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## **LECTURE- 27**

## **Attempt**

Merely because the section opens with the words “ if any person commits suicide” it cannot be held that in a case of unsuccessful suicide there is no attempt to abet the commission of suicide. Suicide and its attempt, on the one hand, and abetment of commission of suicide and its attempt on the other are treated differently by law and therefore the one who abets the commission of an unsuccessful attempt to commit suicide cannot be held to be punishable merely under Section 309 read with Section 116 of the IPC.

To implement the scheme of law he has got to be held punishable under Section 306 of the Indian Penal Code read with Section 511 of the Penal Code. The Supreme Court has never laid down in Satvir Singh v. State of Punjab that under no circumstance, an offence under Section 306 of the Penal Code read with Section 511 of the Penal Code can be committed. The Supreme Court did not have the occasion to consider whether a conviction for an offence of attempt to abet the commission of suicide is punishable under Section 306 read with Section 511 of the Penal Code.

Act done with Criminal Intimidation is not Abetment

Illegal gratification, unfortunately, is a normalized practice in the system. Now this, practice makes the bribe giver an accomplice to some illegal act even if the bribe is extorted from them. The honourable Supreme Court clarified this dilemma in the case of *Dalpat Singh v. State of Rajasthan*[8] by stating that :

*Those who gave illegal gratification to the appellants (Reserve Police constables) cannot be considered as accomplices as the same (bribe) was extorted from them.[9]*

Broadly it can be said that the three strategies of committing the crime of *Abetment* are by

- **Instigating**
- Engaging
- Intentional Aiding

## **Instigating**

Instigating someone literally means to incite, provoke, urge or bring about by persuasion to do anything. The word ‘instigate’ has been interpreted in the case of *Sanju v. State of M.P*[10] One might argue that the actus reus and the mens reus do not merge to a single person, therefore, abetment to do a thing should not be an offence. *In abetment by instigation, there has to be some active involvement of the abettor towards the preparatory phase of the crime.*

This is broadly considered as the actus reus in the crime of abetment, combined with the intention of getting something done or illegally omitted would constitute a complete criminal offence. However, there needs to be sufficient proof that the individual has willfully influenced and coerced the individual to commit a crime[11] but at the same time, it is not necessary for the person abetted to have the same guilty intention or knowledge.[12] The person abetted can totally have a different set of intention and knowledge, still, the offence is committed because the preparatory phase is being dealt with in isolation to the execution phase.[13]

The entire liability of the abettor is decided within the first two stages of the crime. Now even if the execution gets a different result, the crime has been committed. Advice amounts to instigation only when intended to actively suggest or stimulate the commission of an offence. Mere acquiescence does not amount to instigation. **Presence of mens reus is a necessary concomitant of instigation.**[14]

In any event, in determining the criminal responsibility of the defendant in the case, it becomes necessary to determine not only the criminality of an order/suggestion/proposition in itself but also as to whether or not such an order was criminal on its face. Criminal law also rests on the fact that most times people have a free will.[15]

**Lord Kenyon** in the case of *Higgins*[16] said that, “*a mere intent to commit evil is not indictable, without an act done; but is there not an act done, when it is charged that the defendant solicited another to commit a felony? The solicitation is an act sufficient to constitute an overt act of high treason.*”

Commission of the offence is not necessary for the first two clauses of Section 107

- It is immaterial whether the person instigated goes ahead to commit the crime or a group conspiring together executes the object of the conspiracy.[17] Abetment as an offence is complete in itself a distinct.[18] When the alleged abettor has instigated another or engaged with another in a conspiracy to commit an offence. It is not necessary for the offence of abetment that the act abetted must be committed.[19]

Mere verbal permission or silent assent would not constitute instigation

- If A tells B that he intends to loot a bank C, B says **do as you like**, A succeeds in looting the bank C, here B cannot be said to have instigated.

Willful misrepresentation or Concealment is sufficient to constitute abetment

- A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

## Direct or Indirect Instigation

- Where a person gives to an unlawful assembly a general order to beat, it is a case of a direct instigation. The instigation would be indirect when instead of such an order a person raises a slogan “Cowards die many times before their death, the valiant die but once” will intend to provoke. This is direct instigation whereas indirect instigation would be A instigating B to commit a crime not by saying so but by harping upon the wrongs he has suffered.

## Engaging

Means being actively involved in the suggestion or stimulation of the commission of the crime such as in a conspiracy. The sections 120A and 107 of the Indian Penal Code dealing with the offences of conspiracy have clearly stated the difference between the two. The case of *Noor Mohammad Momin v. State of Maharashtra*[20] shows the difference between criminal conspiracy and abetment to conspiracy. Criminal conspiracy has a wider jurisdiction than abetment by a conspiracy. An individual is guilty of conspiracy with the mere agreement between a group of people to commit an offence.

## Ingredients of Abetment by Conspiracy

1. A conspiracy between two or more person.
2. An act or illegal omission may take place in furtherance of that conspiracy.

Under chapter V a mere combination of person or agreement is not enough, an act or illegal omission must also take place in pursuance of the conspiracy and the act or illegal omission must also be in order to the doing of the thing agreed upon between them.[21] Explanation 2 of Section 107 has to be read together with Explanation 5 of section 108, which provides that it is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It would be sufficient if he engages in the conspiracy in pursuance of which the offence is committed. It has been held that where a criminal conspiracy amounts to an abetment under Section 107, it is unnecessary to invoke the provisions of Section 120A and 120B, as the Indian Penal Code makes specific provision for the punishment of such a conspiracy.[22]

- A, a servant enters into an agreement with thieves to keep the door of his master’s house open in the night so that they might commit theft. A, according to the agreed plan keeps the doors open and the thieves take away the master’s property. A is guilty of abetment by the conspiracy for the offence of theft. But should the thieves not come; A will not be liable under this section.

## Intentional Aiding

A person is said to abet the commission of an offence if he intentionally renders assistance or gives aid by doing an act or omitting to do an act. Mere intention to render assistance is not sufficient.

## Ingredients

- Doing an act that directly assists the commission of the crime, or
- Illegal omission of a duty you are bound to do, or
- Doing any act facilitates the commission of a crime.[23]

For instance, two factory workers begin quarrelling and the owner in a fit of anger shouts that if he had a weapon he would teach them a lesson. Now, if another labourer in the factory on hearing this hands him a weapon and the owner subsequently injures them with it, the labourer who supplied the weapon which facilitated the act is guilty of abetment through assistance.[24]

A person, it is trite, abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends to facilitate and does in fact facilitate the commission thereof, would attract the third clause of Section 107 of the Penal Code. Doing something for the offender is not abetment.

Doing something with the knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment. In order to constitute abetment by aiding within the meaning of the third paragraph of Section 107, the abettor must be shown to have intentionally aided the commission of the crime.

A person may invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But, unless it is shown that the invitation was extended with a view to facilitate the commission of the murder, it cannot be said that person extending the invitation had abetted the murder.

The language used in this section is “intentionally aids” and therefore, active complicity is the gist of the offence of abetment under the third paragraph of Section 107 of the Indian Penal Code. Abetment includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing.

On facts held, in the instant case, there was no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide.

Where the principal offender killed the victim with a knife provided by the defendant who later claimed that he thought the knife would be used only to threaten, the defendant’s conviction for murder was upheld, the Court of Appeal saying that the trial judge was correct to direct the jury that the defendant could be so convicted if he contemplated that the principal offender might kill or cause serious bodily harm to the victim as part of their joint enterprise.

It is also not necessary to show that the secondary party to a conspiracy to murder intended the victim to be killed provided it is proved that he contemplated or foresaw the event as a real or substantial risk.

Mere absence from the scene of the crime cannot amount to unequivocal communication of withdrawal from the enterprise. The accused was recruited with certain others by a person to kill his wife. At a predetermined time she was taken to the agreed place and killed. The accused was not present when the killing took place. It was held that he was rightly convicted in that he had lent encouragement and assistance before the commission of the crime.

Merely being present at the crime scene does not amount to aiding

- Unless the intention was to have an effect by being present or the person was aware that an offence is about to be committed or he actively supports or holds some position, rank in committing of the offence.

## Chapter VII

This chapter relates to the offences against an officer, soldier, sailor or airman in the army, navy or air force of Government of India. In addition, these words are common to all the sections right from Section 131 to 140.

### Ingredients

1. Abetment of committing a mutiny by an officer(officer, soldier, sailor or airman in the army, navy or air force of Government of India)
2. Attempting to seduce any officer from his allegiance or his duty.

Mutiny is the uprising against the lawful authorities in the army. It can be very well compared to sedition. The concept of abetment in this chapter is analogous to Chapter V and Chapter XVI. The only difference being Chapter VII comes under the category of offences against the state, hence severe penal sanctions.

## Chapter XVI

### Abetment to Suicide

Instigation as a form of abetment has generally been the most essential consideration in cases of abetment to suicide and dowry death. Another important consideration to charge anyone for abetment to suicide is to prove beyond doubt that the death in question is a suicidal death.[25] Section 306, IPC reads as *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 be liable to fine.* The definition of abetment in section 306 needs to conform with the definition given under section 107 of the IPC.

If A persuades B to kill himself and he does it, then according to this section, A would be liable as an abettor. Proving the direct involvement [26] by the accused in such abetment to suicide is

necessary.[27] However, abetment of suicide is a long mental process and rarely easy to prove. A conviction cannot be handed over under 306 unless clear mens rea is proved. The elements that need to be satisfied in order for an offence to come under section 306 IPC are suicidal death, and abetment thereof held in *Sangarabonia Sreenu v. State of Andhra Pradesh*. [28]

Let us look at some of the recent developments regarding Abetment to Suicide which put forth the ingredients of the offence as well.

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Deceased committed suicide by hanging himself because of the alleged illicit relationship between his wife and the accused. Accused took the wife of deceased away from the house of her brother and kept her with him for four days. There is definitely a proximity and nexus between the conduct and behaviour of the accused and wife of deceased with that of suicide committed by the deceased.

Where a married girl committed suicide by burning herself in her in-law's house, her in-laws were held guilty of abetment because they were persistently torturing her for inadequate dowry and had gone to the extent of accusing her of illegitimate pregnancy. The judge in this case held that all these tortures and taunts caused depression in her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on herself and setting it afire.

Section 306 of the Penal Code prescribes punishment for abetment of suicide while Section 309 of the Penal Code punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of Section 306 of the Penal Code.

In another case of the same kind, a husband persistently demanded more money from his wife, quarrelling with her everyday. On the fateful day when she happened to say that death would have been better than this, she heard only this in reply that her husband would feel relieved if she ended her life. Immediately thereafter he set herself on fire. The husband was held guilty of instigating her to commit suicide. Where the deceased committed suicide within 35 days from the date of her marriage, and the allegation of cruelty was also fully established, accused is found guilty.

- ***Clear mens rea to commit the offence is a sine qua non for conviction under Section 306 IPC***[29]
- Merely because wife committed suicide in matrimonial house, husband and in-laws can't be charged for abetment to suicide.[30]
- In order to convict a person for abetment of suicide, there has to be a clear mens rea to commit an offence. [31]



## Relevant Case Laws

The law of abetment has undergone major changes very recently. The changes are laid out by the landmark cases below:

- In Pramod Shiram Telgote v. State of Maharashtra , it was held that “clear mens rea to commit the offence is a sine qua non for conviction under Section 306 IPC”.
- In Channu v. State of Chattisgarh, it was held that “merely because wife committed suicide in matrimonial house, husband and in-laws can’t be charged for abetment to suicide.”
- In Gurucharan Singh v. State of Punjab, it was held that “in order to convict a person for abetment of suicide, there has to be a clear mens rea to commit an offence.”

## Conclusion

Thus, contrary to popular belief, not only the perpetrator of the crime but also his or her accomplice will be liable in the case.

## MCQs-

i. Conspiracy is a crime which has two different sources. What are they?

- a) To defraud and to outrage public decency.
- b) Agreeing with another person to pursue a course of conduct which will necessarily amount to a crime or involve the commission of a crime.
- c) Conspiracy to commit murder and conspiracy to defraud.

ii. What is the current *mens rea* for statutory conspiracy?

- a) Intention to be a party to an agreement.
- b) Intention that the substantive offence be carried out by one of the conspirators.
- c) Both A and B.
- d) None. Conspiracy is an offence of strict liability.

iii. If the proposals in the Law Commission Report 318 are enacted without change, what would the *mens rea* for statutory conspiracy be?

- a. D and another(s) intend the conduct of the substantive offence.
- b. D and another(s) are reckless in respect of the conduct of the substantive offence.

c. D and another(s) intend or are reckless in respect of the conduct and intend or are reckless to any relevant circumstances of the substantive offence (even if the substantive offence itself is one of strict liability).

d. It is a trick question because statutory conspiracy would be an offence of strict liability.

iv. Which of the following is FALSE?

a. A person can be convicted of encouraging and assisting an offence if the full offence is impossible.

b. A person can be convicted of conspiracy to commit an offence if the full offence is impossible.

c. A person can be convicted of attempting an offence if the full offence is impossible.

d. A person cannot be convicted of any inchoate offence if the full offence is impossible.

v. What is the *actus reus* of an attempt contrary to the Criminal Attempt Act 1981 s. 1?

a. Intention to commit the offence.

b. An act which is merely preparatory to the commission of the offence.

c. Conduct which is more than merely preparatory to the commission of the offence.

d. An act which is more than merely preparatory to the commission of the offence.