

(2025) 12 DEL CK 0010

Delhi HC

Case No: Criminal Appeal No.80 Of 2017

State (Govt Of Nct Of Delhi)

APPELLANT

Vs

Hamid

RESPONDENT

Date of Decision: Dec. 12, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 207, 313
- Indian Penal Code, 1860- Section 34, 107, 304B, 306, 498A

Hon'ble Judges: Vivek Chaudhary, J; Manoj Jain, J

Bench: Division Bench

Advocate: Yudhvair Singh Chauhan, Pawan Kumar Mittal, Chatiyna Jain

Final Decision: Dismissed

Judgement

1. State takes exception to order dated 21.04.2016 whereby respondent/accused has been acquitted of charge under Section 306 IPC Indian Penal Code, 1860.

2. Let us take note of the relevant facts.

3. On 30.10.2010, Smt. Baby @ Nazrin (wife of accused) was brought to AIIMS All India Institute of Medical Sciences in a gasping state by her relatives, with the alleged history of **attempted hanging**.

4. Smt. Jaitoon (mother of. Baby) (PW2) made statement before the SDM Sub-Divisional Magistrate on 02.11.2010 wherein she told that her daughter got married to accused Hamid on 11.04.2004 and from such wedlock, they had two children. The couple was living happily. However, the problem surfaced during the last two years when accused indicated his intention to marry another lady, residing in the same locality. According to Smt. Jaitoon, accused used to beat his wife and used to threaten her with dire consequences. She also divulged that accused had, even, offered his wife Rs. 2 to 4 lacs so that he stands relieved of marital obligation and is in a position to marry said lady. Claiming that her daughter could not have

committed suicide and that she had rather been killed by her husband and in-laws, she prayed for necessary action.

5. Smt. Baby @ Nazrin, eventually, died a month later i.e. on 30.11.2010.

6. Throughout her hospitalization in AIIMS, she remained unconscious and, therefore, her statement could not be recorded.

7. Based on the statements made by her parents and other relatives, the concerned SDM (PW13) prepared a report on 03.12.2010 and recommended registration of FIR against accused Hamid and his parents.

8. It is, however, important to note that only Hamid was charge-sheeted by the police under Sections 304-B/306/34 IPC. Names of his parents were shown in Column No. 12. of the chargesheet. They were not, even, arrested on account of lack of evidence.

9. The concerned magisterial court took cognizance on 03.03.2011 and since offences under Section 304-B/306 IPC were triable exclusively by Court of Sessions, after compliance of provisions of Section 207 Cr.P.C. Code of Criminal Procedure, 1973, the case was committed.

10. Learned Trial Court, after considering the facts and circumstances presented before it, came to the conclusion that prima facie case under Section 306 IPC only was made out against accused Hamid. It also concluded that since there was no allegation of any demand of dowry, Section 304-B IPC was not attracted.

11. Accused was accordingly charged under Section 306 IPC only, to which he pleaded not guilty and claimed trial. Right here, we also lay emphasis that such order on charge attained finality as it was never challenged by the prosecution.

12. Prosecution was directed to adduce evidence and examined eighteen witnesses in its support. These included PW2 Smt. Jaitoon (mother of Smt. Baby @ Nazrin), PW4 Sh. Abdul Qadir (father of victim) and PW11 Sh. Abdul Rashid (brother of victim).

13. Accused, in his statement under Section 313 Cr.P.C., pleaded innocence. He, however, admitted that he had informed his father-in-law about the incident at around 4.15 PM/4.30 PM same day. He also claimed that everything was fine between them till June 2010, when she was pregnant. Later on, he learnt that she had got such pregnancy aborted and, thereafter, there was complete change in her behaviour. According

to him, she looked depressed after such abortion and was taking medicines. He examined four witnesses in his defence, primarily, to demonstrate the fact that his wife was taking medicines and that she had terminated her pregnancy.

14. Learned Trial Court, after careful analysis of the evidence led by prosecution and defence, came to the conclusion that there was nothing to indicate any kind of abetment to commit suicide.

15. Such order is under challenge.

16. According to learned APP for the State, learned Trial Court failed to appreciate the fact that there was clear and unambiguous evidence on record, suggesting involvement of accused in an extramarital affair with other woman, which amounted to cruelty. It is also submitted that the learned Trial Court erroneously held that merely because the religion of the accused permitted polygamy, he could not have abetted the suicide of his wife. He contends that there was no reason whatsoever to have disbelieved and discarded the testimony of parents and brother of deceased.

17. All such contentions have been contradicted and while praying for dismissal of appeal, it is argued that there was never any cruelty on the part of accused.

18. Predominantly, it needs to be assessed whether accused, by entering into alleged extramarital affair, has instigated his wife to commit suicide or not.

19. As per Section 306 IPC, 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.

20. Evidently, the material ingredient of offence is abetment which is defined in Section 107 of the IPC and reads as under:-

Abetment of a thing. - A person abets the doing of a thing, who

First.- Instigates any person to do the 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. We do not have any suicide note which may give any insight as to why Nazrin wanted to end herself. One, who commits suicide, is not alive to disclose as to what bothered and compelled to take such extreme step and, therefore, the task of the court becomes much more arduous and onerous.

22. We need to stress that to attract offence of abetment to suicide, it is incumbent upon the prosecution to establish proof of direct or indirect act(s) of instigation or incitement of suicide, which must be in close proximity to the commission of suicide. Such instigation or incitement should be reflective of clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide Prakash and Others Vs. State of

Maharashtra and Another 2024 INSC 1020. Thus, the act of abetment must be explicitly demonstrated through action or behaviour of the accused and it should also be brought on record that such conduct directly contributed to the victims decision to take his or her own life. Harassment, in itself, does not suffice unless it is accompanied by deliberate acts of incitement or facilitation.

23. The solitary allegation against the accused is that he was having extramarital affair which drove his wife to commit suicide.

24. In order to attract culpability under Section 306 IPC, it is important for prosecution to establish that any such husband, while continuing with such affair, conducted himself in a manner which, eventually, drove his legally wedded wife to commit suicide. The Honble Supreme Court in **Pinakin Mahipatray Rawal v. State of Gujarat** 2013 SCC OnLine SC 814 has observed that mere fact that the husband had developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to cruelty, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. It held that mental cruelty would vary from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. In that case, despite the fact that there was a suicide note by the wife which even referred to extramarital affair of her husband, the Honble Supreme Court came to the conclusion that the alleged extramarital relationship was not of such a nature as to drive the wife to commit suicide.

25. The Honble Supreme Court in **K.V. Prakash Babu v. State of Karnataka** 2016 SCC OnLine SC 1363 held that if a husband gets involved in an extramarital affair that may not, in all circumstances, invite conviction under Section 306 IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. It further observed as under:-

15. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalise but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying

the ingredients of Section 306 IPC.

26. Reference be also made to **Ghusabhai Raisangbhai Chorasiya v. State of Gujarat** 2015 SCC OnLine SC 137 wherein, the Honble Supreme Court has held that even if accused was involved in an illicit relationship and same is also proven, it would not establish cruelty.

27. PW2 admitted that she never met any such lady. Prosecution did examine PW8, father of such other lady, who deposed that he had fixed up marriage of his daughter for 18.11.2010 but afterwards learnt that accused wanted to marry her and insisted for the same, citing that their religion permitted second marriage. As per his further deposition, he, feeling embarrassed, cancelled such marriage. He, however, admitted that he had never seen his daughter meeting accused and heard about the relationship from the persons of the locality. Testimony of one neighbour (PW9) also does not advance the case of prosecution as her evidence is also hearsay.

28. Such other lady was not contacted during the investigation. She is neither a prosecution witness nor alleged to be a co-abettor.

29. Indubitably, accused, if so wished, could have pronounced talak as per shariyat but he, instead, continued with the existing marriage. His alleged offer of money to his wife to set him free also suggests that he did not want to re-marry unless there was formal severance of existing marriage.

30. We have been seen the deposition of various other prosecution witnesses but no concrete material, suggesting instigation or abetment on the part of accused, could be deciphered.

31. We have gone through the statement made by PW2 before the SDM which, eventually, resulted in registration of FIR. In her such statement, she gave the name of that other lady with whom accused wanted to get married and also claimed that accused was offering Rs. 2-4 lacs to his wife in order to get rid of her. However, in her deposition, PW2 introduced a new fact by claiming that her daughter had apprised them that the accused was either asking his wife to take Rs. 2-4 lacs to set him free or to bring Rs. 20 lacs. There is no plausible explanation to the abovesaid huge improvement and when confronted, PW2 admitted that no such fact was revealed by her when she had made statement to the SDM.

32. PW2 admitted that there was cordial relation between her daughter and accused for around four years and as already noted above, the issue of extramarital affair surfaced two years back. Thus, such affair was in the knowledge of Nazrin and her parents for last two years and was, certainly, not a new development. No other recent act or behaviour, suggesting instigation or abatement, has been established which may indicate criminality on the part of accused. Thus, in the present factual matrix, even if the extramarital affair is believed to be true, it did not act as a catalyst for committing suicide.

33. It also needs to be highlighted that PW-2 was of the view that her daughter could not have committed suicide and that she had been killed. However, as per post-mortem report (Ex.PW16/A), the death was on account of septicaemic shock as a direct consequence of prolonged illness as a result of asphyxia due to antemortem hanging.

34. Curiously, when the concerned post-mortem surgeon entered into witness box, various questions were put to him by the prosecution in examination-in-chief as if he was under cross examination. He was, even, given a suggestion that it was not a case of hanging but a case of strangulation. Such type of questions and suggestion should not have been put, without prior permission of the Court. Fact remains that he, categorically, answered that on the basis of the internal findings of the ligature marks on the neck, strangulation was ruled out and that it was a case of hanging. Nothing has been pointed out to us which may even remotely indicate it to be a case of homicide.

35. Since the couple was, otherwise, living happily, the angle of demand of dowry is neither believable in the present factual matrix nor proved in any manner by the prosecution.

36. In view of the foregoing discussion, it thus becomes evident that mere existence of extramarital affair is not sufficient to attract Section 306 IPC. There is no material indicating any immediate or direct instigation or conduct of a nature, compelling Nazrin to commit suicide.

37. We, therefore, do not find any perversity in the findings returned by the learned Trial Court.

38. Consequently, the present appeal is dismissed.