

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1069 of 2016**Order Reserved on : 28.08.2019Order Delivered on : 04.10.2019

- Sudarshan Banjare S/o late Jageshar Banjare, aged about 57 year, R/o Raghupara, P.S. bodla, District – Kabirdham (C.G.) (Father of deceased Laxmi Patre)

----Applicant**Versus**

1. State of C.G. through, Station House Officer, P.S. Kawardha, District – Kabirdham (C.G.)
2. Ramji S/o Chaitram Satyavanshi, aged about 59 years, R/o Guru Ghasidas Chowk, Satnamipara, Kawardha, District Kabirdham (C.G.)

---- Respondents

For Applicant	:	Shri F.S. Khare, Advocate.
For Respondent No.1	:	Ms. Reena Singh, P.L.
For Respondent No.2	:	Shri Rakesh Pandey, Adv.

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. This revision is directed against the order dated 18.08.2015 passed by the learned Additional Sessions Judge, Kawardha, District Kabirdham, in Sessions Trial No.30/2015, discharging respondent No.2-Ramji of the offence under

Section 306 IPC.

04. Brief facts of the case are that charge sheet under Section 306 IPC has been filed against respondent No.2 before the competent Court on the ground that respondent No.2 abetted deceased Laxmi Patre and her husband Om Prakash Patre, as a result of which Om Prakash Patre first committed murder of his wife Laxmi Patre and thereafter he hanged himself. During the course of investigation, it is prima-facie found that respondent No.2 is a Headmaster of the school where deceased Laxmi Patre was posted as Teacher. Respondent No.2 has intentionally marked absence of deceased Laxmi Patre and harassed her severely. The deceased made complaint to higher official but no action was taken against respondent No.2, and instead of taking action against respondent No.2, they intentionally passed the order of deduction of salary against deceased Laxmi Patre. Due to the harassment of respondent No.2, deceased Laxmi Patre made an application for voluntary transfer from the school and prayed that she may be posted to the school where her husband Om Prakash Patre was posted, for which higher official demanded Rs.50,000/-. Further case is that on 18.09.2014, Laxmi Patre and Om Prakash Patre were found dead in unnatural condition in the house. Om Prakash Patre had committed suicide and Laxmi Patre was found in injured condition and while she was being taken to hospital, she succumbed to injuries. During merged investigation, a suicidal

note was found, which was allegedly written by deceased Om Prakash Patre. In this letter, the names of respondent No.2 and others were mentioned and it is stated in the letter that the persons, whose names have been mentioned in the letter, are responsible for their death. Thereafter, FIR was registered against respondent No.2 and other accused persons and after completion of investigation, charge sheet was filed against respondent No.2. The learned trial Court, on 18.08.2015, heard argument before charge and by the impugned order discharged him from the charge under Section 306 IPC. Hence, this revision by the father of deceased Laxmi Patre.

05. Learned counsel for the applicant submits that the order passed by the learned trial Court is perverse and against the facts of the case. The prosecution witnesses have clearly stated in their 161 Cr.P.C. statements that respondent No.2 and other higher officers are involved in the alleged incident. The suicidal letter clearly shows that when deceased Laxmi Patre made an application for transfer, the higher authorities, whose names have been mentioned in the suicidal letter, demanded bribe and they did not take any action on the complaint made by the deceased. He further submits that it is not in dispute that respondent No.2 has intentionally misbehaved with deceased Laxmi as is evident from the prosecution witnesses who have clearly stated that the respondent No.2 is responsible for the death of deceased Laxmi Patre. He also submits that there is documentary

evidence which shows that action was taken against respondent No.2 by District Education officer, Kabirdham, inquiry was initiated and a committee consisting of three members were also constituted who gave its report which shows that there was order dated 06.12.2013 directing the deceased Laxmi Patre that her salary would be deducted and she was also warned. Thus, the impugned order is bad in law and is liable to be set aside.

06. Learned counsel for the State and respondent No.2 supported the impugned order passed by the Additional Sessions Judge.

07. I have heard learned counsel for the parties and perused the material on record.

08. The main substantial question which arises in this revision is whether the trial Court was justified in discharging the accused/respondent No.2 under Section 306 and 107 IPC. The learned trial Court, by the impugned judgment, held that there appears no prima-facie ground against accused/respondent No.2 under Section 306 read with section 107 IPC and discharged him from the offence.

09. This Court would like to deal with the concept of 'abetment'. Section 306 of the Cr.P.C. deals with 'abetment of suicide' which reads 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”

10. The word 'suicide' in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. 'Sui' means 'self' and 'cide' means 'killing', thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself. In our country, while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under section 309 of IPC.

11. 'Abetment of a thing' has been defined under Section 107 of the Cr.P.C. This Court deem it appropriate to reproduce section 107, which read as under:-

“107. Abetment of a thing - A person abets the doing of a thing, who -

First - Instigate 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 places in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aides, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with section 107 read as under:

“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.”

12. This Court in the matter of **Santosh Vishwakarma & Another Vs. State of M.P. (Now C.G.)**¹, held that there must be direct, proximate and co-related incidence of suicide and merely uttering bad words and beating on account of quarrel without any *mensrea* is not an abetment. The para 8 thereof is reproduced herein below:-

“8. If we look into the facts of the present case in the light of the above principle of law and the statements of the father, mother and sister of the deceased, it is admitted position that in the evening of 4-12-1994 Khageshwar hit his cycle on the leg of deceased Anand Kumar Dhruv to which he objected and thereafter, the present accused/applicants along with Khageshwar had beaten the deceased and also threatened him with dire consequences, as a result of which he went to his house and after taking the cycle left the house and he never returned, thereafter, his dead body was found on the railway track on 06-12-1994. Merely on the basis of the quarrel took place between the deceased and the accused persons and the accused persons had beaten the deceased does not constitute abetment. As has been mentioned in the earlier part of this order, in order to constitute the offence it is necessary that the accused must have provoked, incite or

¹ 2004 (2) C.G.L.J. 34

induced the deceased to commit suicide and that too with mens rea that as a result of their act or instigation or inducement the necessary outcome was suicide by the deceased. Beating on account of quarrel and merely uttering the word on the spur of the moment with a threat of dire consequences without any mens rea, the act of the accused cannot be termed as abetment. The act of the accused must be such that the deceased was left with no alternative but to commit suicide. The act of the accused and committing of suicide must be so direct, proximate and correlated with committing of suicide and must be direct result of the instigation or act of the accused. These ingredients are missing in the present case."

13. In the instant case, the prosecution case is that respondent No.2 had severely harassed deceased Laxmi Patre and due to harassment being made by respondent No.2, Om Prakash Patre - husband of Laxmi Patre, first murdered his wife and, thereafter, he (Om Prakash Patre) committed suicide. Having gone through the evidence of prosecution witnesses, it is nowhere established the link between respondent No.2 and deceased Om Prakash Patre, husband of Laxmi Patre. From the oral and documentary evidence, it is also not established that the act of accused/respondent No.2 instigated deceased Laxmi Patre and her husband Om Prakash Patre to take this extreme step of suicide. The learned trial Court, in its order, also noted that for framing of charges, prima-facie the Court

should consider whether there is sufficient basis for trial against the accused. The material and documents available in the present case are not pointing prima-facie to the facts that all the ingredient of crime are present. Even if, for the sake of argument it is considered that deceased Laxmi Patre was being harassed, but there is no evidence on record that respondent No.2, in any manner, harassed Om Prakash Patre, husband of deceased Laxmi Patre. It is not the case of the prosecution that deceased Laxmi Patre also committed suicide, whereas, according to the prosecution, deceased Om Prakash Patre first committed murder of his wife and, thereafter, hanged himself. In the circumstances, it cannot be held that the accused/respondent No.2 abetted deceased Laxmi Patre and her husband Om Prakash Patre to commit suicide. Even the prosecution case is accepted in totality as it is on the face of it, the essential ingredients to constitute the offence under Sections 306 and 107 IPC are missing. Hence, the impugned order is just and proper.

14. In the result, the criminal revision is liable to be dismissed and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE