

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 565 of 2014**

Sanjay @ Suraj Netam, S/o. Mahabeer Netam, Aged About 23 Years, R/o. Damkadih, P.S. Nagri, Tahsil Nagri, Distt.- Dhamtari, Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh, Through District Magistrate, P.S. Nagri, Distt.-Dhamtari, Chhattisgarh

---- Respondent

 For Appellant : Mr. Alok Kumar Pandey, Advocate
 For State/Respondent : Mr. S.R.J.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Judgment on Board****14.08.2018**

1. This appeal is against the judgment dated 27.05.2014 passed by the learned Addl. Sessions Judge, F.T.C. Dhamtari, District Dhamtari (C.G.) in Sessions Trial No.46/2013 whereby the appellant has been convicted under Section 376 & 306 of Indian Penal Code and sentenced to undergo R.I. for 7 years with fine of Rs.1000/- & R.I. for 5 years with fine of Rs.500/- and in default of payment of fine amount, further R.I. for 6 months & 3 months each respectively.
2. Despite repeated calls, the counsel for the appellant did not appear and the case was passed over yesterday and was handed over to legal aid counsel and is heard with the assistance of the counsel from the legal aid.
3. Case of the prosecution, in brief, is that the deceased Saraswati and the appellant were in love relation for 2 ½ years before the date of incident. On 09.07.2013 the deceased was taken to Doctor by the mother of the deceased Bindabai and after examining her, he found that she was having pregnancy of five months. Having enquired as to who was the biological father of the child in womb, she disclosed that she was in love relation with the appellant and she become pregnant due to that as she was

sexually exploited on the pretext of marriage. It is the case of prosecution that the deceased then had a talk with the appellant Sanjay @ Suraj Netam when the Doctor told her that she is pregnant and the Doctor had also talked with the appellant. The Doctor after talking to appellant when asked him what is to be done, the appellant accused stated that he will keep the victim, the deceased. Thereafter the Doctor had asked appellant whether he would like to perform marriage in the Court or in the society, but nothing transpired. Thereafter, a meeting was called by the mother of the deceased Bindabai wherein the persons from the village participated. The meeting was called for the reason to decide the future course of action as the deceased was having pregnancy of five months from the appellant/accused. In the first meeting, the deceased was present but the appellant was absent. Having enquired in the meeting, the victim said that she was made pregnant by the appellant. On the second meeting only the appellant was present and having enquired he admitted the fact that he was in love relation with the deceased for last 2 ½ years, thereafter, the girl was missing from village. After 8-9 days, the dead body of Saraswati when was found in the teak wood forest hanging and thereafter it was sent for post mortem and mother came to know of death of her daughter. Thereafter, the offence under Section 376 & 306 of I.P.C. was registered and the charge sheet was filed.

4. During the course of trial, the appellant/accused abjured the guilt and claimed to be tried. The prosecution on their behalf had examined as many as 17 witnesses and the trial Court after evaluating the evidence on record convicted the accused/appellant as aforesaid; hence this appeal.
5. Learned counsel for the appellant would submit that there is no abetment has been proved by the prosecution in this case. It has further been stated that the evidence of all the witnesses would go to show that the appellant has never disowned the deceased, therefore, if any other reason were

there for committing suicide of deceased cannot be attributed to the appellant. He further submits that unless and until it has been clearly proved that the accused has abetted the commission of offence, no allegation can be attributed to the accused.

6. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the appellant and would submit that the order passed by the learned Court below is well merited, which do not call for any interference.
7. I have heard learned counsel appearing for the parties and perused the records.
8. PW-1, Harinarayan Soni, who was Ayurvedic Doctor at village Sankra who had examined the deceased has stated that on 09.07.2013 Bindabai, mother of the deceased had come to his Clinic for checkup. He stated that the mother has disclosed that her daughter was weak and was not eating and whatever she eats, she vomits. He further stated that after checkup, he found that victim was pregnant and was having pregnancy of five months. The said pregnancy was disclosed to her. Thereafter, it is stated that he asked the deceased that with whose relation she had become pregnant, she disclosed the name of the present appellant. The witness further stated that thereafter he advised to perform marriage with Sanjay and wished them happy life. It is stated that the deceased thereafter had called up Sanjay from mobile and the Doctor too had a talk with Sanjay. The witness had deposed during conversation the accused had stated that he would marry the victim and will keep her. The Doctor further stated that Sanjay, the accused, had stated that they were in relation for 2 years and admitted that deceased got pregnancy through him. Subsequently, he stated that he had read the paper and came to know that victim had died. The cross-examination of this witness do not rebut any fact of admission

to the fact to disbelieve his statement that the deceased was made pregnant by the present appellant.

9. Mother of the deceased Binda Bai was examined as PW-3. She stated that while her daughter was not well, she was taken to Doctor Soni PW-1. After checkup by Doctor she was found pregnant having pregnancy of five months. She further stated that during checkup the Doctor has asked her daughter who was responsible for such pregnancy, she disclosed the name of the appellant Sanjay. Thereafter, victim deceased had a talk with Sanjay on mobile and Doctor had also a talk with the appellant Sanjay. He further stated that Doctor after apprising the facts also asked the appellant as to what to do ? Then the appellant stated that he will keep the victim deceased. Thereafter the Doctor had also asked whether he would perform marriage in court or society as against this no answer was given. The mother of victim PW-3 further stated that after 2-4 days, she called a meeting in the village and in the meeting 10-12 persons came to attend namely Toran, Vishnu, Prembai, Tijbai, Hemant etc. She further stated that she called the meeting for two times for the reason that her daughter was carrying a pregnancy of five months from the accused/appellant. She stated that in the first meeting her daughter was there but the appellant was absent and having asked in the meeting who was responsible for such pregnancy, name of the appellant was disclosed by the daughter. She further stated that in the second meeting only the appellant was present and admitted the fact that he had the relation with victim for 2 ½ years and in that meeting her daughter was absent and thereafter was found missing. Thereafter, a missing report was made in the Police Station and subsequent to it after 8-9 days, she came to know that her daughter was dead as her body was found in the teak wood forest.
10. The statement of PW-3 corroborates to the statement of the Doctor PW-1, wherein he stated that the deceased came to him for treatment and after

having found that she was pregnant, the Doctor as also the deceased had a talk with the appellant. The witness PW-3 was declared hostile and having given the suggestion she stated that in the meeting, the deceased girl had disclosed that the appellant on the allurements of marriage had committed sexual intercourse. She further stated that in the meeting subsequently Sanjay, the appellant, refused to keep Saraswati as his wife and went away from the meeting. As no decision was arrived at in the meeting people had gone back to their home. She further admitted that after 2-3 days of meeting her daughter had went away from the house and admitted that because of the public shame, she had committed suicide. In the cross-examination, she stated that initially when she asked her daughter, nothing was disclosed but the same was disclosed when she was taken to Doctor for test. The aforesaid statement remained unrebutted in the cross examination.

11. The statement of PW-11 namely Goutam Prajapati who was said to be present in the Clinic of Doctor PW-1 also corroborated the version of the prosecution and has stated that after victim was examined, she was found to be pregnant and disclosed that the pregnancy was from Sanjay. Therefore, this statement completely corroborates with the statement given by the Doctor PW-1 and mother PW-3 and this fact has not been diluted in the cross-examination by the appellant.
12. The another witness PW-2, Hembai, who was present in the meeting called by the mother of the deceased PW-3, stated that the meeting was convened at the request of the mother of the deceased Bindabai. In the meeting Bindabai said that her daughter was made pregnant through Sanjay. She further stated that in such meeting victim/deceased was also present but stated that Sanjay was not present. She further stated that the deceased told in meeting that Sanjay had made her pregnant. She was declared hostile and thereafter she admitted the fact that in the meeting

the deceased has said that she was in relation with Sanjay for 2 ½ years and on the pretext of marriage she was sexually exploited and therefore she became pregnant. The witness further stated that Sanjay the appellant was called in the meeting but he refused to come. She further admitted the fact that on the next day meeting Sanjay had admitted the relation with the victim / deceased and admitted to be the biological father of the child in womb of victim. She further stated that when the accused appellant was asked to marry the deceased the appellant refused to do so and went away from the meeting, therefore, no decision can be arrived at. In the cross-examination of this witness she stated that in the meeting victim had not disclosed anything and the appellant has not said anything and denied the entire facts. Similar statement has been made by PW-4 Teejbati and stated that in the first meeting Sanjay accused was summoned but he did not come. She admitted one fact that in the meeting when Sanjay was asked to marry the deceased he refused to do so. She further admitted the fact because of the reason Sanjay refused to marry the deceased, as such, no decision was arrived at in the meeting; thereafter Bindabai, mother of the deceased, went back to home. After such futile result of meeting after few days the dead body of victim was found in forest. In the cross-examination, this witness do not say any knowledge of second meeting. She had denied the fact that victim had disclosed in the meeting that she was made pregnant by the accused. PW-6, Devru Dhruv, appears to be hearsay witness and PW-7 Vishnuram also stated the similar facts as that of PW-4 & PW-5.

13. The Doctor PW-12 who conducted the post mortem has stated that he has examined the decomposed body of the girl and the death was due to asphyxia by hanging. He further stated that after inspection, it was found that in the Uterus 20 weeks of rotten embryo was found. The post mortem report is marked as Ex.P-1 shows death was due to hanging and in the

dead body a dead embryo was found. The presence of embryo in womb affirms the fact that deceased was pregnant at the time of death and corroborates to the statement of the Doctor PW-1, the mother PW-3 and PW-11 that the deceased was pregnant before her death.

14. Now reverting to the statement of the accused recorded under Section 313 of Cr.P.C. no plausible explanation has been given except the fact of denial. The accused has also not come out with any plausible explanation against the accusation and subsequent admission in meeting for cause of pregnancy to the deceased. As against this, the prosecution witness have clearly deposed that in the second meeting the appellant refused to marry the deceased victim even after admission of fact that due to the relation with deceased she became pregnant.
15. If the statement of the prosecution witness are read together, it leads to point out that the prosecution was able to establish the fact that the deceased was in love relation with the appellant for last 2 ½ years before the date of incident. The prosecution has further been able to establish the fact that when the girl was not well she was taken to the Doctor for checkup wherein the pregnancy was discovered and thereafter immediately as a natural consequence a conversation was made by the girl with the boy/ accused. The Doctor PW-1 has corroborated incident that he had talk with the boy and the boy admitted the fact that the deceased was made pregnant by him. Under the circumstances, when according to the statement of PW-1, PW-3 & PW-11 the physical relation was not disputed in between the deceased and the appellant, this fact cannot be presumed that the deceased was subjected to forceful sexual intercourse as the witnesses have proved that physical relation, which had developed was with the consent of victim and the appellant boy. According to the prosecution, age of the deceased on the date of death was 19 years and is corroborated by the post mortem report. Being so when the

physical relation continued with consent of boy & girl both being major only because of fact that girl became pregnant, the theory of forceful sexual intercourse cannot be presumed. Accordingly, the conviction under Section 376 of I.P.C. by the Court below cannot be sustained and the same is set aside.

16. Now with respect to the conviction made under Section 306 of I.P.C. whether the abetment was proved by the prosecution or not, it would be necessary to quote Section 306 of I.P.C. which 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.

17. The Supreme Court in ***Chitresh Kumar Chopra v. State (Government of NCT of Delhi)***¹ has defined the abetment as under :

“11. **Section 306** of the 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."

From a bare reading of the provision, it is clear that to constitute an offence under **Section 306** IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under **Section 306** would stand only if there is an "abetment" for the commission of the crime.

12. The parameters of "abetment" have been stated in **Section 107** of the IPC, which defines abetment of a thing as follows:

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

¹(2009) 16 SCC 605

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."

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](#) of the IPC.

14. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of [Section 107](#) 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 the [IPC](#). The meaning of the said word was considered by this Court in ***Ramesh Kumar Vs. State of Chhattisgarh (2001) 9 SCC 618***

16. Speaking for the three-Judge Bench in Ramesh Kumar case, 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.*

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: *Concise Oxford English Dictionary*); "to keep irritating or annoying somebody until he reacts" (See: *Oxford Advanced Learner's Dictionary - 7th Edn.*).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.”

18. The Supreme Court further in case of ***Praveen Pradhan v. State of Uttaranchal & Another***² describing the abetment has held as under :

13. This Court in *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618, while dealing with a similar situation observed that what constitutes ‘instigation’ must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

14. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has 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. (*Vide: State of Punjab v. Iqbal Singh*, AIR 1991 SC 1532; *Surender v. State of Hayana*, (2006) 12 SCC 375; *Kishori Lal v. State of M.P.*, AIR 2007 SC 2457; and *Sonti Rama Krishna v. Sonti Shanti Sree*, AIR 2009 SC 923.)

19. Keeping in view of the aforesaid legal position, if the evidence and circumstances in this case are translated, it would show that there was a

²(2012) 9 SCC 734

positive action in proximity to the incident which takes the facts within its sweep of abetment. The evidence on record do not suggest that it is mere coincidence and report was made in a spur of moment. This fact cannot be ignored that in the Indian society an unmarried girl who becomes pregnant on an allurements of marriage cannot continue with it as it is a social stigma. The said stigma with victim could have been removed had a marriage been performed by the appellant with the deceased. Instead, the evidence suggest that the appellant started keeping distance when the deceased became pregnant. Subsequently, when it was firstly disclosed by the Doctor during conversation, the appellant admitted the fact he was responsible for pregnancy. The evidence shows that under those circumstances the mother had to call a meeting in the village to draw the attention the issue has generated. In first meeting the appellant was absent and in subsequent meeting the appellant refused to marry the girl. Therefore, the series of act would show that the deceased must have felt humiliated. The disclosure of the pregnancy before the Doctor up till the refusal for marriage had all became public. Apparently, therefore the deceased could not bear it any longer and the circumstances and situation was made to lose the self respect of the deceased and circumstances would show that she was left with no other option except to commit suicide. Taking into the chronological events of fact in the opinion of this Court the case would certainly fall within the ambit of abetment under Section 107 of I.P.C.

20. Considering the evidence in this case, I am of the opinion that the conviction under Section 376 of I.P.C. is not made out. Accordingly, the conviction so made under Section 376 of I.P.C. is set aside. Consequently, the appellant is acquitted of the charges under Section 376 of I.P.C. Now turning back to the conviction under Section 306 of I.P.C., the facts and circumstances, on closed scrutiny, would show the circumstances so

aggravated to the extent around the deceased wherein she was left with no option except to garland the death. Therefore, certainly the act committed by the appellant in the background of the Indian society would amount to abetment. The Court cannot ignore a situation when the unmarried girl suffers with pregnancy and the boy subsequently refuses to marry, the girl is left with feeling of exclusion and cannot be persuaded with gentle art of forgetting and finally may crash to the surroundings which happened in the instant case. The victim girl in situation like this cannot be termed as a commodity as use and throw. Accordingly, the conviction under Section 306 of I.P.C. and the sentence awarded of 5 years with fine of Rs.500/- is upheld and in absence of payment of fine, 3 months additional R.I. is affirmed. If the appellant already suffered the jail sentence, he may be released forthwith.

21. In a result, the appeal is partly allowed to the above extent.

Sd/-
(Goutam Bhaduri)
JUDGE