ABC 2019 (I) 218 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(L. Nageswara Rao & M.R.Shah , JJ.)

Criminal Appeal No. 93 of 2019
(Arising Out of SLP (Crl.) No.8667 of 2016)
(From Punjab & Haryana High Court)
Decided On 18 January, 2019

RAJESH ***- Appellant(s).***

Versus

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

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Conviction of brother-in-law — Slapping in Panchayat — About 5 months' gap between the Panchayat & the suicide — Held, no proximity —cannot be the sole ground to hold the accused responsible — neither a provocation nor encouragement — Acquittal. (Para 12 & 13)***

(B) Criminal Jurisprudence — Indian Penal Code, 1860 — Section 306 — Conviction under — Sustainability of — the conviction is not sustainable on the allegation of harassment — without there being any positive action on the part of the accused, proximate to the time of occurrence— which led or compelled the person to commit suicide. (Para 8)

(C) Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Scope — 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. (Para 8)

(D) Indian Penal Code, 1860 — Section 306 — Offence under — proving of — Held, the act of abetment by the person charged must be proved & established by the prosecution. (Para 8)

(E) Interpretation of Statute — Indian Penal Code, 1860 — Section 107 — Term instigation — interpretation of — Held, 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 —

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 — Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi — relied upon. (Para 9)

(F) Indian Penal Code, 1860 — Section 107 — Term 'instigation' — Scope of —Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Para 10)

(G) Criminal trial — Similar allegations — Acquittal of other accused — Held, As the allegations against all the three accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two accused. (Para 10)

Facts:- *As per the version of complainant, his son committed suicide. After 10-12 when the complainant and other family members entered into the room of the deceased to sprinkle Gangajal, they found a suicide note on the bed of the deceased. It was stated that he committed suicide due to the behavior of the his in-law side. In the suicide note, the deceased stated that false allegations of demand of dowry were made against him and that a Panchayat was also conducted in which there was an attempt to assault him. He also stated that there were continuous threats from his father-in-law, his brother-in-law (Appellant) and the sister-in-law that his family members will also be implicated in a criminal case. On a consideration of the oral and documentary evidence, the Trial Court held the accused persons guilty of committing the offence u/s 306 IPC.*

The appeal filed by the Appellant was dismissed by the High Court, only on the ground that the Appellant slapped Arvind during the Panchayat, however, the conviction and sentence of other two accused were set aside. The honourable Supreme Court held that there was no proximity between the act of suicide and alleged incident of slap happened five months before the suicide. Appellant was acquitted.

Law of relief:- If the allegations against all the accused are similar, the Court ought not to convict one accused after acquitting the other accused.

Held:- Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there 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. 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. (Para-8)

The term instigation under Section 107 IPC has been explained in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi, (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367***) as follows:

> **"16**. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C.Lahoti, J. (as His Lordship then was) said that 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.
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> **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" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.)." (Para-9)

Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Para-10)

We are not in agreement with the findings of the Trial Court that the deceased (Arvind) committed suicide in view of the continuous threats by the accused regarding his being implicated in a

false case of demand of dowry. The evidence does not disclose that the Appellant instigated the deceased to commit suicide. There was neither a provocation nor encouragement by the Appellant to the deceased to commit an act of suicide. Therefore, the Appellant cannot be held guilty of abetting the suicide by the deceased. (Para-12)

For the aforementioned reasons, the appeal is allowed and the conviction and sentence of the Appellant is set aside. His bail bonds stands discharged. (Para-13)

Cases Referred:-

1. *Amalendu Pal alias Jhantu v. State of West Bengal, (2010) 1 SCC 707, (Para-8)*
2. *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi, (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367, (Para-9)*
3. *Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734, (Para-10)*

JUDGMENT

L. NAGESWARA RAO, J.: - Leave granted.

1. The Appellant was convicted under Section 306 of the Indian Penal Code, 1860 (hereinafter referred to as "*the IPC*") and sentenced to undergo five years rigorous imprisonment. The appeal filed by the Appellant was dismissed by the High Court. Hence, this appeal.

2. According to the complaint filed by Bharat Singh (PW-1), his son Arvind was married to Manju, daughter of Laxmi Narayan on 07.11.2000. Indera is the sister-in-law of Arvind and the Appellant Rajesh is his brother-in-law. Arvind committed suicide on 23.02.2002 by consuming Sulfas tablets. On 01.03.2002 when Bharat Singh and other family members entered into the room of Arvind to sprinkle Gangajal, they found a suicide note on the bed of the deceased. It was stated that Arvind committed suicide due to the behavior of the Appellant, Laxmi Narayan and Indera who made false allegations against deceased regarding demand of dowry. A Panchayat was held in the village at the instance of the accused during which the Appellant slapped the deceased. The Appellant and his sister Indera used to threaten the deceased on telephone at the instance of their father Laxmi Narayan.

3. In the suicide note, the deceased Arvind stated that false allegations of demand of dowry were made against him and that a Panchayat was also conducted in which there was an attempt to

assault him. There were continuous threats from his father-in-law (Laxmi Narayan), his brother-in-law (Appellant) and the sister-in-law (Indera) that his family members will also be implicated in a criminal case. Unable to withstand the harassment, the deceased took the extreme step of committing suicide and held his father-in-law, the Appellant and his sister-in-law responsible for his death.

4. On completion of investigation, a charge-sheet was filed under Section 306 IPC. 12 witnesses were examined on behalf of the prosecution and Manju, wife of the deceased was examined as DW-1. On a consideration of the oral and documentary evidence, the Trial Court held the Appellant, his father and sister guilty of committing the offence under Section 306 IPC. The Appellant and his father Laxmi Narayan were sentenced to imprisonment of five years. Accused Indera was sentenced to three years imprisonment on being convicted for committing of an offence under Section 306 IPC. The Trial Court took note of the Panchayat that was held in September, 2001 which was five months prior to 23.02.2002 on which date Arvind committed suicide. Reference was also made to the evidence of PW-1 (Bharat Singh) who stated that he and his son Arvind (deceased) had forgotten about the Panchayat episode in view of the apology tendered by the accused. However, the Trial Court observed that continuous threats held out by the accused to implicate the deceased and his family members in a false dowry case assume importance. The Trial Court also relied upon the suicide note to hold the accused guilty of the offence of abetment to suicide. The version of the defence that Arvind committed suicide due to his depression, due to unemployment and lack of income, was rejected.

5. The appeal filed by the Appellant was dismissed by the High Court. The conviction and sentence of Laxmi Narayan and Indera were set aside by the High Court by the same judgment. The High Court referred to the suicide note Exhibit 'PA' to conclude that there was no error committed by the Trial Court in convicting the Appellant. The High Court also relied upon the evidence of PW-1 and PW-5 who spoke about the convening of the Panchayat by the accused in September, 2001 during which false allegations were made against the deceased. The High Court upheld the conviction of the Appellant while acquitting his father and sister, only on the ground that the Appellant slapped Arvind during the Panchayat which was conducted in September, 2001.

6. It is no doubt true that Arvind committed suicide on 23.02.2002. He left a suicide note which was found by his family members on 01.03.2002. There is also no dispute that Arvind blamed his father-in-law (Laxmi Narayan), his sister-in-law (Indera) and the Appellant for harassment and threats that he would be implicated in a false case of demand of dowry. Admittedly, a Panchayat was held in September, 2001 during which the accused leveled allegations of demand of dowry by Arvind. More than five months thereafter, Arvind committed suicide on 23.02.2002. In the meanwhile, according to the prosecution, Arvind was being threatened by the accused through telephone conversations. The point that arises for our consideration is whether the Appellant can be held guilty for committing an offence under Section 306 IPC in the facts and circumstances of the case.

7. It is necessary to refer to Section 306 IPC and Section 107 IPC which 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.
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> **107. Abetment of a thing.**—A person abets the doing of a thing, who—
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> First.—Instigates any person to do that thing; or
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> 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
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> Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.
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> 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."

8. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there 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. 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. (See ***Amalendu Pal alias Jhantu v. State of West Bengal, (2010) 1 SCC 707***).

9. The term instigation under Section 107 IPC has been explained in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi, (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367***) as follows:

> "**16**. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C.Lahoti, J. (as His Lordship then was) said that 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.
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> **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" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.)."

10. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (See ***Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734***).

11. We are of the opinion that the evidence on record does not warrant conviction of the Appellant under Section 306 IPC. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the Appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit suicide. As the allegations against all the three accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two accused.

12. We are not in agreement with the findings of the Trial Court that the deceased (Arvind) committed suicide in view of the continuous threats by the accused regarding his being implicated in a false case of demand of dowry. The evidence does not disclose that the Appellant instigated the deceased to commit suicide. There was neither a provocation nor encouragement by the Appellant to the deceased to commit an act of suicide. Therefore, the Appellant cannot be held guilty of abetting the suicide by the deceased.

13. For the aforementioned reasons, the appeal is allowed and the conviction and sentence of the Appellant is set aside. His bail bonds stands discharged.

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

ABC 2019 (I) 225 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Mohan M. Shantanagoudar & Dinesh Maheshwari, JJ.)

Criminal Appeal No. 1941/2010
With
Criminal Appeal No. 2153/2013
(From Madras High Court)
Decided On 22 January, 2019

NAWAZ ***- Appellant(s).***

Versus

STATE REP. BY INSPECTOR OF POLICE ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Sections — 302, 304 Pt. I, 300(1) & 201 — Allegation of illicit relation — extra-judicial confession — the deceased called Accused No. 1 & her daughter