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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.654 of 2016

Order Reserved on : 4.12.2018

Order Passed on : 1.3.2019

1. Devanand Chandwani, S/o Late Arjundas Chandwani, aged about 31 years,
2. Deepak Chandwani, @ Purushottam Chandwani, S/o Late Arjundas Chandwani, aged about 40 years,
3. Smt. Mayadevi Chandwani, W/o Late Arjundas Chandwani, aged about 65 years,
4. Smt. Nandni Chandwani, W/o Deepak Chandwani, aged about 34 years,

All are R/o New Khursipar, Sindhi Mohalla, Near Sindhi Dharmshala, P.S. Khursipar, District Durg, Chhattisgarh

---- Applicants

versus

The State of Chhattisgarh through the Station House Officer, Police Station Khursipar, Tahsil and District Durg, Chhattisgarh

--- Respondent

For Applicants	:	Shri S.C. Verma and Shri Harshvardhan Parganiha, Advocates
For State/Respondent	:	Shri Sangharsh Pandey, Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 28.6.2016 passed by the 5th Additional Sessions Judge, Durg in Sessions Trial No.5 of 2016, whereby charges under Sections 306 and 201/34 of the Indian Penal Code have been framed against the Applicants.

2. Applicant No.1 is husband of deceased Padmini Chandwani. Applicants No.2 and 4 are elder brother and sister-in-law of

Applicant No.1 and Applicant No.3 is mother-in-law of the deceased. Marriage between Applicant No.1 and the deceased was solemnised on 6.12.2013. In the intervening night of 14th and 15th of July, 2014 at about 3:35 a.m., deceased Padmini committed suicide by consuming some poisonous substance. On the basis of a memorandum received from the hospital, morgue was recorded. On 15.7.2014 at about 9:20 a.m., during inquiry, statements of witnesses were recorded by police. Allegations against the Applicants are that they were harassing the deceased physically and mentally due to which she committed suicide. Police registered First Information Report and on completion of investigation filed a charge-sheet against the Applicants for an offence punishable under Sections 306 and 201/34 of the Indian Penal Code. The Trial Court framed charges against the Applicants under Sections 306 and 201/34 of the Indian Penal Code. Hence, this revision.

3. Learned Counsel appearing for the Applicants submitted that in the entire charge-sheet there is no material available to frame the charges against the Applicants for the alleged offence punishable under Sections 306 and 201/34 of the Indian Penal Code and as such the Additional Sessions Judge has committed manifest illegality in framing the charges against the Applicants. Even if the whole version of the prosecution is taken as it is, no offence is made out against the Applicants. The very basis and necessary ingredients of the provisions of Sections 306 and 201/34 of the Indian Penal Code are missing in the entire charge-sheet. As per the prosecution story, the deceased committed suicide due to excess sexual act by her husband/Applicant No.1 with her and

there was an illicit relationship of Applicant No.1 with Applicant No.4. Even if it is considered for the sake of argument, only on the basis of this no offence under Sections 306 and 201/34 of the Indian Penal Code is made out against the Applicants. There is no proximity and nexus between the conduct and behaviour of the Applicants 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 Applicants have committed the offence and as such there is no illegality in the order impugned framing the charges against the Applicants 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 Sections 306 and 201/34 of the Indian Penal Code is made out against the present Applicants?

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
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> (ii) engaging in a conspiracy for the doing of that thing, or
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> (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.
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> **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.
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> **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:—
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> > "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 Section109 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."
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> **12**. In Analendu Pal alias Jhantu v. State of West Bengal, (2010) 1 SCC 707, dealing with expression of abetment the Court observed:—
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> > "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 at her matrimonial house in the intervening night of 14th and 15th July of 2014 at about 3:35 a.m. During the course of morgue inquiry and investigation, statements of witnesses, namely, Kavita, mother of the deceased, Harshita, sister-in-law of the deceased, Pratap Tharwani, uncle of the deceased, G.S. Rajpal, maternal uncle of the deceased, Shankarlal, brother of the deceased, Bhaktulal, other maternal uncle of the deceased were recorded by the prosecution. From perusal of their statements, following facts emerge:

(i) Allegedly, Applicant No.1/husband of the deceased was making physical relationship with the deceased daily. It is also alleged that he was taking medicine daily for enhancing his sexual strength and he was also showing obscene clippings to the deceased and was making unnatural sex with her.

(ii) Allegedly, when the deceased was talking at her maternal house, she was allowed to talk only after switching on the speaker of the mobile phone.

(iii) Allegedly, the deceased was under suspicion that her husband/Applicant No.1 was having illicit relationship with Applicant No.4.

Apart from the above, no other allegation is made against any of the Applicants.

19. The spot-map shows that the deceased was living separately along with her husband/Applicant No.1 in a room situated on the first floor of her matrimonial house. Therefore, the allegation that the deceased was allowed to talk at her maternal house only after switching on the speaker of her mobile phone is not acceptable. As regards the other allegations that Applicant No.1/husband was having illicit relationship with Applicant No.4, he was making sexual relationship with the deceased daily, he was also making unnatural sexual relationship with her, he was also taking medicine daily for enhancing his sexual strength and he was also showing her obscene clippings, even if for the sake of argument they are considered to be true, these allegations cannot be said to be "instigation" as defined under Section 107 of the Indian Penal Code. No doubt, the deceased committed suicide, but there is nothing available to show that the Applicants instigated or abetted her in any way to commit suicide. 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 the charges against any of the Applicants for offence punishable under Sections 306 and 201/34 of the Indian Penal Code is made out as there is no nexus and proximity with the conduct and behaviour of the Applicants 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.

20. Consequently, the revision is allowed. The impugned order framing charges against the Applicants for alleged commission of offence punishable under Sections 306 and 201/34 of the Indian Penal Code is set aside. It is held that there is no material available for framing charge against the Applicants and, therefore, they are discharged from the charges framed against them under Sections 306 and 201/34 of the Indian Penal Code.

21. A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-

(**Arvind Singh Chandel**)
Judge

Gopal