

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 39 of 2016**

State Of Chhattisgarh Through The Station House Officer, Police
Station Kotwali, District Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

1. Deepak Kumar Sahu S/o Toran Lal Sahu Aged About 29 Years R/o Village Mokhla, P.S. Lalbagh, District Rajnandgaon, Chhattisgarh.
2. Tikeshwar @ Chhotu Sahu S/o Puran Lal Sahu Aged About 24 Years R/o Village Mokhla, P.S. Lalbagh, District Rajnandgaon, Chhattisgarh.

-----Respondents

For Petitioner/State:	Shri Neeraj Jain, Govt. Advocate.
For Respondents:	Shri Rajendra Tripathi, Advocate.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

19.7.2016

1. The present Cr.M.P has been preferred seeking leave to appeal against the judgment of acquittal dated 2.11.2015 passed by the Sessions Judge, Rajnandgaon in Sessions Trial No.12/2015.
2. Facts in nut-shell are that on 5.12.2014, the deceased Om Prakash Sahu is said to have committed suicide by jumping before the running train on account of which he died instantaneously with multiple injuries. A case has been registered against the present Respondents prosecuting them for the offence punishable under Section 306/34 IPC and the matter was put to trial before the Court below and finally the Court below, vide the impugned judgment dated 2.11.2015, acquitted the Respondents from the charge under Section 306/34 IPC
3. It is this judgment which is assailed in the present Cr.M.P seeking leave

to appeal.

4. Learned Counsel for the State/Petitioner submits that there were sufficient material before the Court below in the course of the evidence by the prosecution, which has not been properly appreciated. He further submits that there was a suicidal note recovered from the deceased vide Article-A wherein the present Respondents have been held responsible for forcing the deceased to commit suicide. He further submits that the Court below has also not properly appreciated the evidence of the father of the deceased Kashiram, PW-6 as also the friends of the deceased namely Harish Chand, PW-4 and Shubam Netam, PW-12 respectively. Referring to the statements of these witnesses, he submits that there was a categorical averment made by the deceased to Kashiram, PW-6, Harish Chand, PW-4 and Shubam Netam, PW-12 that the present Respondents had in the past, on 3 or 4 occasions, assaulted the deceased on the allegation of the deceased sending obscene and indecent messages to the sister-in-law ('saali') Respondent No.1. He further submits that the fact that they had assaulted on the ground of the said incident also is reflected from the deposition of the three witnesses referred above. In addition, it is also the case of the prosecution that on 6.12.14, a village meeting was also to be held in respect of the messages which the deceased used to send to the sister-in-law of Respondent No.1. But, before the meeting could take place and because of the assault on more than a couple of occasions that the Respondents have made on the deceased, he was compelled and forced to take the extreme step of committing suicide. These facts have not been properly considered by the Court below and the Court below has given an order of acquittal in a mechanical manner.

5. The Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh

Sengar vs. State of M.P) has categorically held that “ingredients of Section 107 are that instigating a person to do a thing and “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act which in the instant case is not reflected from the records. The Supreme Court in para-12 of its judgment has held as under:-

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

6. Similarly, this Court while deciding Cr. Rev. No.511/2004 in the case of Nihalluddin vs. State of Chhattisgarh dated 3.11.2010 has also relied upon the above referred judgment of Supreme Court and also the earlier judgments referred by the Supreme Court, considering the ingredients required for an offence under Section 306/107 IPC and held that there should be a clear *mens rea* to commit an offence under this Section and there should be a direct or active act by the accused which led the deceased to commit suicide. This Court while deciding the case of Nihalluddin vs. State of Chhattisgarh (supra) further held that there must be some evidence of instigation or cooperation or initial assistance by the accused persons forcing the victim/deceased to commit suicide to attract the offence under Section 306 IPC.

7. It is also trite at this juncture to mention that for making out a case under Section 306 IPC, the basic ingredient as defined in Section 107 IPC has to be established, but in the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased Om Prakash Sahu is not established by the prosecution by any element of evidence.

8. Hon'ble Supreme Court more recently in a decision made in the case of [2011 (3) SCC 626] (M. Mohan vs. State) held that abetment involves a mental

process of instigation or intentionally aiding a person to do a thing. It required commission of direct or active act by the accused which led the victim to commit suicide. Seeing no other option and such act must be intended to push the victim into a position that he or she commits suicide. That is to say, there must be some evidence of instigation, cooperation or initial assistance by the accused to commit suicide by the victim.

These ingredients are not available in the given facts and circumstances of the instant case. Therefore, clearly an offence punishable under Section 306 IPC is not made out.

9. More recently, in (2014) 12 SCC, 595 (Mangat Ram vs. State of Haryana), the Supreme Court, dealing with the provisions of Section 306 IPC, held as under:-

“The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. Section 306 IPC reads as under:-

“306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 107 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.”

10. If on the aforementioned legal proposition, the facts of the present case are looked into, it is apparent that the prosecution has not lead any evidence to prove any abetement, instigation or incitement on the part of the Respondent/accused which led to the commission of suicide by the deceased.

11. In the opinion of this Court, there is no legality or infirmity on the part of the Court below in acquitting the Respondents/accused for the offence punishable under Section 306/34 IPC

12. The Cr.M.P, being devoid of merits, the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE