

(Ashok Vs. State of M.P.)

03/07/2017

Shri J.S. Kushwah, Counsel for the applicant.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent/State.

Heard on the question of admission

This Criminal Revision under Section 397,401 of Cr.P.C. has been filed against the order dated 12-4-2017 passed by IVth A.S.J. Guna Distt. Guna in Sessions Trial No. 228/2016 by which the charge under Section 306/34 of I.P.C. has been framed against the applicant.

The necessary fact for the disposal of this Criminal Revision in short are that the deceased Satendra Sharma and the co-accused Smt. Upasana were husband and wife. The co-accused Upasana had friendly relations with the applicant. They used to meet each other very frequently. The deceased Satendra Sharma was objecting to the friendly relations of his wife with the applicant. It is alleged that on this issue, the co-accused Upasana used to quarrel with the deceased and continued to have friendly relations with the applicant inspite of repeated objections taken by the deceased. On 12-11-2014, the deceased went to the Parent's house of the co-accused Upasana for taking her back. There, the deceased found that the applicant was sitting in the house of the co-accused Upasana. When the deceased once again took objection to the relations of the applicant with the co-accused Upasana, at that time, it is alleged that the co-accused Upasana extended the threat that She would lodge a criminal case against the

deceased. The deceased was feeling insulted and humiliated. The family members of the deceased tried to pacify the deceased, however, the deceased ultimately committed suicide by consuming poisonous substance on 15-11-2014.

It is submitted by the Counsel for the applicant, that even if the entire allegations are accepted as true, no offence under Section 306 of I.P.C. would be made out against the applicant. There is no allegation against the applicant that because of his relations with the co-accused Upasana, he had ever misbehaved with the deceased. In fact, the relations between him and the co-accused Upasana were of brother and sister. The conduct of the applicant cannot lead to an inference that the applicant had ever abetted the deceased to commit suicide. To buttress his contentions, the Counsel for the applicant relied upon the judgment of the Supreme Court passed in the case of **Sanju @ Sanjay Singh Sengar Vs. State of M.P.** reported in **(2002) 5 SCC 731**, **Ghusabhai Raisangbhai Chorasiya Vs. State of Gujarat** reported in **(2015) 11 SCC 753** and the judgment passed by a co-ordinate bench of this Court in the case of **Rajbhan Saket Vs. State of M.P.** reported in **2016(3) MPLJ (Cri) 549** and **Dr. Praveen Vaishya Vs. State of M.P.** reported in **2016(3) MPLJ (Cri) 96**.

Per contra, it is submitted by the Counsel for the State that according to the prosecution case, the wife of the applicant was having friendship with the applicant and the deceased was objecting to it. Even on earlier

occasions, whenever, the deceased took objection to the relations of his wife with the applicant, it is alleged, that the co-accused Upasana used to quarrel with the deceased. On 12-4-2014, when the deceased went to the parents' house of the co-accused Upasana in order to take her back, he found that the applicant was sitting in the house of the co-accused Upasana. When the deceased took objection to it, it is alleged that the co-accused Upasana extended the threat that She would lodge a criminal case against him. Thus, it is clear that inspite of the objections raised by the deceased, the applicant and the co-accused Upasana were adamant to continue with their relations and the co-accused Upasana had gone to the extent of threatening the deceased to lodge a criminal case against the deceased. Thus, if the entire allegations are considered in totality, then it would be clear that the applicant and the co-accused Upasana had created such a situation where, he was left with no other option but to put an end to his life, as on one hand the co-accused Upasana had relations with the applicant inspite of repeated objections raised by the deceased and at the same time, the co-accused Upasana in the presence of the applicant had extended the threat of falsely implicating him in the criminal case. Thus, prima facie, the abetment of suicide may be inferred.

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.

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.”

“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.”

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 ‘goadings’ 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...."

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."

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."

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

"abetment 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”.

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”

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.”

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."

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.”

The Supreme Court in the case of **Amit Kapur Vs. Ramesh Chander** reported in **(2012) 9 SCC 460** has held as under :

35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* ((2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been

committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in *Ramesh Kumar v. State of Chhattisgarh* ((2001) 9 SCC 618) to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence.

In the case of **Ghusabhai Raisangbhai Chorasiya v. State of Gujarat**, reported in **(2015) 11 SCC 753**, the Supreme Court has held as under :

21. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the "Holi" festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to

commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal (2013) 10 SCC 48*, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with Appellant 4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A IPC which includes cruelty to drive a woman to commit suicide, would not be attracted.

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.

If the facts of the present case are considered, it would be clear that not only the applicant and the co-accused Upasana were adamant to continue with their relations inspite of the objections raised by the deceased, but the co-accused Upasana, used to quarrel with the deceased. On 12-11-2014, when the deceased went to the parents's house of the co-accused Upasana to take her back, then he found that the applicant was also sitting in the house of the co-accused Upasana. When the deceased again objected to it, at that time the co-accused Upasana not only quarrelled with the deceased, but also extended the threat to falsely implicate the

deceased in a case. No direct evidence can be collected about the nature of relations between the applicant and the co-accused Upasana, but if the deceased was having any objection to such relations, then the applicant and the co-accused Upasana must have brought their friendship to an end or should have won the confidence of the deceased before continuing with the relationship/friendship. The allegation of the witnesses, that whenever the deceased took objection to the relationship/friendship of the co-accused Upasana with the applicant, every time, the co-accused Upasana used to quarrel with the deceased. Even the co-accused Upasana had extended the threat of falsely implicating the deceased in a case, in the presence of the applicant. These circumstances speak in volumes. However, still it is a matter of evidence. Whether the applicant or the co-accused Upasana had any intention to instigate the deceased to commit suicide or they had created such a situation before the deceased where he was left with no other option, but to commit suicide, can be decided only after testing the evidence of the witnesses by cross-examination.

By relying on judgment of the Supreme Court in the case of **Ghusabhai Raisangbhai Chorasiya (Supra)**, it is submitted that even assuming that the applicant had illicit relations with the co-accused Upasana, it cannot be inferred that the applicant had in any manner instigated the deceased to commit suicide. If the deceased had any substantive evidence to substantiate the allegation of

illicit relationship between the applicant and his wife, then he had the legal remedy of filing a petition for divorce on the ground of adultery and therefore, it cannot be said that the deceased was left with no other option but to put an end of his life. The submission made by the Counsel for the applicant, though appears to be every attractive, but on deeper scrutiny, the same cannot be accepted. In the case of **Ghusabhai Raisangbhai Chorasiya (Supra)**, the Supreme Court had held that in absence of any evidence to the effect that the husband had conducted in such a manner to drive his wife to commit suicide it cannot be held that merely by having illicit relations, the husband had committed cruelty. Here, it is not the simple case of relationship between the applicant and co-accused Upasana. The additional evidence is that whenever, the deceased objected to the relationship of his wife with the applicant, at that time, the co-accused Upasana had picked up quarrel with the deceased. On 12-11-2014, she not only quarrelled with the deceased but also extended the threat of falsely implicating in a case. Thus, it is clear that the applicant and the co-accused had created such a situation which indicate something more than mere relationship.

At this stage, this Court is of the considered opinion that there is sufficient material available on record to draw an inference that the applicants by their conduct had instigated the deceased to commit suicide.

Accordingly, the order dated 12-4-2017 passed by IVth A.S.J. Guna Distt. Guna in Sessions Trial No.

228/2016 is maintained.

Before parting with this order, it would be necessary to observe, that this Court has given the observations considering the limited scope of revision under Section 397,401 of Cr.P.C. at the stage of framing of charge. The Trial Court is directed to decide the Trial strictly on the basis of the evidence which would come on record, without getting prejudiced by any of the observations made by this Court.

Accordingly, this Criminal Revision fails, and is hereby **dismissed**.

(G.S.Ahluwalia)
Judge