

Vaibhav S/O Premanand Mawale Vs State Of Maharashtra Ps Shegaon City Dist Buldhana

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 15, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 227, 228, 482
Indian Penal Code, 1860 " Section 107, 108, 306

Hon'ble Judges: Urmila Joshi Phalke, J

Bench: Single Bench

Advocate: Akshay Sudame, M.J.Khan

Final Decision: Disposed Of

Judgement

Urmila Joshi Phalke, J

1. Heard finally by consent of learned counsel Shri Akshay Sudame for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the

State.

2. The present revision application is filed by the applicant (the accused) in connection with Crime No.486/2020 registered with the Shegaon Police

Station, district Buldhana under Section 306 of the Indian Penal Code against rejection of discharge application Exhibit.8 filed under Section 227 of the

Criminal Procedure Code.

3. The factual matrix of the case is as under:

The applicant is educated having qualification of Bachelor of Computer Application. Deceased victim and the applicant were having love affair from

last nine years. On 3.12.2020, the deceased committed suicide by hanging herself. The deceased victim has left behind an exhaustive suicide note

stating in it the details of affair and her relationship with the applicant. It was further alleged that on the promise of marriage, the applicant and the

deceased had physical relationship and subsequently, the applicant broke the said relationship and denied to marry with her. It is further alleged that

the applicant has developed relationship with other girl and as the deceased victim was disturbed and in a depression, she committed suicide. On the

basis of the said suicide note, the informant, the father of the deceased victim, lodged a report against the applicant that he abetted the deceased

victim to commit suicide. On the basis of the said report, the crime was registered.

4. After registration of the crime, wheels of the investigation started rotating. During the investigation, the Investigating Officer has drawn spot

panchanama and seized suicide note. He has also collected postmortem note and transcript of WhatsApp Chats between the deceased victim and the

applicant and recorded relevant statements of witnesses and after completion of the investigation, submitted chargesheet against the applicant.

5. After filing of the chargesheet, the case was committed to the Court of Sessions. The applicant filed an application below Exhibit-8 under Section

227 of the Code for discharge contending that the entire investigation papers nowhere reveal that in what manner, he had abetted the deceased victim

to commit suicide. Breaking of the relationship is not sufficient to show that he has abetted the deceased victim to commit suicide. There should be a

direct proximity between abetment and act of commission of suicide. Thus, offence is not made out against him and, therefore, he claimed discharge.

Learned Sessions Judge, Khamgaon rejected the application by observing that her suicide note reflects that she was in relationship with the applicant

for nine years. The deceased victim has narrated the entire affair of behaviour of the applicant. The material available on record is sufficient to frame

charge against the applicant and rejected the application.

Hence, this revision.

6. Learned counsel for the applicant submitted that admittedly, there was love affair between the deceased victim and the applicant and due to some

reasons, the said relationship came to an end. From the suicide note also, nowhere it reflects that what actually act or instigation was on the part of the

applicant due to which she has committed suicide. The WhatsApp Chats show that she was in communication with the applicant and from the

WhatsApp chats, it reveals that physical relationship was out of consent. The communication dated 3.12.2020 reflects that she has expressed her

apology for everything to the applicant. Thus, no positive act or action was on the part of the applicant to abet her to commit suicide. She has

committed suicide on 3.12.2020. Prior to four months of the said incident, the said relationship was broken. So, there is no close proximity as to the act

of the suicide. He submitted that even WhatsApp Chats show that the deceased victim and the applicant were intending to perform marriage, but due

to some reasons, the said relationship was broken and, thereafter, from June 2020 till October 2020, there was communication between the deceased

victim and the applicant. He submitted that now law is settled as far as the abetment is concerned. In catena of decisions, principle is laid down that to

attract Section 306 of the Indian Penal Code, two basic ingredients that an act of suicide by one person and abetment by another person are to be

established. In order to sustain a charge under Section 306 of the Indian Penal Code, it must necessarily be proved that the accused person has

contributed to the suicide by the deceased by some direct or indirect act. Abetment involves a mental process of instigating or intentionally aiding

another person to do a particular thing. To bring a charge under Section 306 of the Indian Penal Code, the act of abetment would require the positive

act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent

from the face of the record, a charge under the aforesaid Section cannot be sustained. In view of that, the order passed by learned Sessions Judge,

Khamgaon deserves to be quashed and set aside.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. SLP (Cri.) Diary No.39981/2022 (Prabhu vs. The State represented by the Inspector of Police and anr) decided by the Hon'ble Apex Court on

30. 1.2024;

2. Prakash and ors vs. State of Maharashtra and anr, reported in 2024 SCC OnLine SC 3835;

3. Jayedeepsinh Jayedeepsinh Chavda and ors vs. State of Gujarat, reported in 2024 SCC OnLine Sc 3679;

4. Criminal Appeal No.654/2017 (Nipun Aneja and ors vs. State of Uttar Pradesh) decided by the Hon'ble Apex Court on 3.10.2024;

5. GEP Vargjese vs. State of Rajasthan and anr, reported in (2021)19 SCC 144, and

6. Lata w/o Pramod Dangre vs. State of Maharashtra and anr, reported in 2022 SCC OnLine Bom 2840.

8. Per contra, learned Additional Public Prosecutor for the State submitted that at the time of framing of charge, a strong suspicion is also sufficient to

frame charge. Whether there was requisite mens rea or not is a matter of evidence. Overall material shows that the applicant created certain

circumstances which compelled the deceased victim to commit suicide. The WhatsApp Chats and statements of witnesses show psychological

condition of the deceased victim. At the stage of framing of charge, the court is required to evaluate the material and documents on record with a

view to find out if the facts emerging therefrom taken at their face value disclose existence of ingredients or not. Thus, at this stage, the material

collected during investigation is sufficient to frame the charge and, therefore, no interference is called for.

9. Before entering into merits of the case, it is necessary to see what are considerations for considering the application for discharge.

10. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the

material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from

the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. The Hon'ble Apex Court in the case of State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023, advertent to the

earlier propositions of law in its earlier decisions in the cases of State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709 and

The State of Maharashtra vs. Som Nath Thapa, reported in (1996) 4 SCC 659 and The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC

338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which

has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face

value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709

advertent to the earlier propositions of law laid down on this subject has held:

29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of

consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find

out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge,

the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a

view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this

stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a

conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground

for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the

materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the

offence. The law does not permit a mini trial at this stage.

12. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression “the record of the

case” used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution.

The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the

charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage

of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into.

At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the

evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it

is.

13. In the case of Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4, the Hon'ble Apex Court considered the scope of

Section 227 of the Code of Criminal Procedure. After advertng to the various decisions, the Hon'ble Apex Court has enumerated the following

principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence

for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified

in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and

large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave

suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a

Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced

before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and

cons of the matter and weigh the evidence as if he was conducting a trial.

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14. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure from which following principles

emerge:

1. While considering the question of framing the charges under section 227 of the Code, the court has the undoubted power to sift and weigh the evidence for the

limited purpose of finding out whether or not a prima facie case against the accused has been made out: The test to determine prime facie case would depend upon

the facts of each case.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in

framing a charge and proceeding with the trial.

3. The court cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the

evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on.

However, at this stage, there cannot be a roving

enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

4. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for

conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

5. At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial

mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

6. At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from

taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be

expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the

case.

7. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the

accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

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15. With the above principles, if the material in the present case collected during the investigation is discussed, there is no dispute as to the fact that

the deceased victim and the applicant were having long standing relationship. The suicide note also reflects the nature of relationship which the

applicant and the deceased were having. As far as allegations of the prosecution are concerned, that there was a promise to marriage and on the

promise of marriage the deceased victim was subjected for physical relationship, material document is the WhatsApp Chats between the deceased

victim and the applicant. Perusal of the WhatsApp Chats reveals that it was the deceased victim who was intensively eager to perform the marriage

with the applicant. It reveals from the Chats that both family members were visiting to each other's house and the deceased victim was attracted

towards the applicant. It further reveals that they also developed the physical relationship between them and the said relationship was continued for

nine years. As far as promise of marriage is concerned, the entire Whatsapp Chats nowhere reflect that the applicant has promised her for marriage

and on the promise of marriage subjected her for the physical relationship. On the contrary, the said WhatsApp Chats Show that by consent of the

deceased victim, the said physical relationship was developed between them and subsequently due to some reasons, the said relationship was broken.

It reveals from the WhatsApp Chats that some discord took place between them in the month of June 2020. WhatsApp Chat dated 5.7.2020 shows

that there was some discords occurred between them. Thereafter, there was a communication, but the said communication nowhere reflects

regarding their physical relationship. Thus, it is apparent that the physical relationship was continued upto July 2020 and, thereafter, the said

relationship had some issues and it appears to be broken. Thereafter, approximately after five months, the deceased victim had committed suicide.

Recital of the suicide note also reflects that they were in relationship for nine years. It also nowhere states that the applicant had developed physical

relationship with the deceased victim on the promise of marriage. On the contrary, it shows that it was consensual relationship and continued for nine

years as one girl with whom the applicant had a communication and, therefore, the relationship was broken. As far as allegations, that the applicant

has developed relationship with the other girl, who initially was co-accused against whom First Information Report is quashed, are not supported by

any evidence.

16. Now, a question remains, whether breaking of the relationship with the deceased victim is sufficient to say that the applicant has abetted her to

commit suicide?

17. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the Indian Penal Code defines abetment of suicide, which reads thus:

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.

Classification of offence. - The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.

18. Section 107 of the Indian Penal Code (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

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.

19. Section 108 of the Indian Penal reads thus:

108. Abettor.—

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable

by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—"The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—"To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the

offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—"It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or

knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence,

and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment,

does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the

same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is

doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the

offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property

belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take

dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—"The abetment of an offence being an offence, the abetment of such an abetment is also as offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be

punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—"It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who

commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A conspires with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer

the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner

explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in

pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

20. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person,

he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

The said Sections penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused

played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 of the Indian Penal

Code. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

21. A question arises as to when is a person said to have instigated another. The word "instigate" means to goad or urge forward provoke, incite

or encourage to do "an act" which the person otherwise would not have done.

22. It is well settled that in order to amount to abetment, there must be mens rea. Without knowledge or intention, there cannot be any abetment. The

knowledge and intention must relate to the act said to be abetted which in this case, is the act of committing suicide. Therefore, in order to constitute

abetment, there must be direct incitement to do culpable act.

23. In the case of Prabhu vs. The State represented by the Inspector of Police and anr, relied by learned counsel for the applicant, by referring the

various earlier decisions, the Hon'ble Apex Court held that the physical relationship over a considerable period of time was out of mutual love

between the appellant and the deceased and not based on the promise of marriage. In the said case, the Hon'ble Apex Court has considered its

earlier decision in the case of Kamlakar vs. State of Karnataka (Criminal Appeal No.1485/of 2011, decided on 12.10.2023 and explained ingredients

of Section 306 of the Indian Penal Code and held, as under:

8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role

in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the

individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's

suicide.

8.3. In Ramesh Kumar vs. State of Chattisgarh, reported in AIR 2001 SC 383, this Court has analysed different meanings of "instigation". The relevant para of the

said judgment is reproduced herein:

"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. ¶

8.4. The essentials of Section 306 IPC were elucidated by this Court in M.Mohan vs. State, AIR 2011 SC 1238, as under:

¶43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of

abetment. The Court dealt with the dictionary meaning of the word ¶“instigation” and ¶“goading”. The Court opined that there should be intention to provoke,

incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of selfesteem and

selfrespect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and

circumstances.

44. 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.

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. ¶

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 106 IPC were also discussed in Amalendu Pal alias Jhantu vs. West

bengal AIR 2010 SC 512, in the following paragraphs:

¶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.

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.

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord

between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in

the commission of suicide by the deceased.

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24. In the case of Sanju @ Sanjay Singh Sengar v. State of M.P., reported in (2002) 5 SCC 371, the Hon'ble Apex Court extensively dealt with

concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the

accused/appellant therein was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts reveals that

there were matrimonial disputes between sister of the appellant/accused and her husband and in connection with the said disputes, the appellant had

allegedly threatened and abused Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the

quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive

language against said Chander Bhushan and had told him "to go and die". The appellant, who had been chargesheeted for an offence punishable under

Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him,

but his Petition was dismissed by the High Court. While allowing the appeal, the Hon'ble Apex Court, inter alia, observed as follows:

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 unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary

concomitant of instigation.

25. Thus, a direct influence or an oblique impact with the acts or utterances of the accused caused or created in the mind of the deceased and which

draw him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or ill-fated thoughts of the suicide, however

unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of the Indian Penal Code. In order to bring out an

offence under Section 306 of the Indian Penal Code specific abetment as contemplated by Section 306 of the Indian Penal Code 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. The intention of the accused to

aid or to instigate or to abet the deceased to commit suicide is a must for an offence under Section 306 of the Indian Penal Code.

26. The Hon'ble Apex Court in case of Ramesh Kumar vs. State of Chattinness, reported in AIR 2001 SC 383 referred in Prabhu vs. The State

represented by the Inspector of Police and anr supra, relied upon by learned counsel for the applicant, in para No.20 has examined different meaning

of 'instigation', which reads as, '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'.

27. Thus, combine reading of Sections 306, 107, and 108 of the Indian Penal Code, shows the requirement is a positive act on the part of the accused

to instigate or aid in committing suicide and in the absence of the same, the conviction cannot be sustained. There has to be a clear intention to commit

the offence for being held liable under Section 306 of Indian Penal Code.

28. The Hon'ble Apex Court, in the case of Mariano Anto Bruno vs. State, reported in (2023)15 SCC 560 in the context of culpability under

Section 306 of the Indian Penal Code, observed as under :

“45. ... 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.”

29. After going through the catena of decisions, it reveals that test that the court should adopt in these types of cases is to make an endeavour to

ascertain on the basis of the materials on record whether there is anything to indicate even prima facie that the accused intended the consequences of

the act, i.e., suicide. To attract the provisions what is to be shown is that the accused have actually instigated or aided in the victim act of committing

suicide. There must be direct or indirect incitement to the commission of suicide and the accused must be shown to have played an active role by an

act of instigation or by doing certain act to facilitate the commission of suicide.

30. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that there was a long standing

relationship between the applicant and the deceased victim. There is nothing on record to show that it was based on the promise of marriage. The

physical relationship over a considerable period of time was out of mutual love and by consent of the deceased victim. The communication between

both of them shows that it was a cordial relationship till June 2020. Subsequently, there appears to be some discords between them. The

communication between the deceased victim and the WhatsApp Chats took place in the month of July 2020 show that the applicant specifically stated

to her during the telephonic communication at 11:31 pm that henceforth we can be friends and nothing else. But, it reveals that it was the deceased

victim who was insisting him for the sexual relationship to which the applicant denied. Thus, the communication shows that the relationship was broken

in July 2020 and the deceased victim has committed suicide on 3.12.2020.

31. As observed by the Hon'ble Apex Court in the case of Prabhu vs. The State represented by the Inspector of Police and anr supra, broken

relationships and heart breaks are part of everyday life. It could not be said that the appellant by breaking up relationship and by advising her to marry

in accordance with the advice of her parents, as he himself was doing, had intended to abet suicide and, therefore, the offence under Section 306 of

the Indian Penal Code is not made out. It is further observed that the physical relationship over a considerable period of time was out of mutual love

between the Appellant and the deceased, and not based on the promise of marriage. This aspect is recently considered by the Hon'ble Apex

Court in the case of Kamaruddin Dastagir vs. State of Karnataka, reported in MANU/SC/1266/2024 and the Hon'ble Apex Court has extensively

dealt with provisions under Section 306 of the Indian Penal Code and held that the very first clause of Section 107 of the Indian Penal Code lays down

that a person, who abets the doing of a thing, is a person who instigates any person to do that thing. Therefore, instigation to do a particular

thing is necessary for charging a person with abetment. In paragraph No. 25 it is observed that even in cases where the victim commits suicide, which

may be as a result of cruelty meted out to her, the Courts have always held that discord and differences in domestic life are quite common in society

and that the commission of such an offence largely depends upon the mental state of the victim. Surely, until and unless some guilty intention on the

part of the accused is established, it is ordinarily not possible to convict him for an offence under Section 306 of the Indian Penal Code. While dealing

with the situation on the basis of the facts before the Hon'ble Apex Court, it is held that the accused-appellant had simply refused to marry the

deceased and thus, even assuming there was love between the parties, it is only a case of broken relationship which by itself would not amount to

abetment to suicide.

32. On examination of the instant case on the touchstone of the principles laid down by the Hon'ble Apex Court, the exhaustive suicide note

written by the deceased victim and the transcript of the Whatsapp Chats between the deceased victim and the applicant reveal that love relationship

was developed between them and out of the same, there was consensual relationship between them. The suicide note or WhatsApp Chats nowhere

disclose that the said physical relationship was developed on the promise of marriage. The said relationship was broken between them. Thus, it is the

case of only broken relationship. Moreover, the suicide by the deceased victim is not immediate result of the said broken relationship. The applicant

denied to have love relationship with her in July 2020 itself and, thereafter, the deceased victim committed suicide on 3.12.2020. Thus, there was no

proximity or nexus between two acts i.e. breaking of the relationship and the suicide. It is only a case of broken relationship which by itself would not

amount to abetment to commit suicide. As far as investigation papers are concerned, it nowhere reveals that the applicant, at any time, provoked the

deceased victim in any manner to kill herself. On the contrary, the evidence shows that after breaking of the relationship, the deceased victim was

constantly in contact with the applicant and was communicating with him. Therefore, in such a situation, merely because the applicant refused to

marry her, that by itself would not amount to instigate or provoke the deceased victim to commit suicide. At the most, what is attributable to the

applicant is that he has broken the relationship.

33. A plain reading of Sections 107, 108, and 306 of the Indian Penal Code and applying it to the undisputed facts of the present case indicates that

none of ingredients are attracted to the case in hand.

34. After having sifted weigh through the evidence on record and gone through the investigation papers and considering the materials on record, it is

difficult to hold that inference of grave suspicion can be raised against the applicant on the basis of the evidence on record. The material appears to be

insufficient for subjecting the applicant to trial. On the basis of the evidence on record, it cannot be stated that the material is sufficient for the

prosecution to establish the charge against the applicant. Subjecting the applicant to trial on the basis of the above said evidence would not only be a

mere formality but also abuse of process of law. Learned Sessions Judge ought to have appreciated this position while deciding the application for

discharge. Learned Sessions Judge ought to have appreciated that the ingredients of the offence under Section 306 are absent. Even, if it is assumed

that the material collected by the prosecution is true, it would not be sufficient to establish the case of the prosecution and, therefore, the conducting of

the trial against the applicant would be an empty formality. I am, therefore, of the view that the order impugned is liable to be set aside.

35. In this view of the matter, the criminal revision application deserves to be allowed. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Revision Application is allowed.

(2) The order dated 17.5.2024 passed below Exhibit-8 by learned Additional Sessions Judge, Khamgaon in Sessions Case No.78/2021 rejecting the

discharge application is quashed and set aside.

(3) The applicant is hereby discharged of offence punishable under Section 306 read with 34 of the Indian Penal Code in connection with Crime

No.486/2020 and Chargesheet No.33/2021 registered by the Shegaon Police Station, district Buldana.

The Criminal Revision Application stands disposed of.