(2024-3)215 PLR 434 (SC)

Supreme Court of India

Present : Justice Pankaj Mithal and Justice Ujjal Bhuyan.

KAMARUDDIN DASTAGIR SANADI – Appellant

Versus

STATE OF KARNATAKA Through SHO Kakati Police – Respondent

Criminal Appeal No. 551 of 2012

(i) Indian Penal Code, 1860 (45 of 1860), Section 107, 306 – Abetment to suicide – Instigation – Mens rea – A person, who abets the doing of a thing, is a person who instigates any person to do that thing – Therefore, 'instigation' to do a particular thing is necessary for charging a person with abetment – 'Instigation' is to provoke, incite or encourage a person to do an act – Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a particular thing and without the positive act on part of the accused there would be no instigation – That to convict a person for abetment of suicide under Section 306 IPC, there has to be a clear *mens rea* on the part of the accused to abet such a crime and it requires an active act or a direct act leading to the commission of suicide. [Para 21, 22, 23]

(ii) Indian Penal Code, 1860 (45 of 1860), Section 306 – Abetment to suicide – Acquittal – Domestic discord – Even in cases where the victim commits suicide, which may be as a result of cruelty meted out to her, the Courts have always held that discord and differences in domestic life are quite common in society and that the commission of such an offence largely depends upon the mental state of the victim – Until and unless some guilty intention on the part of the accused is established, it is ordinarily not possible to convict him for an offence under Section 306 IPC. [Para 25]

(iii) Indian Penal Code, 1860 (45 of 1860), Section 306 – Abetment to suicide – Refusal to marry – Mens rea – Acquittal – Accused on asking of the deceased had simply refused to marry her which is not a positive act on his part with any intention to abet the crime of suicide – Even assuming there was love between the parties, it is only a case of broken relationship which by itself would not amount to abetment to suicide – The accused-appellant had not provoked the deceased in any manner to kill herself – Simply because the accused-appellant refused to marry her, would not be a case of instigating, inciting or provoking the deceased to commit suicide – Even assuming, though there is no evidence that the accused-appellant promised to marry the deceased, that there was such a promise, it is again a simple case of a broken relationship for which there is a

different cause of action, but not prosecution or conviction for an offence under Section 306. [Para 29-31]

Cases referred:

1. Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618.

2. M. Mohan v. State represented by the Deputy Superintendent of Police, (2011) 3 SCC 626.

3. Amalendu Pal alias Jhantu v. State of West Bengal, (2010) 1 SCC 707.

4. Prabhu v. State represented by Inspector of Police & Anr., 2024 SCC Online SC 137.

JUDGMENT

Pankaj Mithal, J. – *(29.11.2024)* – The accused-appellant was charged under Sections 417, 376 and 306 of the Indian Penal Code[1] *[[1]In short 'IPC']*. The trial court acquitted him of all the above offences, but on appeal by the State of Karnataka to the High Court, he was convicted for the offences under Sections 417 and 306 IPC. However, the acquittal under Section 376 IPC was maintained. He was awarded sentence of 1 year under Section 417 IPC with a fine of Rs.5,000/-; and with a sentence of 4 years for the offence under Section 306 IPC with a fine of Rs.20,000/-. Basically, the conviction of the accused-appellant is for the offences of cheating and for abetment of suicide only.

2. A girl named Suvarna, aged about 21 years, was in love with the accused-appellant for the past 8 years i.e. she was in love with him since the age of 13 years. It is alleged that the accused-appellant had promised to marry her but when he refused, she consumed poison and committed suicide.

3. It is alleged that the accused-appellant, Kamruddin Dastagir Sanadi, had promised to marry the deceased before the *jamaat (panchayath)* but 4 months prior to the incident, he had left the village and started living at Kakati, Karnataka. The deceased came to Kakati in the evening of 18.08.2007 and when the accused-appellant clearly refused to marry her, she left. The deceased spent the whole night at the bus stand at Kakati and in the morning consumed poison which she had brought with her from Gadhinglaj. One Badshaha (PW-5), relative of the accused-appellant, found her lying at the bus stand and took her to hospital at about 08:50 am on 19.08.2007. PSI Kakati (PW-15) recorded the statement of the deceased between 3 pm and 4 pm & thereafter sent a requisition to the Executive Magistrate to record the deceased's dying declaration. The dying declaration of the deceased was recorded by the Taluka Executive Magistrate, Belgaum (PW-11) in the presence of the doctor (PW-12) between 04.50 pm and 05.20 pm. Thereafter, she died in the hospital on the same day itself i.e. on 19.08.2007.

4. The mother of the deceased (PW-1) lodged an FIR on 20.08.2007 under Section 306 read with Section 34 IPC at the Police Station, Kakati, Circle Belgaum Rural District, Karnataka against the accused-appellant and his uncle, alleging that the accused-appellant had

deceived her daughter by promising to marry her and then refusing it, which led to the commission of suicide by her in frustration.

5. After investigation, a chargesheet was drawn and submitted charging the accused-appellant under Sections 417, 376 and 306 IPC. The accused-appellant was arrested on 20.08.2007 and later released on bail during the trial. The IInd Additional Sessions Judge, Belgaum, *vide* judgment and order dated 13.04.2010 acquitted the accused-appellant of all the charges as there was no allegation in the dying declaration that the accused-appellant ever had any sexual intercourse with the deceased on the pretext of promise to marry her or ever had any physical relationship with her. Her only allegation was that she consumed poison as he refused to marry her. There was no allegation that the accused-appellant instigated her to consume poison or to commit suicide.

6. Moreover, the statement of mother of the deceased (PW-1) revealed that it was only the deceased who was in love with the accused-appellant and not the other way around. The deceased had impressed upon her mother to convince the accused-appellant to marry her as she was in love with him. The mother of the deceased (PW-1) nowhere stated that the accused-appellant was in love with her daughter. No other evidence was there to prove that any physical relationship was established by the accused-appellant with the deceased except that he had agreed to marry her before the *panchayath,* which was not proved.

7. Thus, in the facts and circumstances of the case coupled with the fact that there was no evidence to suggest that the accused-appellant had instigated or aided the deceased in consuming poison and committing suicide, the trial court acquitted the accused-appellant.

8. On appeal by the State of Karnataka, the High Court convicted the accused-appellant under Sections 417 and 306 IPC. Thus, the present appeal.

9. Learned counsel for the parties were heard at length and ease.

10. The submission of learned counsel for the accused-appellant is that there is no iota of evidence on record to prove abetment of suicide or cheating on part of the accused-appellant and that the High Court is not justified in reversing the decision of acquittal passed by the trial court.

11. The FIR alleges that the daughter of the complainant, upon completion of BA, took admission for MA at Gadhinglaj. She i.e. the mother of the deceased came to know that her daughter was in love with a Muslim boy named Kamruddin Dastagir Sanadi of the village i.e. the accused-appellant. She complained about their affair with the reputed people of the Muslim community of the village and a meeting of the Muslim community was called wherein the accused-appellant and her deceased daughter were present and both of them agreed to marry. The accused-appellant cheated her daughter by giving false assurance of marriage and by entering into physical relationship with her, then refusing to marry, which compelled her to consume poison, leading to her death.

12. The deceased left behind two dying declarations which are on record. *Exh.P17* is the dying declaration recorded by PSI, Kakati (PW-15) whereas *Exh.P10* is another dying

declaration recorded later by the Taluka Executive Magistrate, Belgaum (PW-11) in the presence of the doctor (PW-12) in the hospital between 04:50 pm to 05:20 pm on 19.08.2007.

13. The dying declaration of the deceased duly recorded by PSI, Kakati states that the deceased was a 21 year old girl studying in MA 1st year. She was in love with the accused-appellant who had left the village 4 months back and had started residing at Kakati, Belgaum. Allegedly about 8 days before the incident, he had called on her phone and asked her to come to Kakati. She reached Kakati in the evening of 18.08.2007 and met him at Avanti Hotel. She asked him to marry her but he refused to marry and left. She, thereafter, went to the bus stop and consumed poison which she had brought with her from Gadhinglaj.

14. The dying declaration recorded later by Taluka Executive Magistrate (PW-11), Belgaum, on 19.08.2007 states that she was aged about 21 years and was residing with her mother, elder sister and younger brother and was studying in MA 1st year. She was having an affair with the accused-appellant since last 8 years. Their affair came to the knowledge of the elder persons of both the families and all of them decided to perform the marriage. The accused-appellant agreed to marry her in front of the elders of the village. He left the village about 4 months ago and when she made inquiries about him, she came to know that he was residing at Kakati. She went to Kakati and searched him and made a phone call. Then she met him at Avanti Hotel and asked him to marry her but he refused. Thereafter, she consumed poison which she had brought in a bottle from Gadhinglaj. She was shifted to the hospital for treatment by a relative of the accused-appellant named Badshaha Nazir Pathan (PW-5) of Kakati.

15. The aforesaid statement was made in Marathi and a translated copy was put on record. The doctor had certified that the patient was fully conscious and fit to give statement. The Executive Magistrate, Belgaum, has recorded that the deceased had a frustrated mentality.

16. The dying declaration of the deceased reveals that there is no allegation of any physical relationship between the accused-appellant and the deceased or that the accused-appellant had ever entered into any physical relationship or had sexual intercourse with the deceased under the pretext of marriage. The dying declaration indicates that it was the deceased who was in love with the accused-appellant and wanted to marry him. When the accused-appellant had left the village, it was the deceased who made search about him and came to know that he was residing in Kakati. She herself traced him out at Kakati and went after him. She called him and when they met, he refused to marry her and thus, as her sentiments were hurt, she consumed poison leading to her death.

17. There is no allegation by her that the accused-appellant had instigated her to consume poison or to commit suicide. No other evidence in this regard has been adduced. Even the mother of the deceased (PW-1) in her statement revealed that it was the deceased who was in love with the accused-appellant and that she wanted her mother to convince him to marry her. The said witness though may have stated that the deceased entered into physical relationship with her daughter but the same otherwise does not stand proved or

corroborated, not even by the dying declarations. As regards the promise to marry alleged to have been made by the accused-appellant, it is said that the same was made before the village elders in context with which Najaruddin Mohammad Malik (PW-3) and Kashim Babalal Sankeshwar (PW-4) were examined. Both these witnesses have stated that they had provided a written document regarding the *panchayath* proceedings to the deceased and her mother but no such document was produced by PW-1 to prove that the accused-appellant had actually ever promised or agreed to marry her daughter. There is allegation but no evidence to prove that the accused-appellant was also in love with the deceased or that he was in touch with her in any manner. The allegation that both of them were talking to each other on phone is without any substance as no evidence was produced in the form of call records of either of them to establish that the accused-appellant used to call the deceased and talk to her and to establish that he was also in love with her. There is no evidence to even establish that the accused-appellant entered into any physical relationship with the deceased on the pretext of marrying her. So, the evidence fails to prove any physical relationship between the two, promise to marry on the part of the accused-appellant and that he was instrumental in instigating the deceased to consume poison or to commit suicide.

18. Section 306 IPC defines abetment of suicide which reads as under:

“306. 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.”

19. It provides for the punishment for abetting the commission of suicide. Therefore, ‘abetment’ of suicide is an essential element for punishing a person for an offence under Section 306 IPC.

20. Abetment has been defined under Section 107 IPC and it reads as under:

“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.”

21. The very first clause of the aforesaid provision lays down that a person, who abets the doing of a thing, is a person who instigates any person to do that thing. Therefore, ‘instigation’ to do a particular thing is necessary for charging a person with abetment.

22. ‘Instigation’ is to provoke, incite or encourage a person to do an act.

23. This Court has repeatedly observed that abetment involves a mental process of

instigating a person or intentionally aiding a person in doing of a particular thing and without the positive act on part of the accused there would be no instigation. It has also been observed that to convict a person for abetment of suicide under Section 306 IPC, there has to be a clear *mens rea* on the part of the accused to abet such a crime and it requires an active act or a direct act leading to the commission of suicide.

24. In *Ramesh Kumar v. State of Chhattisgarh*[2] *[(2001) 9 SCC 618],* a three Judges Bench of this Court dealt with a case of suicide by the wife, where the husband in anger uttered- *'You are free to do whatever you wish and go wherever you like'*. Thereafter, the wife committed suicide. The Court, after examining the meaning of instigation which is an essential element for abetment of suicide, observed that such words, uttered out of emotion, do not constitute *mens rea* and do not amount to intentionally inciting the other party to actually do an act which may result in the commission of self-killing/suicide.

25. Even in cases where the victim commits suicide, which may be as a result of cruelty meted out to her, the Courts have always held that discord and differences in domestic life are quite common in society and that the commission of such an offence largely depends upon the mental state of the victim. Surely, until and unless some guilty intention on the part of the accused is established, it is ordinarily not possible to convict him for an offence under Section 306 IPC.

26. The salient features constituting an offence under Section 306 IPC were elucidated by this Court in *M. Mohan v. State represented by the Deputy Superintendent of Police*[3] *[(2011) 3 SCC 626]* and it was observed as under:

"43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605: (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are 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 disease to commit suicide seeing no option and this act must have been intended to push the disease in two such a position that he/she committed suicide."

27. The same aspects have been reiterated by this Court in *Amalendu Pal alias Jhantu v. State of West Bengal*[4] *[(2010) 1 SCC 707]* and have been again repeated in *Prabhu v. State*

represented by Inspector of Police & Anr.[5] *[2024 SCC Online SC 137].*

28. In *Prabhu (supra)* the Court further observed that broken relationships and heart breaks are part of everyday life and that breaking-up of the relationship would not constitute any instigation or abetment of suicide inasmuch as in order to constitute 'Instigation' it must be shown that the accused had by his acts and omissions or by continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide.

29. There is no direct evidence adduced by the prosecution to prove that the accused-appellant has in any way instigated or provoked the deceased to commit suicide. The accused-appellant on asking of the deceased had simply refused to marry her which is not a positive act on his part with any intention to abet the crime of suicide.

30. If we examine the instant case on the touch stone of the above principles of law, we find that the accused-appellant had simply refused to marry the deceased and thus, even assuming there was love between the parties, it is only a case of broken relationship which by itself would not amount to abetment to suicide. The accused-appellant had not provoked the deceased in any manner to kill herself; rather the deceased herself carried poison in a bottle from her village while going to Kakati, Karnataka with a predetermined mind to positively get an affirmation from the accused-appellant to marry her, failing which she would commit suicide. Therefore, in such a situation simply because the accused-appellant refused to marry her, would not be a case of instigating, inciting or provoking the deceased to commit suicide.

31. Even assuming, though there is no evidence that the accused-appellant promised to marry the deceased, that there was such a promise, it is again a simple case of a broken relationship for which there is a different cause of action, but not prosecution or conviction for an offence under Section 306, specially in the facts and circumstances of the case where no guilty intention or *mens rea* on the part of the accused-appellant had been established.

32. In view of the facts and circumstances of the case, we are of the opinion that the judgment and order of the High Court dated 15.12.2011 cannot be sustained in law and is hereby set aside and the accused-appellant stands acquitted as was done by the trial court.

33. The appeal is allowed with no order as to cost.