

THE HIGH COURT OF MADHYA PRADESH BENCH GWALIOR

(Single Bench – Rajendra Mahajan J.)

Criminal Revision No. 644 of 2016

Jameel Ahmed Quraishi S/o Nazeer
Khan aged 62 years R/o Adarsh
Colony A.B. Road Banmore District
Morena.

Applicant

Versus

State of M.P. through Police Station
AJAK Sheopur.

Respondent

For Applicant :- Shri Pooran Kulshrestha, learned
counsel.
For respondent/State :- Shri B.P.S. Chauhan, learned
Public Prosecutor assisted by
Shri D.R. Mahaur, learned
counsel appointed by the
complainant-party.

ORDER

(Passed on the 9th day of November 2017)

The applicant has preferred this revision under Section 397 read with 401 of the CrPC against the order dated 17/6/2016 passed by the learned Special Judge (Atrocities) Sheopur in Special Case No. 11/2016, whereby he has framed charges against the applicant

under Sections 302 alternatively 306 of the IPC and 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act") after refusing to pass an order of discharge in his favour under Section 227 CrPC.

2. The facts, in brief, for adjudication of this revision are thus:- on 23/10/2015, Dr. Sanjay Shukla, the duty doctor in the District Hospital Sheopur, informed the SHO of Police Station Sheopur in writing that Anju D/o Hari Prasad aged 37 years a resident of Balapura Sheopur (for short "the deceased") had been brought dead by Jameel Ahmed Quraishi, the applicant herein. Thereupon, Merg Case No. 29/2015 under Section 174 CrPC was registered at the said Police Station. Sub Inspector Anjali Sharma conducted the merg inquiry. During the course of which, she prepared an inquest report of the deceased and got the postmortem examination of the dead body of the deceased done. According to the postmortem report, the deceased died of asphyxia due to hanging as ligature marks were found around he neck. Thereafter, Anjali Sharma

recorded the merged statements of the witnesses including the landlord of the deceased, her family members and the deceased's daughter Ku. Himanshi aged 12 years. The witnesses of merged inquiry stated her in their statements that the applicant used to torture and harass the deceased mentally as well as physically as a result the deceased committed suicide and that she is a member of the Scheduled Tribe. Anjali Sharma submitted her merged inquiry report dated 26/10/2015 to the SHO of the said Police Station, who in turn ordered her to register the F.I.R against the applicant. Thereupon, on 26/10/2015, she lodged the FIR and registered a case at Crime No. 312/2015 against the applicant for the offences punishable under Sections 306 IPC and 3 (2) (v) of the Act. Upon completion of the investigation, the police filed the charge-sheet against the applicant in the aforesaid Sections of law. Upon the procedural formalities of the CrPC, the case came to be registered as Special Case No. 11/2016.

3. On 17/6/2016, the learned Special Judge

(Atrocities) heard arguments on framing of the charges. On the same day, he passed an order in the order-sheet holding that there is prima facie evidence on record to frame the charges against the applicant under Sections 302 in alternative 306 IPC and 3 (2) (v) of the Act rejecting the plea raised on behalf of the applicant for his discharge under the provisions of Section 227 CrPC. Thereafter, on the same day, the learned Special Judge (Atrocities) framed charges against the applicant to which he pleaded not guilty and claimed trial. Feeling aggrieved by the order of framing of the charge, the applicant approached this Court by filing the revision.

4. Learned counsel for the applicant after referring to the postmortem report of the deceased submitted that the postmortem examination on the dead body of the deceased was done by a panel of three doctors. They have stated in the postmortem report that the ligature marks over the neck of the deceased are quite visible indicating that she died of asphyxia due to hanging and the anti-mortem injuries found on her

dead body were caused by striking of her hands and other body parts against one another. Thus, it is crystal clear that the deceased suffered suicidal death as per medical evidence. Having referred to the case-diary statements of deceased's landlord Smt. Khatoon, her family members and the deceased's daughter Ku. Himanshi, he submitted that they have stated that the deceased committed suicide by hanging, therefore, the medical evidence is also corroborated by ocular evidence. Consequently, the learned Special Judge (Atrocities) erred in framing charge against the applicant under Section 302 IPC. He submitted that as per the case-diary statements of the witnesses and other material on record the deceased was a divorcee and she was a government employee at the time of the incident. The deceased and the applicant developed physical intimacy for each other for a long time and in fact they are in a live-in-relationship. On account of the maladjustment and incompatibility between them, the deceased committed suicide, therefore, no offence under Section 306 IPC is made

out for want of ingredients of abetment as defined in Section 107 IPC in the acts of the applicant. Thus, the learned Special Judge (Atrocities) also erred in framing charges against the applicant under Sections 306 IPC and 3 (2) (v) of the Act. Upon these submissions, he submitted that the learned Special Judge (Atrocities) ought to have passed an order of discharge in favour of the applicant under the provisions of Section 227 CrPC, but he had not done so and framed the aforesaid charges. Hence, this revision for quashing of the charges framed against the applicant and his discharge thereunder. In support of the contentions, reliance was placed by him on the decisions rendered by this High Court in Nilesh Jaat and Another Vs. State of M.P., ILR [2015] M.P. 1891, Smt. Mamta Rai Vs. State of M.P., 2016 CrLJ 1887 M.P.

5. In reply, having referred to the statements of deceased's daughter Ku. Himanshi recorded under Sections 161 and 164 CrPC, the case-diary statements of deceased's landlord Smt. Khatoon, her family members and the parents of the deceased, learned

Public Prosecutor submitted that they have categorically stated that the applicant used to torture and harass the deceased physically and mentally constantly, therefore, the deceased committed suicide. Hence, the learned Special Judge (Atrocities) has not erred in framing the charge against the applicant under Section 306 IPC. However, he frankly admitted that the learned Special Judge (Atrocities) erred in framing charges against the applicant under Sections 302 IPC and 3 (2) (v) of the Act in the light of the postmortem report of the deceased and the status of the relationship of the deceased and the applicant.

6. I have considered the rival submissions made at the Bar and perused the impugned order of framing of the charges and the material on record.

7. Upon the perusal of the case-diary statements of the material prosecution witnesses including the case-diary statement of deceased's daughter Ku. Himanshi and her statement recorded under Section 164 CrPC and postmortem report of the deceased, I find that it is crystal clear like noon that the deceased committed

suicide by hanging herself at about 10:00 AM in her residence when Ku. Himanshi was also there. Therefore, the learned Special Judge (Atrocities) committed errors of facts and law by framing charge against the applicant under Section 302 IPC.

8. In M. Mohan V. State represented by the Deputy Superintendent of Police, (2011) 3 SCC 626, the Supreme Court observed in para 37 of the decision that 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.

9. In our country while suicide itself is not an offence because the successful offender is beyond the reach of law. However, to make an attempt to commit suicide and to abet a person to commit suicide are offences punishable under Sections 309 and 306 IPC

respectively.

10. The ingredients of abetment are set out in Section 107 IPC, 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 aides, by any act or illegal omission, the doing of that thing.”

11. In Ramesh Kumar Vs. State of Chhatisgarh, (2001) 9 SCC 618, the Supreme Court has examined different sets of the meaning of “instigation” in para 20 and observed thus:-

“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."

12. In Randhir Singh Vs. State of Punjab, (2004) 13 SCC 129, the Supreme Court observed in para 12 of its decision thus:-

"Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a

person can be said to be abetting the commission of offence under Section 306 IPC.”

13. In Gangula Mohan Reddy Vs. State of Andhra Pradesh, (2010) 1 SCC 750, the Supreme Court observed in para 17 of the decision thus:-

“Abetment involves a mental process of instigating a person 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 this act must have been intended to push the deceased into such a position that he committed suicide.”

14. In State of West Bengal Vs. Orilal Jaiswal, (1994) 1 SCC 73, the Supreme Court has cautioned the courts in respect of the offence under Section 306 IPC thus:-

“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 not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

15. In the light of the provisions of law concerned and the settled legal position crystallized by the Supreme Court in the aforesaid judgments, I would proceed to examine whether the acts of the applicant amounts to instigation to the deceased to commit

suicide?

16. Deceased's daughter Ku. Himanshi has stated in her statements under Sections 161 and 164 CrPC that when she was 3 to 4 years old, there had been divorce between her parents. Thereafter, the applicant used to come to her house and take away money from her mother/the deceased by assaulting her. She has further stated that on 18/10/2015, the applicant come to her house and stayed with her and her mother till 23/10/2015, the day of committing of suicide by her mother. During that period, the applicant everyday bitterly quarreled with her mother for no faults of hers. On 23/10/2015, the applicant quarreled with her mother in the morning hours. Thereupon, her mother went inside a room of the house taking a piece of rope with her and she bolted the room from inside. Seeing that, she knocked the door several times, but her mother did not open the door of the room. Thereupon, she cried aloud. Later, the applicant and the neighbours came and broke open the door. She saw her mother hanging from the ceiling fan. The

deceased's landlord Smt. Khatoon has stated in her case-diary statement that the deceased had been her tenant for about 8 years. She saw the applicant visiting and residing with the deceased. She is in the know that the deceased was a Hindu woman. However, she adopted the Muslim religion because the applicant is a follower of the Muslim religion. Not only that, the deceased would recite "nawaj" and on 23/10/2015, the day of death of the deceased, she had observed "roja". She has also stated that the deceased committed suicide because of constant torture and harassment meted out to her at the hands of the applicants. Upon the reading of the statements of the duo, I am of the considered opinion that the said acts of the applicant amounts to abetment, as defined in Section 107 IPC and interpreted in the aforementioned case-law, to the deceased to commit suicide. Thus, there is prima facie evidence against the applicant for framing of the charge under Section 306 IPC. The case-law cited in para 4 of the order by learned counsel for the applicant are quite distinguishable on facts, therefore,

“ratio” of the case-law are not applicable in the present case. In the result, the learned Special Judge (Atrocities) has rightly framed the charge against the applicant under Section 306 IPC.

17. Prior to the amendment in Section 3 (2) (v) of the Act by the Act of 2016, the Section reads thus:-

“Commits any offence under the Indian Penal Code 1860 (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.”

18. The deceased's daughter Ku. Himanshi aged 12 years has stated in her statements that when she was 4 to 5 years old there had been divorce between her parents. Ever since, the applicant used to come to their house, stayed with us and slept with her mother in her bedroom at night. Her mother would always insist upon her to address the applicant as “Papa”. From the aforesaid statement of Ku. Himanshi, it is

evident that the deceased and the applicant were in a live-in-relationship for long and the deceased committed suicide because the applicant used to abet her out of the constant bickerings in their live-in-relationship. Thus, the applicant did not abet the deceased to commit suicide only on the sole ground that she was a member of the Scheduled Tribe. Therefore, in my considered view, no offence under Section 3 (2) (v) of the Act is made out. Resultantly, the learned Special Judge (Atrocities) has erred in framing the aforesaid charge against the applicant.

19. For the foregoing reasons and discussion, I come to an ultimate conclusion that the learned Special Judge (Atrocities) has rightly framed the charge against the applicant under Section 306 IPC, but he has patently erred in framing the charges against the applicant under Sections 302 IPC and 3 (2) (v) of the Act. Consequently, this revision is partly allowed. The Charges framed against the applicant under Sections 302 IPC and 3 (2) (v) of the Act are quashed while maintaining the charge under Section 306 IPC. The

learned Special Judge (Atrocities) is directed to hold the trial against the applicant under Section 306 IPC expeditiously in accordance with law.

20. The interim order dated 3/8/2016, whereby the trial proceedings have been stayed by this Court, stands vacated.

21. A copy of this order be sent to the Court of Special Judge (Atrocities) Sheopur without delay.

**(Rajendra Mahajan)
Judge**

AKS