

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.903 of 2018

Order Reserved on : 17.1.2019

Order Passed on : 19.3.2019

Mohd. Arif, S/o Mohd. Rafiq Ahmed, aged about 27 years, R/o Ram Nagar,
Sirsa Road, Supela, District Durg, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through S.H.O. Police Station Supela, District Durg,
Chhattisgarh

--- Respondent

For Applicant	:	Shri B.P. Singh, Advocate
For State/Respondent	:	Shri Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 28.3.2017 passed by the 3rd Additional Sessions Judge, Durg in Sessions Trial No.13 of 2017, whereby the Additional Sessions Judge has framed a charge under Section 306 of the Indian Penal Code against the Applicant.
2. Case of the prosecution, in brief, is that Shailja Sharma (the deceased), aged about 17 years, who was studying in XIth Standard, committed suicide by jumping before a running train on 9.3.2016. A crime was registered against the Applicant. The allegations against the Applicant are that Shailja Sharma was a student of XIth Standard and examination of Class XIth was going on. On 19.2.2016, examination of commerce subject was fixed and the roll number of Shailja Sharma was 111213 which was allotted to her by the school management. Another student

namely, Simranjeet Kaur was allotted Roll No.111215. On 19.2.2016, at the time of examination, Shailja Sharma entered the room of the examination prior to her classmate Simranjeet Kaur and sat on the seat of Simranjeet Kaur. Thereafter, Simranjeet Kaur also entered the room and saw that Shailja Sharma was sitting on her seat. On her objection, the Applicant, who was a supervisor of the examination, asked Simranjeet Kaur to sit on the seat of Shailja Sharma. It is further alleged that after the examination, when, according to the allotted roll numbers, the answer-sheets were collected by the Applicant, he found that there were two answer-sheets of a same Roll No.111215. Thereafter, on being directed by the Applicant, a teacher, namely, Nandita Ghosh cut the Roll No.111215 in the answer-sheet of Simranjeet Kaur and substituted the said roll number by Roll No.111213, which was allotted to Shailja Sharma. When the answer-sheets were evaluated, the answer-sheet bearing Roll No.111213 which was allotted to Shailja Sharma got only 16 marks and thus Shailja Sharma failed in the examination and as a result of which Shailja Sharma committed suicide by jumping before a running train on 9.3.2016. On completion of the investigation, a charge-sheet was filed against the Applicant for an offence punishable under Section 306 of the Indian Penal Code. Vide the impugned order dated 28.3.2017, the Additional Sessions Judge has framed the charge against the Applicant under Section 306 of the Indian Penal Code. Hence, this revision 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 Learned Additional Sessions Judge has committed manifest illegality in framing the charge against the Applicant. There is no proximity or nexus between the conduct and behaviour of the Applicant with that of the suicide committed by the deceased. The evidence collected by the prosecution itself shows that the Applicant did not know deceased Shailja Sharma from before. The only allegation against the Applicant is that on being found two answer-sheets of a same roll number, he got roll number of one of those two answer-sheets corrected and in place thereof he substituted roll number of Shailja Sharma, i.e., 111213. In doing so, there might be negligence on the part of the Applicant, but this negligence does not make out a case of Section 306 of the Indian Penal Code against him. It was further argued that before committing suicide, Shailja Sharma herself was not aware that her roll number 111213 was mentioned in the answer-sheet of Simranjeet Kaur. Therefore, the Applicant is not involved in commission of suicide by Shailja Sharma.

4. On the other hand, Learned Counsel appearing for the State supported the impugned order and 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 charge against the Applicant warranting interference by this Court.
5. I have heard Learned Counsel appearing for the parties and perused the order impugned including the material available carefully.

6. The question in the present case is whether on considering the entire available material to be correct a *prima facie* case for alleged commission of offence under Section 306 of the Indian Penal Code is made out against the Applicant or not?

7. At this juncture, it is appropriate to look into the provisions of Sections 306 and 107 of the Indian Penal Code, which run 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 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 for abetment, which runs 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 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 has been observed by the Supreme Court in **AIR 2010 SC 327 (Gangula Mohan Reddy v. State of Andhra Pradesh)** thus:

“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 the light of aforesaid enunciation of law, the facts of the present case are to be examined.

- 16.** It is the case of the prosecution that on 19.2.2016, Shailja Sharma was a student of XIth Standard and she had appeared for the examination of commerce subject of XIth Standard. She had been allotted Roll No.111213. One of her classmates, namely, Simranjeet Kaur was allotted Roll No.111215. On the date of examination, Shailja Sharma entered the room of examination and sat on the seat of Simranjeet Kaur. Thereafter, Simranjeet Kaur entered the room of the examination and after taking instructions from the Applicant, who was a supervisor of the examination, sat on the seat of Shailja Sharma. It is the further case of the prosecution that on that date, on completion of the examination, after collecting answer-sheets of the students, it was found that Roll No.111215, which was allotted to Simranjeet Kaur, was mentioned in two answer-sheets. The allegation against the Applicant is that on his instructions, out of those two answer-sheets, roll number of one answer-sheet was corrected and substituted by Roll No.111213 which was allotted to Shailja Sharma. Thereafter, on evaluation of the answer-sheets, the answer-sheet bearing Roll No.111213 got 16 marks and thus Shailja Sharma failed in the examination and allegedly due to this she committed suicide. The evidence collected by the prosecution itself shows that the Applicant was not acquainted with Shailja Sharma (deceased) or her classmate Simranjeet Kaur from before. Without verifying the facts, getting the roll number corrected in the answer-sheet of Simranjeet Kaur can be negligence on the part of the Applicant, but he did it intentionally to hurt Shailja Sharma or did it with any other bad intention, nothing is available in this regard in the entire charge-sheet. The facts of the case and the evidence collected by the prosecution themselves show that Shailja Sharma

herself, before her commission of suicide, was not aware of the fact of correction and substitution of the roll number. Even if the evidence collected by the prosecution is taken as it is, *prima facie* it is not established that the Applicant had been continuously torturing or harassing deceased Shailja Sharma physically or mentally. Any of the ingredients of Section 107 of the Indian Penal Code, as mentioned above, does not constitute the offence alleged against the Applicant.

17. In the opinion of this Court, on considering the entire available material to be correct, 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 or proximity with the conduct and behaviour of the Applicant with that of the suicide committed by the deceased.
18. Consequently, the revision is allowed. The impugned order dated 28.3.2017 framing charge against the Applicant under Section 306 of the Indian Penal Code is set aside. The Applicant is discharged from the charge under Section 306 of the Indian Penal Code.

Sd/-

(Arvind Singh Chandel)
Judge