

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 213 of 2017**

- State of Chhattisgarh Through Station House Officer, Police Station Rampur, District Korba, Chhattisgarh.

---- Applicant**Versus**

- Nikita Shrivastava D/o Shri D.K. Shrivastava, Aged About 26 Years R/o Plot No. 111, Indira Commercial Complex, Korba, District Korba, Chhattisgarh.

---- Respondent

For Applicant/State	:	Shri Anupam Dubey, Dy. GA for the State
For Respondent	:	Shri YC Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**C A V Order****(Reserved on 29.08.2017)****(Delivered on 15.09.2017)**

1. Heard on application for condonation of delay.
2. The instant revision is delayed by 8 days.
3. Perused the application and the reasons stated for delay.
On due consideration, the delay of 8 days in filing the revision is condoned.
4. The present revision is by the State against the order dated 20.10.2016, whereby the respondent Nikita has been discharged under Section 498A, 304B and Section 306 of the IPC.
5. Brief facts of the case are that one Smt. Ankita Singh committed suicide by hanging on 16.03.2016. The deceased

Ankita Singh was married with one of the accused Abhishek Singh on 30.01.2015. It is the case of the prosecution that after marriage, the father-in-law, mother-in-law and other accused Abhishek, the husband, in connivance with respondent Smt. Nikita Shrivastava started torturing the deceased on the ground of demand of dowry and it was stated that if the demand is not fulfilled then in such situation Abhishek would obtain divorce and he would be married with Nikita Shrivastava, the respondent. It is the further case of the prosecution that even after the marriage of Abhishek and Ankita, the love relation of respondent Nikita and Abhishek continued. It is alleged that after the marriage, the other co-accused pressurized the deceased for divorce and chatting between the respondent Nikita Shrivastava and Abhishek continued on mobile of their love relations. It is the further case of the prosecution that Nikita Shrivastava though knowing fully well that Abhishek has been married to Ankita, continued her meeting with Abhishek, on which the deceased requested the present respondent to stop the same, but she continued. Eventually, the deceased committed suicide because of the demand raised and the cruelty meted out by the father-in-law, mother-in-law along with the husband coupled with abetment to commit suicide by the present respondent Nikita Shrivastava.

6. Learned counsel for the state would submit that the diary of the deceased which has been seized would clearly spell out that despite the caution given by the deceased, the present respondent continued her relation with the other co-accused Abhishek for which several meetings were held to stop the same but nothing

improved and eventually the deceased Ankita committed suicide by hanging. He further submits that at the time of framing of charge the Court should not have gone into the merits of this case so as to discharge the respondent, therefore, this revision.

7. The learned counsel for the respondent supports the order of discharging by the Court below and would submit that the order is well merited which do not call for any interference. He would further submit that if the deceased was hypersensitive with the issue then nothing can be attributed to the present respondent. It is further submitted that for the sake of arguments even if it is admitted that some relationship was there in between Abhishek and the present applicant, it cannot be termed as love relationship and she has not abetted any cause for suicide. It is further submitted that neither she was related nor anywhere connected to the other co-accused or the deceased Ankita, therefore, in any manner Section 498 A & 304 B of the IPC can not be attracted against the present respondent. He further places his reliance in the judgment of ***Pappu Khare Vs. State of M.P.*** reported in **(2015) 2 MPHT 271** and would submit that even for the sake of arguments it is submitted that the illicit relationship with the other woman is proved then in such case also it cannot be stated that the present respondent has committed the deceased to instigate and aid to commit suicide. He further places reliance in the judgment of ***Mangat Ram Vs. State of Haryana*** reported in **II (2014) CCR 110 (SC)** and submits that when in the investigation instigate is absent to commit suicide then in such case offence under Section 306 IPC cannot be made.

8. I have heard learned counsel for the parties at length and perused the record of the Court below.

9. In order to hold a person guilty under Section 306 of the IPC, it is necessary that the action of accused should fall within the ambit of Section 107 of the IPC, which should comprise :-

(i) instigating a person to commit an offence.

(ii) engaging in a conspiracy to commit an offence;

(iii) intentionally aiding a person to commit an offence

10. Section 306 of the I.P.C. makes abetment to commit suicide punishable, therefore, prima faice the evidence must show a person who has been roped in as an accused has abetted the commission of suicide and the act of the accused must fall within the purview of the three factors which have been stated herein above under Section 107 of the I.P.C. and it is necessary to prima facie establish that the accused has instigated the person to commit suicide.

11. In the instant case, the charge-sheet has been filed under Sections 498-A, 304-B and 306 read with Section 34 of the I.P.C. The prosecution has not come up with any alternative case that in alternate to Sections 498-A & 304-B of the I.P.C., provisions of Section 306 I.P.C. would be attracted. Against the respondent, who is admittedly not a relative of the other co-accused or the deceased, the question of demand of dowry has not been alleged by any of the witnesses. In the statements of Tej Bahadur Singh and Manoj Kumar, who have been shown to be holding the degree of L.L.B., also have alleged that there has been demand of dowry from the other co-accused. The father of the deceased Dinesh

Kumar Singh has made a statement that the demand of gold and other things was made and the husband of the deceased Ankita was in love relation with the respondent and it is asserted that reason of suicide was one of that factor. Likewise, the mother Lal Muni Singh has alleged about demand of dowry and stated that her daughter apprehended that some affair of her husband was going on with other girl, however, the main projection was made about the demand of dowry for which the other accused have been inculpated. The statement of the father of the deceased Dinesh Kumar Singh would also show that the affair of the respondent with the husband of the deceased was projected and it is alleged that she was pressurized by the husband for divorce. The statement of the witness would show that except the fact that it was alleged that husband of the victim was having affair with the respondent nothing has been attributed to the present respondent, who has been discharged.

12. The police has filed a WhatsApp message of the deceased Ankita dated 16.03.2016 at about 1:47 am which was just before the commission of suicide. The message reads as under :-

“3/16/16, 01:47- Net Tata Doco: “Papa aap se ek request h pls meri ek last wish puri kar dijiyega....pls mera jane k bad kisi ko kuch mat kariyega...pls papa pls...apni beti ki ye last wish smjh k isse pura kar dijiyega pls papa pls,”

In such message, which was just before the suicide the deceased has not alleged anything against anybody, instead it is stated that nobody is responsible for the incident.

13. Diary of the deceased has also been seized. The perusal of diary would show that she has written that one day she came to

know about Nikita Shrivastava, thereafter she was broken and hurt. The entire reading of the diary would show that the main allegation is on her husband, wherein she has written and alleged complaint with respect to her husband and it spells out some divorce also. The last page of the diary she has addressed as suicide note wherein she has written that "sorry Ma-Papa" and she has written that she know that she is going to do the wrong thing and it is not that in her life only one person is there her father and mother are also important. She has further written that she is taking the step of her own and not in pressure and she do not want to live further. She further requested with folded hands not to say anything to anyone and not to do anything. Therefore, reading her diary and statement of the witnesses and also the WhatsApp messages, it points out that there have been some allegations against the husband of the deceased of extra marital affair. Therefore, if the deceased was suspecting any extra material affair of her husband with this respondent, even if such diary is accepted in evidence, it will fall short of any ingredient of abetment qua this respondent namely Nikita Shrivastava. In order to bring home the factum of abetment minimum at least suspicion causing abetment should have been present.

14. On the contrary, the deceased has stated in WhatsApp message and in diary that for the step she is taking is of suicide nobody should be held responsible. Therefore, even if for tarreemote reason if yes the deceased had committed the suicide for the reason of relation of her husband with Nikita Shrivastava, then in such case also what abetment has been caused by Nikita

Shrivastava cannot be prima facie presumed in absence of any primary facts and grounds she has abetted the deceased to commit suicide. The abetment if any should have been in the knowledge of the accused. So even if the deceased was writing dairy wherein relation of her husband with Nikita Shrivastava was not accepted then in such case also it cannot be conclusively be held that Nikita Shrivastava had abetted for commission of suicide of Ankita. The dying declaration i.e. the last written page of the diary also do not attribute anything against the respondent.

15. At the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the entire evidence and arrive at any conclusion that the material produced was sufficient or not but at the same time at the time of framing of charges even if the limiting enquiry from the facts do not constitute the minimum ingredients for any offence then certainly the Court can very well look into it. The document & statement must prima facie raise suspicion of commission of offence.

16. The aforesaid diary statement and the statement of the witnesses if are translated into the principles laid down to consider the case under Section 306 I.P.C.it would be relevant to quote the law laid down in case of Rajendra Das Vs. State of Chhattisgarh, reported in 2013 (2) CGLJ in which it has been held in paras 7, 8 & 11 thus :

“7. For the offence u/s 306, the offence by the appellant by instigation depends upon the intention of a person who abets and not upon the act which is done by the person who is abetted. The abetment may be by instigation, conspiracy or intentional aid as provided

under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. Instigation has to be gathered from circumstances of a particular case. In a particular case, there may not be direct offence in regard to instigation which may have direct nexus to suicide. Therefore, in such case, an inference has to be drawn from the circumstances and it has to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

8. In Gangula Mohan Reddy Vs. State of Andhra Pradesh (2010) 1 SCC 750, Hon'ble the Supreme Court while interpreting Section 306 IPC held that "Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract section 306 IPC, there has to be a clear mens rea to commit the offence."

11. In Mohan Vs. State represented by the Deputy Superintendent of Police, AIR 2011 SC 1238 Hon'ble the Supreme Court observed thus:

".....While interpreting section 306 IPC held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC, there has to be a clear mens rea to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry related harassment and that the witnesses have improved upon their earlier statements is ignored then also section 306 IPC, is not attracted in the facts of the present case."

17. Therefore, to constitute an offence under Section 306 of the I.P.C., the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The mere fact that in diary the deceased stated about the relation of the husband with the accused cannot be stated to be the abetment especially by this respondent. In order to hold an abetment, prima facie reading of the statement of the witnesses in

this case along with the diary statement and whatsapp messages cannot be stated that there was a mens rea or community of intention was present. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. Therefore, even if it is admitted that the husband of the deceased was in love relation with the present respondent, the prosecution prima facie must have established the fact the present respondent had the mens rea and thereby has abetted the commission to suicide by the deceased. There has to be some proof of any incitement to the commission of suicide or conspiracy or act facilitating the commission of suicide.

18. The evidence which are collected by the prosecution if at all are accepted i.e. the Diary of the deceased, statement of the relative of the deceased including the mother and father, the ingredients of Section 306 IPC qua the respondent appears to be completely absent on the contrary the suicidal note is otherwise. Therefore, after survey of the entire statement and the facts on record, I am of the opinion that the finding reached by the learned Court below in discharging the accused/respondent do not suffer with any illegality and prima facie fact shows that no ingredients of abetment are present on the part of the present respondent.

Sd/-

Goutam Bhaduri
Judge

Ashu