



2026:DHC:4597

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

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*Judgment reserved on: 31.01.2026**Judgment delivered on : 22.05.2026*

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CRL.REV.P. 549/2023 & CRL.M.A. 13130/2023**X****.....Petitioner****versus****STATE & ORS.****.....Respondents**

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CRL.REV.P. 704/2023 & CRL.M.A. 17091/2023, CRL.M.A. 17092/2023, CRL.M.A. 17093/2023**X****.....Petitioner****versus****STATE THROUGH GOVT NCT OF DELHI
& ANR.****.....Respondents****Advocates who appeared in this case:**

For the Petitioner

: Mr. Amit Gutpa, Ms. Rupali Samuel, Ms. Aditi Soni, Ms. Muskan Nagpal, Mr. H.S. Mahapatra and Mr. Kshitij Vaibhav, Advs.

For the Respondents

: Mr. Sunil Kumar Gautam, APP For the State with SI Vivek Kumar, PS GK-1. Mr. Pradeep Rana and Mr. Inderpreet Singh, Advs. for R-2 in CRL.REV.P. 549/2023. Mr. Rajal Rai Dua and Mr. Rohan Sharma, Advs. for R-2 in CRL.REV.P. 704/2023.



2026:DHC:4597



Ms. Shalini Sinha, Ms. Mahika Pant and Mr. Rajiv Mohan, Advs. for R-3 in CRL.REV.P. 549/2023.

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HON'BLE MR JUSTICE AMIT MAHAJAN

J U D G M E N T

AMIT MAHAJAN, J

1. The present revision petitions have been filed by the Revisionist/ Complainant, under section under 397 read with 401 of the Code of Criminal Procedure, 1973 (*hereinafter 'CrPC'*) seeking setting aside of the order on charge dated 16.02.2023, passed by the learned Additional Sessions Judge (*hereinafter 'Ld. ASJ'*) *vide* which the co-accused persons namely *Mr. Abhinav Malhotra* and *Ms. Annanya Singh* were discharged and the main accused *Mr. Madhav Bhutani* was charged for the offences punishable under Sections 323/341/342/354/376 of the Indian Penal Code, 1860 (*hereinafter 'IPC'*).

QUINESSENTIAL FACETS GERMANE TO THE PRESENT DISPUTE: -

2. Succinctly stated, the complainant/Prosecutrix, filed a Complaint on 26.02.2021, at Police Station Greater Kailash -1, alleging that she had been subjected to sexual assault on 29.12.2020, at a flat situated in Greater Kailash-I, New Delhi, where she had gone to attend a gathering along with certain acquaintances namely, Mr.



Madhav Bhutani, Ms. Annanya Singh and Mr. Abhinav Malhotra. The relevant extract of the complaint is reproduced as under: -

"I am filing the present complaint against Madhav Bhutani, Abhinav Malhotra and Annanya Singh for committing rape upon me on 29.12.2020 in furtherance of their common intention and pre-designed plan. I am residing at House Number [REDACTED] Sector [REDACTED] along with my parents and am pursuing my B.A. Hons in Political Science final year from [REDACTED] Singh [REDACTED] (University of [REDACTED]).

Annanya is pursuing her B.A. Hons in Pol Sc. Final year from the same college and I knew her being my classmate since our first year. Madhav Bhutani is pursuing his B.Com final year from the same college and as a college mate, I also also knew him and had faith in them as friends. Abhinav is pursuing his higher studies from Australia and many a times I heard about Abhinav from Annanya because Abhinav and Annanya are friends but I never saw Abhinav before the date of horrible incident of gang rape upon me and I saw him for the first time.

On 28th December 2020, our final year 5th semester exams were over and Annanya told me that a party among college friends has been organized on 29th December 2020 during the day time around noon and it was also said that the party shall be held at House [REDACTED], New Delhi. Annanya told me to meet her at Moolchand Metro Station around 12:30 PM. Accordingly, in good faith I reached Moolchand Station where Annanya had reached before me. She then told me that Madhav and Abhinav were coming to pick us. Around 1:00 PM, both Madhav and Abhinav came in a blue colour Baleno Car and they asked us to accompany them in the car. There was no occasion or reason to suspect them (or anything wrong).

We all four reached [REDACTED], New Delhi. One person looked like an attendant and asked if we wanted to be served. Madhav and Abhinav told him that nothing was required. TV was on, songs were playing, Madhav gave me the cold drink and Abhinav gave me chips. Thereafter, we all started talking and sipping cold drinks. But later on, I perceived that my cold drink was laced with some sedative and I started feeling dizziness and nausea and I went to vomit in the washroom where



Annanya accompanied me and did not let me lock the door from inside. When I came back I started weeping and fell into a semi-conscious state. Suspecting something wrong I tried to look for my phone to call or press SOS but my phone could not be found and later I learnt that it was taken away by Annanya. Since I was in a semi-conscious state, feeling somewhat paralysed and unable to stand on my feet Madhav picked me physically and took me to the bathroom which was in a bedroom then despite my resistance he placed me on the bed. I was coming in and out of consciousness and during these spells of consciousness I noticed that Madhav had pulled my lower and removed my upper as well. I tried to resist and protect myself but Madhav taking undue advantage of my helplessness in semiconscious state, he forcefully committed rape upon me without my consent and against my will. As far as I remember I attempted to bite him and push him away from myself. When I gained full consciousness, I found myself naked. I saw Madhav and Abhinav sitting there shirtless and I noticed blood stains on the bedsheet, acute pain and burning sensation in my vagina along with pain in my lower abdomen. I also noticed bruises and abrasions on my breasts and left arm. Both Abhinav and Madhav threatened me not to tell about the incident the videos, they had recorded on the phone. They dropped me at Kailash Colony Metro Station around 6 PM in the evening. I remained under such fear and trauma as well as of my reputation and social future could not muster courage to tell anyone about the incident and was living in the state of constant anxiety, PTSD and depression. I have now disclosed it to my mother and have come to report this horrific incident. Kindly FIR be registered against the accused persons for taking action and I request that my identity remains protected and hidden. I plead you to take care of my security as I have been threatened by the culprits and they conspire and harm me physically or socially."

3. Hence, on the basis of the above complaint, vide DD No. 54 A, FIR No. 64/2021 dated 26.02.2021 was registered at Police Station



GK-1 for the offences punishable under sections 376D/342/328/506/109/34 of the IPC.

4. During the course of investigation, the prosecutrix was sent for her medical examination to AIIMS, which was conducted *vide* MLC No. 1906/2021. She denied internal examination stating that the incident was of 29.12.2020 and thus, no medical evidence was extracted.

5. The statement of the prosecutrix, under section 164 of the CrPC, was recorded. The relevant extract is reproduced as under: -

*“On 28th December 2020 my semester exams got over. Madhav, who goes to my college is known to me since 2018 through a college society. I felt he was a trustworthy friend. He planned a get together. My friend Annanya who is dating Madhav’s best friend Abhinav is also a good friend so I trusted hanging out with her and Madhav. Madhav sent us the final address for the get together on 28th night at R-162, Greater Kailash. We were supposed to meet more people but most of them backed out. On the day of the get together i.e. 29th December, Annanya and I were picked up by Madhav and Abhinav in a blue Baleno from Moolchand Metro Station. We reached the venue around 1 PM, there was an attendant like person who asked if we wanted anything to be cooked Madhav said no and asked him to leave. **The TV was switched on, we opened chips and Madhav poured us cold drinks, we were all sipping the cold drinks.** About 15-20 minutes after, I started feeling dizzy and shaky but could still understand what was happening, at that time. I saw that Madhav was making some advances so I started crying and went to the washroom. **Ananya came with me and didn't let me bolt it from inside.** She asked me to calm down and brought me back to the room where we were sitting. At this point I have lost a lot of memory and am not sure what happened in between but the next concrete memory I have is vomiting in the pot and **Madhav was holding me, then he pushed me on the bed, he was trying to remove my lower. I was trying to push him and get up but my body felt paralyzed and my***



head felt unfocused. I remember faintly that he penetrated me with his penis. I was trying to scratch, bite and push to get him away. The next course of events is also a blurry memory after which what I clearly remember is laying completely naked on the bed. The sheet had blood spots. I had acute pain in my upper abdomen and vagina. My vagina was still bleeding. Madhav was shirtless and Abhinav was also in the room pulling clothes back on. I picked my clothes up from where they were lying on the floor, where I saw a packet of condoms lying. I asked where my phone was and where Annanya was. Abhinav said Annanya took it. My phone, which I had been asking for all this while, was given to me by Abhinav, who said Annanya had left. My left arm and my breasts were completely bruised. I asked them what had happened. Abhinav said, "Kuch nahi, tooneskinipehnhai. Vaisebhikuchnahidikhaga". When I tried to confront them they said that they had filmed me and that I shouldn't tell anyone about it "tere par bahut mittiuchlegi". I rushed out of the flat. They said wait where should we drop you. Afraid of them harming me more, I asked to be dropped to the metro station. They dropped me to Kailash Colony Metro Station from where I immediately left on a metro train and went straight to bed once home. My mother asked me what was wrong but I was too scared to say anything as I was afraid Madhav would spread my video among our college peers. Annanya called me a lot of times but I was not in a position to pick up. I was not in my complete senses and was still in shock something like this had happened to me. Madhav & Abhinav tried to contact me through Ananya and on 1st or 2nd January, Madhav threatened me the videos again on phone. I was undergoing therapy and my therapist also sensed something was off. My school friend Poorvi encouraged me to report the incident. I started dreaming of Madhav threatening me, of my video getting leaked. 2-3 days back my mother walked in. on me crying and pressed to know what was wrong and I finally told her everything. My parents were also in shock and decided to file a complaint the next day, which was yesterday. I do not have anything to add to the statement. "

(emphasis supplied)



6. Consequently, the accused persons were arrested, their disclosure statements were recorded, their medical examination/potency test was conducted at AIIMS vide MLC Nos. 1911/2021, 1912/2021 and 1910/2021 and all 4 mobile phones were seized for forensic examination. The accused persons were sent to Judicial Custody on 27.02.2021.

7. The Site plan was drawn, documents pertaining to the booking of the GK flat by the accused persons were obtained, however, due to lack of any CCTV camera no footage could be recovered. The property attendant, namely *Pratiyush Jayal*, and the cleaner, *Ms. Pooja*, were examined, and their statements under Section 161 of the CrPC were recorded, who disclosed that she was the person responsible for cleaning of the bedsheets on the date of the incident and she did not find any blood stains either on the bed-sheet or on the mattress.

8. Additionally, an application under Section 156(3) of the CrPC was moved on behalf of accused Annanya, pursuant to which a pen drive containing photographs, videos, WhatsApp chats, and voice recordings exchanged between the accused Annanya and the complainant was placed on record. Supplementary statements of the prosecutrix and also of her mother were recorded.

9. During investigation, the GK flat was inspected and no blood stained bed-sheets or mattresses were recovered. The Statement of *Mr. Dhruv Arora* under section 161 of the CrPC was recorded who disclosed that the keys of the flat were handed over to him and since



2026:DHC:4597



the purchase of the mattresses in October 2020 no new mattresses have been purchased.

10. The statement of the friend of the prosecutrix, *Ms. Amani Chaudhary* was recorded under Section 161 of the CrPC stating that she was the friend of prosecutrix and accused Annanya. The prosecutrix and the three accused were planning to celebrate and planning was going on since 10-15 days. They all went on 29.12.2020 and since she was not there, she was not sure as to exactly what had happened, but she knew that Annanya left early around 6 PM as her mother was calling. Annanya claimed that she tried to call the prosecutrix, before leaving but could not reach her number. Madhav and Abhinav dropped prosecutrix later at some unknown time. After few days, prosecutrix claimed that she thinks that *it was rape* because she said 'NO' repeatedly. She had asked Annanya to go to the police station and file a complaint, but as Annanya did not see any resistance from prosecutrix's side, she did not want to say something she was not certain of. At the end, prosecutrix distanced herself from all three of them and then filed the complaint against them after 2 months.

11. The statement of another friend of the prosecutrix, *Ms. Chetna Gowarawas* recorded under Section 161 of the CrPC wherein she stated that she and Annanya were school friends and accused Annanya told her on 07.01.2021 that she had gone for a party on 29.10.2020, but she had to leave early. Annanya told her that everyone had fun at the party and later that day, they were sharing videos of the day. However, after few days Annanya informed that the prosecutrix had



started saying that she was not sure as to whether whatever happened in the room with Madhav was consensual or not. Annanya told her that the prosecutrix did not remember anything clearly. Although, prosecutrix was not sure, but she told Annanya that it might be rape and asked Annanya to go with her to the police station as a witness. Annanya told the prosecutrix that she cannot claim anything as to whatever happened inside the room between prosecutrix and Madhav, because she did not see anything, as she was outside the room. However, after few days, prosecutrix started alleging that Annanya was also involved. However, Annanya did not feel anything was being done forcefully, as prosecutrix did not even mention once that something unpleasant was happening during the party.

12. The Supplementary statement of *Mr. Dhruv Arora*, owner of Airbnb Apartment verified that his staff *Pratyush Jayal* had checked the apartment, but did not notice any blood stains on any mattress or bedsheet.

13. On the basis of the WhatsApp chats, voice recordings, screen shots and other material collected, Chargesheet was filed against accused Madhav and Abhinav under sections 376D/342/328/506/34 of the IPC and against Annanya under sections 376D/109/34 of the IPC.

14. Total four supplementary chargesheets were filed. In the *First Supplementary Chargesheet*, CDRs of the mobile phones and the Statement under section 161 of the CrPC of *Ms. Purvi* was also recorded. *Second Supplementary Chargesheet* was filed regarding CDR/CAF of Madhav, details of Metro Travel and photographs of



bruises sustained by the prosecutrix on 29.12.2020. *Third Supplementary Chargesheet* was filed regarding the purchase of two packets of condoms by Abhinav on the said date from Apollo Pharmacy. *Fourth Supplementary chargesheet* was filed regarding FSL of the mobile phone of Annanya.

15. *Vide* the Impugned Order on Charge dated 16.02.2023, the learned Trial Court, after considering all relevant material placed forth including the witness testimonies, electronic evidence etc. held that a *prima facie* case was made out against the main accused Madhav for offences under Sections 376, 354, 323, 341 and 342 of the IPC and accordingly directed framing of charges for the said offences, while discharging him of the offences under Sections 328 and 506 of the IPC. Insofar as accused Abhinav and Annanya are concerned, the learned Trial Court held that the material on record did not disclose *grave suspicion* regarding their involvement, participation, common intention, or abetment in the commission of the alleged offences, and accordingly both were discharged.

16. Aggrieved, the *Crl. Rev. P. No. 549/2023* has been filed by the Prosecutrix/Revisionist, challenging the discharge of accused Abhinav (*Respondent No. 2 therein*) under sections 376D/376/342/328/109/506/34 of the IPC and Annanya (*Respondent No. 3 therein*) under sections 376D/109 of the IPC, while *Crl. Rev. P. No. 704/2023* has been filed challenging the discharge of the main accused Madhav (*Respondent No. 2 therein*) under section 376D/328/506/34 of the IPC.



ARGUMENTS ON BEHALF OF THE REVISIONIST: -

17. The learned Counsel for the Revisionist/Prosecutrix has submitted that the statement of the Prosecutrix under section 164 of the CrPC along with the material on record was sufficient to raise a *grave suspicion* and to frame the Charge against all the accused persons for the offences under section 376D/328/506/34.

18. It is submitted that the booking of the Airbnb, GK-1, was in the name of Abhinav and the bill was also paid by him. Thus, the exact role of each person in the planning of the event was a subject-matter of trial and it could not have been concluded by the learned ASJ that only the Prosecutrix planned the party.

19. It is further submitted that on the date of the incident, just before picking up the Prosecutrix, Abhinav had also purchased two packets of condoms and the payment was also made by Abhinav. The chats between Annanya and Amani dated 29.12.2020 suggest that these condoms were not for the personal use of Annanya and Abhinav, which implies that they were purchased for Madhav.

20. It is further submitted that the Prosecutrix has categorically stated that she felt dizzy and uneasy after consuming the cold drink administered to her by Madhav and both Abhinav and Annanya were aware of the prosecutrix's severely intoxicated state. Despite being aware of her precarious state, accused Annanya did not only not let the prosecutrix lock herself in the bathroom, but also abandoned the prosecutrix, in the company of the accused Madhav and Abhinav.



21. It is further submitted that admittedly Annanya had taken the phone of the prosecutrix and thus, she could not contact anyone or raise alarm or call for help, which proves that Annanya was equally involved in the criminal act. The learned Trial Court has further completely ignored the possibility that the downloading of images/videos, during the incident, could be because of auto-download feature and does not imply active usage of the phone by the prosecutrix.

22. The learned Trial Court has failed to appreciate that the prosecutrix has categorically stated that Abhinav was present, shirtless, in the room where the prosecutrix was naked and unconscious, and he, along with Madhav, had extended threats regarding circulation of her videos. The possibility of them deleting her videos subsequently has also not been considered by the learned Trial Court.

23. It is further submitted that the learned Trial Court has failed to appreciate that Madhav and Abhinav checked-out from the place of incident at 7:15 PM and therefore, their coming back to the place of incident, after dropping the Prosecutrix at Kailash Colony metro station at 6:30 PM, for the purpose of removing and destroying the incriminating articles/ evidences such as used packet of condoms, blood stain on the bed-sheet, the intoxicating substance/ sedative/rape drug, etc. mixed in the cold drink of the Prosecutrix, etc. cannot be ruled out at the stage of Framing of Charge.



24. It is further submitted that the learned Trial Court has not appreciated the WhatsApp chats between the accused persons which reflect that they were not only anxious about the incident, but were also persuading the prosecutrix to forget the incident. They have also deleted several messages/evidence/data from their mobile phones.

25. It is further submitted that the past relationship of the Prosecutrix with one Sankalp has no nexus with the present case.

26. Hence, it is urged that the learned Trial Court has erred in undertaking a detailed evaluation of the evidence placed on record by conducting a mini trial, at the stage of framing of charge, while ignoring that there was sufficient material to raise a *grave suspicion* that all the accused persons had pre-planned the commission of the offence and the co-accused had actively abetted the crime in furtherance of their common intention. Thus, it is prayed that the present petitions be allowed and the impugned order be set-aside.

CONTENTIONS ON BEHALF OF ALL ACCUSED PERSONS: -

27. The learned Counsels on behalf of the accused persons have vehemently argued that the complaint filed by the prosecutrix is false and the present criminal revision petitions are filed frivolously with a view to procrastinate the trial in the instant matter.

28. It is contended that the law at the stage of framing of charge is well settled and the Court is only required to determine whether the material on record discloses a *grave suspicion* against the accused. It is submitted that where two views are possible and the material gives



rise merely to suspicion, as opposed to grave suspicion, the accused is entitled to discharge.

29. It is argued that in the present case, the emotional backdrop is relevant to understand the sequence of events, the conduct of the prosecutrix in organizing the party and the alleged motive for falsely implicating the accused persons.

30. It is submitted that the prosecutrix and the accused Madhav and Annanya were college friends, while Abhinav was Annanya's partner/boyfriend. The WhatsApp chats placed on record reflect that the prosecutrix was, at the relevant time, undergoing emotional distress arising out of her relationship with one Sankalp, who, had been physically involved with another person. Thus, the prosecutrix engaged in conversations with accused Madhav and herself indicated inclination for a hookup/casual physical relationship with him, only a few days before the incident.

31. It is submitted that on 24.12.2020 the prosecutrix herself put an end to her relationship with Sankalp and then, within 4 minutes of her break-up, she proposed the get together/party to Madhav. She asked Madhav and Annanya to make plans for 29.12.2020, created a WhatsApp group, coordinated with all the accused persons, and actively participated in finalizing the venue, including approving the Airbnb accommodation and sharing her identification documents. It is argued that the choice of a private venue was not imposed by any of the accused but was a result of the prosecutrix's own decision-making and active participation.



32. It is further contended that prosecutrix enjoyed all the activities on 29.12.2020 and willingly consumed food and drinks, which is evident from the photos and videos in her own phone.

33. It is further contended that the conduct of the prosecutrix immediately after the alleged incident is also wholly inconsistent with the allegations subsequently levelled. Reliance is placed on contemporaneous WhatsApp chats, including those exchanged in a group titled "*None of the Business*", to submit that the prosecutrix, while communicating freely with the accused persons, did not level any allegation against accused Abhinav or Ananya or even Madhav and was rather casually asking for photographs and videos of the party. In the chats, she also expressed emotions relating to Sankalp, conveyed feelings of guilt/ emotional distress and stated that whatever had transpired was only with accused Madhav.

34. It is further contended that the prosecutrix, in her conversations with her cousin "*Chunnu*", on the date of the incident and very proximate to the time of the incident, admitted to having consumed alcohol voluntarily and referred to only "*kissing*" accused Madhav. It is submitted that again there was no allegation whatsoever against Abhinav or Annanya or even Madhav in these conversations. It is also contended that such contemporaneous admissions negate the allegations of administration of any intoxicating substance and also undermine the subsequent version sought to be projected.

35. It is further contended that even otherwise there is no material on record to support the allegation under Section 328 of the IPC. It is



submitted that no intoxicating or stupefying substance was recovered, no medical evidence exists to support such administration, and the prosecutrix herself admitted to voluntary consumption of alcohol. The material on record reveals that the prosecutrix was herself enjoying drinks with her friends and had willingly consumed alcohol, which is also evident from photos and videos in her own mobile phone.

36. It is further contended that the prosecutrix remained in communication with her mother and other persons even on the date of the alleged incident, including telephonic conversations, yet did not disclose any alleged sexual assault. It is further submitted that call detail records and FSL data indicate that the prosecutrix continued to use her phone, clicked photographs and videos, and engaged in messaging, including with her psychologist, without raising any alarm or complaint. It is argued that such conduct is inconsistent with the prosecution case that she did not have her phone to raise any alarm.

37. It is contended that insofar as Ananya is concerned there is no allegation that she was present at the time of the alleged sexual assault or that she participated in any manner therein. The only allegation pertains to her having taken the phone of the prosecutrix, which was done to avoid a confrontation with the prosecutrix's mother while she was in an inebriated/intoxicated condition. She did not let the prosecutrix bolt the washroom door only out of concern for her safety and to avoid the prosecutrix getting locked inside the washroom in an intoxicated state. It is contended that even assuming the allegation regarding the phone to be correct, the same does not satisfy the



ingredients of abetment under Sections 107 or 109 of the IPC. There is no material to show any instigation, conspiracy, or intentional aiding or prior planning on the part of Annanya, rather, the chats disclose that Annanya was reluctant to even attend the party. It is argued that mere negligence, or presence does not constitute abetment in the absence of *mens rea*.

38. It is contended that insofar as accused Abhinav is concerned, he is a complete outsider who had no prior acquaintance with the prosecutrix and was known to her only through Ananya. It is submitted that there is no allegation of any overt act against him, no allegation of physical contact, and no material suggesting any participation in the alleged offence. It is further submitted that even the prosecutrix, in her communications/chats about 5 days prior to the lodging of the FIR, expressed uncertainty regarding his involvement. It is argued that mere presence at the scene, without any overt act or meeting of minds, cannot attract liability under Sections 34, 109, or 376D of the IPC. It is further submitted that this Hon'ble Court, while granting bail to Abhinav, had observed that his mere presence, at the place of the incident, would not *prima facie* make out a case of gang rape.

39. It is further contended that the allegation of criminal intimidation under Section 506 of the IPC is also not borne out from the record. It is submitted that no photographs or videos, as alleged, were recovered from any of the devices of the accused persons, and FSL reports do not indicate the existence of any such material.



40. It is further contended that the FIR in the present case was lodged after an inordinate delay of approximately two months from the date of the alleged incident i.e. 29.12.2020, without any satisfactory explanation. It is submitted that during this intervening period, the prosecutrix remained in continuous touch with various persons, including her family members and acquaintances, yet no complaint was made. It is further submitted that the record reflects that she was in consultation with a lawyer prior to lodging the FIR and that a draft complaint containing variations was found on her device, which, according to the accused, indicates deliberation, embellishment and afterthought.

41. It is further contended that the registration of the FIR is attributable to external influence, particularly that of Sankalp, who, advised the prosecutrix to initiate legal proceedings against the accused. It is submitted that the contemporaneous chats reflect that the prosecutrix was in a state of emotional conflict and that the idea of initiating criminal proceedings emerged only thereafter, thereby indicating that the allegations were not spontaneous but evolved over time and Sankalp was feeding her mind.

42. It is also contended that the prosecutrix had, at a subsequent stage, requested Annanya to act as a witness against the other accused persons and, upon her refusal to make statements beyond what she had witnessed, falsely implicated her in the present case.

43. It is further contended that the State has not challenged the order on charge passed by the learned Trial Court, and the present



revision has been filed only at the instance of the prosecutrix. This reinforces the submission that even the prosecution does not find sufficient material to proceed against the accused persons.

44. In view of the aforesaid submissions, it is prayed that the present revision petitions be dismissed.

45. I have heard the submissions advanced on behalf of the parties and have perused the record, including the impugned order on charge and the material as well as the judgments relied upon by the parties.

FINDINGS AND ANALYSIS

46. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge/discharge is well settled. The power ought to be exercised sparingly, in the interest of justice. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

47. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the



accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

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

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

(emphasis supplied)



48. The Court, at the stage of framing of charge, is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is *grave suspicion* against the accused which is not properly explained. It is equally well settled that where the material gives rise only to a mere suspicion, as distinguished from grave suspicion, the accused is entitled to discharge.

49. In the aforesaid legal backdrop, it becomes necessary to examine the nature of allegations and the role attributed to each of the accused, to determine if the observations of the learned Trial Court suffer from any illegality or perversity.

50. On the basis of the chargesheet, including the statements of the prosecutrix, the allegations against the main accused Madhav can be summarized as under: -

- (a) Madhav, along with co-accused Abhinav and Annanya, formed a group, sharing a *common intention to sexually assault the prosecutrix* during a college friends' party, to which she had been invited.
- (b) Madhav *administered a cold drink* to the prosecutrix which was laced with a sedative, after consuming which she began to feel dizzy.



- (c) As the prosecutrix became semi-conscious, Madhav is stated to have forcibly taken her to a bedroom from the bathroom and, despite her resistance, laid her on the bed and *forcibly engaged in sexual intercourse* with her without her consent.
- (d) Upon regaining consciousness, the prosecutrix reportedly noticed bruises and abrasions on her breasts and left arm and she was not wearing clothes and was also bleeding.
- (e) When she regained consciousness, Madhav and co-accused Abhinav, both were present, and they *threatened her with dire consequences*, including circulation of videos recorded on a phone, in order to prevent her from disclosing the incident.

51. The allegations against the accused Abhinav can be summarized as under: -

- (a) Abhinav, along with co-accused Madhav and Annanya, formed a group sharing a *common intention to sexually assault the prosecutrix* during a college friends' party to which she had been invited.
- (b) Before the incident, Abhinav *purchased 2 condoms from apollo pharmacy*, for Madhav in



order to facilitate the commission of the offence of sexual assault.

- (c) Abhinav, in conjunction with Madhav (who provided a cold drink), *gave chips to the prosecutrix*, after consuming which she began to feel dizzy.
- (d) Upon regaining consciousness and post sexual assault by Madhav, the prosecutrix reportedly saw *Abhinav (without his shirt) in the same room* where she was laying naked.
- (e) When she enquired about her phone and the whereabouts of Annanya, Abhinav allegedly informed her that Annanya had taken the phone and had already left, and thereafter returned the phone to her.
- (f) Abhinav along with Madhav also *threatened the prosecutrix not to disclose the incident to anyone*, failing which he, along with co-accused Madhav, would circulate videos recorded on their phone.

52. The allegations against the accused Annanya can be summarized as under: -

- (a) Annanya, along with the main accused Madhav and Abhinav, acted in concert to facilitate the commission of gang rape upon the prosecutrix, or otherwise *intentionally aided in the commission of*



the offence, during a college friends' party to which she had been invited.

- (b) Annanya organized the party and deceitfully induced the prosecutrix to attend the same.
- (c) When the prosecutrix went to the washroom due to feeling unwell and vomiting, Annanya prevented her from locking or bolting the door from the inside.
- (d) When the prosecutrix attempted to locate her phone to make a call or trigger an SOS, she could not find it, and later came to know that the *phone had been taken away by accused Annanya.*

Framing of charges under Section 376/341/342 and 323 against the accused Madhav: -

53. From a perusal of the record, it emerges that the allegations of sexual assault are primarily with respect to the main accused Madhav.

54. Firstly, there are specific allegations that he carried the prosecutrix from the bathroom to the bedroom and forcefully placed her upon the bed. Despite her resistance, he wrongfully confined her to the bedroom of the flat. The same has been reiterated by the prosecutrix during her WhatsApp chats with the accused Madhav, when she confronted him and also discussing the incident with her friend Amani. Hence, the Trial Court found the material sufficient to *prima facie* disclose grave suspicion against the accused Madhav for



wrongfully retraining and confining the prosecutrix in the bedroom of the GK-1 flat.

55. As regards framing of charge under *Section 376 and 323 of the IPC*, it emerges that, the prosecutrix has specifically stated in her statement under section 164 of the CrPC, that while the accused attempted to remove her clothing and sexually assault her, she resisted by trying to push him away, scratch and also bite, but felt physically immobilized and disoriented, and recalls that he penetrated her with his penis despite her resistance. During her medical examination also, she disclosed a history of sexual assault by the accused Madhav and reiterated the allegations.

56. Additionally, the statements of witnesses, including friends of Annanya i.e. Amani and Chetna indicate that even Annanya had acknowledged that the prosecutrix had, shortly after the party, complained of Madhav sexually assaulting her. Similarly, as per the statement of Ms. Purvi Goel, childhood friend of the prosecutrix, prosecutrix had disclosed the incident to her the very next day, stating that accused Madhav had forcefully established sexual relations with her without her consent and even the other friend Amani had reached out to Purvi showing concern for the prosecutrix as she showed indications of mental and physical trauma and needed immediate medical assistance.

57. Notably, the prosecutrix's conversation with Madhav on the same night i.e. 29.12.2020, reflects her confronting him about the incident soon after regaining consciousness (asking him if they had



sexual intercourse and if it was unprotected) and attempting to process what had occurred. Even on 31.12.2020, the prosecutrix has again confronted Madhav and has asked him why he forced himself upon her when she clearly said “No”.

58. Additional group and private chats, specifically with Amani and Anannya reveal her complaints of bleeding, injuries and bruises (supported by photographs), and her assertion that she was sexually assaulted/raped by Madhav, while in a semi-conscious state, despite her resistance and specifically saying “NO” multiple times. The chats, along with photographs of injuries and communications with Amani and Purvi demonstrate that they were urging her to seek medical and psychological help, and also to confront Madhav.

59. Hence, in view of the entire material placed on record and without giving any conclusive findings on the veracity of the allegations as the same would be tested during trial, the learned Trial Court directed framing of charges for the offences punishable under sections 376/341/342 and 323 of the IPC, against the accused Madhav.

60. It is apposite to note that this Court, being cognizant of the fact that the present revision petitions have been preferred by the prosecutrix and not by the accused Madhav assailing the charges framed against him, has consciously refrained from adjudicating upon the correctness of the findings returned by the learned Trial Court in that regard, so as to obviate any potential prejudice to him in the event he elects to challenge the same in appropriate proceedings.



Non-Framing of charges under Section 328 and 506 against the accused Madhav and Abhinav: -

61. The prosecutrix is aggrieved by the non-framing of the charges against the accused Abhinav and Madhav, under section 328 of the IPC, when there was sufficient material to demonstrate that the prosecutrix was administered intoxicating substances which led to her semi-conscious state.

62. Section 328 of the IPC reads as under :

“328.Causing hurt by means of poison, etc., with intent to commit and offence

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

63. Firstly, upon perusal of the charge sheet, it emerges that no evidence has been collected by the prosecution to establish that any poison, stupefying, intoxicating, or unwholesome substance was *administered* to the prosecutrix. There is neither any recovery of such substance from the scene of the alleged offence nor any medical evidence to support the allegation. In such circumstance, this Court finds no infirmity in the order passed by the learned Trial Court not framing charge under Section 328 of the IPC.

64. In the case of ***Rajat Mittal v. State, 2015 SCC OnLine Del 13306*** where apart from statement of prosecutrix prosecution could not



find any evidence and in the absence of any medical examination, Coordinate Bench of this Court, while relying upon ***Prashant Bharti v. State (NCT of Delhi) (2013) 9 SCC 113***, held that charge under section 328 of the IPC cannot be sustained without any cogent and corroborative evidence, merely on the basis of oral assertions. The relevant extract is reproduced as under: -

“5. On perusal of the materials collected during investigation by the Investigating Agency, I find no sufficient ground to proceed against the petitioner under Sections 328/313/406 IPC. There is a bald statement of the prosecutrix in the complaint that on 10.12.2007 when the petitioner visited her residence and expressed desire to have a cold drink, she brought cold drink in two glasses; one for herself and the other for the petitioner. The petitioner then desired to have some snacks also with the cold drink. When she went to the kitchen to bring the snacks and took her cold drink on return, it tasted a little different. Soon her limbs started shaking and the cold drink fell from her hands; she became unconscious. When she regained senses, she was shocked to find herself completely nude. During investigation, allegations of having been administered some poisonous or stupefying substance could not be verified or confirmed. The prosecutrix did not get herself medically examined any time soon after the said incident. Nature of ‘substance’ allegedly mixed in the cold drink could not be ascertained. Nothing emerged as to from where any such ‘substance’ was procured by the petitioner. It is on record that subsequent to that, the petitioner and the prosecutrix had maintained their friendly relations. Physical relations were established; albeit on the alleged promise of marriage on various occasions. ‘X’ did not complain about petitioner’s conduct promptly to the police. In Prashant Bharti v. State (NCT of Delhi) (2013) 9 SCC 113, the victim had alleged that the accused therein had offered her cold drink (Pepsi) allegedly containing poisonous/intoxicating substance. After drinking the same, she felt inebriated whereupon the appellant started misbehaving with her and also touched her breasts. She was taken for medical



examination but no evidence of poisoning was found by the police during investigation. The Apex Court quashed the charge under Section 328 IPC observing that allegations levelled by the prosecutrix of having been administered some intoxicant in a cold drink could not be established by the cogent evidence.”

(emphasis supplied)

65. It is also relevant to note that in her complaint, the prosecutrix had stated that “*Madhav gave me cold drink and Abhinav gave me chips. Thereafter we all started talking and sipping cold drinks. But later on, I perceived that my cold drink was laced with some sedative and I started feeling dizziness and nausea....*”. In her statement under section 164 of the CrPC, the prosecutrix stated that “*we opened chips and Madhav poured us cold drinks*”. Notably, as per the own version of the prosecutrix, there is no allegation that the accused Abhinav had tampered with or spiked the beverages, nor is there any indication that the chips contained any intoxicating substance, particularly when they were opened at the spot in the presence of the parties.

66. Surprisingly, the prosecutrix has also, nowhere in her chats with either Madhav or Abhinav or Annanya, or even with any of her other friends, has ever alleged that her cold drink/chips were laced by Madhav or Abhinav. Even before this Court, no additional material/chats/evidence has been placed to suggest that the drinks/chips were spiked. Rather, in her chat with her cousin Chunnu dated 29.12.2020 at 10:49 pm, i.e. proximate to the time of the incident, she admitted to have willingly consumed alcohol at the party.



67. Hence, the learned Trial Court was justified in concluding that the allegation under Section 328 of the IPC is not supported *by prima facie* material.

68. Another contention raised by the prosecutrix is that the Trial Court has erred in not framing a charge under Section 506 of the IPC despite specific allegations that, upon regaining consciousness, she was threatened by Abhinav and Madhav with circulation of her personal videos to deter disclosure and the Trial Court failed to consider that such threats could constitute intimidation irrespective of whether the videos were actually made or retained.

69. The said contention, though attractive at first blush, cannot be accepted in the facts of the present case. It is no doubt true that for an offence of criminal intimidation, the actual existence or recovery of the material forming the subject of the threat is not a *sine qua non*, and a mere threat, if proved, may suffice. However, what is required at the stage of framing of charge is the existence of material which *prima facie* indicates that such a threat was in fact extended.

70. The FSL reports placed on record do not indicate the existence or recovery of any such photographs or videos from the devices of any of the accused, thereby weakening the foundational basis of the alleged threat. Further, although the prosecutrix had asserted that similar threats were extended on 1st and 2nd January, there is an absence of any contemporaneous material or corroborative chats to indicate that such threats were in fact communicated at the relevant time.



71. Thus, the very basis of the allegation that any threat was even extended remains uncorroborated. There is no evidence, no testimony or even any chat, suggesting that the prosecutrix was threatened by the accused Madhav or Abhinav, at any point in time.

72. It also remains undisputed that no such allegations were made by the prosecutrix to any of the witnesses, the chats with whom are relied upon by the prosecution.

73. Hence, the learned Trial Court had rightly declined to frame charge under section 506 of the IPC against the accused Abhinav and Madhav.

Non-Framing of charges under Section 376D/109/107/34 against the accused persons: -

74. The prosecutrix has vehemently urged that the above charges were liable to be framed against the accused persons, as there is sufficient material to suggest that Madhav, Abhinav and Annanya, in furtherance of their common intention to commit rape upon the prosecutrix, formed the WhatsApp Group and invited her to the party. Alternatively, the accused Abhinav and Annanya intentionally abetted and aided the commission of the offence.

75. Section 376D of the IPC reads as under :

“376D. Gang rape

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean



imprisonment for the remainder of that person's natural life, and with fine:

PROVIDED that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

PROVIDED FURTHER that any fine imposed under this section shall be paid to the victim."

76. As regards Section 376D and 34 of the IPC it is well delineated that the provision postulates a prior meeting of minds and participation in furtherance of a common intention. Mere presence at the scene or association with the principal accused, in the absence of any material indicating a shared design, would not be sufficient to attract the said provision.

77. As regards abetment, under Sections 107 or 109 of the IPC, the same requires instigation, conspiracy, or intentional aiding, coupled with the requisite *mens rea*. Mere facilitation or presence, without intention to aid the commission of the offence, would not satisfy the ingredients of abetment. With respect to "*intentional aiding*," it has been held in ***Shri Ram v. State of U.P., AIR 1975 SC 175*** that, to constitute *abetment*, the alleged abettor must have *intentionally* facilitated the commission of the offence. Mere aid without knowledge or intent cannot amount to abetment. It is insufficient to merely show that the crime could not have been committed without such involvement. For instance, a person may casually invite another for a benign purpose, which incidentally enables the commission of a crime such as murder; however, unless such invitation was extended with the intent to facilitate the offence, it would not amount to abetment. The



essence of abetment lies in intentional aid and active complicity, and not in acts that merely have the effect of facilitating the crime.

78. Similarly, the High Court of Madras, in ***B. Ammu v. State of Tamil Nadu***, 2008 SCC OnLine Mad 990, has held that *mere negligence or carelessness* cannot amount to abetment, as the prosecution must establish the requisite *mens rea* under Section 107 of the IPC. The aid has to be rendered with the intention of facilitating the offence, and mere assistance, without knowledge or intent regarding the commission of the crime, would not attract liability for abetment. The relevant extract is reproduced as under: -

“ 11. Section 306 IPC makes abetment to commit suicide punishable. Similarly, Sections 107 and 109 IPC makes abetment an offence. The word abetment means to aid, encourage or to countenance. Section 107 of IPC defines abetment of a thing as instigating any person to do a thing or engage with one or more other person or persons in any conspiracy for doing of a thing or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing. There are two explanations appended to Sec. 107 IPC. As per 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. As per 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.

12. Therefore, the word “instigation” assumes significance. A person is said to instigate any other person to do an act which makes the other person to do such act by any means possible, either direct or indirect. Mens rea is necessary



concomitant for instigation. Therefore, in order to proceed against a person for criminal offence u/S. 107 IPC or 306 IPC, the prosecution must prove the element of mens rea. Therefore, the negligence or carelessness or the facilitation cannot be termed to be abetment so as to punish the guilty as per the provisions of penal laws. However, things would be different in the case of action in public law.

(emphasis supplied)

79. This Court, in *Devi Das v. Union of India*, 1985 SCC OnLine Del 173, while relying upon *Shri Ram* (supra), observed as under: -

“2. According to Section 107 of the Penal Code, 1860 a person abets the doing of a thing, among others, who intentionally aids, by any act or illegal omission the doing of that thing. Explanation 2 to S. 107, reliance on which was placed by Mr. Bagai, reads as below:—

“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.”

On a reading of clause thirdly of S. 107 IPC and Explanation 2, therefore it is clear that in order to constitute abetment of the doing of a thing the abettor must be shown to have intentionally aided the doing of that illegal act. It is thus obvious that unless a person knew that the doer of the wrong thing was going to commit the illegal act there could be no question of the alleged abettor intending to aid the commission of the illegal act by the doer thereof. A person may be said to do anything in order to facilitate the commission of the illegal act by the other and thereby aid the doing of that act only if the alleged abettor does the thing knowingly and intentionally and in order to facilitate the commission of that wrong act. It is not enough that an act on the part of an alleged abettor happens to facilitate the commission of the crime that



may constitute the offence of abetment on his part. The decision of the Supreme Court in the case *Shri Ram v. State of U.P.* ((1975) 3 SCC 495 : AIR 1975 SC 175) (1) is very instructive on the point. The Supreme Court held as below:—

“In order to constitute abetment, the abettor must be shown to have “intentionally” aided to commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment.”

Thus in the absence of any material as stated above having been referred to by the detaining authority in the grounds of detention, the order of detention stating that the detention of the petitioner *Devi Dass* was being ordered with a view to preventing the petitioner from abetting the smuggling of goods, namely, wrist watches was passed by the detaining authority clearly without the application of mind and has to be quashed.”

(emphasis supplied)

80. The Hon’ble Apex Court, in *Pawan Kumar v. State of H.P.*, (2017) 7 SCC 780 elaborately discussed the concept of abetment, in the context of Section 306 of the IPC, breaking it down into its



constituent elements under Section 107 of the IPC into instigation, conspiracy, and intentional aiding. Significant emphasis was laid on instigation, positive acts of goading, provoking, inciting, urging forward or encouraging the commission of an act, which may arise from express words or implied conduct. The Apex Court underscores that abetment necessarily involves a mental element and active participation, and cannot be inferred from mere casual remarks, vague allegations, or isolated incidents without a proximate nexus to the act in question. The relevant extract is reproduced as under: -

“ 34. The word “abetment” has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element. Such a requirement can be perceived from the reading of Section 107 IPC. Section 107 IPC 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 facilitates the commission thereof, is said to aid the doing of that act.”

“Abetment”, thus, means certain amount of active suggestion or support to do the act.

35. Analysing the concept of “abetment”, as found in Section 107 IPC, a two-Judge Bench in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] has held: (SCC p. 610, paras 13 & 15)

“13. As per the section, a person can be said to have abetted in doing 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. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is



bound to disclose, may also come within the contours of “abetment”. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.

15. As per clause Firstly in the said section, a person can be said to have abetted in doing of a thing, who “instigates” any person to do that thing. The word “instigate” is not defined in IPC. The meaning of the said word was considered by this Court in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088].”

In the said authority, the learned Judges have referred to the pronouncement in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] .

36. The word “instigate” literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

37. The word “urge forward” means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a



person instigating another has to “goad” or “urge forward” the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as “abetment”.

38. Analysing further, in *Randhir Singh v. State of Punjab* [*Randhir Singh v. State of Punjab*, (2004) 13 SCC 129 : 2005 SCC (Cri) 56] , the Court has observed thus: (SCC p. 134, para 12)

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.”

39. In *Praveen Pradhan v. State of Uttaranchal* [*Praveen Pradhan v. State of Uttaranchal*, (2012) 9 SCC 734 : (2013) 1 SCC (Cri) 146] , it has been ruled: (SCC p. 741, para 18)

“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. ...”

Xxx xxx xxx

41. A two-Judge Bench in *Netai Dutta v. State of W.B.* [*Netai Dutta v. State of W.B.*, (2005) 2 SCC 659 : 2005 SCC (Cri) 543] , while dwelling on the concept of abetment under Section 107 IPC especially in the context of suicide note, observed: (SCC p. 661, paras 6-7)

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

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed



against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal.”

42. At this juncture, we think it appropriate to reproduce two paragraphs from *Chitresh Kumar Chopra [Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367]* . They are: (SCC p. 611, paras 16 & 19)

“16. Speaking for the three-Judge Bench in Ramesh Kumar case [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C. Lahoti, J. (as his Lordship then was) said that 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.



This Court again observed: (SCC pp. 611-12, para 20)

“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 accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of 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.”

(emphasis supplied)

81. “Aiding” and “abetting”, as contemplated under Section 109 of the IPC, have been elaborately discussed by the Hon’ble Apex Court, in ***Kulwant Singh v. State of Bihar (2007) 15 SCC 670***, and it was categorically held that the liability for abetment arises only when the offence is committed in consequence of such active participation, even if the abettor is not physically present at the scene. Crucially, it was held that mere failure to prevent the commission of an offence is not by itself abetment. The relevant extract is reproduced as under: -

“ 11. Section 109 IPC reads as follows:

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of



such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder."

12. Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and Section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction



for abetment is not sustainable. (See Joseph Kurian v. State of Kerala [(1994) 6 SCC 535 : 1995 SCC (Cri) 20].)

13. 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. Section 109 applies even where the abettor is not present. Active abetment at the time of committing the offence is covered by Section 109.

14. Act abetted in Section 109 means the specific offence abetted. Mere help in the preparation for the commission of an offence which is not ultimately committed is not abetment within the meaning of Section 109. "Any offence" in Section 109 means offence punishable under IPC or any special or local law. The abetment of an offence under the special or local law, therefore, is punishable under Section 109 IPC. For constituting offence of abetment, intentional and active participation by the abettor is necessary.

15. There is a distinction between Section 109 and Section 114. Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by Section 109 and Section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is before the first steps have been taken to commit it."

(emphasis supplied)

82. Keeping the above settled principles in mind we shall proceed to examine the material on record and address the contentions raised.

83. Admittedly, Annanya was not even present at the time of the alleged incident, and neither the complaint nor the statements recorded under Sections 161 and 164 of the CrPC attribute any overt act, including sexual advances/assault or active participation, to accused Abhinav or Annanya. The statements of common friends Amani and



Chetna, as well as contemporaneous WhatsApp chats with Purvi, consistently reflect that the allegations were directed solely against Madhav. Significantly, in her immediate narration of the incident on 29.12.2020, as well as in subsequent chats on 30.12.2020 and 31.12.2020 with her friends, including in the group chat “*None of Your Business*” and private conversations, the prosecutrix did not implicate or express any grievance against Abhinav or Annanya. Even in her conversation with Madhav on the same day and in chats with her cousin, she referred only to Madhav, without attributing any role in sexual assault to the other accused.

84. The material on record does not disclose any circumstance suggesting *a pre-arranged/mediated plan or meeting of minds* between the accused persons. There is no allegation that Abhinav had any prior acquaintance with the prosecutrix or any role in planning the alleged act. Though it has been sought to be argued that Annanya was crucial in planning the party, it emerges from the material placed on record i.e. the WhatsApp chats between the accused persons and the prosecutrix, that, the plan of party was initiated by the prosecutrix on 24.12.2020, who asked Madhav if they could meet · on 29.12.220 wherein she stated 'sun', 'mil' , '29' , 'annanya Abhinav bhi', “*I m asking her*’. Annanya had given her confirmation to the above plan only on 26.12.2020, as is reflected in WhatsApp chat dated 26.12.2020 between accused Madhav and Abhinav stating '*Annanya ne haanboldi*'. It was only the prosecutrix who had created a WhatsApp group and added all the accused persons namely accused Madhav, Abhinav and Annanya



as its members on 28.12.2020. It remains undisputed from the material that since, inadvertently, the father of co-accused Abhinav was added in the aforesaid group, the group was dissolved and a new group was created by accused Madhav.

85. Insofar as accused Abhinav is concerned, it is contended that no specific overt act has been attributed to him in relation to the alleged offence, nor is there any material to suggest instigation, facilitation, or participation in any conspiracy with the principal accused. The fact that the booking was made by him for Madhav, though relied upon by the prosecutrix, does not, in itself, establish any coordinated action or meeting of minds so as to infer a shared intention. It is also material to note that in her contemporaneous communications, prosecutrix has clearly expressed uncertainty regarding his involvement prior to the registration of the FIR. At best, such circumstance may give rise to a suspicion, however, it falls short of the threshold of grave suspicion required at the stage of charge.

86. The allegation that Abhinav had purchased contraceptives prior to the incident has also been relied upon by the prosecutrix to suggest premeditation. However, the said allegation is not supported by any cogent material on record. There is no recovery, no independent corroboration, and no material establishing the purpose or *nexus* of such alleged purchase with the commission of the offence. Even assuming such a purchase to have taken place, in the absence of any evidence linking the same to a shared intention or facilitation of the alleged act, no inference of abetment can be drawn. At best, the



allegation remains speculative and falls short of raising a grave suspicion. The contraceptive could be for personal use and merely because in certain chats Annanya has denied that it is was not for Abhinav and her, the same does not reflect that it was brought for Madhav with the intention to abet the commission of the offence. Even if the case of the prosecutrix is taken at the highest, and it is assumed that Madhav had pre-planned committing rape upon her, there is nothing to show that Abhinav or Annanya had knowledge of the same.

87. Insofar as Ananya is concerned, the allegations against her are confined to her having allegedly taken the mobile phone of the prosecutrix and not permitting her to bolt the washroom door. The material on record, including call detail records and FSL analysis, *prima facie* indicates that the prosecutrix continued to have access to and use her mobile phone during the relevant period, including making calls to her cousin “Chunnu”, her mother, and Annanya herself. In such circumstances, the allegation that the phone was taken away to prevent her from seeking assistance does not find adequate corroboration. Even otherwise, the explanation put forth that the phone was handled to avoid an uncomfortable interaction with the prosecutrix’s family while she was in an inebriated condition cannot be said to be inherently implausible at this stage. In the absence of any material indicating that such act was done with the intention to facilitate the commission of the alleged offence, the same cannot be construed as intentional aiding. Further, mere possession or return of



the phone, by Abhinav to the prosecutrix, also does not establish any common intention or active participation.

88. Similarly, the allegation that Annanya did not permit the prosecutrix to bolt the washroom door does not, by itself, establish any nexus with the alleged offence. The explanation that she accompanied the prosecutrix out of concern for her condition and did not permit the door to be locked for safety reasons cannot be outrightly discarded at this stage. There is no material to suggest that such conduct formed part of any pre-concerted plan or was intended to aid the commission of the alleged act.

89. It is thus evident that neither the acts attributed to Abhinav or Annanya the essential ingredients of abetment. There is no material indicating instigation, conspiracy, or intentional aiding, nor is there any evidence of the requisite *mens rea*. There is no prior communication between the accused suggesting any meeting of minds or conspiracy to commit the alleged offence. There is also no pre- or post-incident communication between Abhinav and Annanya that could be construed as incriminating or confessional in nature.

90. In view of the foregoing discussion, this Court is of the considered opinion that the material on record does not disclose any foundational facts for invoking Sections 376D, 34, 107, or 109 of the IPC.

CONCLUSION

91. Though a conviction can be sustained solely on the basis of the testimony of the victim if it inspires confidence, yet, at the stage of



framing of charges, when the entire material on record completely belies the prosecution case and fails to raise even a *grave suspicion* against the accused persons regarding commission of certain offences, the benefit thereof must enure to the accused persons.

92. Even before this Court, no material has been placed to demonstrate any infirmity or illegality in the impugned order and thus, subjecting the accused to the rigours of a full-fledged trial in such circumstances would be an abuse of the process of law and cause unwarranted prejudice, when the foundational facts themselves do not disclose the commission of certain offences.

93. In the considered opinion of this Court, the learned Trial Court has, after duly appreciating the material on record and considering the broad probabilities of the case, rightly discharged the accused Abhinav and Annanya and declined to frame charges under section 376D/328/506/34 of the IPC against the accused Madhav.

94. Needless to say, if at any subsequent stage, the Trial Court finds evidence to proceed against any of the accused, it is open to the learned Trial Court to take appropriate steps in accordance with law.

95. Accordingly, the Petitions are dismissed, along with pending application(s), if any.

96. A photocopy of the Judgment passed today be kept in the connected matter.

AMIT MAHAJAN, J

MAY 22, 2026

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