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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.371 of 2005

Vinod Kumar Agrawal, aged about 34 years, S/o Kachrumal Agrawal, R/o Village Balasi, P.S. and Tahsil Saraipali, District Mahasamund, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer P.S. Saraipali, District Mahasamund, Chhattisgarh

--- Respondent

For Applicant	:	Shri Sanjay Agrawal, Advocate
For State/Respondent	:	Shri Rajkumar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.1.2018

1. The instant revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the order dated 14.7.2005 passed by the 1st Additional Sessions Judge, Mahasamund in Sessions Trial No.403 of 2004, whereby a charge under Section 306 of the Indian Penal Code has been framed against the Applicant.
2. The allegations against the Applicant are that in the intervening night of 10th and 11th of June, 2003 his employee Santosh Tiwari (deceased) committed suicide by consuming poisonous substance, namely, sulfas. Merg was lodged by Dipak Tiwari (landlord of the deceased) on the basis of which police started inquiry. Statements of Urvashibai (wife of the deceased), Vikrant (son of the deceased), Gangadhar (a neighbour of the deceased) and Dipak Tiwari (landlord of the deceased) were recorded which show that the deceased was a habitual liquor drinker. He was employed as a clerk in Bhagwati Rice Mill owned by the Applicant. The deceased had been making complaints that his employer, i.e., the Applicant was deducting amounts from his salary. It has been further alleged

that the deceased committed suicide as he was harassed by the employer/Applicant. During inquiry, a suicide note allegedly written by the deceased has also been seized by the police. The police has registered First Information Report and after completion of the investigation, has filed a charge-sheet against the Applicant for the offence punishable under Section 306 IPC. Vide the impugned order dated 14.7.2005, a charge under Section 306 IPC has been framed against the Applicant. Hence, this revision.

3. Learned Counsel appearing for the Applicant submits that in the entire charge-sheet there is no material available to frame charge against the Applicant for the alleged offence punishable under Section 306 IPC and as such the Learned Additional Sessions Judge has committed manifest illegality in framing the charge against the Applicant. There is no proximity and nexus between the conduct and behaviour of the Applicant with that of the suicide committed by the deceased.
4. On the other hand, Learned Counsel appearing for the State submits that there is sufficient material available on record for presuming that the Applicant has committed the offence and as such there is no illegality in the order impugned framing charge against the Applicant warranting interference by this Court.
5. I have heard Learned Counsel appearing for the parties and perused the order impugned including the record of the case carefully.
6. The question in the present case is as to whether considering and accepting the entire material available on record as absolutely correct and true, a *prima facie* case for alleged commission of offence punishable under Section 306 IPC is made out against the

present Applicant?

7. At this juncture, it is appropriate to look into the provisions of Sections 306 and 107 of the Indian Penal Code, which read 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.

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.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

8. Section 109 of the Indian Penal Code provides for punishment of abetment which runs thus:

“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.”

9. As per the definition given in Section 107 of the Indian Penal Code, an abetment is constituted by any one of the following three ingredients:

- “(i) instigating a person for doing of a thing, or
- (ii) engaging in a conspiracy for the doing of that thing, or
- (iii) intentionally aiding the doing of that thing.”

10. A person is said to “instigate” another to an act, when he actively suggests or stimulates him to the act by any means of language direct or indirect whether it takes the form of express solicitation or of hints, insinuation or encouragement. The word “instigate” means to goad, urge forward, provoke, incite or encourage to do an act.

11. As Section 306 IPC makes abetment of commission of suicide punishable, therefore, for making liable for an offence punishable under Section 306 IPC, it is the duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused, it is necessary to see that his act must fall in any of the three ingredients as enumerated under Section 107 IPC and, therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more persons in any

conspiracy for seeking that the deceased commits suicide or he must intentionally aid by any act or illegal commission of the suicide by the deceased.

12. In (2001) 9 SCC 618 (Ramesh Kumar v. State of Chhattisgarh), it has been observed by the Supreme Court as under:

“17. The dying declaration Ext. P-10 recorded on 16-6-1986 at 3 p.m. by Parmeshwar Dayal, Executive Magistrate, PW13 is in question-answer form and reads as under:

“Q. What is your name? What is the name of husband? Marriage when done?

Ans. Seema Bai. Name of husband – Ramesh Dubey. Marriage performed in June 1985.

Q. What happened with you?

Ans. Today in the morning I poured kerosene on me and set fire.

Q. Why you set fire?

Ans. Today in the morning quarrel had occurred between me and my husband.

Q. Previously also quarrel had occurred at any time?

Ans. No. From being aggrieved by the quarrel of today, I set fire.

Q. What happened in today's quarrel?

Ans. In the morning he told me that you are free. You go wherever you want to go.

Q. Whether you want to say anything more?

Ans. No.”

In his statement under Section 313 CrPC the accused-appellant stated that he did never ask any dowry nor harassed Seema. On the day of the incident he was preparing to go to his duty but Seema was pressing him to leave her at Shalini's house in Samta Colony. The accused had asked her to go there alone. When he was getting ready to leave for his duty he heard a cry of Seema from kitchen. He saw her burning. He ran to save her and in doing so he burnt his hands, legs and chest.

20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

- 13.** Further, it is observed by the Supreme Court in **AIR 2010 SC 327** (**Gangula Mohan Reddy v. State of Andhra Pradesh**) as under:

“**20.** Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased

to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

14. In **(2011) 3 SCC 626 (M. Mohan v. State Represented By The Deputy Superintendent of Police)**, the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence:

“**45.** The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

15. In **1995 (3) Supp SCC 731 (Mahendra Singh v. State of M.P.)**, the Appellant was charged of an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under:

“My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning.”

Their Lordships of the Supreme Court, considering the definition of 'abetment' given in Section 107 IPC, found that the charge and conviction of the Appellant for an offence under Section 306 IPC was not sustainable merely on the allegation of harassment to the deceased. It is further held that none of the three ingredients of abetment are attracted on the statement of the deceased.

16. In the light of aforesaid enunciation of law, the facts of the present case are to be examined.
17. It is the case of the prosecution that deceased Santosh Tiwari had consumed some poisonous substance at his residence on 10.6.2003 at about 9:00 p.m. It is also the case of the prosecution that at that time the deceased was in drunken condition and had started disputing with his wife saying that he had consumed a tablet of sulfas. When his wife told about the incident to landlord Dipak Tiwari, he came to the spot. The deceased had fallen unconscious and he had vomited. Thereafter, the deceased was taken to Government Hospital Saraipali. He died during treatment. During the course of inquiry, on 11.6.2003, from the possession of Urvashibai, wife of the deceased, one file cover was seized on which the deceased had written the alleged suicide note/dying declaration, which reads as under:

“टीप:- मेरे को कागज नहीं मिला

यह मेरा सोसायट नोट

शायद मैं लिख नहीं पा रहा

मैंने सल्फास का सेवन कर लिया है।

मरते वक्त एक बात लिख रहा हूँ। ये औरत दुनिया की/ इन्हे माफ करना अभी तक काम मैं ये गोली का सेवन किया हूँ। सभी गलती विनोद अग्रवाल S/o कचरू लाल अग्रवाल जो लाल चंद अग्रवाल भगवती राईस मिल के हैं उनके मानसिक आर्थिक प्रतांडना का परिणाम है। उन्हें दण्ड अवश्य देना

गोलू बेटा मुझे माफ करना।

धन्यवाद

हस्ताक्षर”

18. From perusal of the above suicide note, it is clear that there is only allegation against the Applicant in the said suicide note that the deceased committed suicide due to mental and financial torture

given by the Applicant. Particulars of time, place, nature of torture and before whom the alleged torture was given to the deceased by the Applicant are not mentioned in the said suicide note.

- 19.** In her statement under Section 161 Cr.P.C., Urvashibai, wife of the deceased has stated that her husband, much prior to 10.6.2003, used to tell her that he was suffering from a severe mental tension. On being asked, he had replied her that his master used to give him mental and financial torture. His master used to deduct the amounts from his salary which he used to spend in consuming liquor.
- 20.** Vikrant, son of the deceased has stated in his statement under Section 161 Cr.P.C. that at the relevant time he was studying at Sambalpur (Odisha). On being informed about the incident, he came to Saraipali. He has further stated that before committing suicide, his father remained under severe tension. On being asked frequently, he used to avoid telling him the reason. He has further stated that while taking name of the Applicant by him in presence of his father, his father always felt bad.
- 21.** Gangadhar and Dipak Tiwari, a neighbour and the landlord of the deceased, respectively have only stated in their statements under Section 161 Cr.P.C. that the deceased had consumed something, he was vomiting and he was taken to the hospital where he died. Nothing emerges from the statements of these two witnesses that the deceased was ever physically, mentally or financially tortured by the Applicant before them nor did the deceased ever told them anything about the alleged torture being given to him.
- 22.** From the entire evidence gathered by the prosecution in this case, it is clear that except the suicide note there is nothing on record to

establish that before any of the prosecution witnesses the Applicant ever physically, mentally or financially tortured the deceased. Though in the suicide note, it has been mentioned by the deceased that he was being tortured by the Applicant mentally and financially yet there is no particular mentioned in the said suicide note about the date, time, place, nature of the alleged torture and before whom the alleged torture was given to the deceased. From the evidence collected by the prosecution, it is also clear that the deceased was a habitual liquor drinker. On the date of incident also, he had returned home in drunken condition. He used to remain in tension. From the statement of Urvashibai, wife of the deceased, it is clear that the deceased was a liquor drinker and used to spend money of his master in consuming liquor and the said amount was being deducted from his salary by the master. The deceased committed suicide for this reason itself or for any other reason does not establish that the Applicant abetted him to commit suicide.

- 23.** In the opinion of this Court, on considering and accepting the entire material available on record to be absolutely correct and true on their face value, no *prima facie* case for framing of charge against the Applicant for offence punishable under Section 306 IPC is made out as there is no nexus and proximity with the conduct and behaviour of the Applicant with that of the suicide committed by the deceased.
- 24.** Consequently, the revision is allowed. The impugned order framing charge against the Applicant for alleged commission of offence punishable under Section 306 IPC is set aside. It is held that there is no material available for framing charge against the

Applicant and, therefore, he is discharged from the offence punishable under Section 306 IPC.

- 25.** Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge