

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 03.10.2024
Pronounced on: 09.10.2024**

Case:- CrIa (AS) No. 11/2021

**State of Jammu & Kashmir
Through S.H.O Police Station
Budhal**

.....Appellant(s)

Through: Mr. Bhanu Jasrotia, GA.

Vs

1. Rakesh Kumar

2. Harbans Lal

**Sons of Bansi Lal R/O Khawas
Tehsil Kotranka District Rajouri**

..... Respondent(s)

Through: Mr. Jatinder Singh, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

सत्यमेव जयते

- 01.** The appellant – State (now UT) of Jammu & Kashmir has filed the above titled appeal against the judgment dated 30.11.2015 (in short, “**impugned judgment**”) passed by the learned Principal Sessions Judge, Rajouri (hereinafter referred to as the “**trial Court**”) in Sessions Trial case No. 15 titled – “*State vs Rakesh Kumar & Anr.*” whereby the respondents - Rakesh Kumar and Harbans Lal as accused, had been acquitted of the charges under section 306 RPC, arising out of a case registered at Police Station, Budhal vide FIR No. 24/2009.

02. This appeal had been filed alongwith an application, seeking leave to file acquittal appeal. This Court vide interim order dated 12.04.2021, not only condoned the delay of 312 days in filing the appeal, but also granted leave to file appeal against the impugned judgment.

03. The appellant has assailed the impugned judgment passed by the trial Court on the following grounds:-

- (a) That the order of the Learned Trial Court is against the law and facts of the case, as such, deserves to be set aside.**
- (b) That there is sufficient material on record to convict the respondents but the learned Trial Judge has not appreciated the law and facts of the case which has resulted into acquittal of the respondents.**
- (c) That the prosecution had established the case against the respondents by adducing documentary, as well as, oral evidence which in ordinary course of nature is sufficient to guilt the respondents.**
- (d) That the respondents willfully and intentionally committed the crime for which he deserves to be punished.**
- (e) That the Trial Court has failed to appreciate the prosecution evidence in its true and correct perspective. The important pieces of evidence have been ignored. The judgment is based on surmises and conjectures.**
- (f) That the Trial Court has failed to appreciate the prosecution evidence. The conclusion drawn is against the weight of evidence. The occurrence is approved. The acquittal is bad in the eyes of law.**
- (g) That the Trial Court has taken hyper technical approach. The direct and circumstantial evidence have sufficiently proved the guilt of the respondents. The judgment on this count also is bad in the eyes of law and is liable to be set aside.**

04. The appellant – State has finally prayed that the impugned judgment passed by the trial Court in the case titled – “*State vs Rakesh Kumar & Anr.*” arising out of case

registered vide FIR no. 24/2009 at Police Station, Budhal under section 306 RPC be set aside and the respondents/accused be convicted and punished under section 306 RPC in accordance with law.

- 05.** The factual background of the case is that on 01.05.2009, Incharge Police Station, Budhal received an information telephonically from Incharge Manyarti Police Picket Khawas that a woman, namely, Sanjokta Kumari W/O Rakesh Sharma R/O Khawas Tehsil Budhal had consumed some poisonous medicines and that she had been referred to District Hospital, Rajouri for treatment by the local doctor.
- 06.** Based on the aforesaid information, ASI Mohd. Rafiq proceeded towards Rajouri, however, en-route at Palma Rajouri, he found that the heirs of aforementioned Sanjokta Kumari had been taking back her dead body. The custody of the dead body was taken over by the police and taken to Kandi Hospital for postmortem, where her postmortem was conducted by the Medical Officer and after completing medico-legal formalities, the dead body of the deceased was handed over to her heirs for the last rites.
- 07.** The police visited the place of occurrence and site plan was prepared. Since the deceased had died, under mysterious circumstances the inquest proceedings under section 174 Cr.P.C were initiated. In the course of those proceedings,

statements of the witnesses were recorded and police came to find that since marriage, the accused Rakesh Kumar and Harbans Lal i.e. husband and brother-in-law of the deceased respectively, started harassing the deceased to bring dowry and also used to give taunts to her for not bringing dowry and for not being a good cook; that the deceased bearing the cruelty used to tell about the same to her parents, who had tried to make the accused understand, but all in vain; that on 01.05.2009, the father-in-law of the deceased had organized 'Ramayan Path' at his home, in which besides Pandit, many villagers had participated. The deceased was busy in preparing the food in the kitchen and in the meanwhile, the afore-named accused persons entered into the kitchen and asked the deceased in a very angry mood as to why she had not prepared the food as yet. Upon which, the deceased told them that in case, they wanted the food to be prepared immediately, they themselves could prepare the same and on this, both the accused snatched the paraat of the flour from the hands of the deceased, pushed and turned her out of the kitchen and asked her to go away, as they did not want such a dirty girl and not bearing the acts of the accused persons, she committed suicide in her room by consuming insecticide.

- 08.** Based on the enquiry conducted, a case was registered vide FIR No. 24/2009 at local Police Station, for the commission of offence punishable under section 306 RPC, against both the accused (respondents herein) and investigation was started. After investigation of the case, the police came to the conclusion that the respondents had committed offence punishable under section 306 RPC and a charge-sheet was laid. The respondents as accused were charge-sheeted for the commission of the aforementioned offence by the trial Court on 27.10.2009 and on denial of charge by the accused, the prosecution was directed to lead evidence.
- 09.** Prosecution in order to prove its case against the accused/respondents examined Dev Raj (father of the deceased) , Pawan Kumar (brother of the deceased), Neelam Devi (mother of the deceased), Salam Din, Rekha Devi, Kirna Devi, Sapna Devi, Krishna Devi, Anwar Hussain, Dr. Mohd. Ashraf, Som Raj, Subash Chander, Dr. Rishpal Singh, Yog Raj, Pawan Abrol (Assistant Scientific Officer), Jia Lal, Bansi Lal, Mohd. Din & Faiaz Ahmed (Constable) as prosecution witnesses, whereas the respondents/accused in their defence examined one Koshalya Devi as a defence witness.
- 10.** The trial Court on appreciation of the evidence and after hearing arguments from both sides, vide impugned judgment *dismissed* the challan/charge-sheet and the both

respondents/accused were acquitted of the charges of the offence punishable under section 306 RPC.

11. The offence of abetment of suicide provided under section 306 RPC 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.”

12. The expression “**abetment**” within the meaning of Ranbir Penal Code (RPC) is defined as follows:-

“107. Abetment of a thing

A person abets the doing of a thing, who –

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.”

13. The word “**instigation**” means 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.

14. The Apex Court in the case titled – “**State of West Bengal vs Orilal Jaiswal**” reported in (1994) 1 SCC 73 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 the life by committing suicide. The Court has further observed that *“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 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.”*
15. Thus, “**abetment**” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when: (i) he instigates any person to do that thing; or (ii) engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word “**instigate**” literally means to provoke, incite, urge on or

bring about by persuasion to do anything. Whether a person has been abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

- 16.** PWs – Dev Raj (father of the deceased), Pawan Kumar (brother of the deceased) and Neelam Devi (mother of the deceased) made incriminating statements against the accused/respondents, while as the other witnesses are either hearsay witnesses or they had not supported the prosecution version and many of them were declared as hostile.
- 17.** There is admittedly no eye witness to the commission of the offence as no witness has been cited so as to depose that the deceased had been instigated, coerced or abetted to take poison in his/her presence to commit suicide so as to prove by direct evidence that the deceased had committed offence having been abetted by any of the accused.
- 18.** The whole of the case of the prosecution is based on circumstantial evidence. PW-1 Dev Raj Sharma, PW-2 Neelam Devi and PW-3 Pawan Kumar, father, mother and brother respectively of the deceased had been shown as circumstantial witnesses; PW-5 Kirna Devi, PW-6 Rekha Devi, PW-7 Sapna Devi and PW-21 Bansi Lal had been shown as witnesses to the seizure memos of the cane and

towel whereas PW-8 Salam Din, PW-10 Krishna Devi, PW-12 Anwar Hussain and PW-13 Yog Raj had been cited as witnesses to depose that the accused used to quarrel with the deceased. PW-14 Som Raj, PW-15 Subash Chander, PW-16 Rashpal Singh had been cited as witnesses to the custody memo/receipt of the dead body of the deceased. PW-22 Constable Fayaz Ahmed was cited as a witness to the seizure memo of the clothes of the deceased and PW-18 Dr. Mohd. Ashraf was cited as a witness who had conducted postmortem of the deceased, while PW-19 Pawan Abrol had given forensic report as Assistant Scientific Officer of FSL Jammu.

- 19.** From the aforesaid description of the witnesses, it is amply clear that most of the witnesses are formal witnesses, either to the seizure/custody/receipt memos and none of the witnesses except PWs Dev Raj Sharma, Neelam Devi and Pawan Sharma have made any incriminating evidence against any of the accused. These three witnesses being parents and sibling of the deceased, made general statements with regard to the cruelty to which the deceased was subjected to, after her marriage with one of the accused Rakesh Kumar.
- 20.** The prosecution witnesses Salam Din, Krishna Devi, Anwar Hussain and Yog Raj who were cited to have seen the accused subjecting the deceased to cruelty by the accused

had not stated anything while being examined in the court and despite being declared as hostile nothing incriminating could be extracted from their cross-examination by the prosecution. So far as the statements of three witnesses i.e., parents and brother of the deceased are concerned, they had made general allegations without any specific instance as to when the deceased was subjected to cruelty and had this taken place as to why they had not reported the matter to any community panchayat for resolution or to the police for legal action in the matter so much so that the allegation with regard to the demand of dowry has also not been amply proved as to what was demanded by any of the the accused from the deceased or her in laws as dowry.

- 21.** The other reason assigned that since the deceased was unemployed she was frustrated a lot and would have committed suicide since her husband did not arrange any Govt. job for the deceased. The deceased was stated to have worked as a part time Teacher in SSA and was stated to have left the job of her own, therefore, this contention, which has been based against the accused, is also not worth consideration.
- 22.** The mother of the deceased had deposed in her statement that one of her son Ashwani Kumar who was brother of the deceased had been staying in her matrimonial house, however, that Ashwani Kumar was neither cited nor

examined as a witness by the prosecution, though he was an important witness to state as to how the deceased was being treated at the house of her in laws by the accused. Both the accused were stated to be well qualified and were serving as Teachers in the Education Department and even if they may have scolded the deceased for not having prepared food at their house when a '*path*' was being organized by the father of the accused and the reaction of the deceased that in case they want food urgently, they should prepare the food themselves but such a heated exchange between the couple or with any other family member would not constitute an abetment so as to drive the deceased to take the extreme step of committing suicide, as such altercations do take place in every household and this cannot be construed as an abnormal step so as to constitute the abetment of an offence of committing suicide.

- 23.** The trial court has very elaborately discussed the prosecution evidence and has drawn a satisfaction so as to form an opinion that the accused were not involved in the commission of any offence punishable under section 306 RPC. The trial court has also discussed the presumption under section 114-C of the Evidence Act with regard to draw a presumption for the commission of an offence against the husband when the married woman dies within

seven years of her marriage; that presumption is available with regard to dowry deaths and that presumption can also be made basis, on some credible evidence otherwise led by the prosecution and there cannot be a sole ground to draw presumption in absence of the credible evidence to record conviction.

24. The Apex Court in its judgment in a case titled as '**Pawan Kumar Vs. State of Himachal Pradesh**' reported in (2017) 7 SCC 780 with regard to abetment has held in paragraphs 43 and 44 as under:

"43. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of [Section 306](#) IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.

44. In the instant case, the accused had by his acts and by his continuous course of conduct created such a situation as a consequence of which the deceased was left with no other option except to commit suicide. The active acts of the accused have led the deceased to put an end to her life. That apart, we do not find any material on record which compels the Court to conclude that the victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged. On the other hand, the accused has played active role in tarnishing the self-esteem and self-respect of the victim which drove the victim girl to commit

suicide. The cruelty meted out to her has, in fact, induced her to extinguish her life-spark.”

25. A similar view has been fortified by the Apex Court in a judgment titled as **‘Kumar @ Shiva Kumar Vs. State of Karnataka’** reported in **2024 AIR SC 1283** wherein in para 38 while referring para 9 of the judgment of the Apex Court in **‘Rajesh Vs. State of Haryana’** reported in **(2020) 15 SCC 359**, the Apex Court has observed as under:

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.

26. Having regard to the law laid down by the Apex Court in the judgments (supra) and also keeping in view the fact that the trial court has decided the case vide impugned judgment properly with application of mind and has not committed any illegality, this Court is of the considered opinion that the impugned judgment in the instant appeal, does not warrant any interference by this appellate court, in the

conclusion drawn by the trial court of recording acquittal of both the accused.

- 27.** For the foregoing reasons and observations made hereinabove, the appeal is, thus, found to be devoid of any merit and substance and is liable to be rejected. The impugned judgment is upheld. The bail/personal bonds executed by the respondents during pendency of this appeal are discharged. The scanned trial court record be sent back along with a copy of this judgment for information of the trial court.

JAMMU
09.10.2024
Bunty

HIGH COURT



(M A CHOWDHARY)
JUDGE

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**

HIGH COURT
OF JAMMU & KASHMIR AND LADAKH