

**HIGH COURT OF MADHYA PRADESH: SINGLE BENCH AT
INDORE BEFORE HON. SHRI JUSTICE ALOK VERMA,J**

Cr.R. No.610/2016

Santosh S/o Vishvanath Sonane

Vs.

State of Madhya Pradesh

Shri Umesh Sharma, learned counsel for the applicant.
Shri Yogesh Mittal, learned counsel for respondent/State

ORDER

(Passed on 13/10/2016)

This criminal revision under Section 397 r/w Section 401 Cr.P.C. is directed against the order passed by the learned 9th Additional Sessions Judge, Ujjain in Sessions Trial No.142/2016 dated 04.05.2016 whereby the learned Additional Sessions Judge framed charges under Sections 354(a)(i)(ii), 376(2)(i)(n), 306 r/w Section 34 and Sections 3/4, 5/6 and 7/8 of Protection of Children from Sexual Offences Act.

2. The prosecution case in brief is that the deceased Divyanshi @ Charu Soni committed suicide by hanging

herself. In her dying declaration and also in the messages she saved on her mobile phone bearing No.8889500455, she expressed that due to her physical abuse by the present applicant and other co-accused Prabhansh @ Bobby, Praduman @ Moni, committed suicide. In the messages, name of other co-accused were mentioned. However, so far as the present applicant is concerned, only his mobile number was mentioned in the messages. It was a case of the prosecution that the present applicant used to talk to her for long duration during late hours in the night.

3. Learned counsel for the applicant submits that there are no ingredients present against the present applicant for abetment as described under Section 107 of IPC.

4. The applicant placed reliance on the judgment delivered by Hon'ble the Supreme Court in the case of **Sanju @ Sanjay Singh Sengar Vs. state of MP;** reported in **2002 SCC (Cri) 1141** in which, it was held that ingredients of section 107 of IPC should present for taking the act as abetment of the suicide. "Instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea is the

necessary concomitant for instigation. Words uttered in a quarrel or on the spur of moment, such as “to go and die”, cannot be taken to the uttered with mens rea.

5. Placing reliance on this judgment of Hon'ble the Supreme Court, learned counsel for the applicant argues that in the present case, the present applicant was not present when the deceased committed suicide. He was living separately, therefore, it cannot be taken as abetment on his part, due to which the deceased committed suicide.

6. The Section 107 of IPC requires either of three overt acts on behalf of the persons said to have abetted the suicide:

“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.”

7. Apart from the above judgment of Hon'ble the Supreme Court, learned counsel also placed reliance on the judgment of Hon'ble the Supreme Court in the case of

Pinakin Mahipatray Rawal Vs. State of Gujarat reported at **2013 Cr.L.R. (SC) 955** whereby the Hon'ble Supreme Court observed in paragraph 26 of the judgment as under :-

“26. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

8. Reverting back to the present case, age of the deceased was only 16 years at the time of death. It is stated that her mother died in an accident in the year 2008. She was abused by one of the co-accused even prior to death of her mother. The fact was revealed to her mother, she scolded to co-accused. The accused were closed relatives of the

deceased. They are cousins of the deceased. It is alleged in the messages that they all abused the deceased sexually while she was alone and her father used to go to work. Taking advantage of their relationship with the deceased, they entered into the house and abused her physically.

9. Taking overall facts in this case, it is apparent that at this stage detailed scrutiny is not required. There should be a suspicion arise in the mind of the Judge to show that the crime as described by the prosecutrix was committed. This apart, this is a trite law that when somebody drives a persons to such a state that he had no other option but to commit suicide, it amounts to abetment under Sections 107 r/w Section 306 IPC. In this case also taking the prosecution case at its face value such facts exists, and therefore, no interference is required at this stage. Accordingly, this application being devoid of merit liable to be dismissed and is dismissed.

(Alok Verma)
Judge