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## **LECTURE-26**

It is only in cases of intentional aiding that the abettor would have to be acquitted with the principal offender. Following this state of the ruling, the Supreme Court ordered the acquittal of the single abettor when the main offender as also all other abettors already stood acquitted.

The Supreme Court has reiterated that before anybody can be punished for abetment of suicide; it must be proved that the death in question was a suicidal death. The Supreme Court held that the offence of abetment is a separate and independent offence. Where the offence is committed in consequence of the abetment but there is no provision for punishment of such abetment, the abettor is to be punished along with the offender for the original offence.

### **Abettor**

Abetment under the Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of that offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere, concurrence in the criminal acts of another without such participation therein as helps to give effect to the criminal act or purpose, is punishable under the Code.

The definition of an Abettor is laid out in Section 108 of the Indian Penal Code. Abettor under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act, which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section, he must be an instigator or a conspirator or an intentional helper. Merely because the accused's brother was carrying out criminal activities in her house, the appellants cannot be held guilty unless there is some material to show her complicity. The section is coupled with five explanations which are discussed below:

#### Explanation 1

If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

#### Explanation 2

The question regarding the abettor's guilt depends on the nature of the act abetted and the manner in which abetment was made. Commission of the act abetted is not necessary for the offence of abetment. The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment

by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

#### Explanation 3

This explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment. The offence of abetment depends upon the intention of the person he employs to act for him.

#### Explanation 4

The explanation is to be read as follows: “When the abetment of an offence, is an offence, the abetment of such an abetment is also an offence”. In view of Explanation 4 appended under Section 108 of the Penal Code, the contention of the accused that there cannot be any abetment of an abetment is unknown to criminal jurisprudence, holds no merits and consideration.

### **Rationale of Punishing those involved in an Abetment**

It goes without saying that a threat by a group of criminals is greater than a threat by a single person. If we dive deeper into this scenario, we can make out why a team or a gang of criminals is more likely to succeed than a single criminal. First off, a single person committing a crime would be limited in terms of execution of the crime as he would not be able to foresee everything beforehand. He would try to act around his plan which will proceed with a very narrow sighted execution.

As opposed to a single perpetrator, imagine how many possibilities a gang of criminals might open. Each one could think of his/her idea and all of them in conjunction could come up with a totally foolproof plan. Also, an aspect that may be grossly overlooked is the encouragement side of the crime. When someone is acting all by himself, there is little he can do to uplift his encouragement but when a bunch of people are on a mission together, losing motivation will be a rare sight.

### **Differences between Abetment and a Common Intention**

- Abetment is a stand alone offence and can be punished all by itself but having a common intention is no offence on its own and has to be read with in consonance of other crimes.

- For Abetment, the accused may not be present at the crime scene but under Common Intention, his presence is an indispensable element and participate whether actively or passively.
- For Abetment, the crime need not be committed but for Common Intention, the crime must be committed.

## **Types of Abetment under the Indian Penal Code**

### Abetment by Instigation

A person is said to ‘instigate’ another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.

The law does not require that instigation, in a case of abetment by instigation, should be in particular form or that it should be only in words and may not be by conduct; for instance, a mere gesture indicating beating or a mere offering of money by an arrested person to the constable who arrests him, may be regarded as instigation, in the one case to beat and in the other to take a bribe. Whether there was instigation or not, is a question to be decided on the facts of each case. It is, however, not necessary in law, for the prosecution to prove that the actual operative cause in the mind of the person abetted was the instigation, and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed, if the person committing the act had the same knowledge and intention as the abettor. It is impossible for any human tribunal to decide exactly how much the instigation actually weighed in the mind of the person abetted, when he committed the act or offence. The mere commission to bring the notice of the higher authorities, offences committed by other persons, may form the foundation for disciplinary action against him in a departmental way, but it cannot in law amount to abetment of the offence committed by his fellow clerk.

Instigation is to 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.

Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or ‘urging forward’. In order to hold a person guilty of abetting it must be established that he had intentionally done something which amounted to instigating

another to do a thing. Instigation may also be of an unknown person. A mere permission does not amount to instigation.

### **Wilful Misrepresentation or Wilful Concealment**

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) 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. Instigation by 'wilful concealment' is where some duty exists which obliges a person to disclose a fact.

#### *Harassment from the Superior Officers*

Deceased was a qualified engineer who had suffered persistent harassment and humiliation and also had to endure continuous illegal demands made by the accused and upon non-fulfilment of which he would be mercilessly harassed by the accused by a prolonged period of time. Such harassment coupled with the utterance of words to the effect that, had there been any other person in his place, he would certainly have committed suicide. In Madan Mohan Singh v. State of Gujarat, the deceased was a driver in the Microwave Project Department.

He had undergone a bypass surgery for his heart, just before the occurrence of such incident, his doctor had advised him against performing any stressful duties. The accused was a superior officer to the deceased. When the deceased failed to comply with the orders of the accused, the accused became very angry and threatened to suspend the deceased, rebuking him harshly for not listening to him. The accused also asked the deceased how he still found the will to live, despite being insulted so. The driver committed suicide.

For the purpose of bringing home any charge against the accused, the Supreme Court stated that there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide, or engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. If the making of observations by a superior officer, regarding the work of his subordinate, is termed as abetment to suicide, it would become almost impossible, for superior officers to discharge their duties as senior employees.

No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether the circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

### **Abetment by Conspiracy**

‘Conspiracy’ consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means. So long as such design rests in intention only, it is not indictable. When two carry it into effect, the very plot is an act itself, and the act of each of the parties, promise against promise, capable of being enforced, if lawful, is punishable if for a criminal object or for the use of criminal means. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. Where parties concert together, and have a common object, the act of one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of all.

Before the introduction of conspiracy, except in cases provided for by Section 121A, 311, 400, 401, 402 of the Code, was a mere species of abetment when an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.

For an offence under the second clause of this section a mere combination of persons or agreement is not enough; an act or illegal omission must take place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.

For an offence under the second clause of this section, a mere combination of persons or agreement is not enough; an act or illegal omission must take place in pursuance of the conspiracy. But for an offence under section 120 A of the Indian Penal Code, a mere agreement is enough if the agreement is to commit an offence.

Let us discuss the difference between Abetment and Conspiracy. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, An illegal act or an act which is not illegal by illegal means. It differs from other offences because mere agreement is made an offence even if no step is taken to carry out that agreement.

Though there is close association of conspiracy with incitement and abetment, the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated under Section 107 of the Indian Penal Code. There is no analogy between Section 120 B and Section 109 of the Indian Penal Code. There may be an element of abetment in a conspiracy; but conspiracy is something more than an abetment.

### **By illegal omission**

The definition of abetment as given in Section 107 of the Penal Code not only includes instigation but also intentional aiding by an illegal omission. Accordingly, the appellant, being the person responsible for creating circumstances provoking or forcing the victim to take the extreme step to avoid a more miserable life and not making any attempt to save her life, was liable to be convicted for the offence of abetment of suicide.

In a case where a lady advocate was attending the chamber of her senior advocate, the accused. On the day of the incident she was talking with the accused at her residence. At that moment in his presence, she poured kerosene on her and set herself on fire. The accused did nothing to save her. It was held that this did not amount to “illegal omission” and he was not held guilty of abetment to suicide.

### **Abetment of offences under other laws**

The offence of aiding and abetting is applicable to all statutory offences unless specifically excluded by statute and accordingly it was held to apply to offences created by the English Public Order Act 1986. Abetment of an offence under the Prevention of Corruption Act, 1988 can be made by a non-public servant. Abettors are to be prosecuted through trial under the Prevention of Corruption Act.

MCQs-

**i. Abetment of any offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment is dealt under-**

- A. Section 115 of IPC
- B. Section 116 of IPC
- C. Section 117 of IPC
- D. Section 118 of IPC

**ii. Abetment of any offence when one act is abetted and a different act is done; subject to proviso is dealt under-**

- A. Section 109 of IPC
- B. Section 110 of IPC
- C. Section 111 of IPC
- D. Section 112 of IPC

**iii. Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment is dealt under-**

- A. Section 109 of IPC
- B. Section 110 of IPC
- C. Section 111 of IPC
- D. Section 112 of IPC



iv. **Abetting the commission of an offence by the public or by more than ten persons is dealt under-**

- A. Section 117 of IPC
- B. Section 118 of IPC
- C. Section 119 of IPC
- D. Section 120 of IPC

v. The common law offence of incitement has been abolished. What new law replaces it?

- Fraud
- Encouraging or assisting an offence
- Conspiracy
- Section 8 Accessories and Abettors Act 1861