

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4195 of 2023

**Dr. Kaushik Roy
VS.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Arun Kumar Bhagat,
Mr. Arun Goswami,
Ms. Suparna Basu,
Mr. Manabendranath Bandyopadhyay.

For the State : Mr. Debasish Roy,
Ms. Sreyashee Biswas,
Ms. Puspita Saha.

Hearing concluded on : 15.01.2025

Judgment on : 15.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred against an order no. 8 dated 05.09.2023, passed by the Learned Additional Sessions Judge, 2nd Court, Howrah in Case No. ST No. 115 of 2023 corresponding to G.R Case No. 47 of 2017 arising out of Liluah Police Station Case no. 237 of 2017 dated 12.09.2017

under Section 306 of the Indian Penal Code, rejecting the application for discharge of the petitioner herein. The charge faced by the petitioner is under Section 306 of the Indian Penal Code.

2. The written complaint filed by the father of the deceased before the concerned police station on 12.09.2017 contains the allegations as follows:-

"That my daughter Miss Sanchita Chatterjee made a suicide by taking poisonous medicine on 11.09.2017 at around 9.30 p.m. She had died in Medical College Hospital. I am also informing you that a person named Dr. Kaushik Roy, S/O Kalyan Roy residing at Kalyani and practising at NRS Hospital is responsible for this accident. At night she had a conversation with him. I think that Dr. Kaushik Roy might be responsible for this accident."

3. The petitioner's case is that in the year 2011 he helped the victim get admission in the Homeopathy College after which the victim expressed her desire to marry the petitioner.
4. The petitioner expressed his inability to marry the victim and left his job at Rishra Seva Sadan in 2017, where he had met the victim.
5. On 11.09.2017 the petitioner got information that the victim had committed suicide.
6. The de facto complainant in spite of service has not appeared before this Court. The learned Public Prosecutor has placed the

case diary, from wherein it appears that the victim prima facie was in love with the petitioner and on being denied marriage, committed suicide.

7. The Supreme Court in ***Prabhu vs The State Rep By The Inspector Of Police, Criminal Appeal No. of 2024 @ SLP (Crl.) No. ____/2024 (@ SLP (Crl.) Diary No. 39981/2022)***, on **30 January, 2024**, it was held:-

“7. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

8. *Abetment is defined in Section 107 IPC and it reads as follows:*

“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 facilitates the commission thereof, is said to aid the doing of that act.”

9. *In a recent judgment of this Court in **Kamalakar vs. State of Karnataka in Criminal Appeal No. 1485 of 2011** [decided on 12.10.2023], one of us (Vikram Nath J.) explained the ingredients of Section 306 IPC. The Court has held as follows:*

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

***8.3.** In Ramesh Kumar v. State of Chhattisgarh, this Court has analysed different meanings of “instigation”. The relevant para of the said judgment is reproduced herein:*

“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.” 8.4.

The essentials of Section 306 IPC were elucidated by this Court in M. Mohan v. State, as under:

“43. *This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment.*

The Court dealt with the dictionary meaning of the word “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of selfesteem and selfrespect.

Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. *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.*

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.”*

8.5. *The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in Amalendu Pal alias Jhantu v. State of West Bengal³ in the following paragraphs:*

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

10. *On a perusal of the above, and relying upon this Court's previous judgments discussing the elements of Section 306 IPC, the following principles emerge:*

"10.1 Where the words uttered are casual in nature and which are often employed in the heat of the moment between quarrelling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [Swami Prahaladdas v. State of M.P 1995 Supp. (3) SCC 438, Paragraph 3; Sanju v. State of M.P (2002) 5 SCC 371, Paragraph 12]

10.2 In order to constitute 'instigation', it must be shown that 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. The words uttered by the accused must be suggestive of the consequence [Ramesh Kumar v. State of Chhatisgarh (2001) 9 SCC 618, Paragraph 20]

10.3 Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, Paragraph 20]

10.4 There must be direct or indirect acts of incitement to the commission of suicide. The accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide [Amalendu Pal v. State of West Bengal (2010) 1 SCC 707, Paragraph 1214]

10.5 The accused must have intended or known that the deceased would commit suicide because of his actions or omissions [Madan Mohan Singh v. State of Gujarat (2010) 8 SCC 628]"

11. *Applying the above yardstick to the facts of the present case in question, even if we take the case as*

a whole and test the prosecution case on a demurrer, it could not be said that the actions of the accused instigated Kousalya to take her life or that he conspired with others to ensure that the person committed suicide or any act of the appellant or omission instigated the deceased resulting in the suicide.

12. *Broken relationships and heart breaks are part of everyday life. It could not be said that the appellant by breaking up the relationship with Kousalya and by advising her to marry in accordance with the advice of her parents, as he himself was doing, had intended to abet the suicide of Kousalya. Hence the offence under Section 306 is not made out."*

8. The supreme court in ***Prakash vs The State Of Maharashtra, Criminal Appeal No.of 2024, (Arising out of SLP (Crl.) No.1073 of 2023), decided on December 20, 2024,*** it was held:-

"12. *The relevant provisions of the IPC that fall for consideration are 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 facilitates the commission thereof, is said to aid the doing of that act.”

13. *Section 306 of the IPC has two basic ingredients—first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.*

14. *Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well- established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.*

15. *The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act,*

direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide.

16. This Court in the case of **S.S. Chheena v. Vijay Kumar Mahajan and Another**¹², had an occasion to consider the scope of Section 306 of the IPC and the ingredients which are essential for abetment, as set out in Section 107 of the IPC. It observed as follows:

“16. The word “suicide” in itself is nowhere defined in the 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.

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18. In our country, while suicide in 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 IPC.

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21. The learned counsel for the appellant has placed reliance on a judgment of this Court in *Mahendra Singh v. State of M.P.* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] In *Mahendra Singh* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the allegations levelled were as under: (SCC p. 731, para 1)

“1. ... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the

statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

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23. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that: (SCC p. 90, para 17)

“17. ... 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 the life by committing suicide. If it [appears] 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.”

24. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

17. *This Court held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing. Therefore, without a positive act on the part of the accused to instigate or aid a person in committing suicide, conviction cannot be sustained. This Court further observed that 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 of IPC, there has to be a clear mens rea to commit the offence. Abetment also requires an active act or direct act which led the deceased to commit suicide seeing no other option and that act must have been intended to push the deceased into such a position that he committed suicide. However, this Court has cautioned that since each person reacts differently to the same provocation depending on a variety of factors, it is impossible to lay down a straightjacket formula to deal with such cases. Therefore, every such case has to be decided on the basis of its own facts and circumstances.*

18. *More recently, in the case of **Jayedeeepsinh Pravinsinh Chavda and Others v. State of Gujarat**¹³, this Court has relied on **S.S. Chheena** (supra) to hold that the element of mens rea cannot simply be presumed or inferred, instead it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law, that is deliberate and conspicuous intention to provoke or contribute to the act of suicide, would remain unfulfilled. This Court observed as follows:*

“18. For a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence

of clear mens rea—the intention to abet the act—is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide.”

19. It is, therefore, evident that the positive act of instigation is a crucial element of abetment. While dealing with an issue of a similar nature, this Court in the case of **Ramesh Kumar v. State of Chhattisgarh**,¹⁴ laid down the parameters of what would be constituted to be an act of instigation. This Court observed as follows:-

“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.”

20. It could thus be seen that this Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. It has been held that in order 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, however, a reasonable certainty to

incite the consequence must be capable of being spelt out. Applying the law to the facts of the case, this Court went on to hold that a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. Relying on the decision in the case of **Ramesh Kumar** (*supra*), this Court in the case of **Ude Singh and Others v. State of Haryana**¹⁵ observed as follows:

“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.”

22. *It could thus be seen that this Court observed that 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 has been held that since the cause of suicide particularly in the context of*

the offence of abetment of suicide involves multifaceted and complex attributes of human behaviour, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. This Court further observed that a mere allegation of harassment of the deceased by another person would not suffice unless there is such action on the part of the accused which compels the person to commit suicide. This Court also emphasised that such an offending action ought to be proximate to the time of occurrence. It was further clarified that 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. It was further held that if the acts and deeds are only of such nature where the accused intended nothing more than harassment or a 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. This Court held that owing to the fact that the human mind could be affected and could react in myriad ways and that similar actions are dealt with differently by different persons, each case is required to be dealt with its own facts and circumstances.

23. *In the case of **Sanju @ Sanjay Singh Sengar** (supra), the appellant before this Court was charged with having abetted the suicide by his brother-in-law (sister's husband). The prosecution story was that there were strained relations between the deceased and his wife who at the material time was staying with the appellant therein. On 25th July, 1998 the deceased went to the appellant to bring back his wife. There was a quarrel between the appellant and the deceased who came back alone. The deceased told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words. On 27th July, 1998 the deceased was found dead. The deceased left a suicide note which showed his disturbed state of mind but otherwise he blamed the appellant for the suicide. The appellant's petition for quashing of the charge-sheet filed under Section 482 Cr.P.C. was*

dismissed by the High Court which led him to file an appeal before this Court which came to be allowed. While taking note of the disturbed state of mind of the deceased as was evident from the suicide note and the lack of intention on the part of the accused to abet the commission of suicide by the deceased, the Court held that there was a time gap of 48 hours between the abusive language being used and the commission of suicide. As such, owing to the passage of 48 hours, giving the deceased enough time to reflect, there was no proximate link between the words uttered and the act of suicide. This Court observed as follows:

“8. In Swamy Prahaladdas v. State of M.P. [1995 Supp (3) SCC 438 : 1995 SCC (Cri) 943] the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked to the deceased “to go and die”. This Court was of the view that mere words uttered by the accused to the deceased “to go and die” were not even prima facie enough to instigate the deceased to commit suicide.

9. In Mahendra Singh v. State of M.P. [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the appellant was charged for an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under: (SCC p. 731, para1)

“My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

10. This Court, considering the definition of “abetment” under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620)

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 for abetting the offence of suicide should be found guilty.”

12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25-7-1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased “to go and die”. For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 CrPC when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 CrPC is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him “to go and die”. **Even if we accept the prosecution story that the appellant did tell the deceased “to go and die”,**

that itself does not constitute the ingredient of “instigation”. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25- 7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27- 7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7- 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25- 7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

.....

14. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to

*them in an inebriated condition and was abusing her and other members of the family. **The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25- 7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of “abetment” are totally absent in the instant case for an offence under Section 306 IPC.** It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.”*

(emphasis supplied)

24. *It could thus be seen that this Court held that both the courts below had erroneously accepted the prosecution story that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July 1998 wherein it was alleged that the appellant therein had used abusive language and had reportedly told the deceased ‘to go and die’. It was held that even if one accepts the prosecution story that the appellant did tell the deceased ‘to go and die’, that itself did not constitute the ingredient of ‘instigation’. This Court held that it was common knowledge that the words uttered in a quarrel or on the spur of the moment could not be taken to be uttered with mens rea. It has been held further that the alleged abusive words were said to have been told to the deceased on 25th July 1998 during a quarrel and the deceased was found hanging on 27th*

July, 1998. This Court held that if the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and therefore, it could not be said that the abusive language which had been used by the appellant on 25th July 1998 drove the deceased to commit suicide on 27th July 1998. It has been held that the suicide by the deceased was not proximate to the abusive language used two days prior. Additionally this Court held that a plain reading of the suicide note made it clear that the deceased was in great stress and depressed and the suicide note also clearly suggested that it was not the handiwork of a man with a sound mind and sense. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased.

25. Relying on the decision in the case of **Sanju @ Sanjay Singh Sengar** (supra), this Court in the case of **Gurjit Singh** (supra) set aside the conviction under Section 306 of the IPC as it was clear from the evidence on record that there was a time gap of about two months between the last visit of the deceased to her parents with regard to the illegal demand for money by the accused-appellant and the date of commission of suicide by the deceased. As such, this Court held that there was nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the accused-appellant. This Court observed as follows:

“36. It could further be seen from the evidence on record that **the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In Sanju v. State of M.P. [Sanju v. State of M.P., (2002) 5 SCC 371 : 2002 SCC (Cri) 1141]** this Court found that there was time gap of 48 hours between the accused telling the deceased “to go and die” and the deceased “committing suicide”. As such, this Court held

that there was no material to establish that the accused had abetted the suicide committed by the deceased.”

(emphasis supplied)

26. Thus, this Court has consistently taken the view that instigation or incitement on the part of the accused person is the gravamen of the offence of abetment to suicide. However, it has been clarified on many occasions that in order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of instigation by the accused person.

27. This Court in the case of **Mohit Singhal** (*supra*) reiterated that the act of instigation must be of such intensity and in such close proximity that it intends to push the deceased to such a position under which the person has no choice but to commit suicide. This Court held that the incident which had allegedly driven the deceased to commit suicide had occurred two weeks prior and even the suicide note had been written three days prior to the date on which the deceased committed suicide and further, there was no allegation that any act had been done by the accused-appellant therein in close proximity to the date of suicide. This Court observed as follows:

“11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. **The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide.** The

deceased has blamed the third respondent for landing in trouble due to her bad habits.

12. Therefore, in our considered view, the offence punishable under Section 306IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law.”

(emphasis supplied)

28. *This Court in the case of **Naresh Kumar v. State of Haryana**¹⁶, observed as follows:-*

*“20. This Court in **Mariano Anto Bruno v. State** [**Mariano Anto Bruno v. State**, (2023) 15 SCC 560 : 2022 SCC OnLine SC 1387] , after referring to the abovereferred decisions rendered in context of culpability under Section 306IPC observed as under : (SCC para 45)*

*“45. ... It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. **Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306IPC is not sustainable.**”*

(emphasis supplied)”

- 9.** The allegations in the written complaint are that, the night prior to the incident in this case, the victim had conversation with the petitioner.
- 10.** In the present case, there is no proof of direct or indirect acts of incitement to the commission of suicide.
- 11.** There is also no allegation of any instigation/incitement or harassment. There is only denial to marry. A prudent person is

not expected to die by suicide in such circumstance and as such there being no prima facie materials to substantiate the offences alleged against the petitioner, the proceeding in this case is liable to be quashed.

12. CRR 4195 of 2023 is allowed.

13. The proceedings including the order under revision in G.R Case No. 47 of 2017 arising out of Liluah Police Station Case no. 237 of 2017 dated 12.09.2017 under Section 306 of the Indian Penal Code, pending before the learned Additional Sessions Judge, 2nd Court, Howrah, **is hereby quashed/set aside in respect of the petitioner namely Kaushik Roy.**

14. All connected applications, if any, stands disposed of.

15. Interim order, if any, stands vacated.

16. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]