

## Rajesh S/O Mathuradas Advani And Another Vs State Of Madhya Pradesh

**Court:** Madhya Pradesh High Court (Indore Bench)

**Date of Decision:** July 9, 2019

**Acts Referred:** Indian Penal Code, 1860 " Section 34, 107, 109, 306  
 Code Of Criminal Procedure, 1973 " Section 161, 482

**Hon'ble Judges:** Vandana Kasrekar, J

**Bench:** Single Bench

**Advocate:** Piyush Jain, Nilesh Jagtap

**Final Decision:** Allowed

### Judgement

1. The cardinal question that emerges for consideration in this petition is whether the III Additional Sessions Court at Shajapur is justified in framing

the charge against the petitioners for the offence punishable under Sections 306 of the Indian Penal Code in ST No.26/2019 by the impugned order

dated 11th May, 2019.

2. The facts in detail need not be stated, for the controversy really lies in a narrow compass. On 25/08/2018 Shailendra @ Sonu Sharma committed

suicide at his home by hanging, leaving suicide-note wherein he levelled allegations of harassment by the petitioners, on account of demand of loan

amount from him. The police registered crime No.132/2018 under Section 306/34 of IPC and after investigation filed the charge-sheet.

3. It is submitted by the learned counsel for the petitioners that no case is made out on the basis of evidence collected by prosecution during

investigation. He took me through the statement of the wife of the deceased and the other witnesses and submitted that the police have recorded

statements of wife of the deceased. She has only stated that her husband was puzzled and scared and he told her that full amount has been paid to the

petitioners even then they are demanding money charging interest @ 10%-20%. She only expressed doubt that due to stress caused or pressure

created by the petitioners for refund of money; her husband might have committed suicide. No constituent enumerated under Section 107 of IPC is

present in the evidence collected by the prosecution and filed before the Court with the charge-sheet. It is asserted by the learned counsel that even if,

all this evidence is taken into consideration; no case under Section 306 of IPC is made out; therefore, charges framed against the petitioners must be

quashed.

4. The prosecution has opposed the prayer and submitted that wife of the deceased has disclosed before the police the reason of suicide and other

witnesses have supported her statement, therefore, prima facie sufficient evidence is available on record to frame the charges. The Court cannot

consider the effect and impact of the statement of witnesses recorded under Section 161 of Cr.P.C. on the prosecution case and also cannot

appreciate the contradictions and omissions at this stage and prayed for dismissal of the present petition.

5. Before parting with the evidence, apt would be the assessment of the legal proposition consistently pronounced in this regard. Section 107 IPC

reads thus :-

107. 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 willful 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.

Explanation 2 - Whoever, either prior to or at the time of 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.

6. The Hon'ble Supreme Court in State of Kerala and Ors. Vs. S. Unnikrishnan Nair and Ors. AIR 2015 SC 335 has discussed various

authorities on the subject. Relevant paras of the judgment pronounced by Hon'ble Justice Deepak Misra reads thus:

11. The aforesaid provision was interpreted in Kishori Lal v. State of M.P (2007) 10 SCC 797 : (AIR 2007 SC 2457 b) by a two-Judge Bench and the

discussion therein is to the following effect:

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.

7. In *Analendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707 : (AIR 2010 SC 512) dealing with expression of abetment the Court

observed:-

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.

8. In *Netai Dutta* (AIR 2005 SC 1775) (supra), a two-Judge Bench, while dealing with the concept of abetment under Section 107, I.P.C. and,

especially, in the context of suicide note, had to say this:

In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant

herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the

act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the

commission of suicide by deceased Pranab Kumar Nag. Apart from the suicide note, there is no allegation made by the complainant that the appellant

herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The

contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would

only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned single Judge seriously erred in holding that the

First Information Report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the

appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked.

We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal.

9. In *M. Mohan* (2011) 3 SCC 626 : AIR 2011 SC 1238 (supra), while dealing with the abetment, the Court has observed thus:

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 are 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.

10. In a recent judgment passed in *Gurcharan Singh v. State of Punjab* AIR 2017 SC 74 the Apex Court held that the basic ingredients of provision of

Section 306 of IPC are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or

instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment.

Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of

abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, culpability and complicity of the indictable acts or omission are the

concomitant indices of abetment. Section 306 IPC, thus criminalizes the sustained incitement for suicide. If there is no reference or disclosure of any

specific incident in support thereof, the materials on record do not suggest even remotely any act of cruelty, oppression, harassment or inducement so

as to persistently provoke or compel the deceased to resort to self-extinction being left with no other alternative and no such continuous and proximate

conduct of the appellant or his family members with the required provocative culpability or lethal instigative content is discernible to even infer that the

deceased and her daughters had been pushed to such a distressed state, physical or mental that they elected to liquidate themselves as if to seek a

practical alleviation from their unbearable earthly miseries, it could be said that the ingredients of the offence of Section 306 of IPC have remained

unproved and thus, the appellant deserves to be acquitted.

11. In this regard, we can further refer *Jalam vs. State of M.P.* 2014 CRI.L.J. 360, *Ajay Patodia vs. State of M.P.* 2004 CRI.L.J. 197, *Surendra*

*Pathak vs. State of M.P.* 2016 CRI.L.J. 762, *Sanju @ Sanjay Singh Sengar Vs. State of M.P.* AIR 2002 SC 1998.

12. Reverting back to the case in hand, I have gone through the evidence collected during investigation and submitted with the charge-sheet.

13. All these statements; if taken in toto even then they do not constitute offence of abetment to commit suicide. No evidence is there to show that

the intention of the petitioners in demanding their money back was to instigate the deceased to commit suicide. Neither there is any evidence of

persistent pressure, harassment or torture from the petitioner's side nor any evidence that they have ever prompted the deceased in such a

manner that one may apprehend that in case of non-refund of money, they will kill him or will harm him in such a manner that to avoid such condition

a common prudent man may take a decision to self extinction. There is no cogent evidence that either by words or by any action, the petitioners have

forced the deceased to commit suicide. Demand of money credited does not amount to instigate committing suicide. For framing charge under Section

306 of IPC there has to be a mens rea to impel or incite the subject to commit suicide. It also requires an active or direct act, which lead the deceased

to commit suicide and this act must push the deceased into such a position that he sees no option except to annihilate his own life.

14. On a plain reading of the statement of the witnesses, it is difficult to hold that there had been any abetment by the petitioners. Entire material

available on record and the law which has been reiterated several times by the Courts in various pronouncement and in view of the legal provisions, if

we take the allegations made in the first information report or in the statements of the witnesses at their face value and accept them in their entirety,

even then it does not constitute the offence alleged against the petitioners. The prosecution manifestly fails to prove the charge by adducing clear and

sufficient evidence to hold the petitioners guilty.

15. On considering the above submissions, I find that there is no other evidence on record to indicate that the accused in any way abetted suicide.

Besides documentary evidence has been produced by the police; clearly indicated that the deceased Shailendra @ Sonu Sharma used to borrow

money then under the circumstances, it cannot be said that the demanding money back was an act of harassment to the deceased. In the matter of

Devendra Singh vs. State of M.P. 2007 (III) MPWN 95 suicide note contains the name of the accused petitioner undoubtedly, however the Court held

that it cannot be demand of money or loan amount or the alleged threatening in connection with the demand of money cannot be said to be a

provocation for committing suicide under Section 107 of the IPC, which defines abetment of thing and involvement of instigating or intentionally aided

by any act of illegal omission and, therefore, there must willful misrepresentation, or by willful concealment of a material fact which he is bound to

disclose, voluntarily causes or procures for a thing to be done.

16. In the result, I do perceive merits in the petition by placing reliance on the judgments cited above. The assessment of the evidence on record does

not demonstrate with any role of the petitioners, as contemplated by the above provisions, so as to return an unassailable finding of their criminality

under Section 306 IPC. Therefore, present petition deserves to be and is hereby allowed. The impugned order dated 11/05/2019 is hereby set-aside

and charge framed under Section 306 of IPC against the petitioners registered at Crime No.132/2018 passed in S.T. No 68/2019 is hereby quashed.

Petitioners are set at liberty. Their bail bonds be discharged.

17. The Revision is allowed to the extent indicate above. C.C. as per rules.