

## Raghubir Singh Vs Gurdeep Singh and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 24, 2011

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 173, 313  
Penal Code, 1860 (IPC) â€” Section 107, 109, 306

**Citation:** (2011) CriLJ 2448 : (2011) 5 RCR(Criminal) 791

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Alok Singh, J.

Complainant has invoked revisional jurisdiction of this Court challenging the judgment of acquittal dated 10.11.2000 passed

by the Additional Sessions Judge, Sirsa.

2. Brief facts of the case are that on 26.5.99, ASI Ram Kishan along with other police officials was present at T-point bus stand of Village Panihari

in connection with patrolling duty and nakabandi. There complainant Raghubir Singh son of Darshan Singh met him and lodged a complaint before

him. According to the complainant's version he is the resident of Village Jamlera and they are three brothers and six sisters. He is the eldest in the

family and his youngest sister Simarjit Kaur was married with Gurdeep Singh son of Darbar Singh about 7/8 years ago. His sister could not

conceive after the marriage and accused Gurdeep Singh and his family members started taunting and harassing her. After about 2 and 1/2 years of

marriage the accused left his sister Simarjit Kaur at his residence and a panchayat consisting of family members was convened and Simarjit Kaur

was sent to the matrimonial house. Thereafter the complainant enquired from accused Gurdeep Singh regarding the incidence and asked him to

maintain Simarjit Kaur properly. The accused Gurdeep Singh replied that Simarjit Kaur is making the statement out of fear and there is No. such

incidence as has been alleged by Simarjit Kaur. On 25.5.1999 at about 9 p.m. one Jaswant Singh @ Jassa Singh son of Bakshish Singh resident

of Village Amritsar Kalan came to his residence and told that Simarjit Kaur has expired. After receiving the information he along with Mahinder

Singh, Jangir Singh, Jaswant Singh reached at the Dhani Musahabwala at 1.00 a.m. in the night. The dead body of Simarjit Kaur was lying on the

cot in the court yard and No. family member was present inside the residence. He had verified from the neighbourhood as well as relatives that his

sister Simarjit Kaur has committed suicide after consuming poisonous matter as she was being tortured by the accused-persons. On this complaint,

a formal FIR was lodged against the accused. ASI Ram Kishan, the Investigating Officer along with the other police officials reached at the place

of occurrence. A pair of chappals and a jug were recovered from the fields known as ""Sheesham Wala Kila" which were taken into possession.

He prepared the inquest report at the spot, recorded the statements of the witnesses and the dead body was sent for post-mortem examination.

During investigation two accused namely Charanjit Kaur and Harbans Kaur were found innocent and accused Gurdeep Singh was arrested on

27.5.99. After completion of all the investigations the challan was prepared against the accused Gurdeep Singh by Sanjay Kumar ASP, then

Station House Officer of Police Station Sadar, Sirsa vide his report u/s 173 of the Code of Criminal Procedure, 1973.

3. The prosecution in support of its case examined eight witnesses viz. Dr. J.K. Bishnoi who proved the copy of post-mortem report, Raghbir

Singh has narrated the version as alleged in the complaint, Mahinder Singh who is the cousin of the deceased, on 25.5.99 he was also present at

the site when the police visited the residence of the accused. The jug and Chappals were taken into possession vide recovery memo in his

presence and he put his signatures on the memos as an attesting witness. Prem Kishan ASI has narrated the manner in which the investigations

were conducted by him. He has proved the material documents prepared during the investigations. Ram Mufti is a formal witness who tendered his

affidavit to be read as a part of his statement. Dharam Chand is a formal witness who tendered his affidavit into evidence to be read as a part of his

statement. Ranbir Singh is also a formal witness who tendered the affidavit into evidence to be read as a part of his statement. Kulwant Rai Patwari

Halqa prepared the scaled site plan of the place of occurrence on the asking of the investigation officer ASI Ram Kishan and on the pointing out of

Malkiat Singh. The prosecution also tendered the FSL report into evidence. Dr. S.L. Aggarwal, Pat Ram, Sanjay Kumar, Jaspal Singh, Jangir

Singh and Narender Singh were given up by the learned PP being unnecessary. Kuldeep Singh was given up by the learned PP as having been

won over by the accused.

4. In their examination recorded u/s 313 of the Code of Criminal Procedure 1973, the accused denied all the allegations levelled against them and

pleaded that Simarjit Kaur deceased used to remain under depression and had lost her balance of mind because she could not conceive the child.

5. I have heard learned Counsel for the parties and have perused the record.

6. As per prosecution story, Simarjit Kaur has committed suicide after consuming poisonous material as she was tortured by the accused persons.

There is No. allegation in the FIR that she was being tortured for dowry. As per prosecution story, she was being tortured for not conceiving the

child. While as per defence, she was under depression for not conceiving the child.

7. Simarjit Kaur has committed suicide on 25.5.1999 at 7.20 a.m. Delay in lodging the FIR has not been properly explained.

8. Hon"ble Apex Court in the matter of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, in paragraph No. 12 has observed as under:

Even if we accept the prosecution story that the Appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of

"instigation". The word "instigate" denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens

rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment

cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional.

9. Hon"ble Apex Court Bhagwan Das Vs. Kartar Singh and Others, in paragraph No. 15 has held as under:

15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a

wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section

306, Indian Penal Code read with Section 107, Indian Penal Code.

10. Hon"ble Apex Court in the matter of Sohan Raj Sharma v. State of Haryana, AIR 2008 SCW 3202: (AIR 2008 SC 2108) in paragraph Nos.

10 and 11 has held as under:

10. Section 107, Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as

an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons

in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to

complete abetment as a crime. The word ""instigate"" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The

abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act

abetted is committed in consequence of abetment and there is No. provision for the punishment of such abetment, then the offender is to be

punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the

offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.

11. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact

that the husband treated the deceased-wife with cruelty is not enough.

11. Recently, the Hon"ble Apex Court in the matter of SS Chheena v. Vijay Kumar Mahajan and Anr., 2010(4) RCR (Cri) 66: (AIR 2010 SCW

4938) in paragraph Nos. 27, 28 and 29 has held as under:

27. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009 (4) RCR (Cri) 196: 2009 (5) RAJ 278: (2009) 16 SCC 605

had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words ""instigation"" and ""goadings"". 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 other. 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.

28. 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. The intention of the legislature and the ratio of the cases

decided by this Court is clear that in order to convict a person u/s 306, Indian Penal Code there has to be a clear mens rea to commit the offence.

It also requires an active act or direct act which led the deceased to commit suicide seeing No. option and that act must have been intended to

push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-

day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

12. In all the dictums, Hon"ble Apex Court has held that neither the harassment nor cruel behaviour without element of mens rea to instigate or aid

in committing suicide resulting in suicide of the deceased would amount to instigation or abetment to constitute an offence u/s 306, Indian Penal

Code. In the opinion of this Court even if entire prosecution story is believed behaviour of the Petitioners can only be said to be cruel or

harassment without any intent to drive Jaspreet Singh to commit suicide. There is No. iota of evidence to say that Petitioners have mens rea to

drive the deceased to commit suicide.

13. In the considered opinion of this Court, even if prosecution story is accepted in toto that the deceased was being tortured for not conceiving

the child, will not prove the guilt of the accused for an offence u/s 306, Indian Penal Code in the absence of any mens rea to drive the deceased to

commit suicide.

14. Moreover, Hon"ble Apex Court in the matter of Akalu Ahir, reported in 1973 (3) SCC 583 in para 8 has observed as under:

....the revision from an order of acquittal, should appropriately refrain from interfering except when there is a glaring legal defect of a serious nature

which has resulted in grave failure of justice.

....It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court in the court of trial, that the

High Court is empowered to set aside the order of acquittal and direct the retrial of the acquitted accused persons. From the very nature of this

power, it should be exercised in exceptional cases and with great care and caution. Trials are not to be lightly set aside when such order expose

the accused persons to a fresh trial with all its consequential harassment. This matter is not res integra and had indeed been dealt with by this Court

at least in the four cases noticed by the High Court.

....It makes all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect

method of ordering re-trial. No. doubt, in the opinion of this Court No. criteria for determining such exceptional cases which would cover all

contingencies for attracting the High Court's power of ordering retrial can be laid down. This Court, however, by way of illustration, indicated the

following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision.

i. Where the trial court has No. jurisdiction to try the case, but has still acquitted the accused;

ii. Where the trial court has wrongly shut out evidence which the prosecution wishes to produce;

iii. Where the appellate court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;

iv. Where the material evidence has been overlooked only (either) by the trial Court or by the appellate court; and

v. Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of

exceptional nature where the High Court can justifiably interfere with the order of acquittal.

15. In the opinion of this Court, revisional jurisdiction against the judgment of acquittal can only be exercised when any procedural illegality or

manifest error of law is pointed out which was resulted in vitiation of the proceedings and when it is pointed out to the revisional Court that any

important piece of evidence was overlooked or was escaped to be noticed, which could prove the guilt of the accused.

16. In the present case, neither any manifest error of law nor procedural error is pointed out by the revisionist nor any evidence is pointed out,

which was overlooked by the trial Court while acquitting the accused. Moreover, view taken by the trial Court in acquitting the accused should not

be disturbed even if two views are possible after re-appreciation of the evidence.

Revision is devoid of merits and hence is dismissed.