

Court No. - 86

Case :- CRIMINAL REVISION No. - 4250 of 2024

Revisionist :- Rajkumar Jaiswal

Opposite Party :- State Of U.P. And 4 Others

Counsel for Revisionist :- Satyendra Narayan Singh, Vikas Singh

Counsel for Opposite Party :- G.A., Jai Prakash Prasad, Vaishali Sahu

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant criminal revision has preferred against the impugned judgement and order dated 15.7.2024 passed by learned Special Judge (SC/ST Act) Varansi in Session Trial No. 401 of 2015, arising out of Case Crime No. 8 of 2014 under section 306 I.P.C., P.S. Mirza Murad, District Varanasi.

2. Sri S.N. Singh, learned counsel for the revisionist, learned AGA for the State, Sri Jai Prakash Prasad, learned counsel for the respondent nos. 2 to 5 and perused the material available on record.

3. According to prosecution version, informant Rajkumar Jaiswal had lodged an F.I.R. on 16.1.2024 at around 14:10 hours at P.S. Mirza Murad, District Varanasi, under section 306 I.P.C. with averment that his son Rajkumar Jaiswal was married with Supriya Jaiswal on 27.4.2009. The accused Supriya Jaiswal, the daughter-in-law of the informant started quarreling with his family member who is husband and in-laws on one and another ground just after her arrival in her matrimonial home after marriage. The son of the informant Sunil Kumar Jaiswal was working as Accountant at Sandeep Sancy School and due to frequent ill-treatment and harassment meted out to him by wife, he started living separately for three years earlier to the incident. Accused Supriya Jaiswal used to abuse him she even did not offer meal to him and used to tease him every now and then due to which he remained in physical and mental stress. She used to tease him and abuse him by stating that he should die so that she may be able to marry with some capable person and live a happy marital life. Even the family members of Supriya Jaiswal also used to harass and torture the son of the informant. They were creating pressure on Sunil Kumar Jaiswal to get the house transfer in the name of the Supriya Jaiswal. They would also threaten to implicate him in some case

and would also threaten him to life.

4. The son the informant Sunil Kumar Jaiswal was very much disturbed and due to strain, harassment and torture meted out to him by wife and in-laws who were named in the F.I.R. he committed suicide on 20.9.2013 by eating some poisoning substance. The police registered case against wife and in-laws of the deceased in FIR during investigation a suicide note was found which was taken into custody by investigating officer SI Chandra Dev Rai who stated that he visited Prabha Hospital and coming to know that the person who was lying had died. The deceased was identified by the father Raj Kumar Jaiswal in the Hospital where he searched the pocket of the deceased, then he found stamp paper regarding purchase of motor cycle UP65AV7570 and two pieces of suicide note on which mobile no. 9451063580 were marked by deceased. The post mortem of the deceased Sunil Kumar Jaiswal was conducted on 20.9.2013. The police submitted charge sheet against wife of the deceased, namely, Supriya Jaiswal and complication of other accused persons are not made out on the basis of evidence collected during investigation. On commission of trial accused Supriya Jaiswal was charged under section 306 I.P.C. and statement of the witnesses were recorded.

5. During course of trial, the informant filed an application under section 319 Cr.P.C. to summon the other named accused persons to face trial in exercise of power under section 319 Cr.P.C. whose name did not find place in charge sheet. However, the informant not pressed the application under section 319 Cr.P.C. subsequently an application 64 Kha was filed under section 319 Cr.P.C. at the instance of public prosecutor which was dismissed vide impugned order dated 15.7.2024 with observation that statement of ten witnesses have been recorded. The informant has also filed an application 65kha under section 319 Cr.P.C. which was not pressed by him.

6. Being aggrieved by the impugned order, the informant filed present criminal revision before this court. Learned counsel for the revisionist submits that in the statement of P.W. 1 Rajkumar Jaiswal and P.W. 2 Anurag Jaiswal who have clearly stated that all the respondent nos. 2 to 5 were named accused in F.I.R. used to beating to the deceased Sunil Kumar Jaiswal along with Supriya Jaiswal who is already facing trial. Deceased Sunil Kumar Jaiswal due to continuous harassment and torture meted out to him by wife Supriya Jaiswal and respondent nos. 2 to 5, was left with no other option but to end his life. In suicide note written by deceased it is mentioned that due to harassment made by his wife

and her family member, he is committing suicide. He also mentioned nobody of the family member of his in-laws will touch his death body.

7. It is next submitted that Investigating Officer Chandradev Rai has clearly stated that he has obtained the suicide note in original as well as photocopy which has been maintained in the case diary but learned trial court has not considered the same and give the finding that original suicide note has been given after too much late, therefore, finding given by learned trial court is totally perverse and against the records. In F.I.R. as well as suicide note of the deceased and the statement of witnesses P.W. 1 and P.W. 2, the role of respondent nos. 2 to 5 in abetting suicide of deceased along with main accused Supriya Jaiswal, is clearly established and made out, but the trial court has ignored the evidence available on record against private respondents. The witnesses Sandeep Mishra, Mallu Yadav, Ram Kishun Yadav, Guddu Singh and other witnesses have cleared stated regarding suicidal death of Sunil Kumar Jaiswal due to beating and harassment given by Supriya Jaiswal and respondent nos. 2 to 5. He lastly submitted that finding of the trial court is against the evidence on record and impugned order deserves to be set aside.

8. Per contra, learned counsel for the respondent nos. 2 to 5 submitted that there is no illegality and irregularity in the impugned order while dismissing the application under section 319 Cr.P.C. No specific role has been assigned by the revisionist to the respondent nos. 2 to 5 may be cause of commission of suicide committed by the deceased. The original suicide note has not been placed on record and it is stated in the impugned order its photocopy could not be matched with any document on which signature and writing of the deceased was admitted, therefore, no relevance can be placed on the suicide note. Incident took place on 20.9.2013 whereas F.I.R. has been lodged on 16.1.2014 there is no explanation in the F.I.R. regarding such inordinate delay in lodging the F.I.R. The source of obtaining copy of the suicide note is also not mentioned in the F.I.R.

9. Learned AGA submitted that the impugned order is contrary to law. Learned trial court has dismissed the application under section 319 Cr.P.C. ignoring the cogent evidence appearing on record against the respondent nos. 2 to 5.

10. Learned trial court has stated in the impugned order that application under section 319 Cr.P.C. has purportedly filed by the informant (revisionist) neither bear signature nor it is accompanied

with affidavit. The original suicide note has not been brought on record due to non availability of signature of author on the original suicide note, the photocopy of the said suicide note could not be compared with any document on which signature of the deceased was admitted. No such document could be made available by principal of the school where he was teaching. The application has been filed after completion of evidence of ten witnesses during trial and at the stage of remaining witness, the informant had not pressed the application under section 319 Cr.P.C. marked as 65 kha and same was dismissed by the court concerned.

11. Learned counsel for the respondent no. 2 drew attention of the court towards statement of S.I. Chandra Dev Rai investigating officer of the case wherein it is stated that on 10.12.2020 he went to police station straight away from Pragya Hospital he had not made any entry of goods and suicide note, recovered during inquest proceeding in GD. He has also not mentioned contents of suicide note in G.D. of police station. He has not mentioned in inquest report about the condition of paper on which suicide note was written. The FIR in the case was lodged by order of the court passed on an application under section 156(3) Cr.P.C. filed by the informant before the Court of Magistrate. The Investigating Officer had not found complicity of in-laws of the deceased and filed charge sheet only against his wife Supriya Jaiswal who is facing trial at present. Even in evidence of P.W. 1 Raj Kumar Jaiswal main allegations regarding harassment, torture and ill-treatment caused to the deceased, are attributed to the accused Supriya Jaiswal. The allegations against respondent nos. 2 to 5 in evidence of P.W. 1 are based on suicide note of the deceased which could not be duly proved during trial. Even in suicide note main allegations are levelled against wife of the deceased.

12. It is further submitted that P.W. 5, S.I. Chandra Dev Rai has stated that when he had seen the dead body of the deceased in presence of informant Raj Kumar Jaiswal in Prabha Hospital, a stamp paper regarding purchase of motorcycle and two small suicide note on which Mobile No. 9551063580 was mentioned, were recovered. A black colour poisonous substance was recovered from yellow polythene from the place about which doctor stated that it was Furadan Organophosphorus. He seized the poisonous substance in separate cloths and carried out inquest proceedings in presence of family members of the deceased.

13. There is no plausible evidence against respondent nos. 2 to 5 in support of the allegation that they abetted the commission of

suicide by the deceased or did any overt act which had left the deceased with no other option but to take the fatal step.

14. In recent judgement in ***Prabhat Kumar Misra @Prabhat Misra vs. State of U.P.*** Hon'ble Supreme Court in SLP Criminal No. 959 of 2021 vide judgement on 5.2.2024 considered ambit and scope of section 306 I.P.C. and interpreted cogent of section 107 I.P.C. which defines "abetment of a thing". Hon'ble Court observed "it is not disputed that the prosecution case is entirely based on the suicide note left behind by the deceased before committing suicide. On a minute perusal of the suicide note, it would not find that contents thereof indicate any act or ambition on the part of the accused appellant which could make responsible for the abetment as defined under section 107 I.P.C.

15. In present case also it is stated in photocopy of the suicide note on which reliance has been placed by prosecution that his wife and in-laws has compelled him to commit suicide, his wife often threaten him to file a case for dowry harassment. She threatened to sue his entire family even if he started living in a remitted place. His wife has shifted all her ornaments to her parental home nevertheless she did not satisfy, she needs share in his property, so that he and his family be scandalized. In the suicide note it was also written that after his death, his dead body should not be touched by his wife and his in laws.

16. Thus, in alleged suicide note the deceased has not specified in-laws and had made specific allegations against his wife. In similar case ***Rohini Sudarshan Gangurde vs. the State of Maharashtra SLP (Crl) No. 13246 of 2023*** held that reading section 306 and section 107 I.P.C. together would indicate that there must be there must be either an instigation, or an engagement or intentional aid to 'doing of a thing'. When we apply these three criteria to Section 306, it means that the accused must have encouraged the person to commit suicide or engaged in conspiracy with others to encourage the person to commit suicide or acted (or failed to act) intentionally to aid the person to commit suicide.

17. Hon'ble Court placed reliance on an earlier judgement in ***Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707*** wherein it is held that the court explained the parameter of 306 I.P.C. in following words:-

"15. 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.

16. In order to bring a case within the purview of Section 306 of 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."

18. In present case there is no direct or indirect evidence except bald statement of the witness during trial and in alleged suicide note the family members of the wife of the deceased used to harass along with his wife. No overt act has been alleged on their part which could drive the deceased to commit suicide. There is no material on record which could suggest that the respondent nos. 2 to 5 had instigated the deceased to commit suicide.

19. Hon'ble Supreme Court in Constitution Bench judgement ***Hardeep Singh vs. State of Punjab, 2014 SC 1400 held as under :-***

"105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner."

20. In view of foregoing discussion and dictum of Hon'ble Supreme Court in ***Hardeep Singh (Supra)***, I am of the considered opinion that evidence in record are not of such nature that it could form a requisite satisfaction for the trial court to exercise powers

under section 319 Cr.P.C. which is held to be a more than, prima facie, case as exercised at the time of framing of charge but of satisfaction to an extent that evidence is unattributed and would lead to conviction. According to Apex Court in absence of such satisfaction, court could refrain itself from exercising powers under section 319 Cr.P.C.

21. Consequently, I find no illegality or irregularity in the impugned order passed by trial court by dismissing application under section 319 Cr.P.C. filed by the prosecution to summon the respondent Nos. 2 to 5 as an additional accused to face trial with the main accused Supriya Jaiswal. The revision is devoid of merits and deserves to be dismissed.

22. The revision is dismissed, accordingly.

Order Date :- 4.12.2024/SY