

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2546 of 2012

Joyeeta Saha & Anr.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Amartya Ghosh
Mr. Siddhartha Paul
Mr. Sourayadeep Ghosh

For the State : Mr. Avishek Sinha

Heard on : 24.01.2024, 29.02.2024, 06.05.2024

Judgment on : 31.07.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners for quashing of proceeding being G.R. No. 4137/2011 pending before the Learned Additional Sessions Judge, First Track Court, No.2, Barasat corresponding to Baguihati Police Station Case No. 469/2010 dated 28.10.2010 under Section 306 of the Indian Penal Code and all orders passed therein including the order dated 26.06.2012 passed by the Learned Additional Sessions Judge, First Track Court, No.2, Barasat thereby rejecting the prayer of the petitioners from being discharged from the instant case.
2. Petitioner no.1 married one Gopal Saha, son of Tushar Kanti Saha, the de facto complainant of the instant case on 02.03.2010 and resided

separately at G.A. 56, Narayantala Road, Drishti Apartment, 2nd floor, Police Station Baguihati, Kolkata- 700059, at the annoyance of the de facto complainant and his wife.

3. On 28.10.2010 at about 12:15 a.m., the de facto complainant learnt his son, the victim committed suicide by hanging himself in his dining room with a nylon rope on 27.10.2010 at 11:00 p.m. The de facto complainant went to the aforesaid flat and found the dead body of his son.
4. Subsequently, the de facto complainant father of the deceased lodged a written complaint at the Baguihati Police Station on 28.10.2010, inter alia, alleging commission of offence punishable under Section 306 of the Indian Penal Code against the present petitioners.
5. Allegedly the death of the victim was due to suppression of an earlier marriage of petitioner no.1 which caused the deceased to suffer mental agony compelling him to commit suicide at the instance of the petitioners.
6. Baguihati Police Station Case No.469/2010 dated 28th October, 2010 under Section 306 of the Indian Penal Code was subsequently registered.
7. On conclusion of the investigation, charge-sheet being No.3/2011 dated 15.01.2011 under Section 306 of the Indian Penal Code was submitted against both the petitioners.
8. The petitioners filed a petition praying for discharge on 15th May, 2012 before the Learned Additional Sessions Judge, Fast Track Court No.2, Barasat, which was objected through an application filed on behalf of the State.

9. On 26.06.2012 the Learned Additional Sessions Judge, Fast Track Court No.2, Barasat rejected the prayer of the petitioners for discharge and the date 17.08.2012 was fixed for framing of charge.
10. Considered the rival contentions of the Learned Advocate for the petitioners as well as the State.
11. The power of the High Court under Section 482 of the Code of Criminal Procedure is restrictive in nature. It cannot act as a Trial Court and has to be cautious in granting the relief sought for in terms of quashing the proceedings. However, it is also incumbent upon the High Court to discern the complainant's case of accusations whether to be indistinct, vague, cryptic, devoid of particular materials to prima facie constitute the ingredients legally sustainable for commission of an offence. Mere vague assertions based on assumptions and suspicions cannot be entertained to comprise a prima facie case to proceed with the trial to the predicament and unwarranted rigour of the accused persons.
12. Apparently the statements recorded under Section 161 of the Code of Criminal Procedure Code as well as Section 164 of the Code of Criminal Procedure did not reveal that the victim was subjected to prolonged and continuous mental or physical torture or cruelty by the petitioners which propelled him to commit suicide barring any other alternative. It had been alleged that the victim was not allowed to meet his parents and other members of the family to the disgust and umbrage of the petitioners. The victim and his wife resided at a separate accommodation and there was no indication on the records of the victim being captivated and confined at a certain place restricting his freedom of movement preventing and

precluding him to contact his parents and family members. Being an adult male, the victim had ample volition and liberty to communicate with his family members disregarding the displeasure of the petitioners. Candidly the victim if at all exasperated by the act of the petitioners could have left their company and resided with his family members. Moreover, the document denoting the marriage of the victim and the petitioner wife indicated her status to be that of a divorcee at the time of marriage with the victim. Therefore, the suppression of the earlier marriage of the petitioner's wife to the victim and his family was eventually obliterated.

13. In order to constitute an offence under Section 306 of the Indian Penal Code, there should be instances of abetment under Section 107 of the Indian Penal Code immediate or proximate instigation should be exceedingly grave in nature frustrating the victim to an extent of resentment, despair and anguish impelling him to commit suicide.

14. In ***Ude Singh v. State of Haryana***¹ the following was held by the Hon'ble Supreme Court:-

“15. Thus, “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:

(i) he instigates any person to do that thing; or

(ii) he engages with one or more persons in any conspiracy for the doing of that thing; or

(iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

¹(2019) 17 SCC 301

These are essential to complete the abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. *In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.*

16.1. *For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306 IPC. If the accused plays an active*

role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. *We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set-ups, education, etc. Even the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”*

15. The Hon'ble Supreme Court in **Geo Varghese v. State of Rajasthan**² held the following:-

²(2021) 19 SCC 144

“15. The ordinary dictionary meaning of the word “instigate” is to bring about or initiate, incite someone to do something. This Court in *Ramesh Kumar v. State of Chhattisgarh* [*Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has defined the word “instigate” as under : (SCC p. 629, para 20)

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”.”

16. The scope and ambit of Section 107IPC and its co-relation with Section 306IPC has been discussed repeatedly by this Court. In *S.S. Chheena v. Vijay Kumar Mahajan* [*S.S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] , it was observed as under : (SCC p. 197, para 25)

“25. 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. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306IPC 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

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22. What is required to constitute an alleged abetment of suicide under Section 306IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations

attributed to the accused are otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

16. The Hon’ble Supreme Court in **Mariano Anto Bruno v. State**³ held the following:-

“42. To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.”

17. The Hon’ble Supreme Court held the following in **Naresh Kumar v. State of Haryana**⁴:-

“21. This Court in Gurcharan Singh v. State of Punjab [Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200 : (2021) 1 SCC (Cri) 417], observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

³2022 SCC OnLine SC 1387

⁴(2024) 3 SCC 573

22. *This Court in Kashibai v. State of Karnataka [Kashibai v. State of Karnataka, (2023) 15 SCC 751 : 2023 SCC OnLine SC 575] , observed that to bring the case within the purview of “abetment” under Section 107IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.*

23. *Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he : (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a “subjective” test).*

24. *For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:*

“A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”

Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

25. *It is now well settled that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.*

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35. *This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words “may presume”. It must take into account all the circumstances of the case which is an additional safeguard.*

36. *In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306IPC by raising presumption under Section 113-A.*

37. *Before we part with this matter, we may only observe that the criminal justice system of ours can itself be a punishment. It is exactly what has happened in this case. It did not take more than 10 minutes for this Court to reach to an inevitable conclusion that the conviction of the appellant convict for the offence punishable under Section 306IPC is not sustainable in law. The ordeal for the appellant started sometime in 1993 and is coming to the end in 2024 i.e. almost after a period of 30 years of suffering. At the same time, we are also mindful of the fact that a young woman died leaving behind her 6-month-old infant. No crime should go unpunished. But at the same time, the guilt of the accused has to be determined in accordance with law. To put it in other words, the guilt of the accused has to be determined on the basis of legal evidence on record.*

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39. *In the case of accusation for abetment of suicide, the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence. Appreciation of evidence in criminal matters is a tough task and when it comes to appreciating the evidence in cases of abetment of suicide punishable under Section 306IPC, it is more arduous. The court must remain very careful and vigilant in applying the correct principles of law governing the subject of abetment of suicide while appreciating the evidence on record. Otherwise it may give an impression that the conviction is not legal but rather moral.”*

18. In the case of **State of Haryana and Others v. Bhajan Lal and Others**⁵ the Hon’ble Supreme Court observed as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

⁵ 1992 SCC(Cri) 426

constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance

on the accused and with a view to spite him due to private and personal grudge.”

19. The victim had on his own locked the petitioner wife in the room from outside and hanged himself. It was beyond the knowledge and control of the petitioner wife to have imminently rescued the victim from hearing himself. Human psychology and mental state cannot be generally equated which varies from person to person. Egregious act on the part of a person from intractable emotions, depressions cannot be perceived or fathomed. One can be frenzied or hysterical even on minute and momentary disagreement resorting to extremities which cannot be termed as an instigation, inducement or abetment to commit suicide. The allegations improbabilized the commission of a cognizable offence in the F.I.R.
20. In view of the above discussions, the proceeding being G.R. No. 4137/2011 pending before the Learned Additional Sessions Judge, First Track Court, No.2, Barasat corresponding to Baguihati Police Station Case No. 469/2010 dated 28.10.2010 under Section 306 Indian Penal Code and all orders passed therein including the order dated 26.06.2012 passed by the Learned Additional Sessions Judge, First Track Court, No.2, Barasat is quashed.
21. Under such circumstances, the instant criminal revisional application being CRR 2546 of 2012 is allowed.
22. Accordingly, CRR 2546 of 2012 stands disposed of.
23. There is no order to costs.
24. Case diary to be returned forthwith.

25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)