

Dinesh Kumar vs.state

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Court : Delhi

Decided On : Jan-08-2019

Appellant : Dinesh Kumar

Respondent : State

Judgement :

\$~R-2 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

08. h January, 2019 CRL.A. 18/2012 DINESH KUMAR STATE versus Appellant Respondent Advocates who appeared in this case: For the

... Petitioner

s: Mr. L.K.Verma, Adv. For the

... RESPONDENTS

: Mr. Hirein Sharma, APP for the State. CORAM:-

"HONBLE MR JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV SACHDEVA, J.

(ORAL) 1. Subject appeal impugns judgment on conviction dated 05.12.2011 and order on sentence dated 17.12.2011 whereby the appellant has been convicted of an offence under Section 306 Indian Penal Code (IPC for short) and sentenced to undergo 5 years Rigorous Imprisonment besides payment of fine of Rs.2000/-.

2. Learned counsel for the appellant submits that a charge was framed against the appellant under Section 304B/498A/34 of the IPC. While the appellant stood acquitted of all the charges, the Trial Court has convicted the appellant of an offence under Section 306 IPC. Learned counsel submits that the Trial Court erred in not appreciating CRL.A.18/2012 Page 1 of 23 that no charge under Section 306 IPC was framed and the appellant was not given any opportunity to defend himself with regard to the offence under Section 306 IPC and as such the appellant could not have been convicted for an offence for which he was not charged.

3. Learned counsel for the appellant further submits that even if assuming the appellant could have been punished for an offence under Section 306 IPC, even though not specifically charged, the evidence on record does not substantiate the offence under Section 306 IPC and as such the conviction of the appellant cannot be sustained even on merits of the matter.

4. Learned APP appearing for the State submits that the Trial Court has rightly convicted the appellant for an offence under Section 306 IPC, even though the appellant was not charged for the said offence, as there is sufficient evidence available to sustain the charge under Section 306 IPC. He further submits that the Trial Court has referred to the judgment of the Supreme Court in Narwinder Singh vs. State of Punjab, 2011(1) SCR110 wherein the Supreme Court has held that conviction under Section 306 IPC can be sustained even when it is found that evidence is insufficient to convict the accused under Section 304B, 498A IPC even though no specific charge has been framed. Learned APP further submits that the evidence on record warranted a conviction under Section 306 IPC.

5. Without getting into the controversy as to whether the appellant CRL.A.18/2012 Page 2 of 23 could have been convicted for an offence under Section 306 IPC though not specifically charged for the said offence, I have in the first instance consider the case on merits to ascertain as to whether the conviction of the appellant under Section 306 IPC could be sustained.

6. The case of the prosecution is that on 22.10.2009 at about 2 AM information was received regarding death by hanging of a woman. Subsequently, statement of the father of the deceased was recorded wherein he had stated that the deceased

had married the appellant on 06.05.2009 according to Hindu rites and ceremonies.

7. The complainant, father of the deceased, had stated that he had given dowry beyond his means and after a few days of marriage there were further demands of dowry from the appellant that he wanted to open an electrical shop. It is the case of the prosecution that the deceased had repeatedly informed them that there were further demands for dowry.

8. As per the prosecution, the complainant had stated that the sister-in-law (jethani i.e. elder brothers wife) of the appellant had poured spirit over the deceased and she had escaped by jumping on a nearby roof. Thereafter a panchayat was held in which the matter was sorted out. The in-laws admitted their mistake and it was agreed that they shall not repeat their conduct.

9. It is further the case of the prosecution that the deceased committed suicide as she was suspicious that there was an illicit CRL.A.18/2012 Page 3 of 23 relation between the appellant and his sister-in-law.

10. Since the death had taken place between seven years of marriage, inquest proceedings under Section 176 Cr.P.C were conducted and subsequently case under Section 304B/498A/34 of the IPC was registered. After final report was filed, following charges were framed against the accused:-

"CHARGE I, S.K. Sarvaria, Additional Sessions Judge-01, South do hereby charge you (1) Dinesh S/o Rajender Prasad (2) Sumitra @ Santra w/o Rajender Prasad (3) Sukhbir s/o Rajender Prasad and (4) Smt. Sushila wife of Sukhbir as under:
That on 21-22/

at about 2.00 AM at House No.424 Maidan Garhi Road Chattarpur New Delhi within the jurisdiction of PS Mehrauli death of Smt. Priti wife of Dinesh Kumar occurred within seven years of her marriage with Dinesh Kumr on 06.05.09 under the circumstances other than under normal circumstances i.e. by hanging and it is shown that soon before her death she was subjected to cruelty or harassment for fulfilment of illegal demand of dowry by all of you being husband, mother of the husband, brother of the husband and Bhabhi of the husband (sister in law) respectively for or CRL.A.18/2012 Page 4 of 23 in connection with demand of

dowry and thereby committed her dowry death offence punishable under Sections 304-B/34 IPC and within my cognizance. Secondly during 06.05.09 till 21-22/ at house No.424 Maidan Garhi Road Chattarpur New Delhi you all in furtherance of your common intention subjected Smt. Priti legally wedded wife of accused Dinesh with cruelty on account of dowry demands and thereby committed an offence punishable under Section 498A/34 IPC and within my cognizance. And I hereby directed that you all to be tried by this Court for the aforesaid charges 11. Apart from the appellant, his mother, brother and sister-in-law were arraigned as accused. Prosecution led evidence and examined 13 witnesses.

12. The Trial Court after perusal of the testimony of the witnesses held as under:-

"25. In the present case it is not disputed that the deceased Preeti has died otherwise than under normal circumstances. Statement of PWI Dr Sushil Sharma proves that the deceased Preeti has died due to asphyxia due to ante-mortem hanging. It is not the case of the prosecution that it was a homicidal death. The statement of PW1 coupled with the statement of other witnesses CRL.A.18/2012 Page 5 of 23 shall prove that the deceased Preeti has committed suicide by hanging. Thus, the first ingredient stands proved that the death of deceased Preeti has been caused otherwise than under normal circumstances.

26. The prosecution case also stands proved that the death has taken place within seven years of her marriage. The statement of PW2 Sh Balli Tanwar and PW-3 Sheela who are father and mother of the deceased Preeti will prove this fact. They deposed that deceased Preeti was got married with accused Dinesh on 6.05.2009. The death of the deceased Preeti has taken place on 22.10.2009. The postmortem report Ex. PW1/A proves this fact. So the death has taken place within seven years of marriage.

27. Now the prosecution has to prove further that the deceased was subjected to cruelty or harassment by the husband or his relatives; that the cruelty or the harassment had nexus with the demand for dowry and such cruelty or harassment has been caused soon before her death.

28. A scrutiny of the various depositions is required to be done to know the answer of this question. PW-2 Balli Tanwar, father of the deceased stated that his daughter Preeti had informed him about demand of Rs.3 Lakhs for opening of an electric shop. However, there is no such mention in the statement of this witness recorded U/S161Cr PC regarding any such demand. He also stated that prior to the incident, he had never made any complaint regarding dowry demand and beatings PW-3 Sheela, mother of deceased deposed that on third visit of her daughter to her house, she informed her about her harassment and beatings at the matrimonial house and that the accused persons were demanding Rs. 3 Lacs for opening a cycle shop. However, there is no mention about this demand in her statement recorded U/S161Cr CRL.A.18/2012 Page 6 of 23 P.C. She further stated that this demand was raised after two months of her marriage. She admitted that there was no dowry demand from the accused persons at the time of marriage. She further stated that in the Panchayat the discussion was regarding demands of the accused and of giving beatings to deceased. There are contradictions about the alleged demands. While the father says that the demand was for opening electric shop, mother says that the demand was for opening cycle shop. PW-5 Jitender Kumar, a neighbour of father of deceased stated that he came to know that in-laws of deceased were demanding money for starting of shop. From whom he came to know about this demand, is not known. PW-9 Pappan, Tau of deceased Preeti deposed that after two months of marriage, the accused persons started harassing her for dowry and were demanding dowry i.e. money and motorcycle. How and from whom he came to know about these alleged demands is not clear. No other witness has stated about demand of motorcycle. He further stated in his cross examination that Preeti never told me about any specific amount of money being demanded by the accused persons. He stated that he gave Rs. 25,000/- to Preeti for opening electrical shop for Dinesh but this is not mentioned in the statement recorded U/S161Cr PC. PW- 10 Sarwan Kumar, a neighbour of the father of the deceased Preeti stated he had called Preeti at his house, when she had come to her parents' house and on being asked about the reason of her sadness, she replied that she was being maltreated and beaten by her husband, jethani and jeth. He stated in his cross examination that in-laws of Preeti were demanding Rs.3 Lakhs from her but this is not mentioned in

his statement recorded u/s 161 Cr PC.

29. A close perusal of all the aforesaid depositions of the public witnesses show that there is no unanimity regarding demand of dowry by the accused persons from CRL.A.18/2012 Page 7 of 23 the deceased or from her family members. All the five public witnesses though speak about dowry demand but there is no consistency and corroboration. When the accused persons demanded money and from whom the money was demanded, how it was communicated, who communicated the demand of money, to whom the demand was communicated - nothing is clear. The purpose of recording statement u/s 161 Cr PC is to rule out the possibility of improvements and tutoring as the same is recorded at the earliest opportunity after the incident. Most of the witnesses who deposed in the Court stated about demand of dowry by the accused persons but they had not so stated in their statements recorded U/S161Cr PC. In the absence of mention of dowry demand in the statement u/s 161 Cr PC, the statements/depositions recorded in the Court to this effect, cannot be relied upon. It is one of the basic ingredient of the offence u/s 304-B IPC that there must be harassment of the deceased for the the accused persons beyond allegations against reasonable doubt as there is no evidence of any harassment to deceased on account of demand of dowry; there is no evidence that she was subjected to any cruelty so as to drive her to commit suicide or any injury to her life, limb and health and there is no evidence on the record to show that "soon before her death" she has been subjected to any cruelty or harassment 'on account of demand of dowry'. Therefore, the prosecution not only failed to prove the offence under section 304B IPC but also failed to prove the necessary ingredient of offence under section 498A IPC. 'dowry'. Prosecution has failed to prove (underlining supplied) 13. The Trial Court after perusal of the evidence has categorically returned a finding that prosecution has failed to prove the allegations against the accused beyond reasonable doubt. The Trial Court was of CRL.A.18/2012 Page 8 of 23 the view that there is no evidence of any harassment of the deceased on account of demand of dowry and further there is no evidence that she was subjected to any cruelty so as to drive her to commit suicide or cause any injury to her life, limb and health and there is no evidence on record to show that soon before her death she was subjected to any cruelty or harassment on account of demand of dowry.

14. Trial Court, while acquitting the accused of the offences under Section 498A/304B/34 of the IPC, went on to hold that since death has taken place by committing suicide, it examined as to whether there was any abetment on account of the accused persons for driving the deceased to commit suicide so as to make them liable under Section 306 IPC.

15. The finding returned by the Trial Court for the offence under section 306 IPC is as under:-

"36. Ingredients of the offence u/s 306 IPC are that there should be suicide of a person and that it should have been committed in consequence of abetment by the accused.

37. PW-I Dr. Sushil Sharma in his evidence has opined that generally death due to asphyxia due to hanging is indicative of suicide unless proved otherwise. No evidence has come on record that the death of the deceased Preeti was homicidal in nature. As such, the death was suicidal in nature. CRL.A.18/2012 Page 9 of 23

38. PW-2 Balli Tanwar, father of the deceased had stated in his deposition that Panchayat had taken place in the house of the accused persons where it was discussed as to why spirit was thrown on his daughter and why she was being beaten regularly. PW-3 Sheela, mother of deceased deposed that after about 2 - 3 months of marriage, Sushila poured spirit on deceased. Pw-5 Jitender Kumar, a neighbour of the father of the deceased stated that he had attended the Panchayat in which the issue of pouring spirit upon Preeti by the family members of Dinesh was discussed. He further stated that Preeti had jumped on the roof of her neighbour when spirit was attempted to be put on her by her in-laws. PW-9 Pappan, Tau of deceased Preeti stated that in August 2009 spirit was poured upon Preeti by her sister in law Sushila. This issue was also discussed in Panchayat. PW-10 Sarwan Kumar, a neighbour of the father of the deceased Preeti stated that Preeti also told him that once she saved her life by jumping on the roof of her neighbour while spirit was poured upon her by her jethani. He further stated that in the Panchayat issue of pouring of spirit on Preeti was discussed. Another issue which was discussed was about illicit relations between Dinesh and Sushila, although it was not the main issue as the main issue was about pouring of spirit by

Sushila upon her.

39. From scrutiny of aforesaid depositions, it becomes clear that spirit was poured on deceased Preeti which was discussed in Panchayat. An issue of illicit relations between Dinesh and Sushila was also discussed in Panchayat as has been deposed by the witnesses. No other reason has come on record which could throw any light on the mystery as to why the deceased Preeti committed suicide. In their separate statements u/s 313 Cr.PC, accused Dinesh, husband of the deceased and Sushila, jethani of deceased stated that Preeti suspected CRL.A.18/2012 Page 10 of 23 that Dinesh was having illicit relations with Sushila. To a question as to why the witnesses deposed against the accused persons, they replied that the witnesses wanted to take revenge. What revenge the witnesses wanted to take and why the witnesses wanted to take revenge from the accused persons has not been brought on record. As such, the defence is sham. The defence witnesses DW-I Laxmi Narain stated that illicit relations between Dinesh and Sushila was an issue which was discussed in Panchayat. DW-2 Rati Ram stated that the issue of pouring of spirit and illicit relations were discussed in Panchayat. It thus appears that the deceased was feeling harassed at the hands of the accused persons as she was physically tortured by putting spirit on her, and mentally due to the illicit relations between Dinesh /and Sushila. Dinesh and Sushila were having illicit relations and the other accused persons failed to ensure a healthy and peaceful matrimonial atmosphere the deceased Preeti. The issue was discussed in Panchayat but to no avail. Thus, left with no option, Preeti committed suicide and the accused persons Dinesh and Sushila jointly and severally abetted the same. for 16. 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. 17. Under Section 306 IPC, whoever abets commission of suicide is held liable for abetment of suicide.

18. Section 107 IPC defines abetment as under:-

"CRL.A.18/2012 Page 11 of 23 107. 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 willful misrepresentation, or by willful concealment of a material fact which 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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2. Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act. 19. In the case of suicide, a person is liable for abetment if the person has inter alia instigated the deceased for committing suicide or has engaged in any conspiracy for committing suicide or intentionally aided the commission of suicide. CRL.A.18/2012 Page 12 of 23 20. Reference may be had to the judgment of the Supreme Court in Ramesh Kumar vs. State of Chhattisgarh: (2001) 9 SCC618 wherein, the Supreme Court laid down as to what conduct would amount to incitement or instigation:-

"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.

21. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC73:

1994. SCC (Cri) 107]. this Court has 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 transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly CRL.A.18/2012 Page 13 of 23 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. (underlining supplied) 21. Reference may also be had to the judgment of the Supreme Court in Pawan Kumar vs. State of H.P.: (2017) 7 SCC780 wherein, the Supreme Court elaborated upon the expression abetment as under:-

"34. The word abetment has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element. Such a requirement can be perceived from the reading of Section 107 IPC. Section 107 IPC reads as under: 107. Abetment of a thing.***** Abetment, thus, means certain amount of active suggestion or support to do the act.

35. Analysing the concept of abetment, as found in Section 107 IPC, a two-Judge Bench in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC605: (2010) 3 SCC (Cri) 367]. has held: (SCC p. 610, CRL.A.18/2012 Page 14 of 23 paras 13 &

15) 13. As per the section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of abetment. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC. states 107 that any *** 15. As per clause Firstly in the said section, a person can be said to have abetted in doing of a thing, who instigates any person to do that thing. The word instigate is not defined in IPC. The meaning of the said word was considered by this in Ramesh Court of Chhattisgarh [Ramesh of Chhattisgarh, (2001) 9 SCC618:

2002. SCC (Cri) 1088]. . Kumar v. State Kumar v. State In the said authority, the learned Judges have referred to the pronouncement in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC618:

2002. SCC (Cri) 1088]. . CRL.A.18/2012 Page 15 of 23 36. The word instigate literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The word urge forward means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to goad or urge forward the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as abetment.

38. Analysing further, in Randhir Singh v. State of Punjab [Randhir Singh v. State of Punjab, (2004) 13 SCC129:

2005. SCC (Cri) 56]. , the Court has observed thus: (SCC p. 134, para

12) 12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission CRL.A.18/2012 Page 16 of 23 of offence under Section 306 IPC. (emphasis supplied) In Praveen of 39. Uttaranchal [Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC734: (2013) 1 SCC (Cri) 146]. , it has been ruled: (SCC p. 741, para

18) Pradhan v. State 18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. (emphasis supplied) In Amalendu Pal v. State of W.B. [Amalendu 40. Pal v. State of W.B., (2010) 1 SCC707: (2010) 1 SCC (Cri) 896]. , the Court, after referring to the authorities in Randhir Singh [Randhir Singh v. State of Punjab, (2004) 13 SCC129:

2005. SCC (Cri) 56]. , Kishori Lal v. State of M.P. [Kishori Lal v. State of M.P., (2007) 10 SCC797: (2007) 3 SCC (Cri) 701]. and Kishangiri Mangalgiri Goswami v. State of Gujarat [Kishangiri Mangalgiri Goswami v. State of Gujarat, (2009) 4 SCC52: (2009) 2 SCC (Cri) 62]. , has held: (Amalendu Pal case [Amalendu Pal v. State of W.B., (2010) 1 SCC707: CRL.A.18/2012 Page 17 of 23 (2010) 1 SCC (Cri) 896]. , SCC p. 712, para

12) IPC, 12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 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 but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts 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 person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. 41. A two-Judge Bench in *Netai Dutta v. State of W.B.* [*Netai Dutta v. State of W.B.*, (2005) 2 SCC659:

2005. SCC (Cri) 543]. , while dwelling on the concept of abetment under Section 107 IPC especially in the context of suicide note, observed: (SCC p. 661, paras 6-7) 6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the CRL.A.18/2012 Page 18 of 23 7. commission of suicide by deceased Pranab Kumar Nag. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal. two paragraphs 42. At this juncture, we think it appropriate to reproduce from *Chitresh Kumar Chopra* [*Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, (2009) 16 SCC605: (2010) 3 SCC (Cri) 367]. . They are: (SCC p. 611, paras 16 &

19) case [Ramesh 16. Speaking for the three-Judge Bench in Ramesh Kumar of Chhattisgarh, (2001) 9 SCC618:

2002. SCC (Cri) 1088]. , R.C. Lahoti, J.

(as his Lordship then was) said that instigation is to goad, urge forward, Kumar v. State CRL.A.18/2012 Page 19 of 23 19. 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. 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 to 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. *** observed in Ramesh Kumar [Ramesh As Kumar v. State of Chhattisgarh, (2001) 9 SCC618:

2002. SCC (Cri) 1088]. , where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. In other words, in order the accused abetted commission of suicide by a person, it has to be established that: to prove that (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 CRL.A.18/2012 Page 20 of 23 (ii) the deceased move forward more quickly in a forward direction; and the intention the accused had that to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea the necessary concomitant of instigation. is This Court again observed: (SCC pp. 611-12, para

20) (emphasis in original) 20. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and

behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self- protection or an escapism from intolerable self. (emphasis in original) (underlining supplied) 22. Clearly in terms of the law laid down something more than mere apprehension of the deceased was necessary. There is no conduct attributable to the appellant to show that the appellant by his action instigated the deceased to commit suicide. Further perusal of CRL.A.18/2012 Page 21 of 23 the evidence shows that apart from mere allegation no material had come to record that appellant was having any illicit relation with his sister-in-law.

23. The reasoning given by the Trial Court for convicting the appellant under Section 306 IPC is that the deceased was feeling harassed at the hands of the accused persons as she was physically tortured by putting spirit on her and mentally tortured due to the illicit relation between the appellant and his sister-in-law. The Trial Court was of the view that the appellant and his sister-in-law were having illicit relations and further the accused persons failed to ensure a healthy and peaceful matrimonial atmosphere for the deceased and accordingly deceased was left without any option but to commit suicide. The Trial Court was of the view that the appellant jointly with the sister-in-law and severally abetted the offence of suicide.

24. Once the Trial Court has come to a conclusion that there was no evidence that the deceased was subjected to any cruelty so as to drive her to commit suicide or to cause any injury to her life, limb and health, the Trial Court could not have in the facts of the case held the petitioner guilty solely on account of the fact that the deceased had committed suicide within seven years of her marriage. The testimony of the witnesses do not substantiate the commission of an offence under Section 306 by the appellant.

25. I am of the view that the finding of the Trial Court, with regard CRL.A.18/2012 Page 22 of 23 to the offence under Section 306 IPC is concerned, cannot be

sustained from the evidence. The judgment of the Trial Court in so far as the offence under Section 306 IPC is concerned is clearly perverse.

26. In view of the above, the appeal is allowed. The appellant is acquitted of the offence under Section 306 IPC.

27. The bail bond furnished by the appellant is accordingly discharged and the surety released.

28. Since this Court has examined the contention of the appellant on merits and found that no offence under Section 306 IPC is made out, the technical plea raised by learned counsel for the appellant that the appellant could not have been convicted under Section 306 IPC as he was not charge sheeted for the same has not been considered and is left open.

29. Order dasti under the signature of the Court Master. JANUARY08 2019 rk SANJEEV SACHDEVA, J CRL.A.18/2012 Page 23 of 23

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