



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1416 OF 2019

1. Anirudh Arun Bhandarkar
Age: 26 years
Occupation : Student as well as
partner in Bhandarkar General
Stores.

2. Supriya Arun Bhandarkar
Age: 51 years
Occupation : Housewife as well
as partner in Bhandarkar General
Stores
both the above residing at
Bhandarkar Bungalow, Next to
Police Station, Court Lane, S.V.
Road, Borivili (West), Mumbai-
400092.

...Applicants

Versus

1. The State of Maharashtra (at
the instance of Inspector of
Police, MHB Colony Police
Station Borivili (west)

2. Amit Raghuvir Acharya,
Age: 31 years
Occupation : Service Residing at:
El Palaza, 600-601, Opp. Citizen
Bank, IC Colony, Borivili (West),
Mumbai.

...Respondents

Ms Aruna Pai with Mr. N.M. Nadar for the Applicants.
Mr. J.P. Yagnik, APP for Respondent No.1-State.
Mr. Samkit Shah i/b. M/s Jaykar and partners for Respondent No.2.

**CORAM: SMT. ANUJA PRABHUDESSAI &
N.R. BORKAR, JJ.**

DATED: ~~1st~~ JANUARY, 2024.

JUDGMENT (Per SMT. ANUJA PRABHUDESSAI, J.):-

1. Heard finally with consent of learned counsel for the respective parties.

2. By this application, filed under Section 482 of the Cr.P.C., the Applicants have sought to quash the FIR No.238 of 2017 registered with M.H.B. Colony Police Station, Borivali, Mumbai, for the offence punishable under Sections 306 r/w 34 of the IPC.

3. Ms Aruna Pai, learned counsel for the Applicants submits that the deceased was working as a cashier in the shop of Applicants. CCTV footage showed that he had committed theft of cash as well as goods from the shop. The deceased had admitted having committed theft and had agreed to return the money or continue to work in the shop till payment of money. She submits that the suicide note as well as the other material on record does not indicate that the Applicants had in any manner instigated the deceased-Raghuv

Acharya to commit suicide. She therefore contends that the allegation in the FIR and the other material on record do not disclose offence under Section 306 of the IPC. She has relied upon the decision of **Mohit Singhal and Anr. Vs. The State of Uttarakhand and Ors SCC 417.**

4. Per contra, Mr. J.P. Yagnik, learned APP and Mr. Sa Shah, learned learned counsel for Respondent No.2 submit the allegations in the suicide note prima facie prove that the Applicants have levelled allegations of theft, due to which the deceased was in a disturbed state of mind. It is submitted that the material on record prima facie shows the involvement of the Applicants in the said crime. Even otherwise the issue whether the offence under Section 306 of the IPC is made out or not can be decided only in the course of the trial.

5. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The only question for our consideration is whether the FIR as well as other material on record discloses that the Applicants have

abetted suicide of Raghuvir Acharya.

7. It is not in dispute that the deceased was working as a cashier in the shop of the Applicants. He committed suicide during the intervening night of 08/07/2017 and 09/07/2017. Respondent No.2, son of the deceased lodged the FIR alleging that he had come across suicide notes dated 07/06/2016, 12/06/2017, 18/06/2017, 02/07/2017, 07/06/2017 and 08/07/2017 in the handwriting of his father. The said notes indicated that (i) Applicants used to abuse, insult and assault the deceased; (ii) They had levelled false charges of theft against him; (iii) They had taken forcible writing from him that he would not leave the job and threatened to send him to jail; (iv) They had taken the laptop, calculator and handbag of the deceased and the deceased was put under constant mental pressure; and (v) That the deceased was not paid the salary in time. It is contended that said Raghuvir Acharya committed suicide due to the harassment caused by the Applicants. Hence, the allegation of abetment.

8. It may be mentioned that, the term 'abetment' as defined under Section 107 of the Indian Penal Code, 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 willful 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 the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

9. In the case of **Mariano Anto Bruno Vs. The Inspector o**

Police, AIR 2022 SC 4994 the Hon'ble Apex court has observed thus :-

"24. While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in *Geo Varghese Vs. State of Rajasthan and Another* [2021 SCC OnLine SC 873], has observed as under:-

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody

is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under :-

“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.”

14. Though, the IPC does not define the word ‘Suicide’ but the ordinary dictionary meaning of suicide is ‘self-killing’. The word is derived from a modern latin word ‘suicidium’, ‘sui’ means ‘oneself’ and ‘cidium’ means ‘killing’. Thus, the word suicide implies an act of ‘self-killing’. In other words, an act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh [(2010) 1 SCC 707] has defined the word ‘instigate’ as under:-

“Instigation is to goad, urge forward, provoke, incite or encourage to do an act.”

17. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr [(2010) 12 SCC 190], it was observed as under:-

“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 the Supreme 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

25. The ingredients of Section 306 IPC have been extensively laid out in *M. Arjunan Vs. State*, represented by its Inspector of Police [(2019) 3 SCC 315] which are as under: -

“The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

26. In order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in *Ude Singh & Ors. Vs. State of Haryana* [(2019) 17 SCC 301] observed as under:-

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of

incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide.

The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

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36. To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to put deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased.”

10. In **Mohit Singhal** (supra) the Hon’ble Supreme Court has observed that to attract the first clause of Section 107, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have to instigate the deceased to commit suicide. The act of instigation must be

of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

11. In the present case, as noted above, the deceased was working as a cashier in the shop of the Applicants. The statements of the other employees working in the said shop, recorded in the course of the investigation, reveal that the deceased had committed theft of cash and goods from the shop. The statements do not indicate that the Applicants herein had abused or assaulted the deceased in any manner. On the contrary, the statement of Dr. Kiran Dikshit Shandilya indicates that the deceased was suffering from depression and was having suicidal thoughts. The allegations in the suicide note even if accepted as true and correct, do not indicate that the Applicants had directly or indirectly incited, instigated or aided commission of the suicide. Thus, the allegations lack the very element of abetment, which is an essential ingredient of offence under Section 306 of the IPC. In such circumstances, compelling the Applicants to face trial would amount to an abuse of the process of court.

12. Hence, in our considered view the case is squarely covered by illustration Nos.(1) and (3) in the case **State of Haryana and Ors vs. Ch. Bhajan Lal and Ors. AIR .1992 SC 604**, the application is allowed in terms of prayer clause (b). FIR No.238 of 2017 registered with M.H.B. Colony Police Station, Borivali, Mumbai, for the offences punishable under Sections 306 r/w 34 of the IPC, stand quashed.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)