

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrI.A.(MD)No.137 of 2015
and
CrI.R.C.(MD)No.248 of 2015

CrI.A.(MD)No.137 of 2015

Nagarajan

... Appellant/Sole accused

versus

State

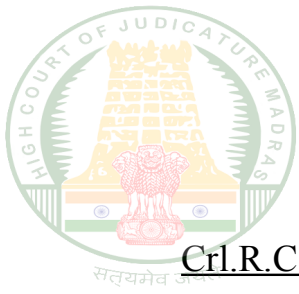
Rep. by the Inspector of Police,
Kannivadi Police Station,
Dindigul District.
(Cr.No.239 of 2003)

... Respondent

Criminal Appeal filed under Section 374 (2) Cr.P.C. against the Judgment of conviction and sentence passed by the learned Magalir Neethimandram (Fast Track Mahila Court), Dindigul, in S.C.No.54 of 2007 on 29.05.2015.

For Appellant : Mr.G.Karuppasamy Pandian

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor
Mr.A.Thiruvadikumar
Amicus Curiae



CrI.R.C.(MD)No.248 of 2015

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The State
Rep. by the Inspector of Police,
Kannivadi Police Station,
Dindigul District.
(Cr.No.239 of 2003)

... Revision Petitioner

versus

Nagarajan

... Respondent
/ Sole accused

Suo motu Criminal case filed under Section 397 r/w. 401 Cr.P.C. seeking to set aside the Judgment of acquittal passed by the learned Magalir Neethimandram (Fast Track Mahila Court), Dindigul, in S.C.No.54 of 2007 on 29.05.2015, acquitting the accused from the charge punishable under Section 306 IPC.

For Revision
Petitioner : Mr.M.Chandrasekaran
Additional Public Prosecutor
For Respondent : Mr.G.Karuppasamy Pandian

COMMON JUDGMENT

The appellant is the sole accused in S.C.No.54 of 2007 on the file of the Mahalir Neethimandram (Fast Track Mahila Court), Dindigul. He was charged for the offence under Section 306 IPC.

2. The trial Court, in conclusion of trial, by its Judgment dated 29.05.2015, found him not guilty for the offence under Section 306, however,



found him guilty for the offences under Sections 354 and 448 of IPC,
convicted and sentenced him as follows:

(i) for the offence under Section 354 IPC, to undergo simple imprisonment for three years and one month and to pay a fine of Rs.25,000/- and in default, to undergo simple imprisonment for three months.

(ii) for the offence under Section 448 IPC, to undergo simple imprisonment for three months.

As against the conviction and sentence imposed by the trial Court, the appellant preferred this Criminal Appeal in Crl.A.(MD)No.137 of 2015 along with an application to suspend the sentence pending the appeal. This Court, while admitting this appeal and also considering the petition for suspension of sentence, found that the trial Court is erred by acquitting the accused for the offence under Section 306 IPC. Further, this Court has felt that the evidence with regard to the offence under Section 306 IPC was not properly appreciated by the trial Court and therefore, it requires further examination and since the State has not preferred any appeal as against the Judgment of acquittal for the offence under Section 306 IPC, this Court directed the Registry to take *suo motu* revision, accordingly, the Registry filed a Criminal Revision Case in

Crl.R.C.(MD)No.248 of 2015.



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3. Mr.A.K.Alagarsamy, learned counsel, took notice on behalf of the appellant and also entered appearance in the *suo motu* Criminal Revision Case.

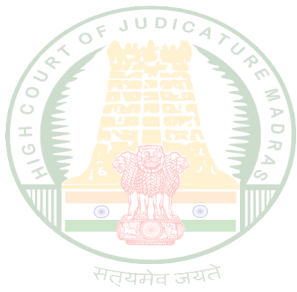
4. Since the accused in both the Criminal Appeal and the Criminal Revision Case is one and the same, both the Criminal Appeal and the Criminal Revision Case are taken up together.

5. Mr.G.Karuppasamy Pandian, learned counsel, representing Mr.A.K.Azagarsami, learned counsel for the appellant, at the outset, submitted that the *suo motu* revision is an abuse of process of court and the appellate Court, while exercising its power under Section 374 Cr.P.C., is not entitled to take up a case on revisional jurisdiction, which is not vested with the Court at the relevant point of time.

6. Considering the issue raised by the learned counsel for the appellant, this Court appointed Mr.A.Thiruvadikumar as an Amicus Curiae to assist this Court in the Criminal Revision Case.

7. The brief facts of the case, which are relevant for considering the

case, are set out as hereunder:



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(i) The deceased Mariammal is the daughter-in-law of P.W.2-Sarasawathi. She had two children, viz., Kavitha and Vanitha. She married the only son of P.W.2, one Ganesan, as a second marriage. On 11.07.2003, at late hours, when the deceased Mariammal was rocking the cradle of her 1 ½ year child, the accused, a neighbour, trespassed into the house of the deceased, hugged her and attempted to rape her. On hearing the noise of the deceased, P.W.2, mother-in-law of the deceased, woke up and scolded the accused and therefore, the accused run away from the house of the deceased. P.W.3-Kalarani, a neighbour, also witnessed the accused coming out of the deceased's house and scolding of P.W.2 on the accused. Ashamed of this incident, the deceased was crying and P.W.2 pacified her. But, in the morning, around 5 O'clock, the deceased and the child were not available in the house. Therefore, P.W.2 searched for her and enquired with her father as to whether she came to their house.

(ii) The deceased Mariammal went to a School, where, her elder daughter Vanitha [P.W.5] was studying in 3rd standard and attempted to take P.W.5 along with her. But, in the absence of Warden, the Teachers did not allow P.W.5 to leave the School. Therefore, the deceased along with her 1 ½ year child went to a nearby place and consumed oleander seeds and also administered poison to her child. P.W.4, while grassing his cattle in the nearby



field at Kuivannayakkanpatti, found the deceased and her child lying in the field and informed the same to P.W.1 – a watchman of Kuivannayakkanpatti Panchayat. P.W.4 along with P.W.1 went to rescue them, where, they found that the child was alive and took the child in a bi-cycle to Kannivadi Government Hospital, where, the child was declared dead. Thereafter, P.W.1 lodged a complaint [Ex.P1] before the Kannivadi Police Station and the same was registered in Cr.No.239 of 2003 on the file of the Kannivadi Police Station on 12.07.2003 at about 3.00 p.m.

(iii) P.W.11-Palaniappan, the Inspector of Police, on receipt of information, proceeded to the place of occurrence, prepared a mahazar (Ex.P4) and rough sketch (Ex.P6) in the presence of P.W.7-Raman and another and also conducted inquest on the deceased Mariammal and after completing the inquest, he made a request for postmortem through P.W.9-Head Constable. He also conducted inquest on the child [Kavitha] and the inquest report of the deceased is marked as Ex.P8 and he made a request for postmortem on child [Kavitha] also. P.W.6-Dr.Ashok Babu conducted the postmortem on the deceased Mariammal and preserved viscera and sent the same for analysis and reserved his opinion vide Exs.P2 and P3. He also examined P.W.6-Dr.Ashok Babu. Thereafter, the further investigation was carried out by P.W.12. P.W.12 examined the Doctor and other witnesses and after completing the



investigation, he filed a final report as against the appellant for the offence under Section 306 IPC on 30.10.2003. The same was taken on file in PRC No. 13/2005 by the learned Judicial Magistrate No.2, Dindigul and committed to the Court of Sessions. The learned Sessions Judge, Mahalir Neethimandram, Fast Track Court, Dindigul, framed charges against the accused and examined the witnesses in S.C.No.54 of 2007.

(iv) During the trial, 12 witnesses were examined and nine documents were marked. P.W.1 is the Watchman of Kuivannayakkanpatti Panchayat, who along with P.W.4, found the deceased and her child Kavitha lying in the field, attempted to rescue the child Kavitha, who was alive and also lodged a complaint in Ex.P1 before the Kannivadi Police Station. P.W.2 is the mother-in-law of the deceased, who is the witness to the previous day occurrence, when the accused attempted to outrage the modesty of the deceased and P.W.3, a neighbour, is the witness to the quarrel between P.W.2 and the accused. P.W.5-Vanitha is the another daughter of the deceased, who was studying in 3rd standard at the time of occurrence. P.W.6-Dr.Ashok Babu conducted the postmortem on the deceased Mariammal and her child Kavitha. P.W.7 is the witness for the observation mahazar and P.W.8 is the brother-in-law of the deceased Mariammal. P.W.9 is the Head Constable, who has taken the viscera to the Forensic Department. P.W.10 is a hostile witness. P.W.11 is



the Investigating Officer, who conducted the preliminary investigation and P.W.12 is the Inspector of Police, who conducted further investigation and file the final report.

(v) The incriminating materials were put to the accused under Section 313 Cr.P.C., but the accused denied the same. In conclusion of trial, the trial Court found him guilty under Sections 448 and 354 IPC instead of 306 IPC and convicted and sentenced as stated supra. Aggrieved over the same, the present Criminal Appeal has been filed.

8. Heard Mr.G.Karuppasamy Pandian, learned counsel representing Mr.A.K.Alagusamy, learned counsel for the appellant and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the State.

9. Mr.G.Karuppasamy Pandian, learned counsel for the appellant submitted that the prosecution has not established its case beyond any reasonable doubt. The case of death has also not been established in this case and final opinion of the Doctor is not marked. In the absence of viscera report and final opinion of the Doctor, it cannot be concluded that the deceased died by consuming poison. He further submitted that the entire case of the



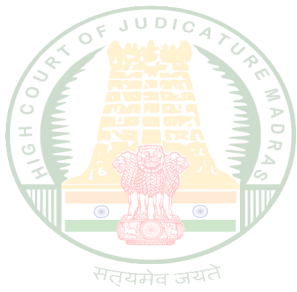
prosecution rests upon the evidence of P.W.2 and P.W.3 and the fact remains that the deceased was not having a good relationship with her husband and the non-examination of the deceased's husband is a material defect in this case. According to P.W.3, on the previous day, both the deceased Mariammal and the accused came out of her house and the same was witnessed by P.W.2-Saraswathi and when P.W.2 questioned the accused, he replied that he came for the purpose of getting a match box and therefore, it is the P.W.2, who scolded the deceased, on account of which, the deceased committed suicide. However, the trial Court, without having any materials, found this appellant guilty and convicted him for the offence under Section 354 IPC.

10. It is further stated by the learned counsel for the appellant that the evidence of P.W.5-Vanitha would disclose that the deceased was not having a good relationship with her husband and therefore, P.W.5 was admitted in the hostel. It is further stated that since P.W.2 scolded the deceased, she had taken the extreme step, for which, the respondent Police, without ascertaining the case files, filed the final report in a mechanical manner. He further submitted that the direction of this Court to take up suo motu Criminal Revision case for the offence under Section 306 IPC is not proper. Further, the conviction under Sections 354 and 448 of IPC without a specific charge is liable to be set aside.



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11. Per contra, the learned Additional Public Prosecutor appearing for the State submitted that the evidence of P.W.2 and P.W.3 would disclose that the accused, a neighbour, trespassed into the house of P.W.2 and attempted to outrage the modesty of the deceased Mariammal. Since the deceased Mariammal protested and cried, P.W.2-Saraswathi, the mother-in-law of the deceased, witnessed the occurrence, scolded the accused and the same was witnessed by P.W.3 also. The evidence of P.W.2 and P.W.3 had made out a specific case as against the accused that the accused entered into the house of the deceased in the mid night and intercepted the deceased. P.W.5-daughter of the deceased, who was studying in 3rd standard, has also stated in her evidence that around 9.00 a.m. on 12.07.2013, her mother [deceased Mariammal] along with her sister Kavitha came to her school and requested to come with her, but, since the School Authorities refused to send her out, her mother [deceased Mariammal] went alone and took out the extreme step. The accused, on the previous day night, entered into the house of the deceased and attempted to rape her, which was witnessed by P.W.3. and on the next day, the deceased had committed suicide. According to the learned Additional Public Prosecutor, the prosecution has established its case sufficiently as against the accused for the offence under Section 306 IPC.



12. This court paid its anxious consideration on the rival submissions made.

13. The deceased Mariammal was having two daughters. Her husband, Mr.Ganesan, is a Drama Artist and he was not present at the time of occurrence. The deceased Mariammal was living with her mother-in-law [P.W.2]. On 12.07.2003, in the early morning hours at 01.00 a.m., the accused, a neighbour, entered into the house of the deceased, hugged her and also attempted to outrage her modesty and on the protest made by the deceased, P.W.2 woke up and questioned the accused. The quarrel between P.W.2 and the accused at odd hours was also witnessed by P.W.3, a neighbour and consequent to that, the deceased went to a nearby field, consumed oleander seeds and also administered poison to her child.

14. The respondent Police filed the final report for the offence under Section 306 IPC and the trial court has also framed charges for the offence under Section 306 IPC. But, the trial Court found this accused/appellant not guilty for the offence under Section 306, however, found him guilty for the offence under Sections 354 and 448 of IPC, convicted and sentenced him as stated supra. Aggrieved over the same, the present Criminal Appeal has been

filed by the accused.

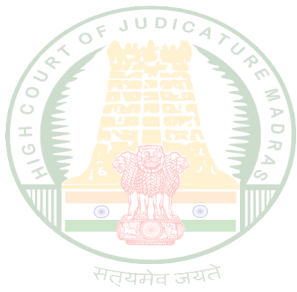


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15. This Court, while considering the matter at the time of suspending the sentence, directed the Registry to take up *suo motu* revision case and accordingly, Criminal Revision Case in CrI.R.C.(MD)No.248 of 2015 has been filed.

16. While at the time of arguments, Mr.G.Karuppasamy Pandian had taken a stand that this Court does not have the power to initiate *suo motu* revision. Therefore, this Court appointed Mr.A.Thiruvadikumar, learned counsel, as Amicus Curiae in order to assist the Court with regard to the powers of the High Court to exercise *suo motu* revision and the conviction of the accused under Section 354 IPC in the absence of the said charge.

17. With regard to the powers of the High Court to exercise *suo motu* revision, the learned Amicus Curiae, by relying upon the Judgments of the Hon'ble Apex Court in the case of *Nadir Khan vs. the State (Delhi Administration)* reported in *1976 AIR 2205*, (ii) *Eknath Shankarrao Mukkawar vs. State of Maharashtra*, reported in *1977 AIR 1177*, submitted that the High Court, while exercising its power under Section 374 Cr.P.C., can also exercise the revisional powers under Section 401 Cr.P.C and that apart, under Section 399(i) Cr.P.C. can exercise the power of revision on its own.



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18. The learned Amicus Curiae further submitted that as per the provisions of Section 401(1) Cr.P.C., the High Court can exercise the power of the *suo motu* revision [on its own motion].

19. At this juncture, it is necessary to extract the provisions of Section 401(1) Cr.P.C.

“401-High Court's powers of Revision – (1) In the case of any proceeding the record of which had been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.”

20. In view of the above provisions and the ratio laid down by the Hon'ble Apex Court [as cited supra], the contention of the learned counsel for the accused, that the *suo motu* revision taken by this Court is erroneous, is unsustainable in law.

21. Admittedly, the accused had been charged under Section 306

<https://www.mhc.trilivellaw.in/judis>, the trial Court had chosen to convict the accused under Section 354



IPC in the absence of said charge. With regard to the same, the learned

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Amicus Curiae submitted that the legal plea as to the sustainability of the conviction for a minor charge in the absence of the said charge revolves around the provisions of Sections 215, 221, 222 and 464 of Cr.P.C. The purpose of framing of charge against the accused is to have proper acquaintance of the allegation for which prosecution is initiated. As per Section 211 of Cr.P.C., there is an obligation on the part of the Court at the time of framing charge to incorporate the relevant requirements, but, as per Section 215 of Cr.P.C., some sort of error visualizing in the format of charge would not make the trial redundant. Further, under Section 222 of Cr.P.C. the conviction under the minor offence than that of the accused had been charged, is found permissible and while in terms of Section 221 of Cr.P.C. even if there happens to be absence of charge against the accused, even then, he could be convicted and the aforesaid is duly cared under Section 464 of Cr.P.C.

19. The learned Amicus Curiae further submitted that the foundational facts as projected by the prosecution would certainly sustain the charge under Section 306 IPC, but, subject to the court accepting the evidence of P.W.2. Admittedly, it was the act of the accused which had induced/driven the deceased to commit suicide. The instigation/intentional aid on the part of the appellant/accused forcing her to commit the drastic act is the act of



outraging the modesty. There is a certain live-link between the act of the accused and the suicide. The ingredients of Section 306 IPC are clearly made out on the factual background of the prosecution case. P.W.2-Saraswathi would inform that the deceased/Mariyammal had made oral dying declarations, expressing her intention to commit suicide, pursuant to the incident/act of the accused in outraging the modesty of the victim. Further, P.W.3-Kalarani and P.W.8-Ganesh had also spoken about the presence of the accused at the odd hours and P.W.8 was also cross examined on the said lines.

20. It is further submitted that in the present case, the accused had played an active role in tarnishing the self esteem of the victim, by outraging her modesty, which had eventually drawn the victim to commit suicide. Therefore, there is a direct act for the incitement to the commission of suicide. Further, the fact that the accused had trespassed at the odd hours, is proved by the evidence of P.W.2 and P.W.3. The accused had in fact suggested to P.W.2 as to she had misunderstood the incident during the cross examination. Therefore, the sustainability of the charge under Section 306 IPC would also depend upon these factors. In support of the same, the learned Amicus Curiae relied on the Judgments of the Hon'ble Apex Court, in *Praveen Pradhan vs. State of Uttranchal and another* reported in *2013 (1) SCC (CrI.) 146* and *Ude*

Singh and others vs. State of Haryana.



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21. Heard the submissions of the learned Amicus Curiae.

22. The deceased Mariammal killed one of her daughters and committed suicide, by consuming certain poisonous substance. P.W.6-Dr.Ashok Babu, who conducted the post mortem of the deceased Mariammal and the child Kavitha, in his evidence, has stated that the deceased died by consuming oleander seeds. Though the viscera and his final opinion were not marked by the prosecution, P.W.6-Dr.Ashok Babu in his evidence has stated that based on the viscera, he gave his final opinion and as per his final opinion, the deceased died by consuming oleander seeds. However, the Doctor [P.W.6] was not cross examined by the accused.

23. P.W.1 and P.W.4 have identified the dead body on 12.07.2003 at about 10.00 a.m. and also duly informed the Police. On the same day, in small hours around 1.00 a.m., this appellant/accused entered into the house of the deceased, hugged her and attempted to rape her and on the protest made by the deceased, P.W.2, her mother-in-law, woke up, shouted at him and thereafter, the accused left the house. P.W.2, in her evidence, has also stated that the victim has stated her that she would not survive any more due to this incidence and she also consoled her, but, even then, she has committed suicide. In the

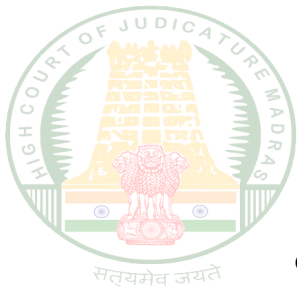


cross examination, a suggestion has been made on behalf of the accused that the accused misbehaved with her daughter-in-law and P.W.2 misinterpreted the same and lodged a complaint and thereby, the accused admitted the said incidence projected by the prosecution.

24. As rightly contended by the learned Amicus Curaie, the accused had played an active role in tarnishing the self esteem of the victim, by outraging her modesty, which had eventually drawn the victim to commit suicide and by the act of the accused, he had instigated the victim to commit suicide and further, there is a direct act for the incitement to the commission of offence.

25. At this juncture, it is necessary to note that if any person commits suicide and the person who abets the commission of such suicide is liable to be prosecuted and punished under Section 306 of Indian Penal Code. The abetment may be by instigation, conspiracy or intentional aid as defined under Section 107 of Indian Penal Code. The word “instigation” has been discussed elaborately by the Hon'ble Supreme Court in ***Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)***, reported in ***AIR 2010 SCC 1446***, which reads as follows:

“Instigation is to goad, urge forward, provoke, incite



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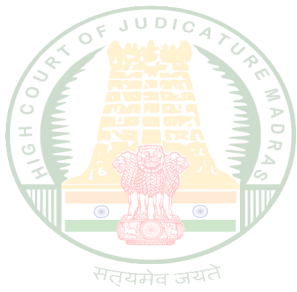
or encourage to do an act. To satisfy the requirement of instigation, though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must 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, an 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. The dictionary meaning of the word goad is a thing that stimulates someone into action; provoke to action or reaction to keep irritating or annoying somebody until he reacts.”

Instigation has to be gathered from the circumstances of the case and an inference can also be drawn from the circumstances, which in fact have created a situation leading the person to commit suicide.

26. In a similar circumstances, in dealing with an offence under Section 306 IPC, the Hon'ble Supreme Court in *Ude Singh vs. State of*

Haryana, in *Crl.A.No.233 of 2010, dated 25.07.2019*, has held as follows:



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“14.6. In *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*: (2009) 16 SCC 605, this Court referred to the decision in *Ramesh Kumar (supra)* and, while pointing out the complexities related with the determination of the question as to the cause of suicide, expounded on the relevant principles in the following:-

"19. As observed in *Ramesh Kumar (supra)*, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20.The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus



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accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss or self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

(Underling supplied for emphasis)

14.7. In the case [Amalendu Pal v. State of W.B.:](#) (2010) 1 SCC 707, this Court, after reference to several past decisions, held as follows:-

"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."

(Underling supplied for emphasis)

15. Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets



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the doing of a thing when: (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

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 behaviour 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



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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



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taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.

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21. In the given set up and the respective position of the parties, if the accused No. 1 continuously addressed or called the deceased girl as his "wife", in our view, the utterance was not merely of teasing but of demeaning and destroying the self-esteem of the young girl whose engagement had broken and whose uncle was mocking her to join him in matrimony. It was the act of humiliation of



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highest order for the girl, who had personally suffered the set-back of broken engagement, apart that she was unable to clear even 10th standard examination. Obviously, she was being ridiculed and taunted for her broken engagement. The other accused persons chose to join the accused No. 1 and aggravated the humiliation of the girl by addressing her as younger brother's wife or aunt. There remains nothing to doubt that the accused persons were working with the common intention to harass and humiliate the girl with reference to her broken engagement. The significant part of the matter is that such taunting and humiliation of the deceased at the hands of the accused persons had not been a singular event or one-off affair but had been a continuous feature, as amply established by the prosecution witnesses. The incident of 05.05.1996 drew the final straw when the hapless girl received the same taunts from the accused persons and she even rebuked them. We find no reason to disbelieve the statement of PW-2 Jai Narain as regards the incident of 05.05.1996. Equally, there is no reason to disbelieve the statement of PW-11 Smt. Krishna that her daughter wept the whole night after the said incident; and on being frustrated and exasperated with such humiliations, expressed her intention to end her life. The fact of the matter remains that the victim girl ended her life in the early morning very next day.

22. Taking an overall view of the matter, we are satisfied that the present one had not been a case of a mere eve-teasing, insult or intimidation but the continuous and



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repeated acts and utterances of the accused persons were calculated to bring disgrace to the village girl and to destroy her self-esteem; rather the acts and utterances were aimed at taking her to the brink of helplessness and to the vanishing point of tolerance. It had not been a case of mere intimidation or insult. The incessant intimidation and insult of the innocent girl had been of instigation; and such instigation clearly answers to the description of abetment of suicide. Therefore, in our view, the accused Nos. 1 and 3 have rightly been held guilty of offence of abetment of suicide.

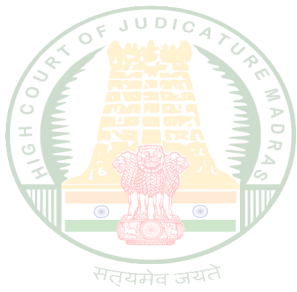
23. The contention of the appellants that their intention had never been to make her commit suicide is required to be rejected because, as noticed above, the hapless girl was intentionally chosen for humiliation by the accused, who were otherwise involved in several litigations with her parents. The accused persons also knew it that the father of the girl was posted in his duty outside the village. As noticed, the intention of the accused had only been to drive the deceased to the brink of helplessness and intolerance; they in fact succeeded in doing so on 05.05.1996, when the girl rebuked them for their utterances. However, the victim girl found no way out because the humiliation at the hands of accused had been everyday affair; and, in the given set up of the society she belonged to, any action against the accused by her family was being avoided for the sake of her honour.



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24. The present case indeed represents a sordid state of affairs in relation to the young girl in the rural setting, whose honour and self-esteem got brutally violated by none other but her own relatives, who found her to be the soft- target to settle their scores with her parents. The accused rather exhibited their denigrating mentality while targeting the young girl, who was otherwise required to be treated by them with affection and respect, for being their niece and their cousin. The facts of this case lead only to the conclusion that the accused persons had intentionally, with their incessant acts and utterances, goaded the victim girl to commit suicide. She indeed committed suicide within few hours of her last and unbearable encounter with the accused. The acts and deeds of the accused in the evening of 05.05.1996 had been too proximate to the event of suicide by 9 a.m. in the morning of 06.05.1996. As testified by PW-11 Smt. Krishna, her daughter cried the whole night for being unable to bear the daily humiliation at the hands of the accused; and ended her life in the morning.

25. For what has been discussed hereinabove and having examined the matter in its totality, we find no reason to consider any interference in the impugned judgment and order dated 05.05.2008 in relation to the appellant Nos. 1 and 3.”



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27. From the above, it is clear that the accused had instigated the deceased to commit suicide and therefore, the charge framed against him under Section 306 IPC is sustainable.

28. Further, it is the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which, it was executed or committed. The trial Court is expected to consider all relevant facts and circumstances with the gravity of offence. The nature of crime, the conduct of the accused and other attending circumstances, are also relevant in deciding the case. The High Court, under Section 401 Cr.P.C., is having the power to call for the records without the intervention of another agency. The High Court as an effective instrument in the administrative of criminal justice is duty bound to suo motu act where there is flagrant abuse of law. The nature of offence and the manner of disposal by the trial Court has prompted the Court to take up the suo motu Criminal revision petition for the ultimate social good of the community. The High Court is not required to act any revision merely through a conduit application at the instance of an aggrieved party.

29. In the facts and circumstances of the case and applying the ratio laid down by the Hon'ble Apex Court, the appellant is liable to be convicted for the offence under Section 306 IPC. Accordingly, the accused is found



guilty for the offence under Section 306 IPC and 448 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months for the offence under Section 306 IPC and sentenced to undergo simple imprisonment for three months for the offence committed under Section 448 IPC. The period of imprisonment already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C. The sentences shall run concurrently.

30. This Court places its appreciation to Mr.A.Thiruvadikumar, learned counsel, who was appointed as Amicus Curiae, for his sincere efforts in representing the case.

31. In the result, Crl.A.(MD)No.137 of 2015 filed by the appellant/accused is dismissed and suo motu revision in Crl.R.C.(MD)No.248 of 2015 is allowed.

29.11.2021

Index : Yes / No
Internet : Yes / No
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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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and CrI.R.C. (MD)No.248 of 2015

B.PUGALENDHI, J.

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Pre-delivery Judgment in
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