



2026:AHC-LKO:21644

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 2844 of 2009

Akhilesh Kumar

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Santosh Kumar Kanaujia
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 12

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Santosh Kumar Kanaujia, learned counsel for appellant and Mr. Vishwas Saraswat, learned AGA appearing on behalf of respondent-State.

2. This Criminal Appeal has been filed by appellant under Section 374(2) Cr.P.C. to set aside order dated 26.10.2009 passed by Additional Sessions Judge, F.T.C.-6, Lakhimpur Kheri in Sessions Trial No.411 of 2001 arising out of Crime No.134 of 1999; State of U.P. versus Akhilesh Kumar & Ors. relating to Police Station Haidrabad, District Lakhimpur Kheri, convicting and sentencing the appellant under section 306 I.P.C. for five years rigorous imprisonment and fine of Rs.3,000/-and in default of payment of fine three months further rigorous imprisonment.

3. As per prosecution version, incident is said to have taken place on 11.08.1999 when the informant's daughter namely, Kavita Devi committed suicide after five years of marriage with the appellant. As per averment made in the FIR, it was alleged that the appellants as

husband, mother-in-law and father-in-law as well as sister-in-law and the elder brother-in-law were instrumental in the suicide of complainant's daughter since she was issue-less and was deliberately humiliated on that account. The averments also indicate an allegation that appellant and his family members used to thrash the deceased on that account, information with regard to which was given to the complainant by his daughter when she came to visit. It is stated that on 11.08.1999, at about 09.00 A.M., complainant was informed that his daughter had committed suicide by hanging.

4. Learned counsel for appellant submits that FIR was lodged as Case Crime No.134 of 1999 only under section 306 I.P.C. and therefore it was incumbent upon trial Court who have recorded specific finding with regard to ingredients of Section 306 I.P.C. He has adverted to the impugned judgment to submit that although the postmortem report indicates seven injuries on the body of deceased but the said injuries were postmortem and not antemortem and since no injury was made out which was antemortem in nature, the provision of Section 323 I.P.C. were not imputed. He has further adverted to the fact that statements of prosecution witnesses being P.W.1 (Sowaran Lal Verma), P.W.2 (Santosh Kumar) as well as P.W.3 Dr. S.C. Ghusia do not indicate any reason attributable upon appellant which was proximate to the deceased committing suicide or of having abetted such a suicide.

5. Learned counsel therefore submits that the ingredients of Section 306 I.P.C read with Section 107 I.P.C. are clearly not made out. He

has adverted to judgments rendered by Hon'ble the Supreme Court in the cases of ***Gurcharan Singh v. State of Punjab*** reported in ***AIR 2020 SC 4714***, ***Shenagavalli v. Inspector of Police, Kancheepuram*** reported in ***AIR Online 2025 SC 495*** and ***Mangat Ram v. State of Haryana*** reported in ***AIR 2014 Supreme Court 1782*** and on that basis submits that presumption under Section 113-A of the Evidence Act would be inapplicable in such circumstances and also that since mens rea was not proved or established, conviction of appellant is against statutory provisions as well as judgments on that point.

6. Learned Additional Government Advocate appearing on behalf of State has opposed the criminal appeal with the submission that prosecution witnesses have clearly established a case under Section 306 I.P.C. read with Section 107 I.P.C. inasmuch as the aspect of humiliation of deceased on account of being issue-less was made out and forms the basis of appellant's conviction. It is also submitted that the impugned judgment clearly adverts to the aspect that the appellant and his family members were untraceable not only on the date of suicide but also even while at the time of inquest, postmortem and cremation. It is therefore submitted that the link with regard to appellant being the abettor of suicide is clearly made out.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it transpires that first information report was lodged on 11.08.1999 making an averment that complainant's daughter Kavita Devi dying as a result of suicide.

Allegation was levelled against appellants as husband, mother-in-law, father-in-law as well as sister-in-law and the elder brother-in-law. The first information report also states that the appellant and his family members used to humiliate and thrash the deceased on account of the fact that she was issue-less.

8. It is relevant that first information report was lodged only under Section 306 I.P.C. and not any other section including section 323 I.P.C. Although the postmortem report indicates as many as seven injuries or contusions on the body of deceased but same were held to be postmortem and not ante-mortem.

9. In view of aforesaid, the aspect requiring consideration would be whether the appellant was rightly convicted under Section 306 I.P.C. read with Section 107 I.P.C.?

10. With regard to the aforesaid aspects, provision of Section 306 I.P.C. pertaining to abatement of suicide states that if any person commits suicide, whoever affects the Commission of such suicide shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. The said provision is required to be addressed in terms of Section 107 I.P.C. pertaining to abatement and indicates ingredients for applicability of the aforesaid Sections which is that a person would be convicted for abetement of a thing when he instigates in pursuance to do that thing or engages with one or more persons or persons in any conspiracy for doing of that thing, if an act or illegal omission takes place

in pursuance of that conspiracy and in order to doing of that thing or intentionally aids, by any act or illegal omission, the doing of that thing. The relation thereto indicate that a person who by means of willful misrepresentation or by concealment voluntarily causes such a thing to be done would also come within the scope of abatement. Explanation II indicates that any person who facilitates the Commission of that Act would also come within the scope of abatement.

11. Section 108 I.P.C also provides the definition of an abettor as a person who abets an offence or commission of an offence or the commission of an act which could be offence, if committed by a person capable of committing an offence with the same intention or knowledge as that of the abettor.

12. Relevant provision of Sections 306, 107 & 108 I.P.C. are as follows:

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.

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.

108. Abettor.— A person abets an offence, who abets

either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

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

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

13. In view of aforesaid definitions, the aspect which could bring a person within the scope of an abettor would be that such a person instigates any other person to do a particular thing. The said aspect would also include an act or omission to do an act which would result in the commission

of a particular thing, as in the present case, suicide by the deceased.

14. For applicability of Section 306 read with Section 107 I.P.C. therefore it would be essential for the trial court to record a finding that the accused has instigated the deceased to commit the offence such as suicide by a particular act or omission which has resulted in suicide particularly if that the accused was aware and had knowledge that by such act or omission, suicide would result.

15. The said aspect has also been considered by Hon'ble the Supreme Court in the case of **Shenbagavalli** (supra) in the following manner:

"15. Section 306 requires a person having committed suicide as a first requirement but for abetment of such commission, which is essential, the ingredients must be found in Section 107 IPC. The requirement of abetment under Section 107 IPC is instigation, secondly engagement by himself or with other person in any conspiracy for doing such thing or act or a legal omission in pursuance to that conspiracy and thirdly intentionally aids by any act or an illegal omission of doing that thing. In large number of judgments of this Court it stands established that the essential ingredients of the offense under Section 306 IPC are (i) the abetment; (ii)

intention of the accused to aid and instigate or abet the deceased to commit suicide. Merely because the act of an accused is highly insulting to the deceased by using abusive language would not by itself constitute abetment of suicide. There should be evidence suggesting that the accused intended by such act to instigate the deceased to commit suicide. (M. Arjunan V. State represented by its inspector of Police; (2019) 3 SCC 315)" (emphasis supplied)

16. The judgment has also placed reliance on judgment rendered in the case of Ude Singh & Ors. v. State of Haryana reported in AIR 2019 Supreme Court 4570 to hold that for the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. The said aspect has also been considered in the case of **Gurcharan Singh** (supra) in the following manner:

"14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified

under Sec 107 of the IPC, the State of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account."

17. Upon applicability of aforesaid judgments in the present facts and circumstances, a perusal of the impugned judgment will make it evident that P.W.1 (Sowaran Lal Verma) and P.W.2 (Santosh

Kumar) in their deposition have only adverted to the fact that marriage between appellant and deceased took place five years ago and the appellant and his family members used to humiliate the deceased on account of her being issue-less. The testimony also indicates the aspect that fifteen days prior to the date of death on 11.08.1999, the deceased had come to her father's place and has specifically informed her parents with regard to humiliation being faced by her and that her in laws would not let her live.

18. The aforesaid deposition of P.W.1 and P.W.2 do not indicate any aspect against the appellant of any humiliation being made against the deceased on any date proximate to the date of suicide. The only statements pertained to continuous humiliation for the past five years on account of deceased being issue-less.

19. Nonetheless, appellant's conviction has been recorded not only on that ground but also casting suspicion upon the appellants absence at the time of death, inquest and postmortem.

20. In the considered opinion of this Court, the impugned judgment does not advert at all to provisions or applicability of Section 306 read with Section 107 I.P.C. indicating any proximate cause at the behest of appellant which would deem that the deceased was left with no other option but to commit suicide. No specific act or omission on the part of appellant which was proximate to the suicide has been recorded in the impugned order which has convicted the appellant only on the general ground of continuous harassment for the period of five years of

marriage and suspicion cast upon him due to his absence subsequent to the death of deceased.

21. As indicated here-in-above, in the case of **Shenagavalli** (supra), for applicability of Section 306 read with Section 107 I.P.C., there has to be evidence suggesting that the accused intended by his act to instigate the deceased to commit suicide and merely because the act of insulting the deceased by abusive language would not constitute abetment of suicide. Similarly in the case of **Gurcharan Singh** (supra) also the aspect of mens rea is required to be established to determine culpability under Section 306 read with Section 107 I.P.C and that the appellant had a guilty mind and in furtherance of that state of mind, abetted the suicide. Ingredients of mens rea cannot be assumed but has to be visible and conspicuous, which cannot be only because of verbal abuse of the deceased.

22. In the case of **Naresh Kumar versus State of Haryana**; (2024)3 SCC 573, it has been held that for applicability of Section 306 read with Section 107 I.P.C., twin conditions of foreseeing the consequences of the act and its desirability to let it happen are the twin conditions required. The relevant paragraph is as follows:

"23. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a

consequence when he: (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test)."

23. In the case of **Prakash v. State of Maharashtra & Ors.**; 2024 SCC Online SC 3835, the following has been held:

"14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well-established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

15. The law on abetment has been crystallised by a plethora of

decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide."

24. The said aspect has also been considered by Hon'ble the Supreme Court in the case of **Abhinav Mohan Delkar versus State of Maharashtra & Ors.**; 2025 SCC Online 1725 in the following manner:

"22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous

harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, 'the straw that broke the camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim."

25. It therefore transpires that for applicability of Section 306 read with Section 107 I.P.C. there has to be proximate prior act indicating mens rea and involving a mental process of instigating the other person to do the particular thing such as the commission of suicide which will attract the offence of abetment.

26. In such circumstances, in the considered opinion of this Court, the prosecution has failed to establish beyond reasonable doubt the aspect

of appellants abatement in the suicide of deceased particularly since the aspect of mens rea has also not been proved or adverted to in the impugned judgment.

27. In the case of **Mangat Ram** (supra), Hon'ble the Supreme Court has also adverted to Section 113 A of the Evidence Act regarding presumption as to abatement of suicide by a married women and has held as follows:

"26. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. So far as the

present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana (2004) 12 SCC 257: (AIR 2004 SC 2790: 2004 AIR SCW 1283), wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband, Section 113-A, therefore, gives discretion to the Court to

raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC."

28. Upon applicability of aforesaid judgment in the present facts circumstances, although the said presumption particularly pertains to any allegation under Section 498-A I.P.C. but would also be applicable only in case of aspects of presumption including a demand for dowry.

29. In the present case, the oral and documentary evidence does not indicate any demand for dowry having been made by the appellant or his family members.

30. In view of discussion made here-in-above, it being evident that provisions of Section 306 I.P.C. read with Section 107 I.P.C. were inapplicable, the impugned judgment and order dated 26.10.2009 passed in Sessions Trial No.411 of 2001 pertaining to Case Crime No.134 of 1999 recording conviction of appellant is hereby set aside. Appellant stand acquitted under Section 306 I.P.C.

31. Appeal therefore stands ***allowed***.

32. The appellant is on bail and he need not surrender. His bail bond is cancelled and sureties discharged.

33. Appellant is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure, 1973, corresponding to Section 481 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023.

34. Let a copy of this judgment and original be transmitted to the Trial Court concerned forthwith for necessary information and compliance.

(Manish Mathur,J.)

March 26, 2026

Subodh/-