

Neutral Citation No. - 2025:AHC:136380

Reserved On:- 15.07.2025

Delivered On:- 12.08.2025

Case :- CRIMINAL REVISION No. - 2254 of 2023

Revisionist :- Anuj Verma

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Pradeep Kumar Rai, Sr. Advocate

Counsel for Opposite Party :- G.A., Mohd. Shoeb Khan

Hon'ble Siddharth, J.

1. Heard Sri Kamal Krishna, learned Senior counsel, assisted by Sri Pradeep Kumar Rai, learned counsel for revisionist; Mohd. Shoeb Khan, learned counsel for opposite party no.2; learned AGA for State and perused the material on record.
2. This revision has been preferred against the impugned judgment and order dated 24.01.2023 passed by court of Additional Sessions Judge / Special Judge, POCSO Court, Ghazipur passed in Juvenile Criminal Appeal No. 105 of 2022 (Anuj Verma vs. State) as well as the order dated 07.11.2022 passed by the court of Juvenile Justice Board, Ghazipur passed in Case No. 150 of 2018 (State vs. Anuj Verma) arising out of Case Crime No. 82 of 2018, under Sections- 305, 376 IPC and Section 3/4 of POCSO Act, Police Station- Saidpur, District- Ghazipur whereby discharge application of the revisionist has been rejected for committing the offences punishable under Sections- 305, 376 IPC and Section 3/4 of POCSO Act.
3. F.I.R was lodged against the two persons, including the revisionist, as Case Crime No. 82 of 2018, under Sections- 376, 306 IPC and Section

¾ of POCSO Act at Police Station- Saidpur, District- Ghazipur on 16.05.2018 at 04:38 p.m.

4. In short the prosecution case is that on 16.05.2018 at 12:00 p.m., the daughter of the opposite party no. 2 committed suicide in her house due to mental and sexual harassment by the accused-revisionist.

5. In pursuance to the F.I.R dated 16.05.2018 the investigating officer started investigation and firstly recorded the statement of the informant / opposite party no. 2, Manendra Kumar Dwivedi, and then recorded the statements of Smt. Krishna Devi (mother of deceased), Smt. Latika Devi (grandmother of the deceased) and Vinod Pathak on 16.05.2018 under Section 161 Cr.P.C. Opposite party no. 2 reiterated the version of F.I.R in his statement whereas the other witnesses stated that the opposite party no. 2 had informed them about the alleged incident.

6. During the course of investigation the suicide note of deceased was collected by the investigating officer. After culmination of the investigation the investigating officer submitted charge sheet against the revisionist and one co-accused under Sections- 376, 305 IPC and Section ¾ of POCSO Act on 30.09.2018 upon which cognizance was taken by the Magistrate on 17.11.2018. The revisionist had made claim of his juvenility before the court of Juvenile Justice Board, Ghazipur and by the order dated 22.05.2018 the revisionist was declared juvenile and his age was determined 15 years, 7 months and 18 days as on the date of occurrence. The order of declaring juvenility of the revisionist was challenged by the opposite party no. 2 before the court of Additional Sessions Judge, Ghazipur and the same was rejected on 25.06.2018. The order dated 25.06.2018 was challenged by the opposite party no. 2 before this court by filing a Criminal Revision No. 2225 of 2018 in which no interim order has been passed till date and same is pending for consideration. On the date of

filing the discharge application, the revisionist had become major therefore he has filed the present revision on his behalf before this court.

7. The photocopy of the relevant police papers of this case were handed over to the revisionist by the Board on much belated stage i.e., 21.10.2022, and after getting the papers the revisionist had moved his discharge application before the Board on 01.11.2022 which was rejected by the Board on 07.11.2022. The rejection order of discharge application dated 07.11.2022 was challenged by the revisionist before the court of Sessions Judge, Ghazipur by filing Juvenile Criminal Appeal No. 105 of 2022 and same was rejected on 24.01.2023.

8. Learned Senior Counsel for the revisionist has submitted that courts below neither verified the allegations of the opposite party no. 2 nor applied its judicial mind and further mechanically rejected the discharge application of the revisionist by passing a wholly unreasoned and cryptic orders dated 24.01.2023 and 07.11.2022.

9. Learned courts below did not considered the fact and evidence of the case and passed the impugned orders dated 24.01.2023 and 07.11.2022 in cursory manner. No finding has been recorded in the order rejecting the discharge application. By looking to the sound economic status of father of the revisionist the entire allegations has been concocted by opposite party no. 2 so as to extort money for him. As per the suicide note of deceased, no allegation of rape and instigation or abetment of suicide are made out against the revisionist. No call details report was brought on record by the investigating officer to substantiate the allegation of talking of the deceased with the revisionist and as such the orders of courts below are illegal and perverse. The word 'deceive' used in the suicide note, is used in many context hence, in which context deceased used the same and committed suicide cannot be presumed. So far the allegation of sending

obscene messages by the revisionist to the informant's mobile number (as per the FIR) is concerned it is submitted that in the entire evidence collected by the investigating officer, there is no disclosure of any mobile number from which alleged messages were received by the informant.

10. From the suicide note / wherein the deceased stated that " पापा, अम्मा, मम्मी, बाउ, प्यारे देवेश । I am sorry आप सभी को मैं अपने आप को फांसी लगा रही हूँ या ज़हर खा लूंगी sorry क्योंकि मेरी वजह से पूरे मोहल्ले में आप सभी की बदनामी हुयी " it can be safely concluded that the deceased had committed suicide only to save her family from social ignominy and also being unable to bear the same. In other words there is no link between the suicide and abetment / instigation on the same by revisionist. Infact there is no evidence of abetment/instigation of deceased by the revisionist. The prosecution did not attributed any such act to the revisionist which may have driven the deceased to commit suicide or cause grave injury to herself therefore offence under section 305 I.P.C. is not made out against the revisionist. There is no evidence of active and direct act of the revisionist which led the deceased to commit suicide seeing no option left for her and that act must have been intended to push the deceased to such a situation that she committed suicide. There is no *mens rea* reflected from the perusal of suicide note on the part of revisionist hence no offence is made out against the revisionist. The orders of the courts below are against the weight of evidence on record.

11. Learned counsel for the opposite party no. 2 has vehemently opposed the submissions made by learned Senior counsel for the revisionist and has submitted that from merit of the case; from perusal of the F.I.R. and the statement of Manendra Kumar Dwivedi, Smt. Krishna Devi, Smt. Latika Devi and Vinod Pathak it is evident that prima facie offence under Section 305, 376 I.P.C. and 3/4 of POCSO Act is made out

against the revisionist and the discharge application of the revisionist has been rightly rejected by the Juvenile Justice Board.

12. From the perusal of the suicide note it is evident that the deceased was abetted by revisionist to commit suicide as due to commission of rape against her, she felt humiliated and her life became miserable due to bad name in the society. She was left with no other option except to commit suicide. The deceased was minor girl aged about 13 years of age and therefore, the present case is covered under Section 305 of I.P.C. (abetment to commit suicide by child). From perusal of evidence prima facie offence under Section 376 I.P.C. and 3/4 of POCSO Act, is made out for framing charge against accused revisionist. As of date it is uncertain that the present case will proceed before the Juvenile Justice Board or Sessions court since the outcome of the decision of Juvenile Justice Board is still awaited after the remand order passed by this Court.

13. Learned counsel for the opposite party no. 2 has relied upon the judgment of Apex Court in the case of ***Manendra Kumar Dwivedi vs. State of U.P. and Another in Criminal Revision No. 2225 of 2018***.

14. After hearing the rival submissions, this court deems fit it appropriate to consider the dying declaration of deceased which is as follows :-

“ पापा, अम्मा, मम्मी, बाउ, प्यारे देवेश । I am sorry आप सभी को मैं अपने आप को फांसी लगा रही हूँ या ज़हर खा लूंगी sorry क्योंकि मेरी वजह से पूरे मोहल्ले में आप सभी की बदनामी हुयी पर वो सच बात थी पापा आप ने मेरा मोबाइल ले लिया फिर भी मई अनुज से रात को बात करती थी देवेश के मोबाइल से पर उसने धोखा दिया जिसकी वजह से मैंने आप लोगों को धोखा दिया उसने मुझे छोड़ दिया ।

अब मेरे जीने का कोई फायदा नहीं मेरे मर जाने से ही सबको फायदा है मैं आप लोगों का सामना नहीं कर सकती थी इसलिए ये कदम उठाया है मैंने । हो सके तो मुझे माफ़ कर दीजियेगा ।

मेरी आखिरी इच्छा बस इतना ही है की अनुज को भी छोड़ दीजियेगा । भले उसने मुझे धोखा दिया पर मई उससे सच्चा प्यार करती थी । मन में ठान लिया था की अगर मैं अनुज की नहीं होगी तो किसी की नहीं ।

sorry

देवेश पढ़ना बाबू पापा का नाम रौशन करना ”

15. A perusal of suicide note of deceased shows that she has not made any allegation against the revisionist except breakup of relationship with him. She has stated that he has deserted her. In similar circumstances the Apex Court in the case of ***Saksham Rajeev Kharbanda vs. State of Maharashtra, through P.I. Khargar Police St., Taluka Panvel, 2019 SCC OnLine Bom 5108***, allowed the application under Section 482 Cr.P.C filed by the accused when the court found that except breakup of relationship between the revisionist and the deceased, there was no other allegation made against the accused and quashed the entire proceedings under Section 306 IPC and discharged the accused by the following order :-

“ 7. Perused the papers. As noted the applicant, aged 21 years was studying in 'N.I.F.T' at Khargar and so was the deceased - Rasika. The applicant was in the first year and Rasika in the second year, when they met and their friendship developed into a love affair. It appears from the statements of Rasika's friends, that there used to be frequent petty quarrels between the applicant and Rasika and on one occasion, Rasika had attempted to commit suicide by slitting her wrist with a blade. It also appears from the said statements that the applicant had taken Rasika to the hospital and thereafter had gone to Ludhiana, Punjab. There is nothing to show that after December 2015, the applicant and Rasika had revived their friendship. The statements of Rasika's friends reveal that post December 2015, Rasika was under stress due to the break up and as such could not concentrate on her studies. On 5th March, 2016, Rasika committed suicide

by jumping from the building, in which she was residing. The death of Rasika is indeed unfortunate. However, the question that arises here for consideration is whether in the facts, the applicant can be said to have abetted the commission of Rasika's suicide.

8. The relevant provisions read as under:-

Section 306 of the Indian Penal Code reads thus;

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.

"Abetment" has been defined under Section 107 of the Code, which reads thus;

107. Abetment of a thing.--A person abets the doing of a thing, who-

First. -- Instigates any person to do that thing; Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-- Intentionally aids, by any act or illegal omission, the doing of that thing."

Explanation 2 which has been inserted along with Section 107 reads as under:-

"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."

9. It is therefore evident that a person abets the doing of a thing, if he 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; or intentionally aids, by any act or illegal omission, the doing of that thing.

.....

.....

17. The facts in the present case clearly do not attract any of the necessary ingredients as are required to constitute an offence under Section 306 of the Indian Penal Code, inasmuch as, there is no instigation, criminal conspiracy to commit the act or intentionally aiding the commission of the act.

18. The material on record does not show that the applicant in anyway either instigated or intentionally aided the commission of suicide. Mens rea, is clearly absent on the applicant's part to show his complicity.

19. Having regard to the judicial pronouncements and the facts of the present case, no offence as alleged under [Section 306](#) of the Indian Penal Code is disclosed, as against the applicant. The observations made by the learned Sessions Judge in paragraph 14 of the impugned order dated 11th February, 2019 clearly do not record the correct proposition of law and on the face of it, are perverse and unsustainable. The relevant part of para 14 reads thus:-

"14. The F.I.R., the statements of witnesses on record prima facie shows that Rasika committed suicide due to unbearable stress after the breakup. It was the crucial time when she was in the need of emotional as well as mental support. Though the parents failed to discharge their duty who were not staying with Rasika, it was the duty of applicant to take care of Rasika when she was under the stress....."

20. Accordingly, the application is allowed and the impugned order dated 11th February, 2019, passed by the learned District Judge - 4 and Asstt. Sessions Judge, Alibag, below Exhibit - 3 in Sessions Case No.69 of 2017, is quashed and set aside and the applicant is discharged from the said case i.e. Sessions Case No.69 of 2017.

16. The Apex Court in the case of **Netai Dutta vs. State of West Bengal (2005) 2 Supreme Court Cases 659**, has held that wherefrom the contents of the suicide note, no offence was made out against the revisionist, his prosecution would amount to sheer harassment of the revisionist.

17. Considering the above dictum of the Hon'ble Bombay High Court and Hon'ble Supreme Court, this court finds that in the suicide note of the deceased she has not made any allegation of commission of offence of rape or abetment of suicide against the revisionist at all. In the post-mortem report of deceased also, no recent sign of commission of offence of rape was found. The deceased in her dying declaration has not made any allegation that the revisionist used to send any obscene message on her

whats-app. She has expressed her affection for him and has also stated that the revisionist should not be punished for her act.

18. During investigation neither call detail record nor the mobile number has been collected by the investigating officer and also no allegation under section of IT Act is levelled against the revisionist. Only oral allegations of rape and sending obscene messages were levelled against the revisionist whereas the informant has himself stated in his statement under section 161 Cr.P.C. that the SIM card of his phone was destroyed by him even then no electronic evidence was collected by the investigating officer to substantiate the allegations. The informant did not disclosed as to from which source he had got knowledge regarding the rape alleged to have committed on the deceased three months prior to the alleged incident. No date, time and place are mentioned in the suicide note wherefrom it can be inferred that the deceased was deceived therefore the offence of abetment of suicide or instigation cannot be said to be made out.

19. The judgment of Apex Court in the case of ***Manendra Kumar Dwivedi (supra)*** relied upon by the counsel for the opposite party no. 2 is regarding determination of age of accused and has no relevance to the issue involved in this case.

20. In view of the above consideration, it is clear that ingredients for constituting offence of abetment of suicide and rape of deceased against the revisionist are not made out. It is true that merely on the basis of dying declaration of deceased being in favour of accused, he cannot be discharged without considering other evidence on record with the recital in dying declaration. In the present case the dying declaration of deceased is against the prosecution case set up in the F.I.R and statements of witnesses. Secondly, there is no credible corroborative evidence to prove

the prosecution case except oral statements of witnesses. There are no call details of deceased and accused collected by the police. The case is although under Section 305 IPC but there is no evidence on record to prove the ingredients of abatement of suicide. Oral statement of Manendra Kumar Dwivedi is against the contents of suicide note of deceased and all the other witnesses were informed the facts of case by aforesaid witness only.

21. The reasons why the juveniles are getting involved in such relationships spoiling their precious lives have been considered by this court in the judgment dated 24.07.2025 passed in the case of Juvenile 'X' vs. State of U.P., Criminal Revision No. 4833 of 2024.

22. The discharge application of revisionist is allowed. He is discharged of the offences alleged against him.

23. The revision is ***allowed***.

Order Date :- 12.08.2025
Rohit