



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1427 OF 2011

KUMAR @ SHIVA KUMAR

APPELLANT(S)

VERSUS

STATE OF KARNATAKA

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave takes exception to the conviction of the appellant under Section 306 of the Indian Penal Code, 1860 (IPC).

2. It may be mentioned that the Fast Track Court – III Mysore vide the judgment and order dated 06.07.2004 passed in S.C. No. 26/2002 convicted the appellant for the offence under Section 306 IPC and sentenced him to undergo rigorous imprisonment (RI) for three years and to pay fine of Rs. 2,000/-, in

default to undergo RI for four months for the aforesaid offence. Appeal filed by the appellant under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the High Court of Karnataka, being Criminal Appeal No. 1139/2004 (SJ-A) was dismissed vide the judgment and order dated 17.09.2010 by upholding the conviction and sentence imposed by the trial court.

Prosecution case

3. Case of the prosecution is that the appellant was earlier residing in the house of the deceased as a tenant though on the date of the incident he was residing elsewhere as the term of the lease agreement had expired. On 05.07.2000 at about 09:00 AM, the deceased was returning home after dropping the children of her sister in the school. When she had reached near the Canara Bank, the appellant was waiting there and teased her to marry him. The deceased refused to respond. Appellant threatened her that if she did not agree to marry him, he would destroy the family of her sisters, outrage their modesty and would kill them. After she reached home, she informed her sisters about the above incident over telephone. Thereafter, she consumed poison in the house. The neighbours saw through the window of the house the deceased lying on the floor in a painful condition. They got the door of the

house opened. The deceased was suffering from pain due to consumption of poison. In the meanwhile, one of her sisters and her husband came to the house. All of them took the deceased to the Nirmala Devi Hospital whereafter she was shifted to the Mission Hospital. Ultimately, she died on 06.07.2000 at 07:30 PM.

4. Raju, the father of the deceased, lodged the first information alleging that appellant was responsible for his daughter committing suicide. The first information was lodged on 07.07.2000 at 06:30 AM.

5. On receipt of the first information, police registered Crime No. 100/2000 under Section 306 IPC. In the course of the investigation, post-mortem examination of the deceased was carried out and the viscera was sent for chemical analysis to the Forensic Science Laboratory, Bangalore (FSL). The chemical analysis report indicated presence of Organophosphate pesticide in stomach, small intestine, liver, kidney and blood. Therefore, the doctor who had carried out the post-mortem examination opined that the death of the deceased was due to respiratory failure as a result of consumption of substance containing Organophosphate

compound. On completion of the investigation, police submitted chargesheet where the appellant was named as the accused.

6. In order to prove its case, prosecution examined as many as thirteen witnesses and got eleven documents marked as exhibits. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C.

7. On examination of the evidence on record and after hearing both the sides, the trial court held that the prosecution had proved the charge against the appellant that he had abetted the deceased to commit suicide beyond reasonable doubt. Accordingly, the appellant was convicted for the said offence whereafter he was sentenced to undergo RI for three years and to pay fine of Rs. 2,000/- with a default stipulation.

8. As already mentioned above, the appellant had appealed against the aforesaid conviction and sentence before the High Court of Karnataka (for short 'the High Court' hereinafter). By the impugned judgment and order, the High Court held that there was no ground to interfere with the order of conviction. Accordingly, the appeal was dismissed as being devoid of any merit.

9. Aggrieved thereby, appellant moved this Court by filing a petition for special leave to appeal. While the prayer of the appellant for exemption from surrendering was rejected on 13.12.2010, notice was issued on 28.02.2011. Thereafter, this Court passed order dated 18.04.2011 directing the appellant to be released on bail subject to satisfaction of the trial court.

Submissions

10. Learned counsel for the appellant submits that both the trial court and the High Court had failed to appreciate the evidence on record in the proper perspective. Conviction of the appellant under Section 306 IPC is not supported by the evidence on record. Therefore, such conviction and the resultant sentence cannot be sustained.

10.1. There are material contradictions in the evidence of the prosecution witnesses. According to learned counsel for the appellant, even if the prosecution case is accepted, no case for abetment to commit suicide by the deceased could be made out against the appellant. There is no evidence pointing out any act of instigation, conspiracy or aiding on the part of the appellant which had compelled the deceased to commit suicide.

10.2. In so far the testimony of PW Nos. 1, 2, 3, 4 and 12 are concerned, there is a great deal of inconsistency and contradictions in their evidence. Besides, those witnesses being the relatives of the deceased, the trial court as well as the High Court ought to have considered their deposition with circumspection. PW-1 is the father of the deceased whereas PW Nos. 2 and 4 are the sisters of the deceased. On the other hand, PW No. 12 is the brother of the deceased. Their evidence are highly inconsistent. He submits that it has come on record that PW-1 i.e. the father of the deceased was living separately from the deceased with a woman outside marriage. On the other hand, PW-2 i.e. sister of the deceased in her deposition stated that it was the neighbours who had told her that deceased had consumed poison and that the neighbours had taken the deceased to Nirmala Nursing Home. She had never stated before the police under Section 161 Cr.P.C. that the appellant used to harass the deceased. Therefore, it was evident that she had improved upon her statement when in her deposition she stated that the appellant used to tease the deceased.

10.3. Learned counsel also submits that there were injury marks on the body of the deceased. The front of the right wrist

showed superficial linear incised injury measuring 5cms in length, which was partially healed. This injury was not explained by the prosecution. That apart, the presence of the injury and the partial healing of the same was indicative of the fact that the said injury had occurred sometime prior to the date of occurrence. This would also be a reflection on the suicidal tendency of the deceased.

10.4. It is further submitted that though the deceased was hospitalised on 05.07.2000, there was delay in lodging of the first information. The First Information Report (FIR) was lodged only on 07.07.2000 at 06:30 AM though the deceased had died on the previous evening at 07:30 PM. This fact coupled with the non-disclosure of alleged harassment of the appellant to anyone by the deceased creates a great deal of doubt about the veracity of the prosecution case. Moreover, the appellant had got married just about two months prior to the incident. Therefore, there was no reason for the appellant to threaten the deceased to marry him failing which she and her family members would be visited with dire consequences.

10.5. In support of his submissions, learned counsel for the appellant has placed reliance on the following two decisions of this Court:

- (i) *Ude Singh and Others Vs. State of Haryana*, (2019) 17 SCC 301
- (ii) *Mahendra K.C. Vs. State of Karnataka and Another*, (2022) 2 SCC 129.

11. *Per contra*, learned counsel for the respondent submits that the evidence on record unmistakably point to the guilt of the appellant. Prosecution could prove that it was the appellant who had abetted the deceased to commit suicide. The charge against the appellant was proved by the prosecution beyond all reasonable doubt and therefore the trial court was fully justified in convicting the appellant under Section 306 IPC and imposing the sentence as above.

11.1. The High Court rightly affirmed the conviction of the appellant imposed by the trial court.

11.2. There is no rule of evidence that conviction cannot be based on the testimony of the evidence of the family members of the deceased. A holistic reading of the evidence of the prosecution witnesses more particularly that of PW Nos. 1, 2 and 4 would clearly establish the prosecution case which was further strengthened by the evidence of the doctor i.e. PW-13. He, therefore, submits that there is no merit in the appeal which is liable to be dismissed.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

Evidence

13. Let us first deal with the evidence on record.

14. PW-1 Raju is first informant and father of the deceased. In his evidence he stated that his deceased daughter X was a final year B.Com student of Maharai College, Mysore. The accused (appellant) used to reside in the ground floor of his house at Vinayakanagar, Mysore. He had stayed there for five years as a tenant and had vacated the house after the tenancy period was over.

14.1. The deceased used to regularly take the two children of his another daughter Meena to Chinamaya School at Jayalakshmpuram around 9:00 AM. During that time, the accused used to meet her and often used to ask her to marry him. In fact, he had threatened his deceased daughter that if she refused to marry him, he would murder her and her sisters. The deceased had told him about these facts. On 06.07.2000 (corrected to 05.07.2000 during further examination of PW-1), the accused had threatened the deceased at about 09.30 AM near Canara Bank, Jayalakshmpuram that if she refused to marry him, he

would pour acid on her and her sisters and murder them. According to him, on that day when he came to the house at 10:00 AM his daughter X was admitted to Kiran Hospital for consuming poison. He stated that the deceased was shifted to Mission Hospital, Mysore for further treatment. At about 7:00 PM on 06.07.2000 his daughter X died. The deceased had consumed poison due to the unbearable harassment and cruelty of the accused. The deceased had told him about the cruel treatment and harassment meted out by the accused to her one week earlier to her death. She had consumed poison when she was in the house. The deceased had no other disappointment in her life except the harassment and cruelty of the accused.

14.2. In his cross-examination PW-1 stated that at the time of death of his daughter X, he was living in the house at Vinayakanagar, Mysore. His deceased daughter had informed him about the harassment of the accused one week prior to her death. However, he did not confront the accused in this regard; neither did he tell any other person nor lodged any complaint before the police. On the day of the incident he had left the house at 7:00 AM. When he came back home at 10:00 AM his daughter X was taken to the Kiran Hospital. When she was in the Mission Hospital,

he visited the said hospital. His daughter X was being treated in the said hospital and she was not in a condition to walk. He went to the Mission Hospital at about 1:00 PM and was in the hospital till the death of his daughter. Police had come to the hospital at around 3:00 to 4:00 PM on the day of her death when PW-1 and his other daughters were present. Police tried to question and talk with his daughter X but she was not in a position to talk. Till her death she did not talk. She died on 06.07.2000 at about 07:30 PM. Police had visited the hospital about two to three times. He stated that on 07.07.2000 he had lodged the complaint which was written by Jayarama, who was present in the hospital till her death.

14.3. He further stated in the cross-examination that the accused was running a chit fund of which he was also a member. His daughter X was of marriageable age. He denied the suggestion put by the defence that he wanted to give his deceased daughter in marriage to the accused but the accused had refused. After the death of his daughter X, he came to know that the accused was a married man. However, he stated that he did not know where accused used to stay after he had left his house.

15. Sister of the deceased Meena is PW-2. In her deposition, she stated that she, her two children and her deceased sister were living together at Paduvarahalli (Vinayakanagar). Her two children were studying in Chinmaya Vidyalaya at Jayalakshmiapuram. The two children were studying in 3rd and 5th standard. The deceased used to take the children to school everyday and also used to bring them back from school. She used to take the children at around 9:00 AM in the morning and also used to bring them back home from the school.

15.1. She acknowledged that she knew the accused. Fifteen days prior to her death, the deceased had told PW-2 that the accused was teasing her and asking her to marry him. When she refused the proposal on the ground that he was a married man, the accused threatened to kill her and her sister. During this period of fifteen days, the deceased did not talk and was in a pensive mood.

15.2. She further stated in her deposition that on the day of the incident i.e. 05.07.2000, she had left for office at 07:45 AM. While leaving for her office, she had asked her sister X to take her children to school. According to her, she had received a phone

message from her neighbour that her sister X was not keeping well and asked her to come home immediately. According to her, she reached home at around 12.30 noon. When she reached the house, the neighbours told her that her sister X had consumed poison and, therefore, she was taken to the Nirmala (Karuna) Nursing Home. Along with the neighbours she went to the Mission Hospital. She found her sister X in an unconscious condition. On the next day at about 7:30 PM her sister X died. She stated that as the accused had threatened her sister X that he would kill her if she did not agree to marry him, she had committed suicide. She further stated that her father had also visited the hospital. Prior to fifteen days of her death i.e. before the accused started harassing her sister, she later was happy and healthy.

15.3. In her cross-examination PW-2 stated that the house belonged to her mother. Her father PW-1 and her mother resided in the said house. Accused used to stay in the ground floor of their house for five years and had vacated the said house prior to the incident two to three months after expiry of the mortgage (sic) period. After vacating the house, the accused used to reside in a house at IV cross at Paduvarahalli (Vinayakanagar). He was

working in a cement dealer shop. After vacating the house, he did not visit the house again and that PW-2 had not seen him.

15.4. At the time of the incident, her deceased sister X was aged about 21 or 22 years. She stated that she and the other family members did not try to conduct the marriage of the deceased. Her father PW-1 was not living with them as he was residing with another woman outside marriage separately. She stated that after the death of her husband she started staying in the said house of her mother. On the day of the incident, her mother had already died.

15.5. PW-2 stated that she had not disclosed to any other person the factum of ill treatment and harassment meted out to her deceased sister by the accused. She had also not stated before the police the fact that her deceased sister X had told her about the harassment of the accused fifteen days prior to her death and her being in a pensive mood.

15.6. She denied the suggestion of the defence that on the date of the incident she had taken her children to the school and that when she had returned to the house at 10:30 AM, she found her deceased sister X in an unconscious condition.

15.7. PW-2 further stated that they did not keep any poisonous medicine in the house. She did not find any bottle containing poison near the bed of the deceased. She denied a suggestion that she along with her another sister Shantha and her husband Diwakar had taken her sister X to Karuna Nursing Home.

15.8. PW-2 stated that she saw her father in the Mission Hospital at 5:00 PM on 06.07.2000. She had not told and informed her father about the incident relating to her sister. Till the dead body of X was taken, her father was in the hospital.

15.9. PW-2 stated that while it was true that the accused was a married person, she did not know that he had married two months prior to the incident. There are residential houses around the house. They were having good relation with the neighbours. The accused was having a chit fund when he used to reside in the house. PW-2 was also a member of the said chit fund. She denied the suggestion that they had tried to marry the deceased with the accused when he used to reside in their house and that the accused had declined to marry her deceased sister which was the reason for him to leave the house. She also denied the suggestion that they had chit fund amount to be repaid to the accused. She

further denied the suggestion that the deceased might have committed suicide for some other reason and that the accused was falsely implicated as he had refused to marry the deceased.

16. Diwakar is the husband of Shantha, the second sister of the deceased. Diwakar is PW-3. In his examination in chief, he stated that at the time of her death the deceased was residing with PW-2 at Vinayakanagar. PW-2 was also the sister of his wife Shantha.

16.1. On 05.07.2000 at about 09:30 AM, the deceased X had telephoned his wife Shantha and told her that she had consumed poison. At that time, he was present near his wife Shantha. According to PW-3, he and his wife Shantha immediately went to the house of the deceased at Paduvarahalli. The deceased talked with his wife Shantha. They shifted the deceased X to Nirmala Hospital and from there to Mission Hospital. On 06.07.2000, the deceased died in the hospital during the night time.

16.2. He stated that his wife Shantha had told him that the accused was responsible for the suicidal death of the deceased.

16.3. In his cross-examination PW-3 stated that before the death of X his wife Shantha had told him about the accused being

responsible for X consuming poison. When they had gone to the house of X and were taking her to the hospital, X had told his wife Shantha that due to the harassment of the accused she had consumed poison. Earlier thereto he did not know this fact. He had seen the accused when he used to reside in a portion of the house as a tenant. The accused had vacated the house two years prior to the incident whereafter he had neither seen the accused nor knew about his whereabouts.

16.4. PW-3 denied the suggestion put forward by the defence that he had stated before the police that the deceased X was in an unconscious condition when they had reached her house and that his wife had not told him that the accused was the reason for the deceased consuming poison. However, he stated that he did not hear what the deceased X had told his wife Shantha.

17. Shantha herself deposed as PW-4. She stated that on 05.07.2000 at about 11:00 to 11:15 AM. the deceased had telephoned her and told her that while she was returning home from the school after dropping the children the accused accosted her on the way. He threatened her that she should marry him and in case of her refusal he would kill her by pouring acid on her.

Because of this she had consumed poison to finish her life to bring an end to the matter. Immediately PW-4 and her husband PW-3 came to the house of the deceased.

17.1. PW-4 stated that when they reached the house of the deceased X, she was lying on the floor and the phone receiver was in a hanging position. When PW-4 questioned X, she again told the above referred facts and the reason for her consuming poison. PW-4 stated that she along with PW-3 and the neighbours shifted X to Kiran Nursing Home and from there to Mission Hospital, Mysore. On 06.07.2000 at about 7:30 PM X died while on treatment in the Mission Hospital.

17.2. In her cross-examination, PW-4 stated that she had told her neighbour about X telling her that she had consumed poison due to the ill treatment and harassment meted out to her by the accused. Her neighbours did not come to the house of the deceased with her. When she had reached the house of X people had gathered. According to PW-4, she knew the neighbours. When she talked with X, the said neighbours were present.

18. PW-11 is M.S. Sathyanaraya who was the investigating officer. In his testimony he stated that he had visited the spot of

occurrence. He had sent the viscera of the deceased for chemical examination. He had submitted the chargesheet against the accused on 17.11.2000. He stated that after receiving the FSL report he had sent the same to the concerned doctor who had conducted post-mortem examination of the deceased for opinion regarding cause of death of the deceased. He had obtained the final opinion of the doctor in this regard.

18.1. In his cross-examination he stated that he had not examined the owner of the house where the accused used to reside. He had also not examined the neighbours of the said house. To a pointed query, PW-11 stated that his investigation disclosed that the accused used to threaten the deceased on public road often. He did the same act fifteen days prior to the death of deceased X. He admitted that he had not examined the witnesses of that area.

19. R. Vijaya Kumar is the elder brother of the deceased X. He is PW-12. He stated that his sister X had consumed poison in the house and had died in the hospital while undergoing treatment. On 05.07.2000 at about 01:30 PM he had received a phone message that his sister X had consumed poison. He reached Mysore at about 7:30 PM and went to see his sister X in the

Mission Hospital where she was undergoing treatment. He found her to be not in a condition to talk.

19.1. He stated that could come to know from his another sister PW-2 Meena that accused had harassed his sister X with proposal for marriage which was the reason for her to consume poison.

19.2. He further stated that he had not told the police about the PW-2 telling him that the accused had threatened his sister. He did not know the details as to how his sister X had consumed poison and the amount of poison. He denied a suggestion that the accused was not responsible for the suicidal death of X and that it was because of their enmity with the accused that they had filed a false complaint against the accused.

20. Dr. Devdas P.K. PW-13 was the doctor who had conducted the post-mortem examination of the deceased on 07.07.2000. He stated that on examination of the dead body he found multiple injection marks present in front of both the elbows. The front of the right wrist showed superficial linear incised injury measuring 5cm in length which was partially healed. He further stated that the stomach, small intestine and contents, liver, kidney

and blood were preserved and sealed and thereafter sent for chemical analysis. On 09.01.2001, he received the chemical analysis report dated 10.10.2000. The report showed presence of organophosphorus compound in the viscera. Death was due to respiratory failure as a result of consumption of substance containing organophosphorus compound.

20.1. In his cross-examination PW-13 stated that organophosphorus compound is a pesticide, however, the quantity of the poison in the viscera of the blood of the deceased was not mentioned in the FSL report. The amount of organophosphorus could be detected during the treatment of the injury. The brain would be conscious till the poison effected the brain. PW-13 could not say the time when the deceased had consumed poison.

21. PW-1 in the first information had stated that before his elder daughter could reach the house the deceased X had become unconscious. Neighbours Kumari Hema, Mahesh, and Sarojamma along with other neighbours, including Smt. Hiremani, had seen through the window that the phone was ringing continuously and that his daughter had become unconscious. They had got the door opened and when they asked X why she had done so, her reply

was that the accused was responsible and because of his harassment she had consumed poison. After that she collapsed. It was thereafter that her sister and brother-in-law came and took her to Nirmala Devi Hospital and thereafter to Mission Hospital.

22. The post-mortem report is dated 07.07.2000. From an external examination of the dead body it was found that there were multiple injection marks present over the front of both the elbows. The front of the right wrist showed superficial linear incised injury measuring 5cm in length, partially healed. The stomach, small intestine and contents, liver, kidney and blood were preserved to be sent for chemical analysis. Accordingly, the blood and viscera were sealed and sent to FSL, Bangalore for chemical analysis on 07.07.2000. The final opinion was kept reserved pending receipt of the chemical analysis report. The chemical analysis report dated 10.10.2000 was received on 09.01.2001. As per the report, colour test TLC method responded for presence of organophosphorus pesticide in stomach, small intestine, liver, kidney and blood. Thereafter the doctor gave the final opinion opining that death was due to respiratory failure as a result of consumption of substance containing organophosphorus compound.

23. The evidence on record, as noted above, not only reveal glaring inconsistencies but also gaping holes in the version of the prosecution. That apart, there are material omissions too. PW-1 is the father and the first informant. According to him, he used to live in the same house as the deceased. On the fateful day, he had gone out of the house at 7:00 AM in the morning and returned back to the house at 10:00 AM. When he came back home at 10:00 AM, he found that his daughter X was admitted to a nursing home for consuming poison whereafter the deceased was shifted to Mission Hospital, Mysore for further treatment. On the other hand, PW-2 Meena, who is the sister of the deceased and also daughter of PW-1, deposed that the house belonged to her mother who was already dead on the date of the incident. Father, PW-1, was living separately with another woman outside marriage. According to her, she along with her two children and her deceased sister were living together in the house at Paduvarahalli (Vinayakanagar) after the death of her husband. She was rather categorical in her cross-examination when she stated that her father PW-1 was not living with them, as he was residing with another woman outside marriage separately. Interestingly, in her cross-examination, she stated that she saw her father in the

Mission Hospital at 05:00 PM on 06.07.2000 i.e., on the second day of hospitalization of the deceased.

24. If the version of PW-2 is to be believed then the evidence of PW-1, the first informant, cannot be accepted at all. His statement that he used to stay in the same house as his deceased daughter X was belied by his own daughter PW-2, who stated that it was she and her two children, who used to stay in the house of her mother along with her deceased sister X, after the death of her husband. According to her, she saw PW-1 in the Mission Hospital at 05:00 PM on 06.07.2000. This itself is strange and not at all a normal behaviour of a father whose daughter had consumed poison and was struggling for her life in a hospital. If what PW-2 says is accepted, then PW-1 had gone to see his daughter in the hospital only in the evening of the next day of the incident, hours before her death. Be it stated that the deceased died on 06.07.2000 at 07:30 PM.

25. Both PW-1 and PW-2 claimed that the deceased had told them about the harassment meted out to her by the appellant fifteen days prior to the incident. However, neither of them confronted the appellant nor lodged any complaint before the police.

26. According to the evidence of PW-4 Shantha, another sister of deceased X and daughter of PW-1, the deceased had telephoned her in between 11:00 to 11:15 AM on 05.07.2000 informing her as to what had happened to her while returning home from the school that led her to consume poison to end her life. It was then that PW-4 and her husband PW-3 rushed to the house of the deceased. When they reached the house of the deceased, she was lying on the floor with the phone receiver in a hanging position. She and her husband along with the neighbours took the deceased to the nursing home and from there to the Mission Hospital.

27. If the version of PW-4 is to be accepted, then the deceased X had called her over telephone at around 11:00 to 11:15 AM on 05.07.2000. It was thereafter that she and her husband rushed to the house from where with the help of the neighbours, the deceased was taken to a nursing home and from there to the Mission Hospital. In other words, according to PW-4, the deceased X was taken to the nursing home only after 11:00 to 11:15 AM. This again contradicts the statement of PW-1 that when he had come back home on 05.07.2000 at 10:00 AM, his daughter X was already taken to the nursing home.

28. None of the near relatives of the deceased i.e. PW-1, PW-2, PW-4 and PW-12 (the elder brother of the deceased) had confronted the appellant as to why he was harassing the deceased with proposal for marriage and in the event of refusal, threatening her with dire consequences. Though they said that they knew about such harassment fifteen days prior to the date of incident, none of them thought it fit to lodge a police complaint. This creates grave doubt about the prosecution version.

29. Though delay in lodging first information by itself cannot be a ground to disbelieve the prosecution case, unexplained delay coupled with surrounding circumstances can certainly dent the prosecution version. Here is a person (PW-1) who evidently goes to the hospital to see his daughter struggling for life twenty-four hours after her admission in hospital, that too just hours before her death. Such a behaviour is unusual for father, to say the least. That apart, evidently, he was not stating the truth when he said that he used to reside in the same house as that of the deceased and when he returned home at 10:00 AM in the morning on the fateful day, the deceased was already taken to the nursing home by the neighbours. Evidence of PW-2 and PW-4 bely such statement of PW-1. His daughter died on 06.07.2000 at 07:30 PM,

whereafter the body was taken by the police for post-mortem examination. Yet he waited till the next morning to lodge the police complaint. The police had also not examined Jayarama, the scribe, who had written the complaint, to ascertain the reason for such delay. According to PW-1, Jayarama was in the hospital till the death of the deceased. In the face of such glaring conduct of the first informant PW-1, adverse inference would have to be drawn. But crucially, the tendered evidence, as discussed above, are hearsay not worthy of much credence.

30. There is one more aspect. In the first information, PW-1 stated that neighbours Kumari Hema, Mahesh, Sarojamma and others including Smt. Hiremani, wife of police personnel Nanjunda Swami had noticed through the window that his deceased daughter X was lying unconscious and that the phone was continuously ringing. He further stated that these neighbours had got the door opened whereafter PW-3 and PW-4 came and took his deceased daughter X to the nursing home. Sarojamma and Mahesh had deposed as PW-8 and PW-9 but both were declared as hostile witnesses. Both stated that the police had not recorded their statements and that they did not know the cause of death of the deceased. Thus, only two of the neighbours were examined and

even they were declared hostile. No other neighbours were examined by the police. There is no explanation by the prosecution for such glaring omission. Again, according to the informant PW-1, it was the neighbours who had first seen the deceased through the window lying on the floor in pain with the phone continuously ringing. It is not at all believable that when the receiver was hanging (as has come out from the evidence of PW-4 Shantha), how the phone could go on ringing continuously. Adverse inference has to be drawn from such glaring contradictions and omissions.

Relevant legal provisions

31. In India attempt to commit suicide is an offence under Section 309 IPC. This section provides that whoever attempts to commit suicide and does any act towards the commission of such offence, he shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both. But once the suicide is carried out i.e., the offence is complete, then obviously such a person would be beyond the reach of the law; question of penalising him would not arise. In such a case, whoever abets the commission of such suicide would be penalised under Section 306 IPC. Section 306 IPC reads as under:

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.

31.1. Thus, as per Section 306 of IPC, if any person commits suicide, then 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.

32. The crucial word in Section 306 of IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. Section 107 of IPC reads thus:

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 facilitates the commission thereof, is said to aid the doing of that act.

32.1. From a reading of Section 107 IPC what is deducible is that a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing. Explanation 1 clarifies that even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise 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. Similarly, it is clarified by way of Explanation-2 that whoever does anything in order to facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

Case law

33. Suicide is distinguishable from homicide inasmuch as it amounts to killing of self. This Court in *M. Mohan Versus State*¹ went into the meaning of the word suicide and held as under:

¹ (2011) 3 SCC 626

37. 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 object of killing himself.

34. In *Ramesh Kumar versus State of Chhattisgarh*², this Court delved into the meaning of the word ‘instigate’ or ‘instigation’ and held as under:

20. 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 or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an 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.

² (2001) 9 SCC 618

34.1. Thus, this Court held that to ‘instigate’ means to goad, urge, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of ‘instigation’, it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. But, a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then instigation may be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

35. Again in the case of *Chitresh Kumar Chopra versus State*³, this Court elaborated further and observed that to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by ‘goad’ or ‘urging forward’. This Court held as follows:

17. Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goad” or “urging forward”. The dictionary meaning of the word “goad” is “a

³ (2009) 16 SCC 605

thing that stimulates someone into action; provoke to action or reaction” (see Concise Oxford English Dictionary); “to keep irritating or annoying somebody until he reacts” (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, “urge” means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or “urge forward” the latter with intention to provoke, incite or encourage the doing of an act by the latter.

35.1. Thus, this Court has held that in order to prove that the accused had abetted the commission of suicide by a person, the following has to be established:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.

36. In *Amalendu Pal alias Jhantu versus State of West Bengal*⁴, this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of

⁴ (2010) 1 SCC 707

suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

37. Similar is the view expressed by this court in *Ude Singh* (supra).

38. In *Rajesh versus State of Haryana*⁵, this Court after referring to Sections 306 and 107 of the IPC held as follows:

9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

39. Reverting back to the decision in *M. Mohan* (supra), this Court observed that abetment would involve a mental process of

⁵ (2020) 15 SCC 359

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. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.

40. Sounding a note of caution, this Court in *State of West Bengal versus Orilal Jaiswal*⁶ observed that the court should be extremely careful in assessing the facts and circumstances of each case as well as 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 transpires to the court that the victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life

⁶ (1994) 1 SCC 73

quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual 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.

Non-recovery of trace of poison (pesticide)

41. There is one more aspect in this case. In a case of death due to consumption or administering of poison or insecticide or pesticide, be it homicidal or suicidal, recovery of the trace of such poison or insecticide or pesticide is crucial.

42. The post-mortem examination report indicated multiple injection marks over the front of both the elbows of the deceased. That apart, it was also noticed that there was a superficial linear incised injury measuring 5cms in length in the front of the right wrist which was partially healed. The stomach, small intestine and contents, liver, kidney and blood were preserved. Those were sealed and sent for chemical analysis to FSL, Bangalore on 07.07.2000. The chemical analysis report is dated 10.10.2000. The report dated 10.10.2000 stated that colour test for TLC

method was carried out which responded to the presence of Organophosphate pesticide in stomach, small intestine, liver, kidney and blood. On this basis, the doctor who carried out the post-mortem examination i.e. PW-13 gave the final opinion that death of the deceased was due to respiratory failure as a result of consumption of substance containing Organophosphate compound.

43. Before proceeding further, it needs to be noted that the chemical analysis report is dated 10.10.2000 whereas the final opinion of PW-13 is dated 09.01.2001, there being a delay of three months. Ofcourse, PW-13 stated that he received the report only on 09.01.2001 on which date he gave the final opinion. Investigating officer offered no explanation as to why there was such delay in handing over of the chemical analysis report to PW-13.

44. Be that as it may, PW-13 in his deposition also stated about multiple injection marks being present over front of both the elbows besides the partially healed wrist wound on the body of the deceased. He stated that it was only on 09.01.2000 that he had received the chemical analysis report dated 10.10.2000 which

showed presence of Organophosphate compound in the viscera. In his cross-examination, he explained that Organophosphate compound is a pesticide. The quantity of the poison in the viscera of the blood of the deceased was not mentioned in the FSL report. That apart, he further stated that the smell of Organophosphate compound could be detected during the treatment. The patient would be conscious till the poison affected the brain. The deceased was treated in the hospital before she died.

45. *A Textbook of Medical Jurisprudence and Toxicology* by Jaising P Modi is considered as authority on various facets of medical jurisprudence and toxicology. In its 27th edition, Organophosphate compounds and allied poisons are dealt with under the heading Inorganic Irritant Poisons (I) in Chapter 3. It says Organophosphate compounds are extensively used as pesticides for soft body insects in agriculture. Their easy availability and quick action are the reason for their popularity for suicidal and homicidal purposes. World Health Organisation has classified Organophosphate compounds on the basis of their lethality into low toxicity, moderate and highly toxic compounds. Organophosphate compounds include Hexaethyl Tetraphosphate (HETP), Tetraethyl Pyrophosphate (TEPP) – Tetron and Fosvex etc.

The Organophosphate compounds are absorbed from the skin, respiratory and GI system. According to the route of entry, the respiratory or GI symptoms are more marked. Organophosphate toxicity can lead to symptoms such as miosis, urination, diarrhoea etc. Early headache, nausea, giddiness, dimness of vision, twitching of the eye muscles, tremulous tongue, profuse frothing etc. may be present. Later, vomiting, sweating, delirium, weakness and paralysis of respiratory muscles, arflexia, incontinence, bronchospasm, cyanosis, pulmonary edema, convulsions etc. whereafter, coma and death may follow. Tetraethyl pyrophosphate is the most toxic and HETP the least. A single dose that will produce symptoms is 5 mg intramuscular or 25 mg orally. 44-50 mg of TEPP intramuscular or 25-100 mg orally will be a fatal dose. In fatal cases, the symptoms begin in 30 minutes and death results in 30 minutes to 3 hours.

46. In this case, the doctors who had treated the deceased in the first nursing home and later on in the Mission Hospital, were not examined by the police. They were also not summoned as court witnesses. Their testimony could have been crucial. They could have thrown light into the nature of intake of the Organophosphate compound: whether by way of injection or consumed orally?

Whether they could detect the smell of Organophosphate compound emanating from the patient? This serious lacuna is further compounded by the fact that the prosecution had failed to recover any syringe or needle from the crime scene. No container or bottle containing the pesticide were also recovered from the room where the deceased was found lying on the floor or in any part of the house. There is no evidence to suggest that police had made an endeavour to search for such container or bottle. If the deceased had injected the poison herself, considering the multiple injection marks over the front of both the elbows, then the syringe and the needle would have been there, in and around her. If she had orally consumed the poison, then also the bottle or the container of the poison would have been present in the crime scene or near about. There is absolutely no evidence in this regard. There is also no evidence to show as to how the deceased had acquired the pesticide. In addition to non-recovery of the syringe or the needle or the container, the police were unable to show the source from where the particular pesticide was obtained by the deceased. If the prosecution case is to be believed, then the syringe and the needle or the container must have been present in the scene of occurrence itself. Those were not found by the prosecution. Neither

any trace of pesticide was seen by the investigating officer in the room. The FSL report as well as the chemical analysis report are silent as to whether any trace of the pesticide was detected from any of the seized articles. Prosecution is silent as to why no investigation was done in this regard. In a case of this nature, where the oral evidence including that of PW Nos. 1, 2 and 4 are not at all convincing, the absence of the container or the bottle containing the pesticide from where the deceased had orally consumed the pesticide, becomes very crucial. Similarly, recovery of syringe and needle if the deceased had injected the poison, is also crucial. As a general principle, it can be said that in a case of death by poisoning, be it homicidal or suicidal and which is based on circumstantial evidence, recovery of the trace of poison consumed by or administered to the deceased is of critical importance. It forms a part of the chain; rather it would complete the chain to prove homicide or suicide.

Conclusion

47. Human mind is an enigma. It is well nigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit

suicide: it may be a case of failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging to the marginalized sections, joblessness, financial difficulties, disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth. Therefore, it may not always be the case that someone has to abet commission of suicide. Circumstances surrounding the deceased in which he finds himself are relevant.

48. Coming to the facts of the present case, we do not find any evidence on the basis of which we can hold the appellant guilty of abetting the suicide of the deceased. While the death of a young woman is certainly very tragic, it cannot be said with any degree of certainty that suicide has been proved; the other essential ingredient constituting the offence under Section 306 IPC, *viz*, abetment cannot also be said to have been proved.

49. Thus on a conjoint reading of the entire materials on record, this Court is of the opinion that the prosecution had failed to prove the charge of abetment to commit suicide under Section 306 IPC against the appellant. The settled legal position, the evidence on record and the glaring omissions of the prosecution

as pointed out above, leaves no room for doubt. We are therefore of the unhesitant view that the conviction of the appellant is wholly unsustainable.

50. That being the position, conviction of the appellant under Section 306 of the IPC is set aside. The judgment and order of the trial court dated 06.07.2004 as affirmed by the High Court vide the judgment and order dated 17.09.2010 are hereby set aside and quashed.

51. Since the appellant is already on bail, the bail bonds shall stand discharged.

52. The appeal is accordingly allowed. No costs.

.....J
[BELA M. TRIVEDI]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
01.03.2024