

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE SUJOY PAUL

ON THE 16th OF DECEMBER, 2022

CRIMINAL REVISION No. 2647 of 2021

Between:-

1. RAJENDRA SINGH LODHI
S/O SHRI JALAM SINGH, AGED
ABOUT 65 YEARS,
OCCUPATION:
AGRICULTURIST VILLAGE
SEMRA LODHI P.S. PATHARIYA
DIST DAMOH (MADHYA
PRADESH).

2. BHUPENDRA SINGH LODHI
S/O SHRI JUGRAT SINGH,
AGED ABOUT 30 YEARS,
OCCUPATION:
AGRICULTURIST VILL.
SEMRA LODHI, PS.
PATHARIYA, DISTT. DAMOH
(MADHYA PRADESH).

3. GURU @ BHANU SINGH S/O
SHRI RAJENDRA SINGH, AGED
ABOUT 30 YEARS,
OCCUPATION:
AGRICULTURIST VILL. SEMRA
LODHI, P.S. PATHARIYA,
DISTT. DAMOH (MADHYA
PRADESH)

.....PETITIONERS

(BY SHRI ESHAAN DATT ADVOCATE FOR APPLICANT
NOS.1 & 3)

(SHRI SACHIN SHUKLA – ADVOCATE FOR APPLICANT NO.2)

AND

1. THE STATE OF MADHYA
PRADESH THR P.S. PATHARIYA
DIST DAMOH P.S. PATHARIYA
DIST DAMOH MP (MADHYA
PRADESH)

2. SMT. GUDDIBAI W/O LATE
SHRI MOORAT SINGH LODHI,
AGED ABOUT 50 YEARS,
OCCUPATION: NOT MENTION
VILLAGE SEMRA LODHI P.S.
PATHARIYA DIST DAMOH
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI A.S. BAGHEL – DEPUTY GOVERNMENT ADVOCATE
FOR THE STATE)

(BY SHRI RAGHUVeer PRASAD PRAJAPATI- ADVOCATE
FOR THE RESPONDENT NO.2).

*This revision coming for on admission this day, Justice Sujoy
Paul passed the following :*

ORDER

This revision petition under Section 397/401 of Cr.P.C. is filed to question the legality, validity and propriety of the impugned order dated 23.9.2021 whereby learned Ist Additional Judge, Damoh in Sessions Case No. 115/21 framed the charge against the applicants.

2. In nutshell the case of prosecution is that a ‘merg’ intimation No. 106/20 regarding death of Murat Singh was recorded at P.S. Pathariya. During the investigation, the Police recorded the

statements of relatives of deceased and other persons. The Police filed the charge sheet under Section 306 of IPC.

3. As per the story of prosecution, on 29.10.2020 at around 5 PM, the applicant no. 2, Bhupendra Singh Lodhi abused and assaulted the deceased Murat Singh by means of a '*Lathi*'. He instantaneously reported said incident in the Police Station. At around 7.30 PM, when Murat Singh returned home, it is alleged that the applicant nos. 1 and 3 pressurized him to compromise the matter and further threatened him of dire consequences. Murat Singh consumed 'Sulphas', a poisonous substance and committed suicide. In turn, after investigation, charge sheet (Annexure A-1) was filed. The charges under Section 306/34 of IPC were framed by the Court below by order dated 23.9.2021.

4. Shri Sachin Shukla for the applicant no. 2 urged that the dying declaration of Murat Singh dated 29.10.2020 shows that Bhupendra Singh allegedly assaulted him by means of '*lathi*'. Learned counsel for the applicant no.2 urged that an assault by means of *lathi* nowhere indicates that it can become reason for committing suicide. Thus, the applicant no.2 is incorrectly arraigned for committing offence under Section 306/34 of IPC.

5. Similarly, Shri Datt submits that the second part of incident is when after lodging the report in the Police Station, Murat Singh reached his house, the applicant nos. 1 and 3 allegedly pressurised him for entering a 'Rajinama'/compromise. Even assuming that the story so narrated in the dying declaration is correct, it does not attract Section 306 of IPC. Widow of Murat Singh namely Guddi Bai in her statement recorded under Section 161 of Cr.P.C. tried to

improve the case. If her statement is compared with dying declaration the embellishment will be apparent.

6. Shri Datt referred Section 107 of IPC and urged that in the instant case necessary factors to attract Section 106 or Section 306 of IPC are absent. Thus, the court below has committed an error in framing charge against the applicant. In support of his argument, Shri Datt placed reliance on **(2010) 1 SCC 750 (Gangula Mohan Reddy Vs. State of Andhra Pradesh)** and in **Hukum Singh Yadav and anr. Vs. State of M.P. reported in I.L.R. (2011) M.P. 1089.**

7. *Per contra*, Shri A.S. Baghel, learned counsel for the State urged that Court below has not committed any error of fact or law in framing the charge by order dated 23.09.2021. It is argued that dying declaration shows that applicant No. 2 has caused a *lathi* injury on deceased Moorat Singh. After lodging report about said incident when he came to his house, the applicant No. 1 and 3 came there and further threatened him. Since, no action was taken by police and Moorat Singh had no option but to commit suicide, he took that extreme step. Thus, it cannot be said that necessary factors for invoking Section 306 are absent. Shri Baghel, learned Dy. Government Advocate for the State placed reliance on **(2012) 9 SCC 734 (Praveen Pradhan Vs. State of Uttaranchal and another).**

8. Shri Raghuv eer Prasad Prajapati, learned counsel for the objector/respondent No. 2 borrowed the argument of Govt. counsel and argued that trial is in progress. Certain prosecution witnesses have already deposed their statements. The Court below best suited to take decision on merits.

9. I have heard the parties at length and perused the record.

10. Section 107 of IPC makes it obligatory for the prosecution to show and establish the element of instigation. The apex Court in the case of **Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh (AIR 2002 SC 1998)**, the Apex Court opined as under:-

13..... Even if we accept the prosecution story that the appellant did tell the deceased “to go and die”, that itself does not constitute the ingredient of “instigation”. 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. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with *mens rea*. It is in a fit of anger and emotion.

(Emphasis supplied)

11. In the case of **Sanju (supra)**, the appellant allegedly told the deceased ‘to go and die. Yet Apex Court opined that it does not constitute the ingredient of ‘instigation’. In the instant case, if story of prosecution is read and believed as such, it will be clear that applicant No. 2 assaulted Moorat Singh by means of a *lathi*. There is no element of ‘incitement’ or ‘instigation’ on behalf of applicant No. 2 while assaulting Moorat Singh by means of *lathi*. Thus, Section 306 of IPC is not attracted as against applicant No. 2.

12. The role of applicant Nos. 1 and 3 is same. As per prosecution story, both of them reached the house of deceased and pressurized/threatened him to settle the matter by entering into

‘Rajinama’. The ancillary question is whether this act falls within the ambit of Section 306 of IPC. In **Gangula Mohan Reddy**, the Apex Court poignantly held as under:

“17. 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 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.”

(Emphasis supplied)

13. The principle flowing from this judgment is that the overt act of accused person must be of a nature which leaves the victim/deceased with no option but to commit suicide. Even assuming that both the applicant Nos. 1 and 3 mounted any pressure to enter into a ‘Razinama’ on Moorat Singh, this does not fall within the ambit of ‘incitement’ or ‘instigation’.

14. This Court in **Hukum Singh Yadav Vs. State of M.P.** considered the judgment of Supreme Court in **Sanju @ Sanjay singh Sengar (supra)**, it is profitable to refer the relevant para-

“10. Considering these legal aspects this is to be observed that whether applicants have had same knowledge that deceased would commit suicide. As per prosecution case, when deceased was going with his father. Applicants restrained deceased and his father Jagdish and abused and

threatened both of them, hence, it cannot be assumed that applicants had knowledge that one of them particularly deceased will commit suicide. When act of abusing and threatening was alleged to be done with deceased as well as his father, so it cannot be said that applicants had knowledge or intention that deceased should commit suicide. There is no evidence that they provoked, incited or encouraged deceased to commit suicide. It is also not alleged that when applicants threatened to kill deceased and his father Jagdish they were armed some weapons. So it cannot be presumed that deceased was so frightened. That he had no opinion left except committing suicide and was compelled to do so.

(Emphasis supplied)

15. The act of applicant Nos. 1 and 3, in the opinion of this Court does not attract Section 306 of IPC. In absence of establishing necessary ingredients for attracting Section 306 of of IPC, applicants cannot be compelled to face the trial unnecessarily.

16. So far judgment of **Praveen Pradhan (supra)**, on which learned counsel placed reliance is concerned, in the said case, the appellant therein harassed and humiliated the deceased on multiple occasions. The deceased was perpetually humiliated, exploited and demoralized which hurt his self-respect tremendously.

17. Thus, Apex Court in **Praveen Pradhan (supra)** declined interference and dismissed the appeal. Pertinently, in Para- 17 of this judgment also, the Apex Court followed the *ratio decidendi* of **Sanju (supra)** which reads 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. Abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 of IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.”

18. In view of the foregoing analysis, Court below the Court has committed an error in framing charge under Section 306/34 of IPC against the applicants by impugned order dated 23.09.2021. As a consequence, the order dated 23.09.2021 is set aside. Revision petition is **allowed**.

(SUJOY PAUL)
JUDGE