

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF MARCH, 2024

CRIMINAL REVISION No.3161 of 2022

BETWEEN:-

**NISHA SAKET W/O LATE PREETAM SAKET
AGED ABOUT 31 YEARS OCCUPATION
HOUSEWIFE, R/O 6/1, COLONY NO.3, PALI
PROJECT PALI, POST STATION PALI, DISTRICT
UMARIA (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI SOURABH SINGH THAKUR - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
POLICE STATION PALI, DISTRICT UMARIA
(MADHYA PRADESH)**
- 2. SMT. RADHA BAI W/O LATE SUKHLAL
SAKET, AGED ADULT, RESIDENT OF
DHAROLA MOHALLA WARD NO.17/22,
POLICE STATION KOTWALI, DISTRICT
SHAHDOL (MADHYA PRADESH)**

.....RESPONDENTS

***(RESPONDENT NO.1/STATE BY SHRI DILIP PARIHAR -
PANEL LAWYER AND RESPONDENT NO.2 BY SMT.
RANNO RAJAK - ADVOCATE)***

.....
"Reserved on : 15/03/2024"

"Pronounced on : 20/03/2024"
.....

*This Revision having been heard and reserved for order, coming on
for pronouncement this day, the court passed the following:*

ORDER

Case diary is available.

2. This Criminal Revision under Section 397/401 of Cr.P.C. has been filed against order dated 18/07/2022 passed by Sessions Judge, Umaria in S.T. No.42/2022, by which charge under Section 306 of IPC has been framed against the applicant.
3. It is not out of place to mention here that applicant had also filed M.Cr.C. No.31993/2022 thereby challenging the FIR, which was also listed on 15/03/2024. Since charges have already been framed and present Criminal Revision has been filed against the order framing charges, therefore M.Cr.C No.31993/2022 was dismissed as withdrawn with liberty to pursue this Revision.
4. The undisputed fact is that applicant is the wife of deceased Preetam Saket, whereas respondent No.2/ Smt. Radha Bai is mother-in-law of the applicant. It appears that Preetam Saket committed suicide by hanging himself in his Government accommodation. *Marg* enquiry under Section 174 Cr.P.C. was registered. Dead body was sent for post-mortem. Statements of witnesses were recorded and thereafter Police registered the FIR against the applicant for offence under Section 306 of IPC. The primary allegations against the applicant were that Preetam Saket had got appointment on compassionate ground on 01/04/2014 on account of death of his father. He got married to the applicant on 26/04/2016. When applicant came back to her matrimonial house for the second time in the month of July, 2016, it is alleged that her behaviour towards her in-laws was not good. Applicant was residing along with her husband (deceased) in Government accommodation No.6/1, Pali

Project Pali. She was not preparing food for her husband in time. Sometimes her husband was compelled to go on duty without having any meals. Behaviour of the applicant was not good. When husband of the applicant used to go on duty, then after leaving her child in the neighbourhood, she was in habit of going to market along with other persons for shopping purposes. When Preetam Saket was resisting to this conduct of applicant, then she used to pick up quarrel with him. In spite of presence of applicant in the house, deceased was compelled to do mopping, cleaning and washing of clothes. Applicant used to go to her parental home without informing the deceased. Applicant used to watch crime patrol serial on TV and in spite of objection by her husband she used to quarrel with him. The deceased was giving Rs.10,000/- per month to his mother which was being objected by the applicant. On 12/07/2021, elder brother of the applicant got married. In *Tilak* ceremony, applicant was dancing. When her husband objected to her dance, then she also quarrelled with him. On 18/07/2021, the deceased was not interested to go back to Pali but at the insistence of the applicant, he came back to Pali along with applicant and children. On 19/07/2021 at about 2:51, applicant informed her brother-in-law (*devar*) on his mobile phone that his brother is no more and has committed suicide by hanging himself. Thus, it was alleged that on account of abetment by the applicant, deceased has committed suicide.

5. Challenging the registration of FIR as well as framing of charge under Section 306 of IPC, it is submitted by counsel for the applicant that even if the entire allegations are accepted, still no offence under Section 306 would be made out.

6. *Per contra*, application is vehemently opposed by counsel for the State as well as complainant. It is submitted that the harassment at the hands of applicant has resulted in such a situation where deceased was left with no other option but to commit suicide. Accordingly, it is submitted that FIR as well as charge-sheet has been rightly filed for offence under Section 306 of IPC and charges have been rightly framed.

7. Considered the submissions made by counsel for the parties.

8. Before considering the allegations made against the applicant, this Court would like to consider the law governing the field of abetment to commit suicide.

9. Section 306 of I.P.C. 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.”

10. “Abetment” is defined under Section 107 of I.P.C. 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.

Illustration

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

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.”

11. The Supreme Court in the case of **Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)** reported in (2009) 16 SCC 605, while dealing with the term “instigation”, held as under :-

“16.....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. *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.

17. 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 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction' (see *Concise Oxford English Dictionary*); "to keep irritating or annoying somebody until he reacts" (see *Oxford Advanced Learner's Dictionary*, 7th Edn.)."

12. The Supreme Court in the case of **Praveen Pradhan vs. State of Uttaranchal and Anothers** reported in (2012) 9 SCC 734 held as under :-

“17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P.((2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for

quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC.”

13. The Supreme Court in the case of **Sanju @ Sanjay Singh Sengar vs. State of M.P.** reported in **(2002) 5 SCC 371** has held as under :-

“6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.”

Further, in para 12 of the judgment, it is held as under:

“12. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation.”

14. The Supreme Court in the case of **Gangula Mohan Reddy vs. State of Andhra Pradesh** reported in **(2010) 1 SCC 750** needs mentioned here, in which Hon'ble Apex Court has held that "abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under section 306 IPC, there has to be a clear *mens rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he

commits suicide. Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out. Hence, appellant's conviction, held unsustainable".

15. In the case of **State of West Bengal vs. Orilal Jaiswal and Another** reported in (1994) 1 SCC 73, the Supreme Court has held that "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 appears 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 that accused charged of abetting the offence of suicide should be found guilty."

16. The Supreme Court in the case of **M. Mohan vs. State represented by the Deputy Superintendent of Police** reported in **AIR 2011 SC 1238** has held that "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 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 this act must have been intended to push the deceased into such a position that he/she committed suicide."

17. The Supreme Court in the case of **Kishori Lal vs. State of M.P.** reported in **(2007) 10 SCC 797** has held in para 6 as under:-

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence

for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

18. In the case of **Amalendu Pal @ Jhantu vs. State of West Bengal** reported in **(2010) 1 SCC 707**, the Supreme Court has held as under:-

“**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 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.

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

14. The expression ‘abetment’ has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause

firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

“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 facilitates the commission thereof, is said to aid the doing of that act.”

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC.”

19. The Supreme Court in the case of **Amit Kapur vs. Ramesh Chander and Another** reported in **(2012) 9 SCC 460** has held as under :-

"35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618 to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence."

20. The Supreme Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh** reported in (2001) 9 SCC 648 has held that "a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and

differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

21. The Supreme Court in the case of **Kumar @ Shiva Kumar Vs. State of Karnataka** decided on 01.03.2024 in **Criminal Appeal No.1427/2011** has also laid down the same law.

22. If the facts of this case are considered, then it is clear that it can be summarized as under:-

- (i) Sometimes in the month of July, 2016, applicant had run away from the house after jumping from the boundary wall and ultimately she was recovered from Budhar square.
- (ii) When the applicant came back to her matrimonial house for the second time, then her behaviour towards her in-laws was not good.
- (iii) The deceased used to tell his mother that applicant is not in habit of giving food in time and even sometimes he go to the duty without having meals.
- (iv) The deceased used to tell his mother that when he goes to his duty, then the applicant after leaving her child in the neighbourhood, is in habit of going to market along with other persons for shopping purposes.

- (v) It was the deceased who was doing the work of mopping, cleaning as well as washing of clothes.
- (vi) The applicant was in habit of visiting her parental home without permission of the deceased.
- (vii) On 19/06/2021, applicant went to her parental home to attend the marriage of her elder brother. When the deceased attended the said function, he found that applicant was dancing which was objected by the deceased and on that issue, there was quarrel between the applicant and deceased.
- (viii) On 18/07/2021, applicant insisted that they would go back to Pali and when the deceased replied that he would not go because he wants to talk to his mother in the night, then the applicant insisted and forcibly took him to Pali Project and thereafter deceased committed suicide.

23. Not preparing the food in time, compelling the husband to do the work of mopping, cleaning as well as washing clothes, dancing in the marriage of her own brother, compelling the deceased to immediately go back to their place of resident i.e. Pali Project and going to the market along with other persons for shopping purposes, cannot be said to be an abetment.

24. Section 107 of I.P.C. 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.

Illustration

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

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.”

25. The allegations which have been made against the applicant are of trivial in nature which generally took place in every house. Even counsel for the complainant could not point out that even if the entire allegations which have been made against the applicant are treated as true, then how the offence under Section 306 of IPC would be made out. Even counsel for the State could not point out that how the ingredients of abetment can be inferred in the light of allegations made against the applicant.

26. Even if the entire allegations are accepted, it cannot be presumed

that there was any instigation on the part of the applicant. In cases of abetment of suicide, there must be proof of direct or indirect acts or incitement of commission of suicide. Acts involve multifaceted and complex attributes of human behaviour and reactions or in the cases of abetment, Court must look for cogent and convincing proof of acts of incitement of commission of suicide. Instigation means to goad, urge forward, provoke, incite, urge or encourage to do an act.

27. If the allegations made against the applicant are considered in the light of law laid down by Supreme Court as already referred in previous paragraphs, this Court is of considered opinion that no case is made out warranting prosecution of the applicant.

28. Accordingly, charge under Section 306 of IPC which was framed by the Court below cannot be upheld.

29. *Ex consequenti*, order dated 18/07/2022 passed by Sessions Judge, Umaria in S.T. No.42/2022 is hereby **set aside**. Applicant is discharged.

30. Criminal Revision succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

S.M.