

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 486 of 2019**Order Reserved on : 21.08.2019Order Delivered on : 04.10.2019

1. Chandan Shrivastava S/o Late Subhash Shrivastava, aged about 31 years.
2. Chitragupt Shrivastava, aged about 23 years, Son of Late Subhash Shrivastava

Both are resident of Ward No. 1, Pipariya, Khairagarh P.S. Khairagarh, District Rajnandgaon C.G.

----Applicants**Versus**

- State of C.G. through Police Station Khairagarh, District Rajnandgaon (C.G.)

---- Respondent

For Applicants	:	Shri Rakesh Pandey, Adv.
For Respondent/State	:	Mr. Anil Tripathi, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****04/10/2019**

01. Heard on admission.
02. With the consent of the parties, the matter is heard finally.
03. The instant revision has been preferred against the order dated 15.03.2019 passed by the learned Additional Sessions Judge, Khairagarh, District

Rajnandgaon, in Sessions Trial No. 05/2019, whereby the charges under Section 306/34 of IPC have been framed against the applicants.

04. As per the prosecution story, complainant Rajesh Vishwakarma gave mere intimation to the police Station Khairagarh on 31.12.2018 at about 9.55 hrs to the effect that on 30.12.2018 at about 7.30 pm, the applicants committed Marpeet with his brother Mithlesh Vishwakarma as a result of which he got depressed and committed suicide by jumping off water tank. He was taken to hospital at Khairagarh, from where he was referred to Rajnandgaon but, on the way, he succumbed to injuries. After completion of investigation, chargesheet was filed against the applicants and learned trial Court on 15.03.2019, framed charge under Section 306/34 of IPC against the applicants. Hence, this revision.

05. The learned counsel for the applicant submits that the charges framed by learned trial Court is illegal and contrary to the facts and evidence of the case, therefore, it is liable to be set-aside. He further submits that from the statements of witnesses, it is very clear that there was no instigation and if whole charge sheet is accepted in its entirety, the offence would not travel beyond the scope of Section 323 of IPC. The mens rea is necessary to establish abetment to commit suicide,

which is completely missing in the case. Thus, the impugned order of the trial Court is liable to be set-aside. In support of his contention he placed reliance on this Court's order in ***Devanand Chandwani v. State of Chhattisgarh*** passed in ***(CRR No. 654/2016 passed on 01.03.2019)***

06. On the other hand, learned counsel appearing for the State submits 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.

07. Heard learned counsel appearing for the parties and perused the material available with due care.

08. At this juncture, it is appropriate to look into the provisions of Sections 306 and 107 of the Indian Penal Code, which reads thus:

“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 mission 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.

Exaplanation1. 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.”

09. Section 109 of the IPC provides for punishment for abetment, which reads as follows:

“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 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.”

10. 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.”*

11. In ***Mahendra Singh v. State of M.P. [1995 (3) Supp SCC 731]***, the applicant was charged of an offence under Section 306 of the 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.”

In ***Mahendra (Supra)***, this case Hon'ble Apex Court

has held that the charge and conviction of the appellant for an offence under Section 306 of the 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.

12. In ***M. Mohan v. State Represented by the Deputy Superintendent of Police (AIR 2011 SCC 1238)*** the Supreme Court by the following observation, has clearly held that in order to convict a person under Section 306 of the IPC there has to be a clear mens rea to commit the offence.

“45. 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.

46. 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.”

13. In this case, all the witnesses stated that the applicants have beaten the deceased on 30.12.2018, The Complainant Rajesh Vishwakarma (brother of deceased) has stated in his evidence that the applicants were already having grudge against the deceased and due to this they committed marpeet with deceased, which offended him and committed suicide by jumping off the water tank.

14. The deceased committed suicide by jumping off the water tank but nothing incriminating material is available to show that the applicants in any manner instigated or abetted him to commit suicide. On considering and accepting the entire material available to be absolutely correct and true on their face value, no prima facie case of framing of the charges against any of the applicant for offence punishable under Section 306 of IPC 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 are found in the instant case.

15. Consequently, the revision is allowed. The impugned order of framing charges against the applicants for alleged commission of offence punishable under Section 306/34 of the Indian Penal Code is set-aside. Applicants are discharged from the charge framed against them under Section 306/34 of IPC.

16. If after hearing the argument, the learned trial Court feels that charges may be framed under Section 323, 324 or 325 of IPC then the trial Court consider about it and proceed in accordance with law.

**Sd/-
(Rajani Dubey)
JUDGE**