering a finding of cruelty against the person charged.

28. The pith and purport of Section 306 IPC has since been enunciated by this Court in ***Randhir Singh vs. State of Punjab (2004) 13 SCC 129***, and the relevant excerpts therefrom are set out hereunder.

> "12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.
>
> 13. In ***State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73***, this Court has observed that the **courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences** were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

29. Significantly, this Court underlined by referring to its earlier pronouncement in ***Orilal Jaiswal*** (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in ***Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707.***

30. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in ***S.S. Chheena vs. Vijay Kumar Mahajan (2010) 12 SCC 190.***

31. In ***Pinakin Mahipatray Rawal vs. State of Gujarat (2013) 10 SCC 48,*** this Court, with reference to Section 113A of the Indian Evidence Act, 1872, while observing that the criminal law amendment bringing forth this provision was necessitated to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry, it was underlined that the burden of proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That the prosecution as well has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC, was emphasised.

32. The assessment of the evidence on record as above, in our considered opinion, does not demonstrate with unqualified clarity and conviction, any role of the appellant or the other implicated in-laws of the deceased Surjit Kaur, as contemplated by the above provisions so as to return an unassailable finding of their culpability under Section 306 IPC. The materials on record, to reiterate, do not suggest even remotely any act of cruelty, oppression, harassment or inducement so as to persistently provoke or compel the deceased to resort to self-extinction being left with no other alternative. No such continuous and proximate conduct of the appellant or his family members with the required provocative culpability or lethal instigative content is discernible to even infer that the deceased Surjit Kaur and her daughters had been pushed to such a distressed state, physical or mental that they elected to liquidate themselves as if to seek a practical alleviation from their unbearable earthly miseries.

33. In the wake up of the above determination, we are, thus, of the unhesitant opinion that the ingredients of the offence of Section 306 IPC have remained unproved and thus the appellant deserves to be acquitted. The findings to the contrary recorded by the courts below cannot be sustained on the touchstone of the law adumbrated by this Court as well as the facts involved. The appeal is thus allowed.

The appellant would be set at liberty from custody, if his detention is not required in connection with any other case.

***Result*:-** Appeal allowed.
