



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1286 of 2019

- Vishesh Kumar Bhawte S/o Bhimrao Bhawte Aged About 30 Years
R/o Village Ghotia, Police Station Gendratola, Rajnandgaon
Chhattisgarh.
- Bhimrao Bhawte S/o Shri Jeevanlal Bhawate Aged About 56 Years
R/o Village Ghotia, Police Station Gendratola, Rajnandgaon
Chhattisgarh.

---- Petitioners

Versus

- The State Of Chhattisgarh Through S.H.O. Gendatola, District
Rajnandgaon Chhattisgarh.

---- Respondent

This is office reference.

Hon'ble Justice Smt.Rajani Dubey
Order On Board

24/05/2019

This Cr.M.P. has been filed seeking modification in the order delivered on 17.05.2019 by this Court in Cr. Rev. No.98/2010 wherein, inadvertently, while uploading the judgment, the date has not been mentioned in the Fly sheet.

In view of above, the typographical error crept in the abovementioned case stands rectified and the date "17.05.2019" be inserted in place of " .05.02019"

With the modification as indicated above, the instant Cr.M.P. stands disposed of.

Sd/-
Rajani Dubey)
Vacation Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

CR.Rev. No. 98 of 2010

Vishesh Kumar Bhawte & Others

Applicants

Versus

State Of Chhattisgarh

Respondent

Post for pronouncement of the judgment on .05.2019

JUDGE
Sd/-





NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 06.05.2019****Judgment delivered on : 17.05.2019****CRR No. 98 of 2010**

- Vishesh Kumar Bhawte And Another S/o Jeevanlla Bhawte Both R/o Vill. Ghotia, Ps Gendatola, Rajnandgaon
- Bhimrao Bhawte S/o Jeevanlla Bhawte Both R/o Vill. Ghotia, Ps Gendatola, Rajnandgaon

---- Applicants**Versus**

- State Of Chhattisgarh, through SHO Gendatola, District Rajnandgaon (CG)

---- Respondent

For Applicant : Shri Gautam Khetrapal, Advocate
For Respondent/State : Shri Vikash Shrivastava, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****17/05/2019**

This criminal revision under Section 397,401 of Cr.P.C. has been filed by the applicant against the order dated 21.01.2010 passed by Additional Sessions Judge, (FTC), Rajnandgaon in S.T.No.108/2009 by which charge under Section 306,34 of IPC has been framed against the applicants.

2. Brief facts of the case are that deceased Anju Ambade was engaged to applicant No.1 Vishesh Kumar Bhawte and parents of



the deceased were demanding to fix the date of marriage which was refused by them. On 15.07.09, a society meeting was called on, where both the families were present which went on for the whole night and during that course, the deceased went to her house to drink water and when she did not come for about half an hour, her mother went to call her daughter and found her hanging on the raft of the house by tying her *dupatta* on the neck. Learned Additional Sessions Judge rejected the arguments of the applicants and framed charges under Section 306,34 IPC against both the accused hence, the present revision.

3. Counsel for the applicants submits that in the entire charge sheet, there is no material available on record to frame charges against the present applicants for the offence under Section 306 IPC and as such, learned Additional Sessions Judge has committed illegality in framing charges against the present applicants as there is no proximity and nexus between the conduct and behaviour of the applicants with that of suicide committed by deceased Anju Ambade. Counsel for the applicants has relied upon the judgment in the matter of **Swamy Prahadas Vs. State of M.P. and Another (1995 Supp.(3)SCC 438)**, wherein the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. Hon'ble Apex Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even *prima facie* enough to instigate the deceased to commit suicide. He has also placed reliance in the matter of **Amit**



Gandhi and Another Vs. State of Chhattisgarh in Cr. Rev. No. 136 of 2014 and 199/2014.

4. On the other hand, learned counsel for the State submits that there is sufficient material available on record for presuming that the applicants have committed the offence and as such there is no illegality in the order impugned framing charges against the applicants warranting interference by this Court.

5. Heard counsel for the parties and perused the order impugned including records of the case carefully.

6. The question in the present case is as to whether considering and accepting the entire material available on record is absolutely correct and true, a *prima facie* case under Section 306 IPC is made out against the applicants.

7. Provisions of Section 306 and 107 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.

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 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.”

8. As per the definition given in Section 107 IPC, abetment is constituted by :

- Instigating a person to commit an offence; or
- Engaging in a conspiracy to commit it; or
- Intentionally aiding a person to commit it.

9. Complainant Inder Lal, father of the deceased has stated in his statement under Section 161 Cr.P.C. that “मीटिंग शुरु हुई तो लडका को समझाए वह शादी से इंकार किया एवं लडकी उसी घर में शादी करुंगी कहकर जिद करने लगी। फिर भी वह शादी के लिए नहीं माना मनाने का दौर रात



भर चला। फिर सुबह लडकी घर मे चली गई आधा घंटा बाद लडकी की मॉ चन्द्रभागा को लडकी बुलाने भेजे तो वह गई और चिल्लाई कि लडकी फांसी लगाकर आत्म हत्या कर ली है। एवं फांसी के दुपट्टा को बीच से काट दी एवं खाट पर लेटाकर देखे तो वह मर गई थी लडके द्वारा शादी से इन्कार करने के कारण लडकी फांसी लगाकर आत्म हत्या की गई।”

10. Other witnesses including mother of the deceased have also given similar statement as has been made by the complainant. In case of **M.Mohan Vs. State represented by Deputy Superintendent of Police (2011 (3) SCC 626**, the Apex Court has held that in order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit the offence, by observing as

under:

45. The intention of the Legislature and the ration 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.”

11. In one of the judgments of this Court in the matter of Ramesh Kumar Vs. State of Chhattisgarh (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 IPC, on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her



husband who had said that she could go where ever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused, this Court said,

“ A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty.”

12. In the present case, as per prosecution story, on refusal from marriage by the applicants, meeting was called and during the course of said society meeting, deceased went to her house for drinking water and committed suicide by hanging herself from the raft of the house. From the above circumstances, the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 IPC. Thus, in the opinion of this Court considering and accepting the entire material available on record as absolutely correct and true on their face value, no *prima facie* case for framing charge for offence punishable under Section 306,34 IPC is made out against the present applicants as there is no nexus and proximity with the conduct and behavior of the accused persons with that of the suicide committed by deceased



Anjulata. It is the deceased and she alone and none else is responsible for her death. Consequently, the revision filed by the applicants is allowed. It is held that there is no material for framing charges against the present applicants and they are discharged from the offences punishable under Sections 306/34 IPC. Applicants are on bail. Their surety and bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
Judge

