

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.285 of 2009

1. PARMILA DEVI @ TENGRAHAWALI W/o Shri Bito Swarnkar R/o vill -
Bajinathpur, P.O.- Bajinathpur, P.S.- Sour Bazar, Distt.- Saharsa
2. Mukesh Swarnkar @ Mukesh Kumar S/o Sri Bito Swarnkar R/o vill -
Bajinathpur, P.O.- Bajinathpur, P.S.- Sour Bazar, Distt.- Saharsa
3. Bhim Swarnkar @ Bhim Sonar S/o Shri Bito Swarnkar R/o vill -
Bajinathpur, P.O.- Bajinathpur, P.S.- Sour Bazar, Distt.- Saharsa

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Ms. Pallavi Pandey, Amicus Curiae
For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 19-01-2026

Heard learned Amicus Curiae for the appellants
and learned Additional Public Prosecutor for the State.

2. The present appeal is directed against the judgment of conviction dated 07.02.2009 and order of sentence dated 13.02.2009 passed by learned Additional Sessions Judge, Fast Track Court - V, Saharsa in Sessions Trial No. 40 of 2008, arising out of Saurbazar P.S. Case No. 239 of 2007, G.R. Case No. 1664 of 2007 whereby and whereunder the appellants have been convicted for the offence punishable under Sections 498A/34 and 306/34 of the Indian Penal Code



and have been sentenced to undergo rigorous imprisonment for seven years for the offences under Section 306/34 of IPC and appellants have further been sentenced to undergo rigorous imprisonment for three years for the offences under Sections 498A/34 of the Indian Penal Code. Both the sentences have been directed to run concurrently.

3. The fardebayan of informant/ Dinesh Kumar Swarnkar (PW4) was recorded near Sonarpatti P.S. Sourbazar at 2:00 AM on 29.09.2007. As per prosecution case, about four years ago marriage of informant's sister/victim was solemnized with the appellant no. 3 - Bhim Swarnkar @ Bhim Sonar and she was blessed with male child who was about three years old. It is alleged that about four days prior to the alleged occurrence, the deceased/victim made communication with the informant on telephone of a betel shop owner namely Pappu Kumar and informed him that victim's mother-in-law/appellant no. 1, brother-in-law Mukesh Swarnkar/appellant no. 2 and her husband/appellant no. 3 used to assault and torture her and denied to give food to the victim and she further informed that she would not survive and she had no option rather to commit suicide because of being tortured by the appellants as said torturous act became



unbearable, upon which informant tried to pacify the matter. It is alleged that on 28.09.2007 at about 7PM some unknown person of Baijnathpur made contact on the mobile of villager of the informant, namely, Poona Devi and intimated that victim had committed suicide. Upon that information, informant reached *sasural* of victim at about 1 AM in the night of 29.09.2007 and saw the victim dead and noticed the ligature mark of hanging in the neck of deceased. It is alleged that victim committed suicide as a result of torture and cruelty meted out to her by the appellants. It is further alleged that the appellants absconded with Mukesh Kumar (three years old) who is son of the deceased and only dead body of the victim was lying therein the house.

4. On the basis of fardbeyan of informant/PW-4, Sourbazar P.S. Case No. 239 of 2007 was registered under Sections 498A and 306/34 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant under Sections 498A, 306/34 of the IPC. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed



charges against the appellants under Sections 498A/34 and 306/34 of the IPC. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused person/appellant, prosecution has examined altogether eleven witnesses. PW-1 Jai Kant Yadav – a formal witness who has identified signature and handwriting of the then officer In-charge of Saurbazar P.S. Binda Paswan on the formal FIR which is marked as Ext.- 1, PW-2 Munna Sonar (hostile), PW-3 Chandu Sonar (hostile), PW-4 Dinesh Kumar Swarnkar (informant of the case) has identified his signature on the Fardbayan and also signature of Suresh Swarnkar, which are marked as Exts.-1 & 1/1 respectively, PW-5 Asharfi Pandit, who has been examined as a material witness of the occurrence and has identified his signature on the inquest report and signature of Ashok Kumar on the same, which are marked as Exts. 1/3 and 1/4 respectively, PW-6 Suresh Swarnkar (hostile), PW-7 Umda Devi (hostile), PW-8 Ram Bilash Singh who is a formal witness and has identified the endorsement on the fardebayan in the handwriting and signature of Bhola Prasad Singh which is marked as Ext- 1/5,



PW-9 Shankar Saran and PW-10 Bhola Prasad Singh (I.O. of the case) and PW-11 Dr. Sacchidanand Rai (doctor).

6. Prosecution has relied upon following documentary evidence on record:-

Ext. 1- The formal FIR in the handwriting of Bind Paswan, the then Sub-Inspector and Officer-in-Charge of Saurbazar Police Station;

Ext. 1/1 – Signature of informant Dinesh Kumar Swarnkar on the Fardbeyan;

Ext. 1/2 – Signature of witness Suresh Swarnkar on the Fardbeyan;

Ext. 1/3 – Signature of witness Asharfi Pandit on the inquest report of deceased Kala Devi;

Ext. 1/4 – Signature of witness Ashok Kumar on the inquest report of deceased;

Ext. 1/5 – The pagination in the handwriting and bearing the signature on the fardbeyan of the informant, Dinesh Kumar Swarnkar, in Saurbazar Police Station Case No. 239/2007;

Ext. 2 – IO has identified the Fardbeyan to be in his pen and signature;

Ext. 3 – IO has identified his handwriting and signature of on the inquest report;

Ext. 4 – IO has identified his writing on the seizure list and signature of witnesses Parmeshwar Sah and Sitaram Sonar;

Ext. 5 – the dead body chalan;

Ext. 6 – Post-mortem report of the deceased.



7. Defence has produced only one witness Chandra Kishore Yadav who has been examined as DW-1. However, defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

8. After hearing the parties, the learned trial court convicted the appellants and sentenced him as indicated in the second paragraph of the judgment.

9. Following submissions have been made on behalf of learned counsel for the appellants:-

10. Learned counsel for the appellants submits that judgment of conviction and order of sentence passed by the trial court is illegal and not supported by any material available on record and same is based on conjectures and surmises. He further submits that PW-4 is the informant as well as star witness of the case and his statement in the initial version of prosecution story is totally contradictory from the latter version while adducing evidence before the Court. He further submits that during the course of adducing evidence before the Court, PW-4/informant has taken U-turn from the initial version of prosecution story as he has clearly stated



during the course of cross-examination that appellants have not made any demand of dowry and marriage was performed ideally and the reason for committing suicide is that appellants are relatively poor in comparison to the informant's side and husband of the deceased used to reside outside. In this way, the version of the PW-4 is quite inconsistent and totally contradictory with the initial version of the prosecution story and his version cannot be trusted and the same can be negated. He further submits that informant is a factual witness and he has not supported the case of prosecution during the course of adducing evidence before the learned trial court. He further submits that PWs- 1, 5 and 8 are formal witnesses and their statements are of no significance in the light of the facts and circumstances of the case. He further submits that PW-10 is an official witness who is the Investigating Officer of the case and his evidence is full of infirmities regarding the fair investigation. He further submits that PW-10 has not conducted fair investigation as to how the victim has committed suicide. He further submits that PW-10 has not inspected the place from where the information has been gathered regarding the alleged occurrence. He further submits that PW-10 (Investigating Officer) has not recorded the



statement of owner of the betel shop. He further submits that PW-10 has not stated anything regarding the unknown person of Baijnathpur who made contact on the mobile of villager of the informant, namely, Poona Devi and she has not been produced in the Court, so that truth of the occurrence could be found out. On the several aspects, the investigation has been left unattended. In this way, the role of the investigating officer (PW10) is in question mark. Though doctor (PW 11) has given the opinion but doctor has not categorically stated as to whether the death was suicidal or homicidal. In absence of the factual witnesses, the case of the prosecution cannot be proved beyond reasonable doubt. Even if the expert witnesses denote the opinion regarding the occurrence but as to how the manner of occurrence could be inferred from the place of occurrence, who has seen the occurrence, as to how the occurrence has taken place, for the aforesaid purposes, the factual witnesses are required. In the present case, there is single factual witness who has given contradictory statement and his statement is not reliable. In the light of the facts and circumstance so the case, the prosecution has failed to prove the case beyond the reasonable doubt. There was no reason for which the suicide has been committed. There was no



triggering point for abetting due to which suicide has been committed and nothing was found on record which clearly indicates that the suicide was committed just because the act of the appellants. In this way, the judgment of conviction and order of sentence passed by the concerned court is not justified and legal and same is liable to be set aside.

11. Learned APP for the State has submitted that PW-4 who is the informant of the case has categorically stated in initial version of prosecution story as to how the appellants have tortured the informant's sister/victim and made the situation intolerable, thereby compelling her to commit suicide. He further submits that victim had already intimated the informant about the ill treatment meted out to her which the informant has very specifically and categorically stated in the initial version of the prosecution story. Though, during the course of cross-examination some contradictions are there but on the said basis whole prosecution story cannot be thrown out. He further submits that doctor has examined the victim and has pointed out the death was on account of asphyxia resulting from hanging and the opinion of doctor is quite corroborative of the allegation made in FIR and the Investigating Officer (PW10) has also pointed out that



informant and other prosecution witnesses have supported the case of prosecution when the statements were recorded by the informant under Section 161 of Cr.P.C.. In this way, the judgment of conviction and order of sentence passed by the concerned court are justified and legal. Hence, no interference is needed.

12. The question which arises for consideration is:-

"Whether the appellants have committed the offence punishable under Sections 306/34 and 498A/34 of the IPC in the light of given facts and circumstances of the case or not ?"

13. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

14. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

15. PW-4/ Dinesh Kumar Swarnkar is informant of the case who has initiated the story of prosecution and he has pointed out as to how suicide has been



committed by his sister/victim. In para 1, he has stated that the marriage of his sister/victim was solemnized with the appellant no. 3 about four years ago and she was blessed with one male child from the wedlock. In para 2, he has stated that for about 2-3 months of the marriage, the husband, brother-in-law and mother-in-law kept his sister/victim with dignity and thereafter they started demanding the dowry and on non fulfillment of the same they started torturing her. In para 3, he has stated that four days before the death of victim, she had intimated him that her husband (appellant no. 3), mother-in-law (appellant no. 1) and brother-in-law (appellant no. 2) used to assault and torture her. In para 4, he has stated that upon receiving information from the resident of Baijnathpur, it was revealed that the in-laws of his sister/victim had tortured her (victim) due to which she committed suicide by hanging and thereafter he went to the house of his sister/victim's in-laws. He further stated that nobody was present in the house. The dead body of his sister/victim was lying in the house on a cot (chawki). He further stated that in morning he saw the dead body of his sister/victim. There was ligature mark on the neck of his sister/victim and blood was oozing out from her nose. In para 10 of cross-examination, PW4 has stated that the dead



body of his sister/victim was cremated by son of victim. In para 11, he has stated that while cremating the dead body of his sister/victim, family members and agnates of the victim's in-laws were present. In para 12, he has stated that *shradh karm* of his sister/victim was performed by victim's in-laws at her sasural. In para 13, PW4 has stated that husband of victim, brother-in-law of victim and mother-in-law of victim never demanded dowry. In para 14, he has stated that *dwiragaman* (second marriage) of his sister/victim was not performed after marriage. In para 15, he has stated that after marriage, his sister/victim stayed at her in-laws' house for two months and after that she returned to informant's (PW4) house. In para 16, PW4 has stated that he went along with his sister/victim to her in-laws' house after marriage and thereafter he returned. In para 19, PW4 has stated that his sister/victim stayed at his house for 3-4 months and thereafter she went to her in-laws' house. He further stated that his mother has performed *bidai* of victim and at the time of *bidai*, PW4 had seen his brother-in-law happy. In para 21, PW4 has stated that whenever his sister/victim and brother-in-law came to his house, they would bring sweets and clothes. In para 22, PW4 has stated that neither he nor his mother had any complaint against his



brother-in-law (appellant no. 3) or his family members. In para 25, he has stated that he and his brother-in-law (appellant no. 3) are poor people. He further stated that marriage of his sister/victim was performed ideally. In para 29, PW4 has stated that the accused people are poorer than him. In para 30, he has stated that his sister/victim used to remain unhappy because the marriage was solemnized in a poor family. In para 31, he has stated that his brother-in-law (appellant no. 3) used to earn by staying outside. He further stated that the mother-in-law (appellant no. 1), father-in-law, and brother-in-law/*devar* (appellant no. 2) of his sister/victim stayed at home. In para 32, PW4 has stated that mother-in-law (appellant no. 1) of his sister/victim used to welcome him whenever he went to his sister/victim's in-laws' house. In para 33, he has stated that he was never informed by anyone about the harassment being meted out to his sister/victim. In para 35, he has stated that he was also present at his sister/victim's funeral. In para 36, he has stated that at the time of his sister/victim's death, his father was not alive. He further stated that his household expenses were managed solely from his earnings. In para 37, he has stated that he did not remember whether the Daroga (police officer) read over the statement to him or not. He



further stated that he put his signature on the statement at the behest of Daroga.

15.1. From the perusal of evidence adduced by the PW4, it is crystal clear that during the course of cross-examination, his statements are quite contradictory. He has stated that no dowry was being demanded and marriage was performed ideally. PW4 has cited the reason as to how his sister/victim felt that the appellants' side was relatively poor and that was the reason for sorry state of affairs for his sister/victim. During the course of cross-examination, PW-4 has categorically stated that no torture was meted out to his sister/victim and she was behaved properly. In this way, the statement of PW-4 is quite contradictory on the point of demand of dowry, on the point of suicide as well as on the point of treatment meted out to his sister/victim. In this way, on all core aspects of the offence, the statement of PW-4 is quite contradictory and his evidence is full of contradictions and inconsistencies with the initial version of prosecution story and no act of instigation was attributed to the appellants for commission of suicide by informant's sister/victim. It has not come in the evidence of PW-4 that informant's sister/victim had no other option left but to commit suicide.



From the perusal of evidence of PW-4, it is clear that he has not stated anything which entails the allegation either under Section 498A or under Section 306 of IPC.

16. PW 5 (Asharfi Pandit) was one of the signatories of the inquest report and he was not present in the village at the time of occurrence. When he returned, he saw the dead body of deceased and large number of people gathered there. In para 7, he has stated that the document was not read over by Daroga ji to him

16.1. From the perusal of evidence adduced by PW5, it is clear that he has not stated anything regarding the core aspect of the offence rather he has only stated that he was not present in the village at the time of occurrence and he has seen the dead body of the deceased and Daroga ji has not read over the document to PW5. Hence, his statement is of no significance.

17. PWs. 2, 3, 6 and 7 have not supported the case of prosecution and they have been declared hostile.

18. So far PWs. 1 and 8 are concerned, even if they are not hostile, they are formal witnesses and they are not factual witness and their evidences are of no significance in the light of the facts and circumstance of the case.



19. PW 9 (Shankar Sharan) has stated that he knows Bhima Sonar (appellant no. 3) of his village. He further stated that victim was the wife of Bhima Sonar. He has further stated that he was not present in village at the time of occurrence. He has further stated that he has no knowledge regarding the family condition of the victim. During his cross-examination, he has admitted that he had not seen anything with his own eyes.

19.1. From the perusal of evidence of PW9, it is clear that he has himself admitted that he was not present in the village at the time of occurrence and he has no knowledge regarding the family condition of the victim. In this way, his evidence is of no significance in the light of the facts and circumstances of the case.

20. PW-10/ Bhola Prasad Singh is investigating officer of the case. He has stated that he was posted at Baijnathpur camp and he got the information regarding the incident at about 1:30 AM and he saw that dead body of the deceased. The brother of deceased was also there. He has stated that he recorded the fardbayan of informant (PW4) in the intervening night of 28/29-09-2007. He has further stated that formal FIR was lodged as Saurbazar P.S.



Case No. 239 of 2007. In para 6, he has stated that the rope by which the strangulation was made, has been seized and seizure list was prepared in the presence of seizure list witness Parmeshwar Sah and Sitaram Sonar. In para 7, he has stated that chalan of dead body was prepared which is marked as ext. 5 and the dead body was sent for postmortem examination. In para 9, he has stated that he recorded the re-statement of informant in which he supported the farbdeyan. In para 19, PW 10 has stated that informant had not stated before him that appellants never demanded dowry from him and the informant or his mother were ever asked for dowry from his brother-in-law or his family members. He has further stated that informant had not stated before him that the informant and his mother had no complaint against appellant no. 3 or his family members. He has further stated that informant had not stated before him that his sister/victim used to remain in frustration due to her marriage in a poor family. In para 33, he himself has stated that he assumed the charge of investigation by himself. In para 38, he has stated that he prepared the inquest report in the case diary but did not mention the time. In para 42, he has also recorded the statement of mother-in-law of the deceased who is claimed to be innocent and appellant no. 1 is



an old lady. In para 44, PW10 has stated that he had never visited naihar of the deceased.

20.1. From the perusal of the evidence adduced by the investigating officer (PW10), it is clear that in para 4, he has stated that he got the charge of the investigation of the present case through in-charge of the Saurbazar Police station, but in para 33, he has stated that he took the charge of investigation by himself which is totally inconsistent. From the perusal of FIR, it is clear that the deceased had intimated on telephone of a betel shop owner four days before the incident about the ill treatment meted out to her but the IO has not investigated the said vital aspect. The investigation of the investigating officer is not up to mark. The statement of investigating officer is self contradictory as in para 4 he has stated that he got the charge of investigation of present case through the in-charge of Saurbazar Police Station but in para 33 he has stated that he assumed the charge of investigation by himself. He has admitted that he had not visited the place from where he received the information regarding the occurrence and he admitted that he had not visited the *naihar* of the victim. In this way, the statement of the investigating officer is not fair with regard to the investigation on the core aspect of



the offence.

21. PW-11/ Dr. Sacchidanand Rai has stated that on 29.09.2007 he was posted at Sadar Hospital, Saharsa as a medical officer and on the same day, he conducted post mortem on the dead body of Kala Devi (informant's sister/victim) and found following injuries:-

External Examination:-

Both eyes closed. Pupil dilated and fixed. Face swollen, congested, tinged of blood from the mouth, one ligature mark on the front of neck above thyroid cartilage with blackish blue in colour.

Internal Examination :-

After dissection of neck, subcutaneous tissues under ligature mark white extravasation of blood underneath of subcutaneous tissue, fracture of thyroid cartilage seen. On the opening of chest and abdomen both lungs congested, heart :- right side full, left side empty, stomach contains partially digested food particles. Liver, spleen and both kidneys – NAD. Bladder empty, uterus- No gravid uterus

Cause of death :- Asphyxia resulting from hanging.

Time elapsed since death :- within 24 hours

21.1. In the opinion of doctor, cause of death of deceased was asphyxia due to hanging.

22. It is relevant to quote judgment of Hon'ble Supreme Court passed in the case of ***Pinakin Mahipatray Rawal vs State of Gujarat*** reported in ***(2013) 10 SCC 48*** in which at para 25 of the said judgment reference of Section 113-A has been given which reads as under:-



"113-A. Presumption as to abetment of suicide by a married woman-
when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation- For the purposes of this section, 'cruelty' shall have the same meaning as in Section 498-A of the Penal Code, 1860."

Further in para 26 of the said judgment, it has been observed as follows:-

"26. Section 113-A only deals with a presumption which the court may draw in a particular fact situation which may arise when necessary Ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms



defined in Section 498-A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though, a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A-1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extramarital affair was of such a degree which was likely to drive the wife to commit suicide.

23. On the facts, I have already found that PW 4 (informant) has stated during the course of cross-examination that no harassment was being meted out to his sister as he was never being informed regarding ill treatment and marriage was solemnized ideally and he has pointed out the reason for unhappiness of his sister that her in-laws are relatively poor in comparison to the informant's side. It has also been pointed out by PW4 that the mother-in-law of his sister used to welcome informant (PW4) whenever he went to the in-laws' house of his sister and the appellants had never demanded dowry. PW4 while adducing his evidence has categorically and specifically negated the allegation levelled in



the initial version of prosecution story. In this way, there is nothing on record to prove that appellants had instigated, conspired, intentionally aided so as to drive the informant's sister/victim to commit suicide. Only reason as quoted by the trial court is that the appellants' side is relatively poor and this is the reason for sorry state of affairs for informant's sister/victim.

24. It is also relevant to quote judgment of Hon'ble Supreme Court passed in the case of ***Jayedeeptsinh Pravinsinh Chavda & Ors. vs. State of Gujarat*** passed in ***Criminal Appeal No. of 2024 (arising out of SLP (Crl.) No. 7957 of 2024)*** in which at paragraphs no. 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, it has been held as follows:-

16. Section 306 of the IPC provides for punishment for the offence of abetment of suicide. It has to be read with Section 107 of the IPC which defines the act of 'abetment'. The provisions read as follows:

"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."

17. Section 306 of the IPC penalizes those who abet the act of suicide by another. For a person to be charged under this section, the prosecution must establish that the accused contributed to the act of suicide by the deceased. This involvement must satisfy one of the three conditions outlined in Section 107 of the IPC. These conditions include the accused instigated or encouraged the individual to commit suicide, conspiring with others to ensure that the act was carried out, or engaging in conduct (or neglecting to act) that directly led to the person taking his/her own life.

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. The same position was laid down by this Court in **S.S. Chheena v. Vijay Kumar Mahajan**, wherein it was observed that:*

"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 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."

19. To bring a conviction under section 306, IPC it is necessary to establish a clear mens rea to instigate or push the



*deceased to commit suicide. It requires certain such act, omission, creation of circumstances, or words which would incite or provoke another person to commit suicide. This Court in the case of **Ramesh Kumar v. State of Chhattisgarh**, defined the word "instigate 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."

20. The essential ingredients to be fulfilled in order to bring a case under Section 306, IPC are:

- i. the abetment;*
- ii. the intention of the accused to aid or instigate or abet the deceased to commit suicide.*

21. Thus, to bring a case under this provision, it is imperative that the accused intended by their act to instigate the deceased to commit suicide. Thus, in



cases of death of a wife, the Court must meticulously examine the facts and circumstances of the case, as well as assess the evidence presented. It is necessary to determine whether the cruelty or harassment inflicted on the victim left them with no other option but to end their life. In cases of alleged abetment of suicide, there must be concrete proof of either direct or indirect acts of incitement that led to the suicide. Mere allegations of harassment are insufficient to establish guilt. For a conviction, there must be evidence of a positive act by the accused, closely linked to the time of the incident, that compelled or drove the victim to commit suicide.

22. It is essential to establish that the death was a result of suicide and that the accused actively abetted its commission. This can involve instigating the victim or engaging in specific actions that facilitated the act. The prosecution must prove beyond doubt that the accused played a definitive role in the abetment. Without clear evidence of an active role in provoking or assisting the suicide, a conviction under Section 306 IPC cannot be sustained.

23. The act of abetment must be explicitly demonstrated through actions or behaviors of the accused that directly contributed to the victim's decision to take their own life. Harassment, in itself, does not suffice unless it is accompanied by deliberate acts of incitement or facilitation. Furthermore, these actions must be proximate to the time of the



suicide, showcasing a clear connection between the accused's behavior and the tragic outcome. It is only through the establishment of this direct link that a conviction under Section 306 IPC can be justified. The prosecution bears the burden of proving this active involvement to hold the accused accountable for the alleged abetment of suicide. The same position has been laid down by this court in several judgments, such as:

i. M. Mohan v. State;

ii. Amalendu Pal alias Jhantu v. State of West Bengal;

iii. Kamalakar v. State of Karnataka.

24. Therefore, for a conviction under Section 306 IPC, there must be clear evidence of direct or indirect acts of incitement to commit suicide. The cause of suicide, especially in the context of abetment, involves complex attributes of human behavior and reactions, requiring the Court to rely on cogent and convincing proof of the accused's role in instigating the act. Mere allegations of harassment are not enough unless the accused's actions were so compelling that the victim perceived no alternative but to take their own life. Such actions must also be proximate to the time of the suicide. The Court examines whether the accused's conduct, including provoking, urging, or tarnishing the victim's self-esteem, created an unbearable situation. If the accused's actions were intended only to harass or express anger, they might not meet the threshold for abetment or investigation. Each case demands a



careful evaluation of facts, considering the accused's intent and its impact on the victim.

25. *This Court in **Ude Singh v. State of Haryana** reported in (2019) 17 SCC 301, held that to convict an accused under Section 306 IPC, the intent or mental state to commit the specific crime must be evident when assessing culpability. It was observed as under:*

"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.

25. It is also relevant to quote the decision



of Hon'ble Supreme Court in the case of ***Abhinav Mohan Delkar vs. The State of Maharashtra & Ors.*** passed in ***Criminal Appeal Nos. 2177-2185 of 2024*** in which at para 19 and 20 it has been held as follows:-

"19. Madan Mohan Singh v. State of Gujarat reported in (2010) 8 SCC 628 was a case in which the accused was alleged to have continuously harassed and insulted the deceased and spoken as to how he was still alive despite the insults levelled. There was also a suicide note in which the deceased, a driver, accused his employer of having driven him to suicide. Despite such an allegation in the suicide note, this Court found that there was absolutely nothing in the suicide note or the F.I.R. which could even distantly be viewed as an offence, much less under Section 306 of the I.P.C.

20. Again, the ingredients under Sections 107 and 306 of the I.P.C. was interpreted by one of us in ***Prakash and Ors. v. State of Maharashtra and Anr.*** reported in ***2024 SCC Online SC 3835*** in the following manner:

"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."

26. In the present case, there was no evidence that the appellants have instigated, conspired, intentionally aided so as to drive the victim to commit suicide and there was no evidence of direct triggering act that left the deceased with no other option but to commit suicide. Neither informant nor any other witnesses has stated that appellants were instigating or intentionally aiding in the commission of suicide by the victim/deceased. Merely allegation, without any positive act of instigation or intentionally aiding, cannot attract Section 306 of the IPC. In the present case, the informant/PW-4 himself has given contradictory statement while adducing



evidence before Court and he has also admitted that the marriage was performed ideally and no demand of dowry was made. The very informant (PW-4) who has initiated the version of prosecution story, has given totally contradictory statement during the course of adducing evidence which is fatal for the prosecution case. Even no factual witness has stated that victim was being tortured for dowry rather informant (PW4) himself has stated that appellants' side are relatively poor and this is the reason for sorry state of affairs for informant's sister/victim. So far as the factual witnesses of this case are concerned, either they have been declared hostile or they have not stated anything regarding the core aspect of the offence. Further, PW 5 who was one of the signatories of the inquest report, has himself stated that he was not present in the village at the time of occurrence and when he returned, he saw the dead body of deceased. PW9 has also stated that he was not present in the village at the time of occurrence and he has no knowledge regarding the family condition of the victim. The Investigating Officer (PW10) is not a factual witness. He is an official witness who has adduced his evidence and his evidence suffers from several infirmities which have already been discussed in the foregoing



paragraphs and hence, his evidence has also not supported the case of prosecution. PW4, who is informant as well as close relative of the victim, though he has supported the initial version of prosecution story but his evidence is quite contradictory on the core aspect of the prosecution story as while adducing evidence before the court, he has stated that no ill treatment was meted out to his sister and no dowry was being demanded as marriage was solemnized ideally. The informant (PW4) has specifically stated the reason for the sorry state of affairs of his sister was only that appellants were relatively poor in comparison to informant's side. In this way, the informant (PW4), who set the prosecution story into motion, has taken U-turn while adducing evidence before the Court from the initial version of prosecution story and his version is quite contradictory on the core aspect of the story of prosecution. In this way, the version of informant (PW4) is neither reliable nor convincing. Hence, the contention of learned counsel for the appellants is quite convincing in the light of aforesaid facts and circumstances of the case.

27. On all counts from the analysis of evidence of prosecution witnesses as well as material available on record, I find that appellants have not committed any



positive act amounting to instigation or intentionally aiding in commission of suicide. In this way, the prosecution has failed to prove its case beyond reasonable doubt. Hence, the judgment of conviction and order of sentence passed by the concerned court are not justified and legal and same are fit to be set aside.

28. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. Appellants are on bail, they are discharged from the liabilities of their bail bonds.

29. The interlocutory application(s), if any, shall also stand disposed of.

30. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

31. The records of this case be also returned to the concerned trial court forthwith.



32. Before parting with the judgment, I appreciate the legal assistance rendered by Ms. Pallavi Pandey, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5,000/- (five thousand) to Ms. Pallavi Pandey, learned Amicus Curiae, as consolidated fee for the legal assistance rendered by her, within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

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