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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on : 02rd August, 2023
Date of decision: 24th August 2023

+ CRL.M.C. 2921/2019 & CRL.M.A. 11776/2019 (stay)

REKHA RANI & OTHERS **Petitioners**

Through: Mr. Shekhar Prit Jha and Ms.
Preeti Kumari, Advocates.

V

STATE OF NCT OF DELHI**Respondent**

Through: Mr. Utkarsh, APP for State with
SI Ravi Narwal, PS Moti
Nagar.

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. DD No 48A dated 12.03.2016 was got lodged by Duty Constable posted at Acharaya Bhikshu Govt. Hospital, Delhi regarding one woman namely, Rajni Babbar (hereinafter referred to as **“the deceased”**) was admitted by her father vide MLC No. 13290/16 and was declared brought dead in the hospital. DD No 48A was entrusted to SI Vikas Mudgil (hereinafter referred as **“the Investigation Officer”**) who conducted the proceedings under section



174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) and recorded the statement of the family members of the deceased. Initially, the family members did not report any suspicion about her death but after few days of the incident i.e. on 03.07.2016, the father namely Madan Mohan Babbar of the deceased handed over a suicide note which was found later in the house. The father of the deceased on basis of the suicide note alleged that life of the deceased daughter was made miserable by their relatives with whom they have property disputes in Panipat and the deceased could not bear the atrocities and committed suicide. The Investigating Officer has also visited the relatives at their native place in Panipat to make enquiry into the allegations levelled against them collected details/documents of the cases/complaints between the deceased and the relatives. Accordingly with the approval of the DCP/West on dated 19.9.2016 fresh statement of Madan Mohan Babbar (hereinafter referred to as “**the complainant**”) was recorded by the Investigating Officer.

1.1 The complainant stated that he is having one property bearing no 408A, Gali No. 5, Indira Colony, Panipat wherein his wife Mamta @



Neelam and son Yatin Babbar are residing. The complainant is having legal disputes pertaining to said property with his in-laws. The deceased as and when used to go to Panipat to stay in the house then her maternal uncles, namely, Krishan Lal, Somnath, Sita Ram @ Sahil along with their wives and sons, namely, Jatin, Anil and Sunni used to quarrel with wife of the complainant namely Mamta and the deceased so that they can be compelled to leave the property situated at Panipat. They also used to taunt the deceased besides abusing her. The deceased used to inform about this to the complainant and his son namely, Yatin Babbar and started to live under depression. The deceased about one or two days before from the suicide told Yatin Babbar that the Anil s/o Om Prakash has clicked her obscene pictures and he along with his mother Madhu and his brother Vicky were blackmailing her so that she can be compelled to leave the property and due to this reason she went in depression. The deceased came to Delhi at her house situated at Moti Nagar and committed suicide after two days i.e. on 12.03.2016. The above mentioned persons have caused mental pain and agony to the deceased as a result of which she committed suicide. Thereafter FIR bearing no.0442/2016 dated



19.09.2016 was got registered at PS Moti Nagar, New Delhi under sections 306/34 IPC on the basis of complaint made by the complainant pertaining to the commission of suicide by the deceased on 12.03.2016 at about 07.00 pm at house bearing no 25/381, New Moti Nagar, Delhi.

1.2 The charge-sheet was filed after conclusion of the investigation under sections 306/34 IPC wherein Anil Kumar, Madhu, Krishan Lal, Rekha Rani, Jatin were implicated. During investigation no incriminating material could be found against Sunny s/o Somnath, and Somnath and Sita Rain both s/o Munshi Ram. The Investigating Officer could not recover any obscene picture of the deceased and none could be traced who had seen those pictures. The Investigating Officer also collected the admitted handwriting and signature of the deceased and suicide note was sent to the FSL which was found to be written and signed by the deceased.

2. The Court of Shahabuddin, Additional Sessions Judge, West District, Tis Hazari Courts, Delhi (hereinafter referred to as “**the trial court**”) vide order dated 24.04.2019 (hereinafter referred to as “**the impugned order**”) passed the order on framing of charge which is



reproduced verbatim as under:-

As Jointly prayed for, fresh arguments on charge heard today from both sides present. Perused the record. In view of submissions and record, the statements of witnesses, suicide note of deceased Ms. Rajni Babbar and her PM report as well as other material placed on record, this court is prima facie of the considered opinion that a prima facie case for the offence punishable u/s 306 IPC, read with sec.34 IPC, is made out against all five accused herein. Accordingly, charge framed separately to which all five accused pleaded not guilty and claimed trial.

3. The petitioners being aggrieved by the impugned order filed the present petition on the grounds that the charges have been framed without any factual foundation as the contents of the alleged suicide note do not either refer or make out the offence against the petitioners. There is no whisper in the suicide note about the petitioners that they abetted or instigated the suicide of the deceased. The parameters of the section 107 IPC have not been made out. There is no averment in the suicide note that the petitioners had caused any harm to the deceased or were responsible for the commission of suicide by the deceased. The Trial Court has failed to appreciate that the deceased was dissatisfied from her life and was appearing to a negative personality. The civil litigation started by the mother of the deceased was decided in her favor and the criminal complaint cases filed against the accused



Anil and Krishan Kumar were also dismissed in the year 2013 and 2014. The framing of the charge against the petitioners is contrary to the law.

4. The counsel for the petitioners advanced oral argument and also submitted the written argument. It is argued that the criminal and the civil cases were pending in different courts at Panipat with respect to the property gifted by late Munshi Ram in favour of his daughter namely Mamta Rani @ Neelam who is mother of the deceased. The unexpected and the exclusive transfer of the property by late Munshi Ram in favor of Mamta Rani @ Neelam to the exclusion of all legal heirs was the bone of contention and the acrimony between Mamta Rani @ Neelam and her brothers, their wives and children. The criminal cases lodged either by the deceased or her mother were resulted into the acquittal except one case and on the date of suicide all cases except the trial arising out of FIR bearing no. 0338/2014 were disposed of in 2015 and January 2016. The FIR bearing no. 0338/2014 registered under sections 376/354(A)/452/323 resulted into conviction of all accused persons on 15.03.2018 for the offences punishable under sections 323/341/34 IPC against which the appeal is



pending. There was no criminal case pending or filed at the instance of the petitioners against the deceased and her family members and accordingly, the allegations for the abetment of suicide are unfounded and contrary to the record. The Investigating Officer recorded the statement of the complainant, Sonia Babbar (sister of deceased) and Poonam (who was the neighbor of the deceased) and they have expressed no animosity between the family of deceased and the accused and their statements were recorded immediately after the incident.

4.1 The Trial Court at the stage of framing of the charge had relied upon the statement recorded during investigation by the police, suicide note and other materials collected during investigation but no incriminating materials or allegations were found in the respective statement of the father, sister and the neighbor of the deceased. The alleged suicide note which was relied upon by the Trial Court in passing the impugned order was without any basis of foundation. The suicide note was alleged to have been written on 03.03.2016 and was submitted to the police on 03.07.2016 without any plausible reason and justification. There is no allegation with respect to any harassment



or abetment caused by the petitioners in the suicide note, and appears to be the compilation of the memory of the deceased. The deceased in the suicide note has described her personality. The suicide note also cast aspersion on the personality of accused/Anil. The deceased also expressed her desire to become a dress designer and her intention to start a boutique shop. The deceased was a negative personality and wanted to live a life of an independent and carefree person and she was not interested in the married life. It also appears that the deceased cannot live and spend a full life with any male because she hates them since her childhood. The alleged suicide note cannot be treated as a suicide note which ranges from the year 2007 to 03.03.2016. The necessary ingredients for the offence under sections 306 and 107 IPC were missing. It was argued that the impugned order be set aside.

5. The Chapter XVIII of the Cr.P.C. deals with trial before a Court of Session. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of Cr.P.C. of reads as under:-

227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient



ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 3 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

6. The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in **V.C. Shukla V State through C.B.I.**, 1980 Supp SCC 92. The prosecution is required to establish a prima facie before a charge can be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal & another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of the Code in Sessions



criminal trial and observed as under:-

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

7. The Supreme Court in **Onkar Nath Mishra & others V State (NCT of Delhi) & another**, Appeal (Crl.)1716 of 2007 decided on 14th December, 2007 regarding framing of charge observed as under:-

It is trite that at the stage of framing of charge the court is



required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

7.1 The Supreme Court Dipakbhai Jagdish Chandra Patel V State of Gujarat, (2019) 16 SCC 547 discussed law relating to the framing of charge and discharge and observed as under:-

15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section



227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire



evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

7.2 The Supreme Court in **Asim Shariff V National Investigation Agency**, (2019) 7 SCC 148 expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The Supreme Court in **State of Karnataka V M.R. Hiremath**, (2019) 7 SCC 515 held that it is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The



Supreme Court in **Ghulam Hassan Beigh V Mohammad Maqbool Magrey & Others**, Criminal Appeal No. 001041 of 2022 (Arising Out of S.L.P. (Criminal) no 4599 OF 2021) decided on 26th July, 2022 observed as under:-

Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See: Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217).

8. Section 306 IPC deals with abetment of suicide and reads as under:-

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.

8.1 The abetment is defined under Section 107 IPC which reads as under:-

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.

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.

8.2 The Supreme Court in **Geo Varghese V State of Rajasthan and another**, 2021 SCC OnLine SC 873 has considered the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC observed as under:-

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.



16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh has defined the word ‘instigate’ as under:-

Instigation is to goad, urge forward, provoke, incite or encourage to do an act.

17. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr (2010) 12 SCC 190, it was observed as under:-

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 or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme 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.

8.3 The Supreme Court in The ingredients of Section 306 IPC have been extensively laid out in **M. Arjunan V State, represented by its Inspector of Police**, (2019) 3 SCC 315 11 considered ingredients of section 306 IPC in detail and observed as under:-

The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide.



The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.

8.4 The Supreme Court in **Ude Singh & Others V State of Haryana**, (2019) 17 SCC 301 held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 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. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of *mens rea* on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

8.5 The Supreme Court in **Mariano Anto Bruno & another V The Inspector of Police**, Criminal Appeal No. 1628 of 2022 decided on 12th October, 2022 after referring above referred decisions rendered by the Supreme Court in context of culpability under section 306 IPC observed as under:-



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 their 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.

8.5.1 The Supreme Court also referred **Ramesh Kumar V State of Chhattisgarh**, (2001) 9 SCC 618 wherein the conviction for the offence under Section 306 IPC was set aside as ingredients of Section 306 IPC were not established. It was observed as under:-

20. Instigation is to goad, 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. The present one is not a case 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 an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In State of West Bengal v. Orilal Jaiswal and Anr.10, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. 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.

8.6 The Supreme court in **Gurcharan singh V State of Punjab**, (2020) 10 SCC 200 as cited by the counsel for the petitioner observed 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. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

8.7 The Supreme Court in **Kashibai & Others V The State of Karnataka**, Criminal Appeal No. 000627 of 2023 (arising out of SLP (Crl.) No. 8584/2022) decided on 28th February, 2023 observed that to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to



be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

9. The prosecution case is primarily rested on suicide note stated to be written by the deceased and is basis of registration of present FIR. The Supreme Court in **Sharad Birdhi Chand Sarda V State of Maharashtra**, (1984) 4 SCC 116 considered issue that whether a suicide note can be considered as valid dying declaration under section 32(1) of Indian Evidence Act, 1872. The Supreme Court after referring earlier decisions delivered in **Pakala Narayana Swamy V Emperor**, AIR 1939 PC 47, **Hanumant V State of M.P**, AIR 1952 SC 343 etc. observed that section 32(1) is an exception to the rule of hearsay and makes admissible the statement of a person who dies whether the death is a homicide or a suicide provided that the statement relates to the cause of death or relates to circumstances leading to the death. Hence a suicide note is admissible as a dying declaration under the ambit of section 32(1). To seek corroboration of a dying declaration is a rule of prudence. The courts should rely on any statement made by a deceased in form of suicide note if such declaration is free from any inconsistency or infirmity raising doubt



regarding its credibility. A suicide note in the form of a dying declaration can be taken as the sole evidence for convicting the accused even without the presence of any corroborative evidence. However maker of dying declaration should be in sound mental condition as observed by the Supreme Court in **Laxmi V Om Prakash & others**, AIR 2001 SC 2383 that if the court finds that the capacity of the maker of the statement to narrate the facts was impaired, or if the court entertains grave doubts regarding whether the deceased was in a fit physical and mental state to make such a statement, then the court may, in the absence of corroborating evidence lending assurance to the contents of the declaration, refuse to act upon it. The Supreme Court in several cases also considered evidentiary value and relevance of suicide note for offence under section 306 IPC.

9.1 The Supreme Court in **Netaidutta V State of W.B.**, (2005) 2 SCC 659 cited by the counsel for the petitioners observed as under:-

5. There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to deceased Pranab Kumar Nag. It seems that the deceased was very much dissatisfied with the working conditions at the workplace. But, it may also be noticed that the deceased



after his transfer in 1999 had never joined the office at 160, B.L. Saha Road, Kolkata and had absented himself for a period of two years and that the suicide took place on a 16-2-2001. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of Pranab Knmar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of “abetment” have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or 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, or the person should have intentionally aided any act or illegal omission. The Explanation to Section 107 says that any wilful misrepresentation or wilful concealment of a material fact which he is bound to disclose, may also come within the contours of “abetment”.

6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of-any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

9.2 The Supreme Court in **Madan Mohan Singh V State of Gujurat & another**, Criminal Appeal No 1291 of 2008 decided on 17th August, 2010 regarding evidentiary value of suicide note observed as under:-



8.....We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note.

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not



impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.

9.3 The Supreme Court in *Geo Varghese V The State of Rajasthan*

& another also considered legal impact of suicide note for offence under section 306 IPC and observed as under:-

39. Insofar as, the suicide note is concerned, despite our minute examination of the same, all we can say is that suicide note is rhetoric document, penned down by an immature mind. A reading of the same also suggests the hypersensitive temperament of the deceased which led him to take such an extraordinary step, as the alleged reprimand by the accused, who was his teacher, otherwise would not ordinarily induce a similarly circumstanced student to commit suicide.

10. The suicide note is reproduced under for the sake of reference verbatim :-

Today 03.03.2016 Time 1:46 I am again in depression and this depression will be a big cause of my death. Because my all maternal uncle their wives and their sons are responsible for these circumstances. My life was destroyed by my maternal uncle's son Anil S/o Om Prakash. Who lived in Panipat. with his wife Charu. My Maternal Aunt Madhu is a cunning lady she wants money by any wrong way. She teaches the Anil to spoil my whole life. She wanted that if Anil will reach upon me then she can achieve a new car gold financial support from my parents or my family. Because they are uneducated persons. They don't have jobs and their business. They does always illegal and wrong activities. Anil



was also a bootcherer when his father was alive but this income money was not sufficient for those persons. They want more than Anil started his illegal business selling liquid liquor without any licences with the help of Tehsil camp. Chowki and City Thana Police. Anil was also not good looking, and he was not able for me as a my life parter for any way but he has lots of attraction for me and he always tries to insist me for a relationship which was not liked by me. He was also not a able person for my life because he also not a hardworking or a responsible person like a his father who always depends on others like my mom and my father Anil's father Om Prakash doesn't a working person, he takes financial help from my family for his and his family financial needs. Shop no.8 Ram Nagar which is running by Anil and his brother Vicky who was also involved in this plan Vicky is also selling illegal liquid liquor with his brother Anil at the shop no.8 Ram Nagar. In year 2007 5th March when the Krishan son Paras born then Krishan son's birth occasion my mother and father came here in Panipat and 5th April 2007 my grandfather (Nana) was expired due to illness. That time Anil was on house in the absence of my parents on that time he ties different wrong methods to insist me for a relationship like eating lots of medicines, drink phinoel, eat mortein Rat kill and give threat to jump the our buildings 2nd floor by back side of our neighbour's roof who were lived on the 1st and 2nd floor flat's. These daily routine threat can't valuable for me, but the one thing is valuable for me and this thing is a relationship which was related to our family valuable boundation my other Maternal uncle's have no any. Touched a victim's sexual organs or removed clothing.

In order to prove an offence of attempt to commit rape there must be commission of an overt act. Any overt act beyond mere preparation and in furtherance of intent is proximate act prior to the consummation of sexual intercourse.

Genrally, there can be no attempt to commit a crime unless the intent to commit it exists at the time when an attempt is made. Therefore, to constitute an attempt to



commit rape upon a female underage of consent intention to know the girl carnally must have existed in the mind of an accused at the very time when he did an overt act or acts.

Since intention is a state of mind that can be evidenced only by words or conduct of a person who is claimed to have entertained it specific intent to commit rape like any other fact can be shown by the circumstances. However, the specific intent to commit rape can be inferred from conduct if such intention follows naturally from the conduct proven for instance when the immediate direct and necessary consequences of voluntary acts of an accused point with reasonable certainty to specific intent to commit rape intention is established.

Evidence is showing an accused person's voluntary attempt to remove complainants clothes to expose his/her private parts would be sufficient to support conviction for attempted rape even though no further actions were taken to commit an offence of rape but it is not mandatory that prosecution must give evidence upon the fact that a defendant.

Today I was thinking that I have to improve my English reading and writing or speaking skill. But I have a big problem I can't improve my speaking and writing skill because in my family no one is interested in English language my parents are illiterate and my sister passed my brother don't think that English as a second language helps us to improve our skills and important for our carrier. Now I am a dress designer and I that that in future when I will open my own bouquite then I will face many problems because lack of English language speaking and writting skill. I don't know when and how will I can improve my language skill it's like a dream cum true for me. When I will be perfect in English language. When someone asked about me that I know English language then I feel ambarance I can't say to anyone that my family is not interested to learning English.

Today I was thinking that when I was free then I will use laptop for check the DVR because DVR had been stop working. Now it's working properly. Today I had opened the



previous day recording where our neighbour Hema is throwing the garbage by using the broom out of my house and I had taken her video clips with the help of CCTV camera. I will use there CCTV footage for evidence which will show to the SDM office that our neighbours throw the garbage in front of our house and this will create dangerous diseases for our family. Kishan Lal also spread garbage in front of our house gate there is lots of stagnant water and flies lay eggs on it. Amit is also throwing garbage in front of our house where the shop shutter had situated. We can't open our gate and our shop's shutter people were trying to create problems for us. They don't like us because we don't talk with them. They are educated but their habits are like illiterate persons. They are dumbos they don't have any sense how to live in neat and clean atmosphere.

Today I was interacting with LV ME FFQ during the conversation we bet together he said that I will be a good h.wife in future because I am able to suffer any kind of problem. But I said no. I can't be because I am not interested in married life. I can't live and spent my whole life with anyone (male) because I personally hate them, so he asked me you also hate me I said yes because it's my nature, since my childhood. First, he thought I was joking, and I am not serious, but I was serious then he said you are wrong I was a experience of different kind of people. So, I said that it will show by time. what will be my future I will be wrong, or you will be. Then he said ok. So, I was writing this note for my future. When I will prove my self right or wrong by time who will win LV ME FFQ or me.

For my future

Rajni

11. It is reflecting that the late Munshi Ram, father of Mamta Rani @ Neelam who is the mother of the deceased, had given the property bearing no. 408A, Gali No. 5, Indira Colony, Panipat to her to the



exclusion of all other legal heirs, which resulted into the hostile litigation and acrimony between the family of the deceased and legal heirs of late Munshi Ram. Multiple civil as well as criminal cases were pending between the parties. The litigation between the family members of the deceased and other legal heirs of late Munshi Ram stated to have been reached to a logical end except one appeal which was arising out of FIR bearing no. 0338/2014.

11.1 The deceased stated to have committed suicide on 12.03.2016 and at that time no suicide note was handed over to the Investigating Officer. The statements of the complainant who is the father of the deceased, Sonia Babar who is the sister of the deceased and Poonam who was one of the neighbour of the deceased were recorded during investigation but they did not express any animosity between the family of the deceased and the accused. The complainant handed over a suicide note on 03.07.2016 to the Investigating Officer which was stated to be written by the deceased. FSL report also confirmed that it was written and signed by the deceased. Thereafter, the present FIR was got registered on 19.09.2016 and after conclusion of the



investigation in charge sheet filed under sections 306/34 IPC the petitioners besides Krishan Lal and Anil Kumar were implicated.

11.2 As discussed hereinabove, section 306 IPC makes abetment of suicide a criminal offence and abetment is defined under section 107 IPC. To constitute the offence under section 306 IPC there should be abetment and intention of the accused to aid or instigate or abet the deceased to commit suicide. There must be concrete evidence to suggest that the accused had intended by his act towards the deceased to instigate, to commit suicide. If the deceased happened to be the hyper-sensitive and the action on behalf of the accused is not ordinarily expected to induce another person to commit suicide then it will not be safe to prosecute the accused for abetment of suicide. There must be direct act of incitement for the commission of the offence.

11.3 The deceased in the suicide note stated to be written on 3.03.2016 stated that she was in depression which shall be a big cause of her death. The deceased had put responsibility on all her maternal uncles, their wives and sons for causing depression to her. However, the deceased did not cite even a single act or instance stated to be



caused by her maternal uncles and their families which caused depression to the deceased. It appears that the deceased was having grievance against the accused/Anil and his wife Charu. The deceased in suicide note also cast aspersion on the petitioner Madhu but only stated that she was a cunning lady and wanted to get money by wrong way. The deceased was appearing not to be happy with the families of her maternal uncles as they were uneducated persons without jobs and business and were found to be indulged in illegal and wrong activities. It is also alleged that the accused/Anil started an illegal business by selling the liquor without any license and was also not good looking. The deceased did not consider accused/Anil as his life partner, although he was having a lot of attraction for the deceased. The allegations as made in the suicide note against the accused/Anil only reflects that the accused/Anil was interested in the deceased but was not good looking. The deceased also remembered the past conduct of the accused/Anil since April, 2007 who also used to give threats to the deceased to develop a relation with the deceased. The deceased also referred that there can be no attempt to commit a crime unless there is intention to commit a crime. The deceased also talked about the



ingredients necessary to constitute the offence of rape and discussed the factors which may be warranted to convict a person for the offence of rape.

11.4 The deceased also mentioned in the suicide note that she was thinking to improve her English, reading and writing or speaking skills but she could not improve as none in her family was interested in English language. The parents of the deceased happened to be illiterate. The deceased also wanted to open her own boutique being a fashion designer and for this she wanted to improve her language skills. The deceased in the suicide note also talked about the display of video clips with the help of CCTV camera and spreading of garbage in front of her house gate. The deceased appeared not to be happy as her family members were not able to open the gate and shutter of the shop.

11.5 The deceased appeared to be not interested in the married life as she could not expect to live and spent her life with any male as she used to hate males personally. The deceased also in conversation with LVMEFFQ and conveyed that she will be a good wife in the future.

11.6 The suicide note stated to be written by the deceased did not refer the name of the petitioners or any of their acts which may be



sufficient to incite the deceased to commit the offence. From the suicide note it is appearing that there is not even a single act mentioned that the petitioners has instigated the deceased to commit suicide by provoking, inciting or encouraging to do the act of suicide. The deceased was appearing to be under depression and there is nothing in this suicide note which can suggest abetment on the part of the petitioners responsible for the committal of the suicide by the deceased. The Minute examination of this suicide note, FIR and other material including the statement of the complainant, sister and the neighbour of the deceased reflects that there was nothing on record which can suggest or infer any negative act on the part of the petitioners which may compel the deceased to commit suicide. The suicide note is appearing to be a personal compilation of memories and personal thoughts of the deceased. It also appears that the deceased was under depression and was not happy and satisfied with her past life and experiences with her relatives who are the legal heirs of the late Munshi Ram. If the family of the deceased was having litigation with the accused or other legal heirs of late Munshi Ram it is not sufficient to incite deceased to commit suicide. There is no



specific allegation and material of definite nature against the petitioners so that they can be put to trial for offence punishable under sections 306/34 IPC. The contents of the suicide note are not sufficient to compel her to commit suicide. The pain and suffering of the complainant who is the father of the deceased is understandable as his young daughter has committed suicide but the sympathies, pain and suffering of the complainant cannot be transformed or translated into legal remedies i.e. for criminal prosecution.

12. The perusal of the impugned order reflects that the trial court while passing the order on charge which is a serious exercise has not considered the allegations and contents of the suicide note and other material collected during the investigation. The trial court has not given even the minimum reasoning for formulating its opinion regarding the existence of prima facie case for the offence punishable under section 306 IPC read with section 34 IPC qua the petitioners. The impugned order was passed in mechanical and cryptic manner and is devoid of any valid reasons. As mentioned hereinabove, there is no sufficient material to prosecute the petitioners for the offence



punishable under section 306 IPC. The impugned order cannot be sustained in law qua the petitioners and is accordingly, set aside.

13. In view of the above discussion, the present petition is allowed the petitioners, namely, Rekha Rani, Madhu and Jatin are discharged for the offences punishable under sections 306/34 IPC. Their bail bonds are cancelled. Surety discharged.

14. The present petition, along with pending applications, if any stands disposed of.

15. Copy of this order be sent to the trial court for information.

DR. SUDHIR KUMAR JAIN, J

AUGUST 24, 2023

j/sk/sd