

Sess.case No.26/13.

29.4.13. Accused Purnima Dutta, Anu Dutta and Pratibha Dutta are present.

Today is fixed for necessary order.

In this case, I/O has submitted charge sheet against the accused persons U/S.306 of I.P.C.

Sec.306 of I.P.C read as under-

“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”

In Vishal Agarwalla vs State of Assam reported in 2012(2)GLT 701, our own Hon’ble High court held that *“while dealing with the scope of Sec.306 of I.P.C, it is necessary that one understands as to what the word ‘abetment’ conveys under Sec.107 of I.P.C, which is most relevant in this regard.”*

Sec.107 of I.P.C read as under –

“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;

Thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.”

The Hon’ble High court further held that ‘abetment’ as contemplated in Sec.107 of I.P.C falls into three distinct categories, namely, (i) a person can be said to abet the doing of a thing, when such a person instigates the other person to do that thing or

(ii) when a person engages with one or more other person(s) in any conspiracy in the doing of that thing or
(iii) when any person intentionally aids by any act or illegal omission, doing of a thing. The offence of abetment is committed, when a person instigates another to do a thing or when he enters into a conspiracy for doing of a thing or when he intentionally aids, by illegal act or omission, the doing of that thing.

In the light of the definition of the word 'abetment' or to abet by Black and Wharton and word instigation according to Oxford Dictionary and taking into view how the Hon'ble Supreme court has described abetment in Ramesh kumar vs State of Chattisgarh reported in (2001)9 SCC 618; Randhir Singh vs State of Punjab reported in (2004) 13 SCC 129, it is held that "abetment' involves a mental process of entering into a conspiracy' for doing of a thing or a mental process of 'aiding' a person in doing a thing or in the mental process of instigating, i.e., goading, using, forwarding, provoking, enticing or inscribing to do a thing. Thus abetment implies an intentional act or omission on the part of the person, who is alleged to have abetted an act. There need no "be direct evidence of such intention and such intention may be inferred even from circumstantial evidence."

In Vishal Agarwal (supra) what becomes clear is that –

"The, 'abetment', in the context of an offence under Sec.306 IPC, would mean inciting, encouraging, provoking or urging forward to commit suicide. Such an act of inciting, encouraging, provoking or urging would obviously reflect an intentional act, on the part of the accused, to induce one or intentionally drive one to commit

suicide. Hence, to commit suicide merely because of the fact that a husband subjects his wife to cruelty and the cruelty is of the extent that it would, ordinarily, drive a woman to commit suicide, such an act of subjecting the wife to cruelty by such a husband would not necessarily amount to abetment unless the Court is satisfied that the wife was subjected to cruelty, or the woman was subjected to cruelty, with 'intent' to drive her to commit suicide."

In Vishal Agarwal (supra) to understand the ambit of Sec.306 of I.P.C, following example is given-

21. "Two men A and B are married to X and Y respectively. A has been subjecting his wife, X, to cruelty, which was of such a nature and of such an extent that it would have, ordinarily, driven a woman, placed in the position of X, to commit suicide, but A never intended that X shall commit suicide. However, unable to bear such cruelty, X commits suicide. Let us, now, compare such a case with the case of B. Let us assume that B subjects Y to cruelty with intent that she commits suicide and unable to bear such cruelty, Y commits suicide. In the case of a, where there was no intention to drive the woman to commit suicide, though his wife, X did commit suicide, the fact remains that in the case of B, there was an intention to instigate Y to commit suicide, hence, while B can be held liable and guilty of an offence U/S.306 I.P.C, A cannot be so held guilty of an offence under Sec.306 I.P.C. The test is, therefore, not as to whether X or Y was subjected to cruelty.

22. The test is also not whether X or Y committed suicide. The test would be as to whether the

woman was subjected to cruelty with a view in making her commit suicide or whether she was subjected to cruelty without any intention to make her commit suicide. If the intention was not to drive the woman to commit suicide, the mere fact that the nature cruelty was such that the woman was likely to commit suicide, it would not make out a case of Sec.306 IPC, if Y commits suicide.

23. In an offence Under Sec.306 IPC, therefore, it is imperative for the prosecution to prove that the woman committed suicide not merely because of the fact that she' was subjected to cruelty, but that she was subjected to cruelty with a view to making her commit suicide. "

From the above discussion, it reveals that abetment of suicide requires instigation from the end of the accused to the person, who commits suicide. If a person is mentally and physically harassed and tortured, the person, who perpetrates harassment and torture, cannot be held liable U/S.306 of I.P.C unless there is some material indicating that the intention, behind the harassment and torture, was to see that the person, harassed and tortured commits suicide.

In the present case, informant Ira Dutta, on 12.10.07 lodged the F.I.R at Bhogdoi O.P alleging, inter alia, that accused persons used to torture her physically challenged daughter for property. On 9.10.07 when the accused persons again abused her sister with filthy words for which her sister at about 2:40 p.m took poison with an intention to commit suicide. Though she was shifted to Civil Hospital, Jorhat, but at about 12 midnight, she died. A suicide note was recovered. Anu Dutta is unmarried. Accused Protibha Dutta and Purnima Dutta are married women.

From the documents, it reveals that on the next day of occurrence, i.e., on 10.10.2007 Sri Sanjeeb Dutta, the son of the informant by filing an F.I.R and informed that on 9.10.07 at about 2:40 p.m, his sister Minu Dutta consumed poison with an intention to commit suicide. ON the basis of said F.I.R, a U.D case was registered and did investigation and submitted report that the deceased committed suicide. During investigation, post mortem was done on the dead body of the deceased, but Doctor could not give definite cause of death, accordingly, viscera was preserved for forensic examination. But, the I/O who did the investigation of the U.D case did not send the viscera for forensic examination in time.

On the basis of the statement of witnesses, the I/O came to a finding that the deceased committed suicide. In the report of U/D case, the I/O has not mentioned about suicide note.

The document submitted U/S.173 of Cr.P.C is silent that the intention of the accused in abusing the deceased, was to make the informant's daughter Minu Dutta, commit suicide.

In view of above discussion and relying decision in Vishal Agarwal (supra), prima facie , there is no material to frame charge U/S.306 of I.P.C against the accused persons.

Accordingly, all the three accused persons are discharged.

Their bail bonds are cancelled.

Destroy the seized articles in due course of law.

ASSTT.SESS.JUDG,JORHAT

ASSTT.SESS.JUDGE

JORHAT.