

Bashir Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 29, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 173, 207, 227, 228, 374

Evidence Act, 1872 â€” Section 113A

Penal Code, 1860 (IPC) â€” Section 107, 108, 306, 309, 323

Citation: (2014) 4 RCR(Criminal) 572

Hon'ble Judges: Mahavir Singh Chauhan, J

Bench: Single Bench

Advocate: Rahul Vats, Advocate for the Appellant; A.P.S. Gill, Assistant Advocate General, Advocate for the Respondent

Judgement

Mahavir Singh Chauhan, J.

This is convict's first appeal under sub-section (2) of Section 374 of the Criminal Procedure Code, 1973

(Cr.P.C., for short) directed against judgment of conviction and order of sentence dated 18.02.2003 (here-in-after referred to as "the impugned

judgment") passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Ferozepur (here-in-after referred to as "Trial Court")

convicting and sentencing him to rigorous imprisonment for a term of six years in addition to a fine amounting to two thousand rupees (Rs. 2,000/-

) and in default of payment of fine to further rigorous imprisonment for a term of six months, under Section 306 of the Indian Penal Code, 1860

(IPC, for short).

Background Facts:

Smt. Sito (the deceased) was married to appellant Bashir about 18-20 years prior to 31.10.98 (the date of occurrence). She had four sons from

her marital union with the appellant, who used to quarrel (with her) and remark that she had illicit relations with Babbu, Rajesh and Desa.

Appellant, on his return to the home in the evening on the fateful day, started doubting fidelity of the deceased whereupon she got enraged, doused

herself with kerosene and set herself ablaze.

2. The deceased was removed to the civil hospital. Doctor intimated Station House Officer (SHO, for short) of Police Station, Sadar, Ferozepur

regarding admission of the deceased in the hospital with burn injuries. Sub Inspector (SI) Kulwant Singh (here-in-after referred to as "the

Investigating Officer"), accompanied by a few police officials, reached Civil Hospital, Ferozepur. Varinder Kumar, Tehsildar-cum-Executive

Magistrate, also reached the hospital, recorded statement of Dr. O.P. Bagri to the effect that the deceased was fit to make a statement, recorded

dying declaration, Exhibit P-7, of the deceased at 12.43 A.M. on 31.10.98. Investigating Officer also recorded statement, Exhibit P-8, of the

deceased which was attested by Varinder Kumar, Executive Magistrate. On the foot of the statement, Exhibit P-8, Investigating Officer made his

endorsement, Exhibit P-8/A, whereupon a formal First Information Report ("FIR", for short), Exhibit P-20, came to be registered.

3. Investigating Officer visited the spot, drew a rough site plan, Exhibit P-21, of the place of occurrence, and took in possession plastic container

containing two litres Kerosene and some half burnt pieces of clothes vide memorandum, Exhibit P-17.

4. Deceased succumbed to the burn injuries on 04.11.1998. On being informed Investigating Officer visited the hospital, prepared Inquest Report,

Exhibit P-12, arrested the appellant and caused a scaled site plan, Exhibit P-13, prepared.

5. On completion of investigation and other codal formalities, a report in terms of sub-section (2) of Section 173, Cr.P.C. was prepared and

presented before the learned jurisdictional Magistrate, who, after complying with the provisions of Section 207, Cr.P.C., committed the case to the

court of Session at Ferozepur, which was ultimately assigned to the learned Trial Court.

Proceedings before the trial Court:

6. Upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the

prosecution, learned Trial Court formed an opinion that there was ground for presuming that the appellant had committed an offence punishable

under Section 306, IPC, and the offence being triable exclusively by the Court of Session, framed in writing a charge against him to which the

appellant pleaded not guilty and claimed to be tried.

7. In a bid to bring home guilt of the accused, prosecution examined seven witnesses.

8. Dr. O.P. Bagri, PW 1, deposed to say that on 30.10.1998 at 08.45 P.M. he medico-legally examined the deceased, who was brought to the

hospital by the appellant, and found superficial to deep burns over the face, both arms and forearms, chest, abdomen, back and thighs; smell of

kerosene was present in scalp hair; and burn area was about 70%. He also proved Medico Legal Report (MLR, for short), Exhibit P1, pictorial

diagram, Exhibit P-2, intimation, Exhibit P-3, police application, Exhibit P-4, his endorsement, Exhibit P-4/A declaring the deceased fit to make

statement, his opinion, Exhibit P-5, given before the Executive Magistrate that the deceased was fit to make a statement, besides saying that he

remained present throughout when the statement of the deceased was recorded by the Executive Magistrate and that the deceased remained fit

throughout recording of her dying declaration which he too attested.

9. Executive Magistrate, Varinder Kumar Garg, PW 2, testified on oath that on 31.10.1998, on receipt of order, Exhibit P-6, from Sub Divisional

Magistrate for recording of statement, he went to the hospital and recorded statement, Exhibit P-5, of the doctor regarding fitness of the deceased

to make statement; the deceased stated before him that she had burnt herself because the appellant had levelled allegations against her fidelity; but

she could not put her thumb-mark on the statement as her fingers were burnt and she also could not raise her arms to thumb mark the statement.

He sent the papers to Sub Divisional Magistrate, Ferozepur. He also proved his endorsement, Exhibit P-6/A, dying declaration, Exhibit P-7, which

the deceased had made voluntarily and without any pressure of the police and relations, his report, Exhibit P-9, besides stating that the

Investigating Officer also recorded statement, Exhibit P-8.

10. According to Dr. Sandeep Gupta, PW-3, who conducted postmortem examination on the dead body of the deceased, there were superficial

to deep burns over the face, both arms and forearms, chest abdomen, back and both thighs, margins around burns were red in colour, on

dissection, underlying tissues were found to be congested, peripheral area was hyperemic, auxiliary hair and scalp hair were singed, there was one

stitched wound, transverse on lower part of right leg on its medial side (of Venesection, Skull and vertebrae were healthy, Membrane, brain and

spinal cord were congested, pleurae, larynx, tracheae, right lung, left lung and heart were congested and there were spot particles in the tracheae,

in abdomen peritoneum was congested, mouth Pharynx and esophagus were healthy, stomach was healthy and contained 150 Mls, of semi

digested food, small and large intestines, liver, spleen and kidneys were congested, bladder and organs of generation were healthy, and cause of

death, as per his opinion, was shock and toxemia due to 70% burns which were ante-mortem and sufficient to cause death in the ordinary course

of nature. He also proved postmortem report, Exhibit P-10, and pictorial diagram, Exhibit P-10/A, police request, Exhibit P-11, and inquest

report Exhibit P-12.

11. PW-4 Sunder Singh, retired Head Draftsman, proved scaled site plan, Exhibit P-13 while PW-5, Constable Mohinder Singh, PW-6,

Lakhwinder Singh and PW-7, SI Kulwant Singh, the Investigating Officer, proved various steps taken during the course of investigation.

12. After witnesses for the prosecution had been examined and before the appellant was called on to enter on his defence, learned Trial Court

questioned the appellant generally on the case so as to afford him an opportunity to explain the incriminating circumstances brought on record by

the prosecution. Appellant denied all these circumstances and reiterated plea of his innocence and false implication, while admitting the factum and

date of marriage of the deceased with him, and factum of death of the deceased by burning, he came out with a plea that the deceased, who

usually remained mentally disturbed, ended her life of her own and that he neither harassed her in any manner nor levelled any allegation of

immorality against her, nor did he ever doubt her fidelity.

13. Even though called upon to enter on his defence, the appellant did not lead any such evidence. When evidence in defence was closed, the

learned Public Prosecutor summed up his case and the learned defence counsel replied to it. Learned Trial Court, in view of the submissions made

for and against the charge and on appraisal of the evidence available on record, reached a conclusion that the prosecution was able to prove guilt

of the appellant beyond reasonable doubt, and, accordingly, holding him guilty, convicted and sentenced the appellant as here-in-before stated.

Submissions for and against the impugned judgment:

14. I have heard Shri Rahul Vats, Advocate, learned counsel representing the appellant and Shri A.P.S. Gill, learned Assistant Advocate General

appearing for the State.

15. It is argued on behalf of the appellant that while marriage of the deceased with the appellant and her death by burning are not disputed, yet

finding of the learned Trial Court that the appellant abetted suicide of the deceased is unsustainable because the circumstances preceding death of

the deceased do not fit in the description of the term "abetment" as defined by Section 107, IPC, and appellant's conduct, in the description of the

term "abettor" within the meaning of Section 108, IPC, but the learned State counsel argues that levelling allegations against the most cherished

virtue of a woman, i.e. her fidelity and honour, is the worst kind of treatment and is sufficient to lead a woman to take the extreme step of

committing suicide.

16. No other or further point has been urged on either side.

How the learned Trial Court has approached the issue:

17. In view of what was argued before it, learned Trial Court formulated for adjudication following questions, namely:

1. Whether the Dying declaration Exh. P-7 was made by the deceased voluntarily and without any pressure?

2. Whether conviction of the accused can be based only on the basis of dying declaration in question?

18. In my view the learned Trial Court missed the real question involved in the case, viz. "Can the appellant be held to be an "abettor" within the

meaning of Section 108, IPC, and his conduct as "abetment" within the meaning of Section 107, IPC?" In fact, the appellant does not dispute the

voluntariness of the dying declaration, Exhibit P-7 and is well established by now that conviction can be based solely on a dying declaration

provided it is found to be voluntary and confidence inspiring.

19. Nevertheless, the learned Trial Court, while dealing with the issue of abetment by the appellant of suicide by the deceased, has held that from

the dying declaration, Exhibit P-7, it is manifest that the appellant made allegations against fidelity of the deceased and accused her of having extra-

marital relations with a neighbour, and two relatives of hers, which the deceased could not bear and put herself afire and the appellant did not do

anything to douse the flames when the deceased was burning.

20. Before analysing the evidence to find out whether or not the finding of conviction recorded by the learned Trial Court can be sustained, it is

deemed apt to understand what "suicide" and "abetment to commit suicide" mean?

What is suicide and what amounts to its abetment:

21. The word "suicide" in itself is nowhere defined in the Penal Code, however, its meaning and import is well known and requires no explanation.

Sui means "self and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself,

irrespective of the means employed by him in achieving his goal of killing himself. In our country, while suicide itself is not an offence considering

that the successful offender is beyond the reach of law, attempt to suicide is an offence under Section 309, IPC and its abetment is punishable

under Section 306, IPC.

22. As the controversy revolves around the applicability of the provisions of Section 306, IPC, to the facts of the present case, the necessary

ingredients of Sections 306, 107 and 108 Indian Penal Code have to be noticed. Section 306, IPC, provides that "if any person commits suicide,

whoever abets the commission of such suicide, shall be punished." As this section does not define the expression "abets", therefore, meaning of the

abetment has to be gathered from the provisions of Section 107, IPC, coupled with the definition of the expression "abettor" as laid down in the

Section 108, IPC, which read as under:-

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

First. - Instigates any person to do that thing:

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 willful mis-presentation, or by willful 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 facilitates the commission thereof, is said to aid the doing of that act.

108. Abettor. - A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an

offence, if committed by a person capable by law of committing an offence with the commission of an act which would be an offence, if committed

by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. - The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be found to do that

act.

Explanation 2. - To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to

constitute the offence should be caused.

Explanation 3. - It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same

guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Explanation 4. - The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Explanation 5. - It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the

person who commits. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

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.

23. In *Ramesh Kumar Vs. State of Chhattisgarh*, a three-Judge bench of the Hon^{ble} Supreme Court had an occasion to deal with a case of a

similar nature. In a dispute between the husband and wife, the appellant husband had said to the wife, "you are free to do whatever you wish and

go wherever you like". Thereafter, the wife of Ramesh Kumar, the appellant therein, had committed suicide. The Hon^{ble} Supreme Court

examined different shades of the meaning of ""instigation"" and observed that ""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, but what constitutes

instigation must necessarily and specifically be suggestive of the consequence. A reasonable certainty to incite the consequence must be capable of

being spelt out. The acts or omission or a continued course of conduct should be such, as to create such circumstances that the deceased was left

with no other option except to commit suicide in which case instigation may have been inferred. A word uttered in the fit of anger or emotion

without intending the consequences to actually follow cannot be said to be instigation.

24. In State of West Bengal Vs. Orilal Jaiswal and another, , Hon"ble Supreme Court 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 her 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.

25. Hon"ble Supreme Court in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), , dealt with the dictionary meaning of the word

instigation"" and ""goading"" and opined that there should be intention to provoke, incite or encourage the doing of an act by the victim.

Abetment, thus, involves a mental process of instigating 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.

26. It may also be relevant to refer to the observations made in Ranjit Singh v. State of M.P., 1997 (3) Crimes 256, wherein deceased had

committed suicide in her quarter by hanging herself to the ceiling fan. In this case 5-6 days prior to the incident, the accused had outraged the

modesty of the deceased for which offence under Section 354, IPC, was registered. It was held that said act of the accused could not be

construed as an abetment to the deceased to commit suicide and for that reason conviction under Section 306, IPC, was not sustained.

27. In Gurdeep Singh v. State of Haryana, 1998 (3) RCR (CrI) 266, deceased committed theft of money of his master. Accused tried to have

carnal intercourse with the deceased and probably on that account he felt ashamed and committed suicide. It was held that offence of abetting was

not made out as there was no instigation on the part of the accused for committing the suicide. This was a case where the Additional Sessions

Judge, Karnal had decided to frame charges under Sections 323, 506 and 306 read with Section 34, IPC, against the petitioner vide order dated

20.08.1997. This order was challenged, on the ground that the facts did not warrant any charge to be framed under Section 306, IPC. While

accepting the revision petition, it was observed in paras. 6 and 7 as under:-

6. Section 306 Indian Penal Code lays down that if any person commits suicide, whoever abets the commission of such suicide, shall be punished

for abetment of suicide. The main point for consideration is whether in the light of the allegations levelled against the petitioners by the prosecution it

can be said that there was abetment from the side of the petitioners. The learned counsel for the State relies on para No. 3 of the impugned order

and maintains that there were constant threats from the side of the petitioners, as a result of which deceased Amit committed suicide and it

tantamounts to abetment. I do not subscribe to the argument raised by the learned counsel for the respondent. As per provisions of Section 107

Indian Penal Code a person abets the doing of a thing, who instigates any person to do that thing; or 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 intentionally aids, by any act or illegal omission, the doing of that thing.

7. A reading of the above provisions would show that there should be a direct nexus between the act complained of and the ultimate effect. If the

deceased had resorted to commit suicide by sprinkling kerosene oil upon himself, it cannot be readily said that petitioners were responsible. As per

the allegations of the prosecution one of the petitioners tried to have carnal intercourse with the deceased. The deceased might have felt ashamed

on this. He might have also felt ashamed of the fact that he had committed the theft of the money of the master. There was demand of money which

was the material conduct on the part of the petitioners but it cannot be said that there was common abetment or that there was any instigation on

the part of the petitioners to the deceased for committing of suicide. I do not dispute with the proposition of law that while framing the charge of the

trial Court is supposed to see a prima facie case but if the parameters of prima facie case are totally beyond the circle and scope of Sections 227/

228 Criminal Procedure Code certainly this Court has the power to interfere with the said illegal orders while exercising the powers in revision.

28. In *Sudhakar and Anr Vs. State of Maharashtra*, , suicide was committed by the victim after 5-1/2 months of the alleged rape. In that case

prosecutrix did not directly state any fact regarding cause of her death. Her statement did not state her mind for committing suicide allegedly on

account of humiliation to which she was subjected to on account of rape committed on her by the accused. The Court came to the conclusion that

relying upon the statement of the prosecutrix termed as dying declaration was unjustified.

29. In *Deepak Vs. State of Madhya Pradesh*, , two accused persons, who lived as her tenants in the same house, approached the deceased, a

sixteen years old girl, and made overtures for sexual intercourse. When she refused, the accused were said to have threatened her that they would

defame her. After about an hour, she committed suicide by setting herself afire. High Court of Madhya Pradesh acquitted the accused of the

offence under Section 306, IPC, by holding as under:

9. The first question which falls for decision is whether the two accused persons can be held guilty of offence under Section 306 of the Indian

Penal Code abetment has been defined under Section 107 of the Penal Code. On the evidence led by the prosecution in the case, can it be said

that the two accused persons, in any manner, either "instigated", were "engaged" in conspiracy or intentionally "aided" in commission of suicide by

the deceased. As is the statement of the deceased, disclosed from her three dying declarations, the two accused persons, at late hour of the night,

entered her room and tried to take advantage of the situation to commit sexual offence against her. This act on the part of the accused might or

might not have driven the woman to commit suicide. In the facts as have been brought on record, the two accused persons could not have foreseen

that such act on their part, may be that it was a serious offence, would necessarily drive that woman to commit suicide. It is admitted by the

deceased in her own dying declarations that not soon after the incident of outraging her modesty, but after about an hour she set herself afire. In my

considered opinion therefore, this is not a case where it can be said that the two accused persons were abettors to the act of commission of suicide

by the deceased. This is not a case of a married woman, who having been subjected to a continuous treatment of torture, had ended her life. No

presumption under Section 113A of the Evidence Act arises in such a case. Here is a case of a woman whose modesty was outraged while she

was with her paramour. There was neither any intention nor any positive act on the part of the accused to instigate her or aid her in committing

suicide. The two accused persons, therefore, cannot be held guilty of the offence under Section 306 of the Indian Penal Code and their conviction

on that count by the trial Court, is liable to be set aside.

30. In Raj Kumar Vs. The State of Punjab, , deceased Sita Devi, had married Rajinder Kumar some five years prior to the occurrence. Rajinder

Kumar and his wife had stopped seeing eye to eye with each other with the result that for the last 22 days prior to the occurrence he had stopped

returning to his house. He was employed at the shop of Raj Kumar appellant. Sita Devi held Raj Kumar to be responsible for discord between her

and her husband and for the abnormal conduct of Rajinder Kumar of absenting from home. Her efforts of persuading Rajinder Kumar to come

back to her appear to bear no fruit. At about 8 a.m. on the date of occurrence, Sita Devi deceased came to the shop of Raj Kumar to make a final

bid at persuading Rajinder Kumar to resume normal visits to the matrimonial home. He, however, told her off saying that he would not come home

and would ill treat her. Sita Devi went back to her house and returned with a bucket of kerosene and again told Rajinder Kumar accused that if he

would not accede to her request of returning to her she would burn herself. Both of them told her that she could go ahead with her plan, the same

would not affect their health. Sita Devi then and there sprinkled kerosene upon her body and with a matchstick set herself afire right in front of the

shop of Raj Kumar accused. The accused did not make any effort to save her by extinguishing fire or removing her to the hospital for medical aid.

It was Sohan Lal P.W. 5, who happened to be present there and removed her to Civil Hospital, Ludhiana where she died on the same day. A

Division Bench of this Court held as under:

The retort made by the accused when the deceased threatened to commit suicide if Rajinder Kumar did not agree to her request, did not amount

to instigation by any stretch of imagination. If such a retort is accepted to be constituting instigation, then to cite only one example, the parents

would be guilty of abetment of suicide if even when most unreasonable demand is made by their child, which they are not in a position to comply

with, on the threat of committing suicide and they were to retort that the child could do so as they were not in a position to agree to his/her request.

The framers of the Code surely could never have intended this to happen.

31. In M. Mohan Vs. The State represented by The Deputy Superintendent of Police, , one Kamatchi (the deceased) was married to Anandraj,

who even after marriage with Kamatchi (the deceased) stayed with his two brothers and parents in the joint family. Accused Anandraj's elder

brother, M. Mohan and his wife Easwari owned a Qualis car. On the date of Pongal i.e. on 14-1-2005, Kamatchi's in-laws family planned a visit

to Theme Park at Madurai from Karaikudi. Deceased Kamatchi, her husband Anandraj were denied the use of the said family car. Other

members of the family had gone to Theme Park in the family car whereas the deceased Kamatchi and her husband Anandraj were told by Easwari

to reach the destination by public bus who is alleged to have said to Kamatchi that ""if you want to go by a car, you have to bring a car from your

family"". Kamatchi along with her husband Anandraj and the child, took a public transport (bus) from Karaikudi to Madurai for reaching the said

Theme Park and returned to her matrimonial home in a bus. Kamatchi was deeply hurt by the taunting statement of Easwari regarding denial of the

use of family car. Immediately thereafter, Kamatchi demanded a car from her father for personal use and after four days i.e. on 18-1-2005 at

about 1.30 p.m. she committed suicide by hanging herself in her bedroom using her sari. Hon"ble Supreme Court, in view of the facts and

circumstances of the case, held as under:

48. In the instant case, what to talk of instances of instigation, there are even no allegations against the appellants. There is also no proximate link

between the incident of 14-1-2005 when the deceased was denied permission to use the Qualis car with the factum of suicide which had taken

place on 18-1-2005. Undoubtedly, the deceased had died because of hanging. The deceased was undoubtedly hypersensitive to ordinary

petulance, discord and differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human

sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people

behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question that remains

to be answered is whether the appellants can be connected with that unfortunate incident in any manner?

49. On a careful perusal of the entire material on record and the law, which has been declared by this Court, we can safely arrive at the conclusion

that the appellants are not even remotely connected with the offence under Section 306 IPC. It may be relevant to mention that criminal

proceedings against the husband of the deceased Anandraj (A-1) and Easwari (A-3) are pending adjudication.

32. The intention of the Legislature and the ratio of the above-cited cases is 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 leads the deceased to commit suicide seeing no

option and this act must have been intended to push the deceased into such a position that he committed suicide. A person abets the doing of a

thing only when he instigates a person to do that thing or engages with one or more other persons in any conspiracy for the doing of that thing. If an

act or illegal omission takes place in pursuance of that conspiracy; and thirdly, the act of a person would amount to "abetment" if he intentionally

aids by any act or illegal omission to do a particular thing. Therefore, for constituting the offence of abetment, there should be a direct or

reasonable nexus between the act and the consequence. If there is no direct nexus, the offence of abetment would not be complete.

Conclusion:

33. From what has been said and discussed herein-above, it comes out that "Instigation" is to goad, urge forward, provoke, incite or encourage to

do "an act" and that to satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, but what

constitutes instigation must necessarily and specifically be suggestive of the consequence. A reasonable certainty to incite the consequence must be

capable of being spelt out. The acts or omission or a continued course of conduct should be such as to create such circumstances that the

deceased was left with no other option except to commit suicide in which case instigation may have been inferred. A word uttered in the fit of

anger or emotion without intending the consequences to actually follow cannot be said to be instigation. The learned Trial Court was, therefore,

expected to be extremely careful in assessing the facts and circumstances of the case and the evidence adduced in the trial for the purpose of

finding whether the cruelty meted out to the deceased had in fact induced her to end her life by committing suicide and the deceased was not

hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which she belonged and such

petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide.

34. Corner stone of the prosecution story is the dying declaration, Exhibit P-7. When translated in English, it reads as under:

I and my husband quarrelled. I poured kerosene oil on myself and set myself on fire with a match stick. No pressure was mounted on me for

making statement. My husband remarked that I was having illicit relations with Desa son of a neighbour, Chacha and Masad. I told him that I was

innocent. I became angry. Except this I was not harassed for dowry.

35. A similar version was given by the deceased in her statement, Exhibit P-8, made before the Investigating Officer.

36. Except for the episode of 31.10.1998 no incident showing an altercation or vocal wrangle between the deceased and the appellant has been

brought on record. In the 31.10.1998 incident, only role attributed to the appellant is that he had made certain unsavory remarks against fidelity

and character of the deceased, however, no evidence is available on the record of learned Trial Court to indicate that the appellant thereby

intended to lead or incite the deceased to commit suicide. It is worth mentioning here that out of their 18-20 years old connubial unification, the

appellant and the deceased procreated four children which is indicative of a happy married life of the two. Nobody from the matrimonial or

parental family of the deceased has come forward to depose that the appellant-deceased duo ever had any discord over any matter. None out of

the four children of the deceased has been examined as a witness to state that the appellant had ever insulted or humiliated the deceased to such an

extent that she would be driven to a state where there was end of all hope for her.

37. Learned Trial court, on one hand, has failed to take note of the fact that even in the dying declaration, Exhibit P-7, the deceased did not state a

word from which it could be inferred that the appellant instigated, goaded, prompted or aided, by words or acts, the deceased to resort to the

extreme step, and, on the other, has drawn a presumption of abetment against the appellant merely on account of failure of the appellant to save

the deceased but, at the same time, has failed to give credit to the appellant of the fact that he rushed the deceased to the hospital. The story impels

a reference to Raj Kumar v. State of Punjab (supra) even at the cost of repetition. In that case deceased Sita Devi, had married Rajinder Kumar

some five years prior to the occurrence. The couple stopped seeing eye to eye with each other. Since 22 days prior to the occurrence Rajinder

Kumar stopped returning to his house. Sita Devi held Raj Kumar, employer of her husband, responsible for the dissension between her and her

husband and for the abnormal conduct of Rajinder Kumar of absenting from home. Her efforts of persuading Rajinder Kumar to come back to her

appear to bear no fruit. At about 8 a.m. on the date of occurrence, Sita Devi deceased came to the shop of Raj Kumar to make a final bid at

persuading Rajinder Kumar to resume normal visits to the matrimonial home. He, however, void her off saying that he would not come home and

would ill treat her. Sita Devi went back to her house and returned with a bucket of kerosene and again told Rajinder Kumar accused that if he

would not accede to her request of returning to her she would burn herself. Both of them told her that she could go ahead with her plan, the same

would not affect their health. Sita Devi then and there sprinkled kerosene upon her body and with a matchstick set herself afire right in front of the

shop of Rai Kumar accused. The accused did not make any effort to save her by extinguishing fire or removing her to the hospital for medical aid.

It was Sohan Lal P.W. 5, who happened to be present there and removed her to Civil Hospital, Ludhiana where she died on the same day. A

Division Bench of this Court held that conduct of Rajinder Kumar did not amount to instigation or say abetment. Facts and circumstances of the

case on hand are no different. From the circumstances of the case it appears that the deceased was hypersensitive to ordinary petulance, discord

and difference in domestic life quite common to the society to which she belonged. Learned Trial Court, however, failed to read in between the

lines and this has resulted into miscarriage of justice.

38. In the consequence, the appeal succeeds and is accepted, impugned judgment of conviction and order of sentence dated 18.02.2003 are set

aside and the appellant is acquitted of the offence of which he was charged and convicted.

39. Amount of fine imposed by the learned Trial Court, if already deposited by the appellant, shall be refunded to him.

40. Appellant is on bail. His bail bonds are discharged. Return Trial Court record along with a copy of this judgment.