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THE EXTENT OF ABETMENT OF SUICIDE

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ABSTRACT

This paper focuses on the extent of abetment of suicide. It begins with an introduction of abetting a suicide and is then followed by the definition of “abettor.” Section 306 of Indian Penal Code is also explained in the next topic as it is the primary law which the paper focuses on. To understand the depth of abetment and what actions and conducts fall under abetment of suicide, three different cases have been discussed. Since most of these cases are examples of ill treatment against women by their husband and in-laws, Section 498A is also significantly discussed. Convicting someone under abetment can be a difficult task due to the nature of indirect participation of the accused person in the death of the victim. Hence, the paper also contains analysis of the judgements of these cases so as to get a dynamic perspective of the issues. The primary purpose of this paper is to understand abetment of suicide and its extent.

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INTRODUCTION

Suicide is one of the leading causes of death not only in India but also in the world. A total number of around 140,000 people died due to suicide in 2019 according to a report by National Crime Records Bureau.¹ The reason behind the taking of one's own life differs in various age groups. A leading cause of suicide among adolescence is social and peer pressure, while many adults resort to suicide as a result of financial failure or loss.² However, at times suicide can be knowingly or unknowingly be abetted by another person as well.

In this research paper, a detailed analysis will be made on what actions exactly falls under the scope of abetment to suicide.

SECTION 306 OF INDIAN PENAL CODE

Section 306 of IPC states that *“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.”*³ For a person to abet a suicide his act must fall under the definition of “abetment” as given in section 107 of IPC. According to it, there must be an existence of instigation on the part of the abettor, or engagement in conspiracy, or assisting the commission of the offence.⁴ The instigation must be intentional to invoke Section 306 of IPC.

AN ABETTOR

A person is said to abet an offence when that person abets either the commission of an offence or the commission of an act which would be an offence, if it is committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.⁵ For

¹ Vijdan Mohammad Kawoosa, *In 2019, a person died by suicide every four minutes: NCRB data*, Hindustan Times, (September 01, 2020),

² Lakshmi Vijaykumar, *Suicide and its prevention: The urgent need in India*, Indian Journal of Psychiatry, 49(2); 81-84 (2007)

³ Section 306, Indian Penal Code, 1860, Act no.45, Acts of Parliament, 1860 (India)

⁴ Section 107, Indian Penal Code, 1860, Act no. 45, Acts of Parliament, 1860 (India)

⁵ K.D. GAUR, CRIMINAL LAW CASES AND MATERIALS 223 (9th ed. 2019)

constituting an offence of abetment, it is not a necessity that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.⁶

SANJAY SINGH SENGAR VS. STATE OF MADHYA PRADESH⁷

BACKGROUND

Appellant is a man named Sanjay Singh Sengar. The marriage between his sister, Neelam Sagar and Chander Bhushan took place in 1993. After her marriage, Neelam was ill-treated by her in-laws as a result of which she returned to her parent's house and started living with her brother, the appellant. The appellant advised his sister's in-laws to take her back in and not mistreat her. It is stated that on 25 July 1998, the appellant visited Chander Bhushan's parents' place and begged them to not physically harass her and allow her to return to her matrimonial home. Furthermore, the parents of Chander Bhushan were threatened by the appellant saying that if they did not stop harassing his sister, he would file a complaint against them under Section 498A of IPC. Bhushan's mother finally asked him to bring Neelam back to their home to avoid any police case due to which Bhushan went to the appellant's house. A quarrel occurred between the appellant and Bhushan and the appellant had asked him "to go and die."

On 27 July 1998, Bhushan was found dead. His body was found hanging by a rope on neck. In addition to that, a suicide note was also found claiming the appellant, Sanjay Singh Sengar, was responsible for his death.

JUDGEMENT

The court held that mere uttering of the phrase "to go and die" itself does not constitute instigation. According to Section 107 of IPC the term 'instigate' refers to the incitement of the urge to commit an act of drastic measure or even to stimulate a drastic action.⁸ Thus, it is important that there is a presence of *mens rea*, that is, a guilty mind, in order to prove that there was instigation on the part of the accused. The court further stated that the abusive words used by the appellant were a part of

⁶ Kehar Singh v Delhi Administration, AIR 1988 SC 1883

⁷ Sanjay Singh Sengar v State of Madhya Pradesh, (2002) 5 SCC 371 (India)

⁸ Indian Penal Code, 1860, Act no. 45, Acts of Parliament, 1860 (India)

the heated quarrel that occurred between the appellant and the deceased and words used in the heat of the moment does not constitute *mens rea*. It was also pointed out that the quarrel took place on 25 July 1998 and the death occurred on 27 July 1998, thus, the deceased had enough time to think and reflect on his decision and it cannot be assumed that the abusive words used by the appellant led the deceased to commit suicide. Also, the court's analysis of the suicide note was that the deceased, Bhushan, was in great stress and agony. It can be assumed that this was due to the fact that he was unemployed at the time of his death. His wife, Neelam, had also given a statement that he had been drinking to a great extent. Thus, the court held that his suicide was a consequence of his own circumstances and had nothing to do with the quarrel he had with the appellant.

ANALYSIS

The decision of the court to hold that there was an absence of *mens rea* on the part of the appellant is based not only on the assumption that the uttered phrase “to go and die” did not conform with instigation but also on the fact that the deceased was filled with stress and frustration. Although it is clear that the suicide was a result of his personal life circumstances, one thing that felt short of notice was that the appellant's abusive words may have been the final trigger for the deceased to commit suicide. Now, this leads us to question whether if the appellant's words did prompt him to commit suicide, then is he liable or not, even without the presence of *mens rea*. There are certain exceptions to the rule that *mens rea* applies to all criminal offences. In these offences, the law holds a person liable for his act with or without the establishment or proving of a guilty mind. This means that even if a person did not have any wrongful intention, he may still be liable for his criminal act. These types of offences fall under the category of strict liability offences.⁹

However, this argument may still be countered with the established fact that the deceased was an alcoholic as it is a known reality that alcoholism can eventually lead to suicide. Therefore, the liability of a person who is accused of abetting a suicide through verbal abuse may vary from case to case. As seen in this case, the proof of alcoholism leading to suicide had more weight than the appellant's abusive phrase during a verbal quarrel.

⁹ K.D. GAUR, CRIMINAL LAW CASES AND MATERIALS 54-55 (9th ed. 2019)

GURCHARAN SINGH VS. STATE OF PUNJAB¹⁰

BACKGROUND

The appellant, Gurcharan Singh was married to Shinder Kaur. Together they had a son and a daughter. It was stated from the part of the prosecution that Shinder Kaur was harassed by her husband and in-laws for not meeting their dowry demands post marriage. She was beaten up, turned out from her in-laws' house and asked her to bring them Rs.20,000/- from her parents. The complainant, Jail Singh, who is the father of the deceased Shinder Kaur, went to her matrimonial home and told them that he will not be able to meet their demands. On 12 August 1997, Shinder Kaur committed suicide in her matrimonial house by consumption of aluminium phosphide. The complainant alleged that his daughter's death occurred either by being poisoned by her husband and in-laws or she ingested poison as she was being harassed by them.

JUDGEMENT

The Trial Court held that the appellant-accused and the in-laws were liable for Shinder Kaur's death stating that her financial hopes were frustrated by her husband's willful neglect. It was further stated that when a woman is married it is expected of the husband to provide her with love, affection and financial support. Thus, all three accused were convicted under Section 304B, which is related to dowry death¹¹, and 498A of IPC, which is about cruelty subjected to the wife by her husband or his relatives.¹² In addition to that the husband was convicted under Section 306 of IPC.

In the Criminal Appeal, the appellant-accused argued that his conviction under Section 306 was unjustified as there was no evidence provided in the Trial Court which may have led to his wife's death.

Finally, the Supreme Court overruled that in order for person to be convicted under Section 306 of IPC, the prosecution must be able to prove that the accused must have played an active role through instigation or through facilitation. It is further stated that there was no overt act or illegal omission from the part of the appellant-accused in taking care of his wife and there was no

¹⁰ Gurcharan Singh v State of Punjab, IV (2016) CCR 301 (SC)

¹¹ Section 304B, Indian Penal Code, 1860, Act no. 45, Acts of Parliament, 1860 (India)

¹² Section 498A, Indian Penal Code, 1860, Act no. 45, Acts of Parliament, 1860 (India)

evidence that the deceased faced harassment from her husband and in-laws. Thus, the appellant's conviction under Section 306 was quashed.

ANALYSIS

The Trial Court reasoned that the willful neglect and cause of frustration to his wife by the appellant-accused was enough to constitute abetment under Section 107 of IPC. It is important to note that there was no particular evidence to reach this conclusion that the husband had willfully neglected his wife or caused her frustration. The decision to convict the accused under Section 306 was solely based on the assumption that the deceased committed suicide as a consequence of her husband's emotional and financial ignorance towards her. In contrast, the counsel of the appellant-accused had evidence showing that the husband took due care of the deceased and that there were no circumstances related to ill-treatment or any dowry demand. Even so, the conviction of a person under Section 306 cannot be dependent upon the extent of moral, emotional and financial support he provides. Thus, the overruling of this judgement by the Supreme Court is justified.

The Supreme court's judgement to quash the conviction of Gurcharan Singh under Section 306 of IPC was based on two things. The first being the failure of the prosecution to show existence of *mens rea* and the other being there was no hard evidence to prove that the actions of the accused were directly related to the suicide.

HEERA LAL VS. STATE OF RAJASTHAN¹³

BACKGROUND

The deceased, Lalita, was harassed by her father in-law and mother in-law for a period of five years leading her to commit suicide by setting herself on fire. Prior to her death, Lalita made a dying declaration before the Sub-Divisional Magistrate. She stated that her in-laws would quarrel with her every day and on that particular day they had asked her to leave the house. She further stated that her husband, Omprakash lived in Kuwait and had nothing to do with this. But now, he had arrived. Lalita on being asked to leave their house, started living separately from them. However, the in-laws came to that place with their luggage and told her that they would staying there from then onwards. She rebutted by saying that since they are not in good relations so she

¹³ Heera Lal v State of Rajasthan, AIR 2017 SC 2425

did not want to stay with them. The in-laws replied her “to get lost.” Lalita stated she had enough of their behaviour and went to the kitchen, poured kerosene on herself and set a fire to her body. She also stated that her father in-law did not try to stop her.

JUDGEMENT

The Trial Court relied on two statements- i) the statements of their neighbours, who attested that the deceased was indeed subject to harassment by her in-laws and ii) the dying declaration of the deceased. It held the two accused convicted under Section 306 of IPC but offence under Section 498A of IPC was not made out.

The counsel of the accused argued that since the two accused were not charged under Section 498A of IPC, it was clear that the element of cruelty subjected to the wife was absent.

The Supreme Court referred to Section 113A of the Indian Evidence Act which states that there is a requirement of three elements- i) act of suicide has been committed, ii) the suicide has been committed within a period of seven years from the date of the marriage and iii) the husband or his relatives who are charged had subjected her to cruelty. The court may also presume that the suicide had been abetted by her husband and the relatives. However, this presumption may only be done after all the facts and circumstances of the case have been thoroughly examined. The presumption can only be raised if there is a cause-and-effect relationship between the cruelty exhibited by the accused and the suicide.

The Supreme Court stated that there was an absence of the basic ingredient of conviction under Section 498A, that is, cruelty, and also the third ingredient for conviction under Section 113A of IEA¹⁴, that is, the father in-law and the mother in-law charged under Section 306 of IPC had subjected the victim to cruelty. The court was clear on the fact that there was harassment from the side of the in-laws towards the wife, however, it was stated that harassment alone would not lead to abetment of suicide and that the act of harassment was of a lesser degree than cruelty.

Therefore, as the link between the suicide and cruelty could not be established, the conviction of the in-laws under Section 306 was quashed.

¹⁴ Section 113A, Indian Evidence Act, 1872, Act no. 1, Acts of Parliament, 1872 (India)

ANALYSIS

The judgement of the Supreme Court can be agreed to as there was lack of evidence of cruelty. However, there was proof of harassment and the court clearly stated that harassment alone would not constitute abetment of suicide and harassment was a lesser offence than cruelty. This leads to the issue of what exactly is the difference between harassment and cruelty, and how cruelty is an ingredient of abetment and harassment is not.

According to Section 498A of IPC, cruelty means “*any willful conduct which is of such a nature as is likely to drive the woman to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health of the woman,*” or “*harassment of the woman with a view to coercing her or any person related to her meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand.*”¹⁵ This means that the accused must be willing to be cruel to the victim. If the husband does not realise that his conduct is cruel or if he does not foresee that his conduct would lead his wife to commit suicide, then such conduct does not fall under the definition of “cruelty.” Whereas, for a conduct of harassment to fall under the ambit of “cruelty”, the harassment subjected towards the wife must have intention to meet any unlawful demand for any property or valuable security on the side of the accused. It can be analysed from the definition of cruelty given in Section 498A of IPC that all kinds of harassment do not constitute cruelty but all conducts proven to be “cruelty” involves harassment.

CONCLUSION

Referring to these three cases we can understand that the conduct of abetment may vary from case-to-case varying situations. The burden of proof lies heavily on the prosecution side as the prosecution has to depend on witness testimonies and circumstantial evidence. It is extremely difficult on their part to prove the existence of *mens rea* in the conduct of the accused because the conduct of the accused can be subjected in such a way that the guilty mind looks absent but is actually present. For example, a person may commit a willful conduct which will lead to the wife’s death but may escape conviction on the lines that his actions only constitute harassment and as we

¹⁵ Section 498A, Indian Penal Code, 1860, Act no. 45, Acts of Parliament, 1860 (India)

all know harassment does not constitute abetment of suicide until and unless it is related to unlawful demand of valuable property.

We can thus conclude that although for a person to be convicted under abetment of suicide there are a few ingredients to be fulfilled, the conviction heavily depends on how the accused subjected the deceased leading to suicide. The emphasis is placed on circumstantial evidence.