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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.734 of 2016

Umesh Banjare, son of Puni Ram Banjare, aged about 24 years, R/o Village Bataupali, P.S. Kosir, District Raigarh, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through P.S. Sarsiva, District Balodabazar-Bhatapara, Chhattisgarh

--- Respondent

For Applicant	:	Shri Raghvendra Pradhan, Advocate
For Respondent	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.8.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. This revision has been preferred against the order dated 22.6.2016 passed by the Additional Sessions Judge (FTC), Balodabazar in Special Sessions Trial No.7 of 2016, whereby the Additional Sessions Judge has framed charge against the present Applicant under Section 306 of the IPC.
3. As per the prosecution story, deceased Hemlata was married to the Applicant in May, 2015. It is alleged that co-accused Manoj Nirala, who was *Fufa* (uncle) of the deceased and Chaitram had gone to the matrimonial house of the deceased and had complained that the deceased was characterless and her character was suspicious. It is further alleged that on the basis of the said complaint, the Applicant started doubting on the character of the

deceased and also started subjecting her to physical and mental cruelty and harassment. It is the further case of the prosecution that due to this, a social meeting was convened and on 30.7.2015, with the consent of both the husband and the wife (the deceased), a divorce took place between them. Thereafter, the deceased started residing at Village Durumgarh along with her grand parents, i.e., co-accused persons Manoj Nirala and Chaitram. As per the prosecution case, on 19.8.2015, the deceased committed suicide at Village Durumgarh by consuming poison. Morgue intimation was lodged by Ajay Narang on 20.8.2015. On the basis of morgue inquiry, First Information Report for offence punishable under Section 306 of the IPC was registered on 29.10.2015. On completion of the investigation, a charge-sheet was filed under Section 306 read with Section 34 of the IPC against the present Applicant and co-accused persons Chaitram Banjare, Hirondi Banjare (wife of Chaitram), Manoj Nirala, Madhu Nirala (wife of Manoj Nirala). Vide the impugned order dated 22.6.2016, the Trial Court has framed charge against the Applicant and co-accused persons under Section 306/34 of the IPC.

4. Learned Counsel appearing for the Applicant submits that there is nothing on record on the basis of which any *prima facie* case under Section 306 of the IPC is made out against the present Applicant. Ingredients of Section 107 of the IPC are totally missing. Therefore, no case is made out against the Applicant. The Trial Court ought to have considered the fact that as per the prosecution case itself, the reason behind consumption of poison by the deceased was the rape which was committed by co-accused Manoj Nirala upon her and the ill-treatment given to her by Madhu Nirala, wife of Manoj

Nirala. The Trial Court ought to have considered the fact that divorce had already taken place between the Applicant and the deceased and the deceased had committed suicide at her paternal house. Therefore, no case is made out against the Applicant.

5. Learned Counsel appearing for the State/Respondent supports the impugned order and submits that from the material contained in the charge-sheet, *prima facie*, case under Section 306 of the IPC is made out against the Applicant also. Therefore, the Trial Court has rightly framed the charge against him.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. Abetment has been defined in Section 107 of the Indian Penal Code 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.

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.”

8. In **(2002) 5 SCC 371 (Sanju @ Sanjay Singh Sengar v. State of M.P.)**, in paragraph 12 of its judgment, the Supreme Court has held that 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.
9. In **(2011) 3 SCC 626 (M. Mohan v. State represented by the Deputy Superintendent of Police)**, the Supreme Court has held that “Abetment involves mental process of instigating or intentionally aiding a person in doing of a thing. There should be clear *mens rea* to commit offence under Section 306 of the IPC. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide”.
10. On a close reading of Section 107 of the IPC and the above principles laid down by the Supreme Court, it is apparent that in a case under Section 306 of the IPC, there should be clear *mens rea* to commit offence under this section and there should be direct or active act by the accused which led the deceased to commit suicide. That is to say that there must be some evidence of “instigation”, “co-operation” or “initial assistance” by the accused to commit would be suicide by the victim/deceased.
11. Looking to the facts of the present case, it is clear that the deceased was married with the Applicant in May, 2015. From the

prosecution story, it is clear that on 30.7.2015, a divorce had taken place between them after a social meeting and thereafter, the deceased was residing at her paternal house along with co-accused persons. Allegedly, on 19.8.2015, she consumed poison. Deonarayan, who is uncle of the deceased, in his statement recorded under Section 161 of the Cr.P.C., has categorically stated that 15 days prior to the date on which the deceased had consumed poison, he had gone to her house. At that time, he had seen that Hirondi Banjare and Madhu Nirala were beating deceased Hemlata. On being asked, Hemlata had told him that when Manoj Nirala was committing sexual intercourse with her, it was seen by Hirondi Banjare and Madhu Nirala and, therefore, they were beating her. Jai Prakash Lahre, another witness, in his statement under Section 161 of the Cr.P.C., has also stated that on 30.7.2015, he was present in the social meeting in which with the consent of both the Applicant and the deceased, divorce had taken place between them. Ramayanbai, grand mother of the deceased has also stated that Manoj Nirala had an illicit relationship with the deceased from before her marriage with the Applicant.

12. From the above discussion, it is clear that after 19-20 days of 30.7.2015, i.e., the date on which the divorce had taken place between the Applicant and deceased Hemlata, she consumed poison and that too at her paternal house. 15 days prior to her death, she was seen with co-accused Manoj Nirala in a compromising position and, therefore, she had also been beaten by other co-accused persons Hirondi Banjare and Madhu Nirala. Thereafter, the deceased committed suicide by consuming poison. There is nothing on record on the basis of which it could *prima*

facie be established that the Applicant instigated the deceased in any manner to commit suicide. Therefore, in my considered opinion, in absence of such ingredients, offence under Section 306 of the IPC is not made out against the Applicant.

13. In view of the foregoing reasons, the revision is allowed. The impugned order framing charge against the Applicant under Section 306 of the Indian Penal Code is set aside. The Applicant is discharged from the criminal case.

Sd/-

(Arvind Singh Chandel)
JUDGE