

## Mahendra Awase Vs State Of Madhya Pradesh

**Court:** Supreme Court Of India

**Date of Decision:** Jan. 17, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 " Section 174

Indian Penal Code, 1860 – Section 107, 306

Bharatiya Nyaya Sanhita, 2023 " Section 45, 108

**Hon'ble Judges:** Abhay S. Oka, J; K. V. Viswanathan, J

**Bench:** Division Bench

**Advocate:** Pradeep Kumar Yadav, Prapti Shrivastava, Gopal Singh, Vishal Thakre, Aditya Yadav, Sunil Kumar Srivastava, Tota Ram, Anjale Kumari, Sanjeev Malhotra, Abhimanyu Singh, Pashupathi Nath Razdan

**Final Decision:** Allowed

## Judgement

Speaker- 1, "Sir, in the evening, the evening, let me go at least.

[illegible]

abusive language. Now, let me know, whether we are to go

in the evening? Yes, we are to go in the evening. Bhaiya since

when I, you, are, to, go. When I, I, made, a phone call

only then you realized that we are to go in the evening.

Speaker- 1, "No, he has met me two times while on the way. Now, I, I,

may, go, to, his, home and, only, there, I, may,

convince him. What else can I do I also told him that I have

nothing more. Dear I have only 30-35 thousand rupees. You may give

him and get freed.

Speaker- 2,"What, are, you, narrating, me. From

where  $\tilde{A}, \tilde{A}, \tilde{A}, \tilde{A}$ , you  $\tilde{A}, \tilde{A}, \tilde{A}, \tilde{A}$ , may  $\tilde{A}, \tilde{A}, \tilde{A}, \tilde{A}$ , give  $\tilde{A}, \tilde{A}, \tilde{A}, \tilde{A}$ , money,

(\*\*\*\*\*) abusive language.

Speaker- 1, "Yes, Sir.

Speaker- 2,Tell him I have no concern with it.

Speaker- 1, "You have got it, and now you may return. That is all."

Speaker- 2, "Listen, if you are not giving today then you, may, ,

deposit, Rs. 11,800/-, with penalty, in, the, office, at,

11:00 AM. If you cannot, I am not in your favour. If

you don't want to talk then I will tell my authority.

Speaker- 1, "No, No. Sir it is our duty.

Speaker- 2, "You will pay money tomorrow

because you had committed it.

Speaker- 1, "Yes, Sir.

Speaker- 2, "Otherwise, I will come to the Pump.

You can run up to when you can.

“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.

12. Section 107 of the IPC 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.”,

As is clear from the plain language of the Sections to attract the ingredient of Section 306, the accused should have abetted the commission of a suicide. A person abets the doing of a thing who 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.,

13. In Swamy Prahaladdas vs. State of M.P. and Another, [1995 Supp (3) SCC 438], the appellant remarked to the deceased that 'go and die' and the deceased thereafter, committed suicide. This Court held”,

that:-,

3. ...Those words are casual nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite”,

'mens rea' on the assumption that these words would be carried out in all events. “”,

14. In Madan Mohan Singh vs. State of Gujarat and Another, (2010) 8 SCC 628, this Court held that in order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107”,

IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate,

or to abet the deceased to commit suicide is a must for attracting Section 306.,

15. In *Amalendu Pal alias Jhantu vs. State of West Bengal*, (2010) 1 SCC 707, this Court 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 there 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.",

[Emphasis supplied],

16. 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.,

17. *M. Mohan vs. State*, (2011) 3 SCC 626 followed *Ramesh Kumar vs. State of Chhattisgarh*, (2001) 9 SCC 618, wherein it was held as under:-",

41. This Court in SCC para 20 of *Ramesh Kumar* has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)",

“20. 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."",

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife,

therein) may necessarily be drawn.”

Thereafter, this Court in *Mohan* (supra) held:-",

45. 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.”

[Emphasis supplied],

18. As has been held hereinabove, to satisfy the requirement of instigation the accused by his act or omission or by a continued course of conduct should have created such circumstances that the deceased was",

left with no other option except to commit suicide. It was also held that a word uttered in a fit of anger and emotion without intending the consequences to actually follow cannot be said to be instigation.,

19. Applying the above principle to the facts of the present case, we are convinced that there are no grounds to frame charges under Section 306 IPC against the appellant. This is so even if we take the",

prosecution's case on a demurrer and at its highest. A reading of the suicide note reveals that the appellant was asking the deceased to repay the loan guaranteed by the deceased and advanced to Ritesh,

Malakar. It could not be said that the appellant by performing his duty of realising outstanding loans at the behest of his employer can be said to have instigated the deceased to commit suicide. Equally so, with the",

transcripts, including the portions emphasised hereinabove. Even taken literally, it could not be said that the appellant intended to instigate the commission of suicide. It could certainly not be said that the appellant",

by his acts created circumstances which left the deceased with no other option except to commit suicide. Viewed from the armchair of the appellant, the exchanges with the deceased, albeit heated, are not with",

intent to leave the deceased with no other option but to commit suicide. This is the conclusion we draw taking a realistic approach, keeping the context and the situation in mind. Strangely, the FIR has also been",

lodged after a delay of two months and twenty days.,

20. This Court has, over the last several decades, repeatedly reiterated the higher threshold, mandated by law for Section 306 IPC [Now Section 108 read with Section 45 of the Bharatiya Nyaya Sanhita, 2023]",

to be attracted. They however seem to have followed more in the breach. Section 306 IPC appears to be casually and too readily resorted to by the police. While the persons involved in genuine cases where the,

threshold is met should not be spared, the provision should not be deployed against individuals, only to assuage the immediate feelings of the distraught family of the deceased. The conduct of the proposed",

accused and the deceased, their interactions and conversations preceding the unfortunate death of the deceased should be approached from a practical point of view and not divorced from day-to-day realities of",

life. Hyperboles employed in exchanges should not, without anything more, be glorified as an instigation to commit suicide. It is time the investigating agencies are sensitised to the law laid down by this Court",

under Section 306 so that persons are not subjected to the abuse of process of a totally untenable prosecution. The trial courts also should exercise great caution and circumspection and should not adopt a play it,

safe syndrome by mechanically framing charges, even if the investigating agencies in a given case have shown utter disregard for the ingredients of Section 306.",

21. For the above reasons, we hold that the case against the appellant is groundless for framing of a charge under Section 306. Hence, we discharge the appellant from proceedings in Sessions Case No. 19 of",

2023 pending on the file of First Additional Sessions Judge, Khargone District, Mandleshwar and quash and set aside the said proceedings. The appeal is allowed and the impugned order dated 25.07.2023 passed",

by the High Court in Criminal Revision No. 1142 of 2023 is set aside.,