

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.948 of 2014

Order Reserved on : 4.12.2018

Order Passed on : 1.3.2019

Smt. Nemin Bai, aged about 37 years, W/o Shri Hemlal Sahu, R/o Nadiyamath, Thana Dongargaon, Rajnandgaon, Chhattisgarh

---- Applicant

versus

The State of Chhattisgarh through Police Station Dongargaon, District Rajnandgaon, Chhattisgarh

--- Respondent

For Applicant	:	Shri Parag Kotecha, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 8.12.2014 passed by the Sessions Judge, Rajnandgaon in Sessions Trial No.55 of 2014, 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 on 16.11.2012, Teminbai (deceased) committed suicide by consuming poisonous substance. On the basis of information received from the hospital, morgue was recorded on 17.11.2012. Thereafter, police investigated the offence in question and recorded statements of witnesses. The witnesses in their statements recorded under Sections 161 of the Code of Criminal Procedure have stated that the Applicant is a neighbour of the deceased and prior to the date of incident, disputes had been taking place between the Applicant

and the deceased. On the date of incident also, a dispute had taken place between them and due to that the deceased committed suicide. On the basis of the said statements, police registered First Information Report and on completion of the investigation, filed a charge-sheet for offence punishable under Section 306 of the Indian Penal Code. Vide the impugned order dated 8.12.2014, a charge under Section 306 of the Indian Penal Code has been framed against the Applicant. Hence, the instant revision has been moved by the Applicant.

3. Learned Counsel appearing for the Applicant submitted 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 of the Indian Penal Code and as such the 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 submitted that there is sufficient material available for presuming that the Applicant has committed the offence and as such there is no illegality in the order impugned framing the charge against the Applicant warranting interference by this Court.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. The question in the present case is as to whether considering and

accepting the entire material available as absolutely correct and true, a *prima facie* case for alleged commission of offence punishable under Section 306 of the Indian Penal Code 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 of the Indian Penal Code makes abetment of commission of suicide punishable, therefore, for making liable for an offence punishable under Section 306 of the Indian Penal Code, 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 of the Indian Penal Code 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:

“**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 of the Indian Penal Code 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 of the Indian Penal Code 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 of the Indian Penal Code, found that the charge and conviction of the Appellant for an offence under Section 306 of the Indian Penal Code 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 **2015 AIR SCW 4814 (State of Kerala v. S. Unnikrishnan Nair)**, the Supreme Court observed as under:

“**11.** The aforesaid provision was interpreted in *Kishori Lal v. State of M.P.*, (2007) 10 SCC 797 by a two-Judge Bench and the discussion therein is to the following effect:—

“Section 107, IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the

original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

12. In *Analendu Pal alias Jhantu v. State of West Bengal*, (2010) 1 SCC 707, dealing with expression of abetment the Court observed:—

“The expression “abetment” has been defined under Section 107, IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107, IPC. Section 109, IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107, IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107, IPC.”

- 17.** In the light of aforesaid enunciation of law, the facts of the present case are to be examined.
- 18.** It is the case of the prosecution that the deceased consumed some poisonous substance on 16.11.2012 at about 4:00 P.M. Earlier also, disputes had been taking place between the Applicant and the deceased and on the date and time of the incident also, a dispute had taken place between them. Therefore, the deceased consumed some poisonous substance. On receiving information, father of the deceased, namely, Dularava, mother of the deceased, namely, Santribai and other witnesses reached the spot. At that

time, the deceased was unconscious. When she was being taken to the hospital by an ambulance, on the way, she became conscious. Then on being asked, she told that without any reason, the Applicant raised a dispute with her and abused her and, therefore, due to the same being intolerable, she consumed phosphate. During treatment, she died in the hospital at about 11 P.M.

19. Police has recorded the statements of Santribai, mother of the deceased, Dularava, father of the deceased and other witnesses, namely, Jankibai, Chimanlal, Naresh Kumar, Agrobai, Raghunath, Jeevrakhan, Pyarelal, Kamlesh Kumar, Gokuldas, Ku. Kavita under Section 161 of the Code of Criminal Procedure. From perusal of the statements of the above witnesses, it clearly appears that they have only stated that a dispute had taken place between the Applicant and the deceased and, therefore, the deceased consumed poisonous substance. There is nothing on record to show that the Applicant had continuously been torturing the deceased physically or mentally. From the evidence available, it is only established that a dispute had taken place between the Applicant and the deceased on the date and time of incident and due to that only the deceased consumed poisonous substance.

20. In the opinion of this Court, on considering and accepting the entire material available 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 of the Indian Penal Code 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. None of the three ingredients enumerated in Section 107 of the Indian Penal Code is found in the instant case.

21. Consequently, the revision is allowed. The impugned order framing charge against the Applicant for alleged commission of offence punishable under Section 306 of the Indian Penal Code is set aside. It is held that there is no material available for framing charge against the Applicant and, therefore, she is discharged from the charge framed against her under Section 306 of the Indian Penal Code.
22. A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge