

(Manoj vs. State of M.P. & Anr.)

22.12.2016

Shri Aditya Singh, Counsel for the applicant

Shri R.D. Agrawal, Panel Lawyer for the respondent
No.1/State.

Shri Brajesh Sharma, counsel for the respondent No.2.

This petition has been filed under Section 482 of Cr.P.C. against the order dated 09.09.2011 passed by First Additional Sessions Judge, Datia in Criminal Revision No. 71/2011 arising out of order dated 15.7.2011 passed by Chief Judicial Magistrate, Datia in Criminal Case No.667/2009 by which an application under Section 190 of Cr.P.C. filed by the prosecution for taking cognizance against the applicant for offence punishable under Section 306 read with Section 34 of IPC was allowed.

2. The prosecutions' story in short is that on 29.1.2009 at about 16:00, the dead body of an unknown boy aged about 18 years was found on the railway track. Information to police was given by one Ram Singh, the Gang Man, who was on patrolling. On the basis of the information given by Ram Singh, Dehati Merg Intimation was registered. The dead body was sent for postmortem. After the postmortem, the dead body was buried on 31.1.2009.

3. On 30.1.2009, Chandrabhan Singh, lodged a Missing Person Report in Police Station Kotwali, Daita. It was alleged that his younger brother had left the house for getting his pant darned. At the shop of Goswami, he came to know that his brother was beaten by Rinku Goswami and the applicant gave a telephonic information to the family members that Daulat Singh Dangi is sitting in his shop. After getting

information from his family members, he immediately went to the shop of Goswamiji, where he was informed that his brother has already left. Thereafter, they searched for Daulat Singh Dangi at various places, however, his whereabouts could not be known. Therefore, a Missing Person Report was lodged. Later on, Virendra Singh identified the shoes, clothes belonging to the deceased as that of his nephew Daulat Singh (deceased). At the request of Virendra Singh the dead body was dug out. Thereafter Chandrabhan Singh identified the dead body as that of his brother Daulat Singh. DNA test of the dead body was also got conducted and according to DNA test report the deceased Daulat Singh was Biological son of Malkhan and Rajeshwari.

4. After conducting the Merg Enquiry a FIR was registered against co-accused Rinku Goswami and the applicant. It was found that the deceased had committed suicide by jumping in front of running train. Charge sheet for offence punishable under Section 306 of IPC was filed against co-accused Rinku Goswami on the ground that the deceased has committed suicide because of the beating given by co-accused Rinku Goswami. No charge sheet was filed against the present applicant on the ground that he was not present on the spot at the time of alleged beating.

5. An application was filed before the Court of Magistrate under Section 190 of Cr.P.C., praying that the cognizance against the present applicant be also taken for offence punishable under Section 306/34 of IPC. However, the said application was rejected on the ground that as the offence is triable by Sessions Court, therefore, the application is not

maintainable. A criminal revision was filed which was allowed and the matter was remanded back for decision afresh on the application under Section 190 of Cr.P.C.

6. By order dated 15.7.2011 the Magistrate took cognizance against the applicant for offence punishable under Section 306/34 of IPC. The said order was challenged before the Revisional Court. The Revisional Court dismissed the revision. Being aggrieved by the order of the Revisional Court, the present petition under Section 482 of Cr.P.C. has been filed.

7. It is contended by the learned counsel for the applicant that even if the entire allegations are accepted, no offence punishable under Section 306 of IPC would be made out. It is further submitted that the courts below have committed material illegality in taking cognizance against the applicant for offence punishable under Section 306/34 of IPC.

8. *Per contra*, the counsel for the State as well as the counsel for the complainant submitted that at the stage of taking cognizance, meticulous appreciation of evidence is not permissible and thus the Court of Magistrate as well as the Revisional Court did not commit any illegality or irregularity while taking cognizance against the present applicant for offence punishable under Section 306/34 of IPC.

9. Heard the learned counsel for the parties and perused the record of the courts below.

10. On 29.1.2009 at about 4:00 PM the dead body of an unknown person was noticed by one Ram Singh, Gang Man working in Railway Department while he was on patrolling.

He immediately informed ASI who found that the dead body is lying on the railway track. Naksha Panchnama was prepared. As the body was unidentified therefore the clothes of the deceased which were found at about a distance of 100 meters from the place where the dead body was found were seized. After getting the postmortem done, the dead body was buried.

11. On 30.1.2009 Chandrabhan Singh made a written report to the police alleging that on 29.1.2009 at about 11:00 AM his younger brother Daulat Singh Dangi had left the house at 11:00 in the afternoon for getting his pant darned (रफ़ू) After sometime, he came to know that his younger brother has been beaten by the co-accused Rinku Goswami and the applicant had given an information on phone in his house that Daulat Singh Dangi is sitting on his shop. The said telephonic message was communicated by the members of his family to him and when he went to the shop of the applicant, then he was told that his brother had already left. Search was made for his younger brother at bus station and railway station etc. but whereabouts could not be known, therefore, a Gum Insan Report was made.

12. On 31.1.2009, an application was made by one Virendra Singh that the clothes and the shoes which were seized by the police from the spot are that of his nephew Daulat Singh Dangi and, therefore, the dead body may be handed over to him after digging out the same. On 1.2.2009 the dead body was dugged out and the same was identified by Virendra Singh and Chandrabhan Singh on the basis of body built up. It was again sent for postmortem which was conducted on 1.2.2009. The statements of the

witnesses were recorded.

13. The bones of the dead body were sent for DNA test along with blood sample of Malkhan Singh and Rajeshwari Devi parents of the deceased. As per the DNA test report, the dead body was of the biological son of Malkhan Singh and Rajeshwari Devi. Thus the prosecution succeeded in proving that the dead body which was recovered from the railway track on 29.1.2009 was that of Daulat Singh Dangi.

14. During investigation the police recorded the statements of Virendra Singh who stated that he is working on the post of teacher in Government Secondary School, Visalpura. On 29.1.2009 while was on his duty, at about 12:30 in the afternoon, he received a telephonic call on his mobile from his village Khiriya Dhabu. The said call was of his elder brother who informed that the applicant has informed him on telephone that Daulat Singh Dangi is sitting in his shop and he had teased a girl of their family and, therefore, he has been beaten. Virendra Singh in his turn informed his nephew to go to the shop of Manoj. At about 3:00 PM while he was going to the shop of the applicant, he met with his nephew Chandrabhan Singh. They jointly went to the shop of Manoj Goswami (applicant) where the shopkeepers informed that the co-accused Rinku and the applicant have beaten one boy and both of them i.e. co-accused Rinku and the applicant had taken the boy on their motorcycle. They searched for Daulat Singh Dangi and ultimately on 30.1.2009 at about 2:30 in the afternoon a Gum Insan report was lodged. At about 5:00-6:00 PM the applicant called this witness and extended the threat as they have lodged a report against the applicant, therefore,

now he would lodge a report against this witness. On 31.1.2009 while they were searching for Daulat Singh Dangi, his brother Rajendra Singh Dangi informed that a dead body has been recovered from the Railway track. The clothes of the dead body were shown by ASI which were identified by this witness. The dead body was later on dugged out after obtaining due permission from the Executive Magistrate and the same was identified. One Kishore Dangi and Balbir Dangi who are known to this witness have informed that on 29.1.2009 they had seen the applicant and the co-accused putting the body of the deceased on the railway track as a result of which this witness has full confidence that after killing the deceased, the dead body was thrown on the Railway track.

15. Balbir Singh had also stated that while he was going towards the Pagdandi Gadariya Chowki he found that the applicant and co-accused Rinku were putting the dead body of a boy aged about 17 years on the Railway track and thereafter this witness went away from the spot.

16. Ram Kishore has stated that on 29.1.2009 he had seen that the applicant and co-accused Rinku Goswami were taking the deceased Daulat Singh Dangi on their motorcycle. Thus the statement of these witnesses are to the effect that the deceased Daulat Singh Dangi was seen for the last time in the company of the applicant and the co-accused Rinku Goswami. However, as cognizance has not been taken for offence under Section 302 of IPC, therefore, this set of evidence does not take the case of the prosecution any further.

17. Akhilesh Gupta has stated that on 29.1.2009 at about

12:30 in the afternoon one boy had given a letter to the daughter of Kamlesh who is aged about 12 years. After hearing the shouts of the girl the shopkeepers came there and caught hold the boy. On enquiry, he disclosed his name as Daulat Singh Dangi. When they saw the letter they found that it was a love letter. All the shopkeepers scolded Daulat Singh Dangi and enquired about the phone number of his house and thereafter somebody made a telephonic call to his family members. After sometime the brother of Daulat Singh Dangi namely Chandrabhan Dangi came there along with two friends and when he was informed by the shopkeepers about the fact of giving of a love letter to the girl then Daulat Singh Dangi was also scolded by Chandrabhan Dangi and he took away Daulat Singh along with him. The statement of Rajesh Raikwar, Ashok Sahu and Sanjay Gupta are also to the same effect.

18. Chandrabhan Singh had stated that he is a student of B.Sc. IIIrd Year and his younger brother Daulat Singh Dangi is a student of Class 11th. On 29.1.2009 at about 11:00 AM, Daulat Singh had left the house for getting his pant darned (रफू). He received a phone of his grandfather Surat Singh who informed that the applicant has informed that Daulat Singh is sitting in his shop and this witness was asked to go and check the situation. This witness along with his relatives Rohit Dangi and Sanjeev went to the shop of the applicant where he came to know that the co-accused Rinku Goswami had beaten Daulat Singh. The shopkeepers told him that Daulat Singh has already left the shop. He tried to search for Daulat Singh Dangi and ultimately on 30.1.2009 at about 2:00 PM he lodged a Gum Insan report on 31.1.2009.

He identified the clothes and after the dead body was dug out, the same was identified by Virendra Singh. The statements of Rohit Dangi and Sanjeev are also to the same effect.

19. Marut Nandan Upadhyay has stated that on 29.1.2009 at about 3:30 he had suffered a gunshot in the village Suketa and he gave this information to the applicant on his mobile. The applicant was in Jhansi at the relevant time. He made all the necessary arrangements in the hospital for the treatment of this witness and on the next day the applicant had also visited the hospital at Jhansi. Lakhan Singh Yadav has stated that on 29.1.2009 he had gone to Jhansi along with the applicant.

20. Munna Khan and Jaswant Singh have stated that they had seen one boy committing suicide, by jumping in front of running train.

21. Thus, from the appreciation of the evidence which has been collected by the police during investigation it appears that the deceased Daulat Singh Dangi had given a love letter to the daughter of Kamlesh and on alarm being raised by the girl, the deceased was scolded by the shopkeepers and thereafter the deceased committed suicide by jumping in front of running train.

22. The moot question is that even if the entire allegations are accepted as they are then whether can it be said that the applicant has committed an offence of abetment of suicide.

23. Section 306 of I.P.C. reads as under :

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

24. "Abetment" is defined under Section 107 of I.P.C. which reads as under :

"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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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."

25 The Supreme Court in the case of **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** reported in **(2009) 16 SCC 605** while dealing with the term "instigation" held as under :

"16. ... 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction' ... to keep irritating or annoying somebody until he reacts...."

26. The Supreme Court in the case of **Praveen Pradhan Vs. State of Uttaranchal** reported in **(2012) 9 SCC 734** held as under :

"17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy

or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. (2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC."

27. The Supreme Court in the case of **Sanju @ Sanjay Singh Sengar Vs. State of M.P.** reported in **(2002) 5 SCC 371** has held as under :

"6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.”

Further, in para 12 of the judgment, it is held as under:

“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.”

28. The Supreme Court in the case of **Gangula Mohan Reddy Vs. State of A.P.** reported in **(2010) 1 SCC 750** needs mentioned here. In which Hon'ble Apex Court has held that:

“abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing – Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained – In order to convict a person under section 306 IPC, there has to be a clear mens rea to commit offence – It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide – Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide

should be found guilty- Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out - Hence, appellant's conviction, held unsustainable".

29. In the case of **State of W.B. Vs. Orilal Jaiswal**, reported in **1994 (1) SCC 73**, the Supreme Court has held as under:-

"This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end 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 that accused charged of abetting the offence of suicide should be found guilty"

30. The Supreme Court in the case of **M. Mohan Vs. State represented by the Deputy Superintendent of Police** reported in **AIR 2011 SC 1238** has held as under :

"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 is clear that in order to convict a person under Section

306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

31. The Supreme Court in the case of **Kishori Lal vs. State of M.P.** reported in **(2007) 10 SCC 797** has held in para 6 as under:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

32. In the case of **Amalendu Pal @ Jhantu vs. State of West Bengal** reported in **(2010) 1 SCC 707**, the Supreme Court has held as under:-

“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 their 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.

14. The expression ‘abetment’ has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for

the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"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."

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC."

33. Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

34. In the present case the police has seized the so called love letter written by the deceased Daulat Singh Dangi to the daughter of Kamlesh. Thus, the allegation of the

witnesses that the deceased was scolded/beaten because of the fact that he had given a love letter to the daughter of Kamlesh is found corroborated by the love letter so seized by the police. In the present case it is also apparent from the statements of Munna Khan and Jaswant Singh Yadav that one boy had committed suicide in front of them by jumping in front of running train. Thus, it is clear that there is no corroborative evidence on record to substantiate the allegation of last seen together or putting the body of a boy on the railway track as stated by Balbir Singh and Ram Kishore who are admittedly friend/known to Virendra Singh. Accordingly, the Trial Court did not commit any illegality in not taking cognizance for offence punishable under Section 302 of IPC.

35. The only evidence which has come on record against the present applicant is that he had made a telephonic call to the family members of Daulat Singh informing them about the conduct of Daulat Singh of writing a love letter to a girl. By no stretch of imagination, it can be presumed that the applicant in any manner instigated or abetted the deceased to commit the suicide. The Trial Court by order dated 15.7.2011 while taking cognizance against the applicant for offence punishable under Section 306/34 of IPC has observed that the name of the applicant along with the co-accused Rinku is specifically mentioned in the FIR. The first set of evidence is that those persons who had seen the deceased Daulat Singh Dangi for the last time in the company of the applicant and the co-accused Rinku Goswami. Another set of evidence is with regard to the presence of the applicant in Jhansi. Thereafter by merely

mentioning that there is a prima facie evidence against the applicant for taking cognizance under Section 306/34 of IPC, the Magistrate took cognizance under Section 306/34 of IPC against the applicant. The Trial Court did not consider the fact or gave any reason as to how the allegations made against the applicant amounts to instigation or abetment. Similarly, while dismissing the criminal revision the Revisional Court has not taken into the consideration the facts and the allegations for coming to a conclusion that whether the conduct of the applicant amounts to instigation or abetment of suicide or not?

36. Considering the allegations which have come against the applicant, it is clear that the applicant had not taken any active role or had in any manner provoked the deceased to commit suicide. If the deceased had given a love letter to a girl and thereafter he was scolded or even beaten by the shopkeepers, and making a complaint to the family members of the deceased about the conduct of the deceased of giving love letter to a girl cannot be said to be an act which may amount to instigating the deceased to commit suicide.

37. Considering the facts and circumstances of the case, it appears that the deceased was hypersensitive to ordinary petulance. It appears that the deceased was afraid of his family members because a complaint was already made to his family members about the conduct of the deceased of handing over a love letter to a girl. In such a situation, if the deceased committed suicide, it cannot be said that the applicant in any manner committed an offence of an abetment of suicide. In the present case the ingredients of

abetment of suicide are not present. As it is evident from the statement of the witnesses, there is no active or direct Act on the part of the applicant which may lead the deceased to commit suicide. Thus, it is clear that the allegations as leveled against the applicant do not prima facie make out a case under Section 306 of I.P.C. Therefore, this Court is inclined to exercise its powers under Section 482 of Cr.P.C. The order dated 15.7.2011 passed by Chief Judicial Magistrate, Datia in Criminal Case No. 2665/2011 and the order dated 9.9.2011 passed by First Additional Sessions Judge, Datia in Criminal Revision No.71/2011 are hereby quashed. Consequently, further proceedings against the present applicant also stands quashed. The application is allowed.

38. As the record of the Trial Court was requisitioned by this Court by order dated 2.11.2011, the office is directed to return the record of the Trial Court as early as possible.

(G.S. Ahluwalia)
Judge

(alok)