

Neutral Citation No. - 2023:AHC-LKO:55949

A.F.R.

Reserved on:-11.8.2023

Delivered on:-23.8.2023

Court No. - 29

Case :- CRIMINAL APPEAL No. - 661 of 2003

Appellant :- Pawan Sut @ Ram Sukh Tiwari

Respondent :- The State Of U.P.

Counsel for Appellant :- M.S.Khan,Pradeep Kumar Shukla

Counsel for Respondent :- Govt.Advocate

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Pradeep Kumar Shukla, learned counsel for the appellant and Sri Jugal Kishore, learned AGA for the State.

2. This criminal appeal has been filed by the appellant- Pawan Sut @ Ram Sukh Tiwari challenging the order of conviction and sentence dated 24.04.2003 passed by the Additional Sessions Judge/FTC III, Sultanpur in ST No. 37 of 2021 whereby the appellant has been convicted under section 306 IPC and sentenced to undergo imprisonment of 8 years and a fine of Rs. 5,000/- and further 6 months in default of fine.

3. A number of legal and factual points have been raised by the appellant which shall be dealt with at appropriate stages in the body of the judgment.

4. Relevant facts in nutshell are as below:-

(i) *The informant Satya Narayan Tiwari gave a written report before the police station concerned with the allegations that his sister-Meera Devi was married to Pawan Sut @ Ram Sukh Tiwari; Pawan Sut @ Ram Sukh (the accused), Ram Das, Gurprasad, Sri Chand set her ablaze at about 9.00 pm on 26.09.2000; it is alleged in the FIR that her husband was selling of all his property gradually and he used to ask his sister that he should have brought at least Rs. 10,000/- per month from her 'maika' to meet out his expenses; it is further alleged that when his sister disclosed all the matter to him, he counseled her and left her at her husband's place; he received the information of the incident next day at about 4.00 pm, therefore they reached the district hospital, Sultanpur; his sister (the deceased) told him that accused got annoyed when she asked whether he had brought vegetables or not; he poured kerosene oil on her and rest of the accused persons assisted and she was set to fire by her husband; her condition deteriorated and she succumbed to her injuries on 28.09.2000; on the basis of this information, case crime no. 402 of 2000 under section 304 IPC was registered and investigated upon; the postmortem of the dead body was conducted; a dying declaration was recorded; the*

statement of witnesses were recorded and thereafter accused Pawan Sut @ Ram Sukh Tiwari was chargesheeted under section 306 IPC.

(ii) The prosecution examined PW1-Satya Narayan (the first informant), PW2-Hare Ram, Pw3-Ravi Dutt Tiwari, PW4-Asharfi Lal (the witnesses of fact), PW5-Dr. Anil Kumar, PW6-Dr. B.N. Tiwari, PW7-ASI Pramod Kumar, PW8-Nayab Tehsildar, PW9-Asha Ram (Nayab Tehsildar), PW10-the investigating officer.

(iii) The statement of the accused was recorded under Section 313 Cr.P.C.; the accused denied that his wife died of burn injuries but admitted that his wife died on 28.09.2000 at about 6.30 am; after flatly denying all other facts of the case, he stated that the clothes of her wife caught fire when she was cooking food and that he is innocent.

5. Heard and perused the papers on record in the light of the contentions of both the sides.

6. PW1-Satya Narayan Tiwari who admittedly is the real brother of the deceased has chosen not to support the prosecution case and denied that his sister ever told him that the accused- Pawan Sut @ Ram Sukh Tiwari (husband of the deceased) poured kerosene oil and set her ablaze; from the statement given by him this fact is sufficiently proved that when he visited his sister in the hospital, she was lying there with extensive burn injuries on her body and the next day she died.

7. PW2-Hari Ram denied having knowledge of any bickering between the deceased and her husband or that he ever used to maltreat her; he said that he was not in the village when the incident happened.

8. PW3-Ravi Dutt Tiwari, who belongs to same family as that of accused, has stated that Pawan Sut @ Ram Sukh Tiwari is a drunkard; he did not do any job and that he was selling of all his property gradually, therefore none was left to take care of his children; he has stated that his wife (the deceased) tried to check him from indulging in such habit and also from dissipating his property pleading that how she and her children shall survive, if no source of sustenance is left; he has further stated that her children often used to go to sleep hungry and many time it was him who helped them out by providing meals; he also used to quarrel with his wife on this issue of neighbors providing meals to her kids; his wife was much harassed by his tactics and wanted that he shunned his habit of having liquor; he used to physically assault his wife time and again; deposing about the occurrence he has said that on that day accused returned to his house and asked for meals; his wife retorted that when there is no ration then how food can be cooked; enraged over this reply, he began beating his wife; his kids were crying aloud; he (the witness) intervened and tried to mediate and counsel them; the accused exited out of his house and returned at about 8 in the evening; he categorically stated that at the time

of departing from his house, he taunted her by saying that she should stay in the house and that he is leaving; thereafter the deceased came to the witness's house; the witness and others tried to counsel her; after sometime he heard loud cries; he rushed to the house of Meera Devi and found smoke bellowing out of the doors; the kids were crying; he and other witness-Hari Ram etc reached the place of incident; the deceased opened the door and that her clothes had burnt down; she was crying; she was made to put on another set of clothes and was taken to the hospital; she was referred to the district hospital but she succumbed to her injuries.

9. PW4-Asharfi Lal has not supported the prosecution case.

10. PW5-Dr. Anil Kumar, who conducted the postmortem has deposed that except a small portion of the body, her whole of the body was having burn injuries and there were some blisters on certain parts; she was having 80 to 90% of burn injuries.

11. PW6-Dr. B.N. Tiwari has given statement that she was referred for taking dying declaration before the S.D.M.

12. PW8-Nayab Tehsildar has proved the dying declaration which is on record; in her dying declaration she stated as below:-

"मेरा पति शराबी है रोज शराब पीकर हमें प्रताड़ित करता है और सारी सम्पत्ति बँच डाला है जिससे तंग आकर मैंने खुद अपने शरीर में आग लगाकर झुलस गयी हूँ। मेरे बड़े लड़के का नाम मनीष उम्र लगभग 9 वर्ष, दूसरे लड़के का नाम विपिन उम्र लगभग 5 वर्ष है तीसरी सन्तान लड़की है जो तीन वर्ष की है मेरे पिता का नाम शीतला प्रसाद तिवारी निवासी चौपड़िया थाना लम्बुआ जनपद सुलतानपुर है। आग मैंने अपनी साड़ी में लगायी थी। मिट्टी का तेल आदि नहीं डाला था। बयान पढ़कर सुनाया गया तस्दीक की तथा हस्ताक्षर बनवाया जा रहा है।"

13. Before proceeding to evaluate the evidence produced by the prosecution, it will be useful to first examine the scope of section 306 IPC, the abetment to commit suicide and see broadly what kinds of acts can be construed as bringing the matter within the confines of section 306 IPC.

Section 306 IPC is as 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."

Abetment is defined under Section 107 of IPC which 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.

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.

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."*

14. The essential ingredients of the offence under Section 306 I.P.C. are the abetment and commission of suicide in consequence thereof. The 'abetment' may mean intentionally aiding or instigating or engaging in a conspiracy.

15. A two Judges Bench of the Supreme Court in **Ude Singh and Ors. vs. State of Haryana, (2019) 17 SCC 301** observed as below:-

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

*16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, **instigation means to goad, urge forward, provoke, incite or encourage to do an act.** If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. **The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused** and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own*

facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

16. For the application of section 306 IPC, the law requires that there should be a proximity between the act of suicide with the acts and conduct or treatment meted out by the accused to the victim or acts which would amount to intentionally aiding or instigating or abetting the deceased to take his/her life.

17. In the instant matter, the case of the prosecution is that the accused instigated the commission of crime. As has been held by the Supreme Court, the 'instigation' means to goad, urge forward, provoke, incite or encourage to do "an act". Obviously the intention is to be gathered on the basis of peculiar facts and circumstances of each and every case. No formula for general application can be laid down.

18. Now coming back to the facts of this case, no other witnesses except PW3-Ravi Dutt Tiwari has supported the prosecution case. The evidence on facts given by him has been reproduced in para-8 of this judgment. If all the facts deposed by him are taken at its face value or as being credible and reliable, it appears that the accused used to have drinks frequently and was not taking enough care of his wife and children. He was squandering away his property by selling it off and that was the cause of confrontation between accused and his wife. The evidence given by PW3 gives a very clear impression that the wife was feeling harassed and exasperated by the conduct of her husband and this was the cause of frequent bickering between them. On the day of the occurrence, he returned home and asked for food, to this she reacted by saying that how food can be cooked when there is no ration; enraged over this reply, he physically assaulted his wife taunting that she may stay in the house and he is leaving. The evidence given by him further suggest that she became very disturbed and was counseled by the witness, however she decided to take her life and put herself on fire. She put herself on fire on her own, is a fact which has been clearly proved by her own dying declaration. If the dying declaration is perused, she has simply said that her husband is a drunkard and used to harass her and also squandered/sold off all the property and added that *जिससे तंग आकर मैंने खुद अपने शरीर में आग लगाकर झुलस गयी हूँ।* Except the above statement, she has said nothing which could have thrown additional light on the circumstances which compelled her to take her life. The statement given by her in her dying declaration is corroborated by the statement given by PW3. There appears no reason to doubt the above two important pieces of evidence i.e., the dying declaration and the other testimony of PW3. Now the short question which arises whether these facts and circumstances will constitute the offence under section 306 IPC.

19. The pain and suffering of a wife who was the mother of small kids, the problem of sustenance she was facing, the inability to mold her husband to see the reason, the problem of poverty, the intricate human equations between husband and wife, the impact of such situations on domestic peace etc. can easily be imagined. The habit of drinking, the act of squandering away the property, physical assault, domestic dispute bickerings or quarrels over not able to make two ends meet, lack of money for taking good care of children are quite unfortunate and arouse empathy and emotions from everyone not merely the people living in the vicinity, near relatives or well-wishers of the deceased and her children. But the court has a duty to take decisions on the basis of facts not on the basis of sentiments. In my view the act of the accused may be deplorable but do not amount to "**instigation to commit suicide**" unless there was something more to add upon. In my view, some more overt act, though may be an indirect one, was required on the part of the accused to bring his acts or conduct within the meaning of the word "instigation".

20. The unfortunate story does not end here. With a sense of guilt, I am constrained to write that this appeal has come up for hearing after the accused had already undergone whole of the term of sentence and was set free. In fact, he was detained for a month over and above the period of imprisonment by inadvertent turn of events which need not be elaborated here. Suffice it to say that chinks in the majesty of law are wide open. The failings and the frailty of justice delivery system is showing by itself.

21. In view of the discussion in the paras preceding para no. 20, the judgment given by the learned Sessions Judge convicting the accused is not sustainable and the accused deserves to be acquitted.

22. The judgment and sentence order dated 24.04.2003 passed by the Additional Sessions Judge/FTC III, Sultanpur in ST No. 37 of 2021, is set aside and the accused is acquitted.

23. Accordingly, this criminal appeal is **allowed**.

24. Let copy of the judgment be immediately sent to the court concerned for necessary action.

Order Date :- 23.8.2023

Vikram