

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 12 of 2022****Order Reserved on 06.5.2022****Order Delivered on 13.5.2022**

Ashish Kumar Rajwade @ Rinku, S/o-Shri Pradeep Kumar Rajwade, Aged about 28 years, R/o-Bodar, P.S.- Sonhat, District – Koriya (C.G.)

----- Applicant/Accused

Versus

State of Chhattisgarh, Through-S.H.O., P.S.-Charcha, Distt. - Koriya (C.G.)

----- Non-applicant

For Petitioners : Mr. Pushkar Sinha, Advocate.
For Non-applicant/State : Mr. Amit Singh Chouhan, PL

Hon'ble Shri Justice N.K.Chandravanshi

Order [CAV]

1. The instant revision petition has been preferred against the order dated 24.9.2021 passed by Additional Sessions Judge, Baikunthpur, District Kororia in Sessions Trial No. 40/2021, whereby a charge under Section 306 of the Indian Penal Code has been framed against the applicant/accused (henceforth 'applicant').

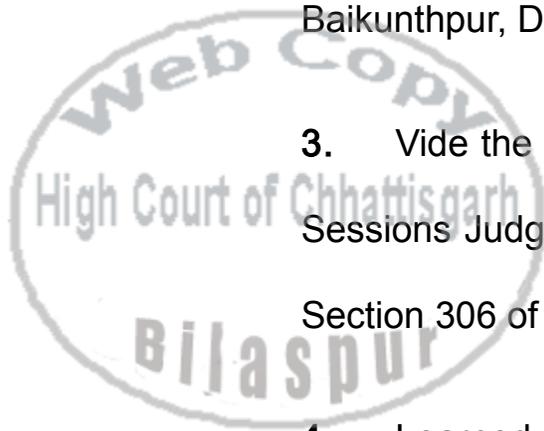
2. Brief facts of the case are that on 29.1.2020 at about 7.30 pm informer Jageshwar Prasad Rajwade informed the police that his daughter Manisha Rajwade has committed suicide by hanging herself in his home. Based on above facts, merger report No. 03/2020 was lodged in police station Churcha, District Kororia.



During merg enquiry, it was revealed that applicant and Manisha Rajwade (since deceased) were having love affair, he physically abused her and he had asked her to marry but subsequently he refused to marry, therefore, deceased was under a lot of stress and, therefore, she took extreme steps to end her life. Based on above facts, FIR No. 23/2020 under Section 306 of the IPC was registered against the applicant in Police Station Churcha, District Korla. After usual investigation, charge-sheet for the alleged offence was filed against the applicant, which is pending consideration before the learned Additional Sessions Judge, Baikunthpur, District Korla.

3. Vide the impugned order dated 24.9.2021, learned Additional Sessions Judge, Baikunthpur, District Korla framed a charge under Section 306 of IPC against the applicant, hence this revision.

4. Learned counsel appearing for the applicant would submit that even if the entire case of the prosecution is taken as it is, the offence under Section 306 IPC is not made out because the basic ingredients of Section 306 IPC i.e 'abetment' (*to commit suicide*), as defined in Section 107 IPC, are not attracted in the present case. It is further submitted that all the prosecution witnesses have made vague and bald statement to the effect that applicant was having love affair with the deceased and because of his refusal to marry with her, she committed suicide but neither they have stated that applicant abetted the deceased to commit suicide nor they have stated that he committed any cruelty or harrassment or





engaged in any conspiracy for commission of suicide by the deceased. It is further submitted that if the whole charge-sheet is accepted in toto, it cannot be held that the act of suicide was the last resort available to the deceased and there is no material on record to convict or even to frame charge against the applicant for offence punishable under Section 306 of the IPC, as there is no proximity and nexus between any conduct and behaviour of the applicant with that of suicide committed by deceased – Manisha Rajwade. For the sake of argument, if it is assumed that applicant had some relation with deceased, despite that it cannot be a reason for committing suicide in terms of various decisions rendered by the Supreme Court including M.Mohan v. State represented by Deputy Superintendent of Police¹.

5. Per contra, learned counsel for the State/respondent would submit that as per charge-sheet, there is sufficient material available on record for presuming that the applicant has abetted the deceased to commit suicide, as such, there is no illegality or infirmity in the order impugned framing charge against the applicant under Section 306 of IPC, which does not call for any interference in the instant revision.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

7. The question in the present case is as to whether on

¹ (2011) 3 SCC 626



considering the entire material available on record to be correct and true, a prima facie case for alleged commission of offence punishable under Section 306 of the IPC is made out against the applicant ?

8. Before considering the facts of the instant case, it appears necessary to have a look on the provisions contained under Section 306 of the IPC, which reads thus:-

“S. 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.”

Abatement has been defined in Section 107 which reads as under :-

”S. 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 2 – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and





thereby facilitate the commission thereof, is said to aid the doing of that act.”

Punishment of abetment is provided under Section 109 of the IPC which reads as under :-

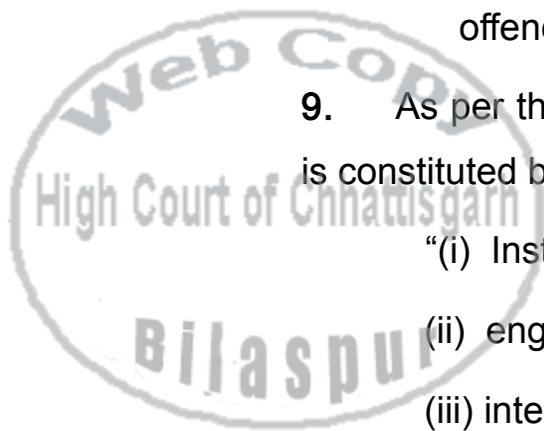
“S. 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment – Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.”

9. As per the definition given in Section 107 of the IPC, an abetment is constituted by any one of the following three ingredients :

- “(i) Instigating a person for doing of a thing, or
- (ii) engaging in a conspiracy for the doing of that thing, or
- (iii) intentionally aiding the doing of that thing.”

10. 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 word 'instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

11. As Section 306 of the IPC makes abetment of commission of suicide punishable, therefore, for making liable for an offence punishable under Section 306 of the IPC, it is the duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused, it is





necessary to see that his act must fall in any of the three ingredients as enumerated under Section 107 of the IPC, and therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more persons in any conspiracy for seeking that the deceased commits suicide or he must intentionally aid by any act or illegal omission, of the commission of suicide by the deceased.

12. The Supreme Court has considered the scope of Sections 107 and 306 of the IPC in the matter of Sanju @ Sanjay Singh Sengar v. State of M.P.² and held as under :-

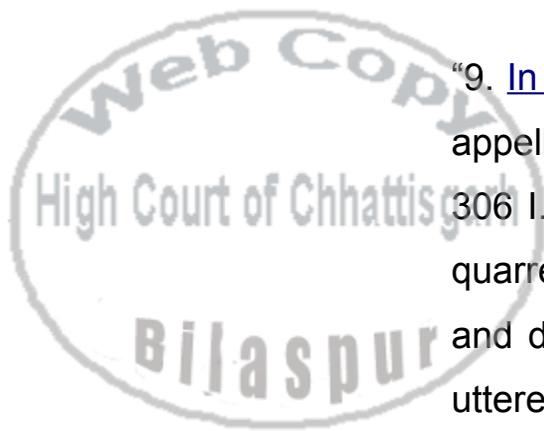
“9. In Swamy Prahaladdas v. State of M.P. & Anr.³, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even *prima facie* enough to instigate the deceased to commit suicide. ”

13. In the matter of Ramesh Kumar v. State of Chhattisgarh⁴, the Supreme Court, while considering the conviction for an offence under Section 306 of the IPC on the basis of the dying declaration recorded by an Executive Magistrate where she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter, she had poured

2 (2002) 5 SCC 371

3 1995 Supp. (3) SCC 438

4 2001 (9) SCC 618





kerosene on herself and had set fire. Acquitting the accused, the Supreme Court held as under :-

“A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

14. Hon'ble Supreme Court in the case of Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)⁵ had an occasion to deal with the aspect of abetment. In the said case this Court has opined that there should be an intention to provoke, incite or encourage the doing of an act by the accused. Besides, the judgment also observed that each person's suicidability pattern is different from the other and each person has his own idea of self- esteem and self - respect. In the said judgment it is held that it is impossible to lay down any straitjacket formula dealing with the cases of suicide and each case has to be decided on the basis of its own facts and circumstances.

15. In the case of Amalendu Pal @ Jhantu v. State of West Bengal⁶, their Lordships of the Supreme Court in order to bring a case within the purview of Section 306, IPC, has held as under :-

5 (2009) 16 SCC 605

6 (2010) 1 SCC 707



“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under [Section 306](#) IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of [Section 306](#) IPC is not sustainable.

13. In order to bring a case within the purview of [Section 306](#) IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under [Section 306](#) IPC.”

16. In the case of **S.S. Chheena v. Vijay Kumar Mahajan**⁷, Hon'ble Supreme Court reiterated the ingredients of offence of Section 306 IPC. Paragraph 25 of the judgment reads as under :-

“28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate

7 (2010) 12 SCC 190



or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under [Section 306](#) IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

17. In the case of *M. Mohan* (supra), the Supreme Court has clearly held that in order to convict a person under Section 306 of the IPC, there has to be a clear mens rea to commit the offence, by observing as under :-

“45. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide. ”

18. In *Gurcharan Singh v. State of Punjab*⁸, the Supreme Court has pointed out the basic ingredients of Section 306 of the IPC i.e. suicidal death and abetment and held that to constitute abetment, intention and involvement of accused to aid or instigate commission of suicide is imperative. Paras 21, 28 and 29, being relevant, are extracted below :-

8 (2017) 1 SCC 433



“21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

28. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal*^P that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced



individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in *Amalendu Pal v. State of W.B.*¹⁰

29. That the intention of the legislature is that in order to convict a person under [Section 306](#) IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena v. Vijay Kumar Mahajan*¹¹.”

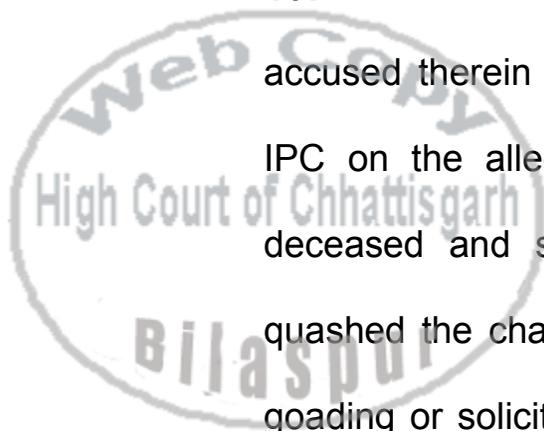
19. In the matter of *State of West Bengal v. Indrajit Kundu*¹² the accused therein was charged for offence under Section 306 of the IPC on the allegation that the accused and his parents abused deceased and stigmatized her as call girl. The Supreme Court quashed the charges under Section 306 of the IPC holding that no goading or solicitation or insinuation by any of the accused persons to deceased to commit suicide and observed in para 11 as under :-

“11. From the material placed on record, it is clear that respondents are sought to be proceeded for charge under Section 306/34 mainly relying on the suicide letters written by the deceased girl and the statements recorded during the investigation. Even according to the case of de facto complainant, respondent Nos. 2 and 3 who are parents of first respondent shouted at the deceased girl calling her a call-girl. This happened on 05.03.2004 and the deceased girl committed suicide on 06.03.2004. By considering the material placed on

10 (2010) 1 SCC 707

11 (2010) 12 SCC 190

12 2019 SCC Online SC 1201





record, we are also of the view that the present case does not present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. In the case of *Swamy Prahaladdas v. State of M.P.*¹³ this Court while considering utterances like “to go and die” during the quarrel between husband and wife, uttered by husband held that utterances of such words are not direct cause for committing suicide. In such circumstances, in the aforesaid judgment this Court held that Sessions Judge erred in summoning the appellant to face the trial and quashed the proceedings.”

20. Reverting to the facts of the present case in light of principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments (supra), it is quite vivid that father & mother of the deceased and other witnesses have stated that deceased Manisha Rajwade was pursuing her study, B.A. final year at Baikunthpur College, therefore, she met with the applicant frequently. Applicant sometime used to take her for college and some times drop her in her house. It is further stated that deceased has told her mother and other relatives that she was having love affair with the applicant and he asked her to marry. They have also stated in their police statement that subsequently applicant refused to marry her, due to which, she was under a lot of stress. They have stated

13 1995 Supp. (3) SCC 438



that the applicant has made physical relation with her also on the pretext of marriage.

21. Perusal of statements of the witnesses, would go to show that they have made vague and bald statements, as they have not stated that, since when deceased and applicant were in alleged love relation and when deceased had told them that applicant had made physical relation with her, whereas, not only, merg report but from the statements of parents of deceased, grandmother and other relatives, it appears that the day prior to the incident, a boy and his family members had come to see the deceased for a matrimonial relationship and on being asked, the deceased had also agreed to that relation and on the next day i.e. on 31.1.2020, parents of deceased were willing to go to the house of that boy in furtherance of their matrimonial relation. If she would have any affair with the applicant and her parents were knowing about that fact, then why they had proceeded for looking a boy for her marriage. Even in the postmortem report, there is nothing substantive about having physical relation with the deceased.

22. Since applicant and deceased were colleague and the applicant used to take and drop the deceased at college, therefore, it is possible that some intimacy might have developed between them, but only due to this reason, it cannot be said that the applicant has abetted her in any manner to commit suicide or there is any reasonable nexus and proximity with the conduct and behaviour of the applicant with that of the suicide committed by the deceased in order to constitute the offence under Section 306 of the IPC.



23. Every person has a right to choose his better half for his life according to his wish and nobody can compel him/her to do things against his/her wishes. It seems that deceased was hyper sensitive girl and, therefore, she could not control her emotions, which she was having at the relevant point of time and took such a extreme step to end her life by committing suicide. There is nothing on the record, which would *prima facie* show that applicant harassed her in any manner or have played any direct or indirect act or instigation, as a consequence of which, deceased was compelled to commit suicide.

24. In the considered opinion of this Court, considering the entire material available on record as absolutely correct and true, despite that in light of aforesaid principles of law laid down by Hon'ble Apex Court in various decisions, no *prima facie* case for framing charge under Section 306 IPC is made out against the applicant as there is no nexus and proximity with the conduct and behaviour of the applicant with that of the suicide committed by deceased Manisha Rajwade.

25. Consequently, the revision is allowed. The impugned order dated 24.9.2021 framing charge against the Applicant under Section 306 of the Indian Penal Code is set aside and the Applicant is accordingly discharged.

Sd/-

(N.K. Chandravanshi)
Judge

D/-

