

Before Anita Chaudhry, J.

KAMALJIT SINGH—Appellant

versus

U.T. CHANDIGARH—Respondent

CrI. A. No.12-SB of 2005

October 10, 2013

*Indian Penal Code, 1860 - Ss. 107, 306 - 'Abetment' - 'Suicide'
- Colleague of appellants committed suicide - Named them in suicide
note - Appellants tried for offence u/s 306 IPC - Convicted by trial
court - Filed appeal - Held, to attract ingredients of abetment intention
of accused to instigate or abet the deceased to commit suicide is
necessary - Appeal allowed - Appellant acquitted.*

Held, that to attract the ingredients of abetment, the intention of the accused to instigate or abet the deceased to commit suicide is necessary. The issue that has to be seen is whether the prosecution was able to show whether the case would fall under Section 306 of the Indian Penal Code. Reference should first be made to the relevant provisions.

(Para 11)

Further held, that in abetment there is a mental process of instigating a person and for aiding there has to be a positive act on the part of the accused and if these are present only then conviction can be sustained.

(Para 13)

Further held, that a plain reading of the suicide notes show that Bhinder Singh was under stress. The reason given by him was that he was harassed by Kamaljit Singh without giving any details. The reason for the suicide suggest that the person was depressed and had fears of his own. The ingredients of abetment are totally absent in the present case.

(Para 15)

Further held, that taking the totality of the material on record and the facts and circumstances of the case into consideration it will lead to irresistible conclusion and it is the deceased and none-else who was responsible for his death. The suicide notes only expresses anguish. The deceased was holding a grudge that he had been wronged. A charge under Section 306 IPC could not have been sustained. There is no evidence that there was any act or direct act which led the deceased to commit suicide seeing that he had no option.

(Para 16)

Baldev Singh, Sr. Advocate with Sudhir Sharma, Advocate, *for the appellant*. (in CRA No.S-12-SB of 2005).

A.P.S. Dcol, Sr. Advocate with Vishal Rattan Lamba, Advocate for the appellant

ANITA CHAUDHRY, J.

(1) These are two appeals arising out of the judgment of conviction and order of sentence dated 15.12.2004 passed by the Additional Sessions Judge, Chandigarh who convicted both the appellants in FIR No.244 dated 15.06.2000, registered under Section 306/34 IPC at Police Station Sector 39, Chandigarh. Both the appellants were sentenced to undergo rigorous imprisonment for a period of three years along with a fine of ' 5000/- each. In default of payment of fine, they were to undergo further rigorous imprisonment for a period of six months.

(2) Bhinder Singh (deceased) was Clerk in Government Medical College & Hospital, Chandigarh. He went on duty on 14.06.2000 but did not return home. His family searched for him. On the next day they came to his office in search of him. The store and rooms were found bolted from inside. The door was broken in the presence of some doctors of the hospital and the dead body of Bhinder Singh was found lying with the face downwards. His turban was lying at some distance. Bhinder Singh had vomited and blood drops were found in the nostrils. The doctors felt his pulse and declared him dead. The police was summoned and search of the room was carried out. From one of the drawers of the table they found suicide notes and a diary which contained another suicide note. The author of the suicide notes had blamed Kamaljit Singh, the store keeper and B.P. Mishra another employce of harassment that he was forced to take his life. In one of the notes Bhinder Singh had mentioned that he had been forced to append his signatures on taking over charge report without the articles being actually handed over to him.

(3) The FIR was lodged on the basis of the suicide notes. One more suicide note was recovered from the stockings of the deceased. On receipt of the report from the chemical examiner, it was revealed that Bhinder Singh had consumed aluminium phosphate.

(4) After completion of investigation challan was framed against both the appellants under Section 306 IPC to which they pleaded not guilty and claimed trial.

(5) The prosecution examined Dr. N.K. Arora - PW1, Bhag Singh - PW4 who is the main witness for the prosecution, Dr. Krishan Vig - PW7, Dr. D.K. Pathak -- PW8, Kuldeep Singh -- PW10 and SI Baldev Singh - PW14. Report Ex.P41 and Ex.P42 of the handwriting expert Mr. T. Joshi - PW12 was also tendered into evidence.

Dr. D.K. Pathak - PW8 had conducted the postmortem examination on the dead body of Bhinder Singh deceased and the following opinion was noted:-

"Greenish patch on the right and left side of pelvis, nails cynosed, face dark coloured and swollen. There was blood from nose. There was no external mark of injury. Skulp skull and vertebrae and brain and walls ribs and cartilages, plural cavities larynx and trachea, lungs, heart, peritoneum, mouth, pharynx and oesophagus, large intestine, bladder, external genitalia are lad. Stomach and its contents small intestine, liver spleen and kidney were sent for chemical examination. Time between death and postmortem was 24 to 26 hours."

T. Joshi - PW12 from the Office of the Government Examiner of Questioned Documents, Shimla had compared the handwriting on the suicide notes with the admitted signature of Bhinder Singh and had proved his report Ex.P41 as well as opinion Ex.P42.

(6) In the statement recorded under Section 313 Cr.P.C. Accused B.P. Mishra pleaded false implication and stated that he had no concern with the giving and taking over of the charge nor he had spoken to Bhinder Singh on this subject and he had simply authenticated the report and he was not posted there and had been transferred on 31.05.2000 and was relieved from the office on 06.06.2000 and he had started functioning in the hospital store w.e.f. 08.06.2000.

Accused Kamaljit took the plea that he had handed over the complete charge on 19.05.2000 under the supervision of B.P. Mishra and the counting of the stock was completed on 19.05.2000 and B.P. Mishra had come to hand over the charge report.

(7) In defence, they had examined Lachman Singh DW1. He brought the summoned record relating to B.P. Mishra and deposed that he had joined the office on 06.06.2000 and he had relinquished the charge from the post of the Store Officer from the college building premises in the after-noon on 05.6.2000. He stated that accused was not serving in the Department in which Bhinder Singh was serving on 14.06.2000.

Narinder Kumar Hans – DW2 the Store Officer in the Medical College, Sector 32, Chandigarh identified the signatures of B.P. Mishra on Ex.DH.

Ashwani Kumar, Clerk – DW3 stated that he had not seen Kamaljit Singh and Bhinder Singh quarreling over charge nor any complaint had been made regarding any irregularity in the stock or in the handing over charge report. He stated that he was a fellow clerk in the store of the hospital.

Jatinder Singh Kohli DW4 brought the service record of accused Kamaljit Singh who joined the service on 30.05.1997 as Clerk. The record did not indicate any blemish in the service record of Kamaljit.

(8) The trial Court accepted the evidence and convicted both the accused and sentenced them to punishment mentioned here-in-before.

(9) I have heard the submissions made on behalf of both the sides and with their assistance considered the evidence.

(10) It was contended on behalf of the appellants that Bhinder Singh had taken over charge from Kamaljit Singh, Store Keeper on 06.06.2000 and the allegations against the appellants were that both the appellants had abetted the suicide. It was urged that the prosecution had failed to lead any evidence to show that there was any irregularity in the stock and it could only be if there was any shortage and not otherwise. It was urged that they have led evidence to show that there was no irregularity and physical verification of the stock was carried out and the report is available and there was no reason for the appellants to aid or abet the suicide. It was urged that one of the appellants had already left charge and had joined at another post and the reason for the suicide may be some domestic dispute. It was urged that in order to succeed in a case under Section 306 IPC, the prosecution has to prove that there was instigation, aiding or abetment or goading which is missing in this case. It was again urged that there was no complaint to the senior officers that Bhinder Singh was facing harassment at the hands of the appellants and the very factual foundation of the case is so weak. It was urged that there was no allegations in the suicide note that the appellants had forced him to commit suicide and they were also disputing that the suicide notes were in the hand of the deceased. It was urged that Ex.DG would show that no irregularity was found consequent

to the physical verification carried out on the directions of the Director Principal of the Government Medical College and there was no evidence that the appellants had committed any willful act or had instigated the deceased to commit suicide and suicidal pattern of each person is different and it could be that he was hyper sensitive and there is nothing in the suicide note which would even distantly be viewed as an offence much less under Section 306 IPC. Reliance was placed upon *Madan Mohan Singh* versus *State of Gujarat and another (1)*, *Sanju @ Sanjay Singh Sengar* versus *State of Madhya Pradesh (2)*, *Netai Dutta* versus *State of West Bengal (3)* and *Gangula Mohan Reddy* versus *State of Andhra Pradesh (4)*.

On the other hand, the counsel representing the State supported the judgment and urged that the suicide notes were recovered from the drawer and they were sent for comparison with the handwriting of Bhinder Singh which was available in the office and there is a report in favour of the prosecution and Kuldeep Singh PW10 had stated that he was conversant with the writing of the deceased and the manner in which the suicide notes have been left, show the tremendous pressure upon Bhinder Singh which made him take his life.

(11) To attract the ingredients of abetment, the intention of the accused to instigate or abet the deceased to commit suicide is necessary. The issue that has to be seen is whether the prosecution was able to show whether the case would fall under Section 306 of the Indian Penal Code. Reference should first be made to the relevant provisions. Section 306 IPC & Section 107 IPC read as under:-

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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- (1) 2010(4) RCR (Cr.) 207 SC
 - (2) 2002(2) RCR (Cr.) 687
 - (3) 2005(2) SCC 659
 - (4) 2010(1) RCR (Cr.) 605 SC

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 thin; or

Thirdly-- Intentionally aides, by any act or illegal omission, the doing of that thing. Explanation 2 which has been inserted along with Section 107 reads as under:

“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”

(12) In *Ramesh Kumar* versus *State of Chattisgarh* (5), the Hon'ble Apex Court had the occasion to deal with a case of suicide where the husband has uttered some words and thereafter, the wife committed suicide. In para 20 of the judgment, the Court has examined different shades of the meaning given to instigation which reads as follows:-

“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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion to actually follow cannot be said to be instigation.”

In State of West Bengal versus Orilal Jaisal and another (6), the Hon'ble Apex 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 difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference 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."

(13) Having seen the meaning of abetment and instigation, the instant case has to be examined. In abetment there is a mental process of instigating a person and for aiding there has to be a positive act on the part of the accused and if these are present only then conviction can be sustained. The facts of the present case have now to be seen. The case set up by the prosecution is that Bhinder Singh had left behind some suicide notes which were found in drawer of his office. The police could not lay hands on his handwriting but they were able to get his original signatures on the leave application and other documents and the letters and the admitted signatures were sent to the handwriting expert. A report was received that the signatures were of the same person. They found similarity in the handwriting but the experts did not compare the words written in the body of the letter. Even if it is assumed that the writing on the notes was that of Bhinder Singh, it has to be now seen whether the suicide was a result of the acts committed by the appellants and whether there was any instigation abetment or goading.

In the case of suicide the presence of mensrea is a necessary concomitant of investigation. A perusal of the suicide notes show that there is no use of any abusive words or abusive language used against Bhinder Singh. Bhinder Singh had given a clean chit to his family and he was upset with the behaviour of Kamaljit Singh. It only states that Kamaljit Singh store keeper had harassed him and it is on that account he was committing suicide

and action should be taken against him. Bhinder Singh did not disclose the details. In one of the letters he had said that the charge handing and taking report had forcibly been got signed from him though actually the articles mentioned in it were not handed over.

(14) It could be that there were some shortages and that was weighing in his mind but there is evidence on the record which shows that an inquiry was conducted to find out that whether there was any shortages in the store but it was found that there was no shortage in the store. It appears that Bhinder Singh was hyper sensitive. He had no previous animosity with either of the appellants. There was no humiliation or exchange of abuses or nor any such fact had come to the notice of the seniors or other officials. The suicide was not proximate to the charge handing and taking report. There is evidence to show that one of the appellant had already been transferred prior to the incident and had left charge on the after-noon of 05.06.2000.

(15) A plain reading of the suicide notes show that Bhinder Singh was under stress. The reason given by him was that he was harassed by Kamaljit Singh without giving any details. The reason for the suicide suggest that the person was depressed and had fears of his own. The ingredients of abetment are totally absent in the present case.

(16) Taking the totality of the material on record and the facts and circumstances of the case into consideration it will lead to irresistible conclusion and it is the deceased and none-else who was responsible for his death. The suicide notes only expresses anguish. The deceased was holding a grudge that he had been wronged. A charge under Section 306 IPC could not have been sustained. There is no evidence that there was any act or direct act which led the deceased to commit suicide seeing that he had no option.

(17) In the light of the provisions of law and the settled legal positions crystallized by series of judgments of the Apex Court, it is held that the conviction of both the appellants cannot be sustained. Consequently, both the appeals are allowed. The order of conviction and sentence passed by the trial Court is set aside and the appellants are acquitted from the charges levelled against them and their bail bonds and surety bonds stand discharged. Lower Courts record be sent back.