

# **Parshu Ram vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 4 February, 2025**

**Author: Saurabh Lavania**

**Bench: Saurabh Lavania**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:7187

Court No. - 12

Case :- APPLICATION U/S 482 No. - 775 of 2025

Applicant :- Parshu Ram

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Jayveer Rajput

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.
2. In view of the order proposed to be passed, notice to opposite party No.2 is hereby dispensed with.
3. The present application under Section 482 Cr.P.C. has been filed for the following main relief(s):-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to set aside the order dated 13.08.2024 passed by Learned Session Judge, Unnao whereby the application for discharge filed by the applicant has been rejected in Session Trial No.1445 of 2022; State Vs Parshu Ram as well as order dated 22.08.2024 passed by Learned Session Judge, Unnao (contained as Annexure No. 1),

in the interest of law and justice."

4. The case of the prosecution as per F.I.R. bearing F.I.R./Case Crime No.0295/2022, dated 26.10.2022 under Section 306 I.P.C., Police Station- Makhi, District-Unnao, lodged by opposite party No.2/Mithilesh Lodh is to the effect that on 25.10.2022 at about 5.00 P.M. some hot talk had taken place between the deceased (son of the complainant) on one side and the applicant and his sons, Jitendra and Dharmendra, on the other side and due to the said altercation, the deceased committed suicide on 25.10.2022 by hanging himself. The autopsy surgeon also pointed out the cause of death as 'asphyxia due to ante mortem hanging'.

5. Taking note of the allegations leveled in the F.I.R., statement of the witnesses in support of the case of prosecution, recorded by the Investing Officer (in short "I.O."), as also the post mortem report, the Investigating Officer submitted charge sheet against the applicant and the thereafter cognizance was taken upon the charge sheet so submitted and thereafter the matter was committed to Court of Sessions where the same was registered as S.T. No. 1445 of 2022 (State Vs. Parshu Ram).

6. Before the Session Court, in view of the facts and circumstances of the case as also various pronouncements of Hon'ble Apex Court on the issue, the applicant preferred an application seeking discharge, which has been rejected by the trial court without considering the fact and circumstances of the case and law on the issue based on the issue vide the impugned order dated 13.08.2024.

7. Bare perusal of the impugned order, it is apparent that the trial court, while rejecting the application seeking discharge, has not discussed the essential ingredients to attract the offence under Section 306 I.P.C.

8. Learned counsel for the applicant submitted that a bare perusal of FIR would show that there is no specific allegation based upon which Section 306 IPC can be attracted. He says that for the purposes of offence under Section 306 IPC, the prosecution has to allege and prove that the deceased was abetted/instigated by the accused immediately before committing suicide. Merely on the allegation of harassment/torture 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, implication or conviction in terms of Section 306 IPC is not sustainable. 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. This aspect is missing in this case. In this regard, learned counsel for the applicant placed reliance on the relevant paras of the judgment of Apex Court passed in the case of Gurcharan Singh v. State of Punjab reported in (2020) 10 SCC 200, which are quoted as under:-

"13. Section 107 IPC defines "abetment" and in this case, the following part of the section will bear consideration:

"107. Abetment of a thing.--A person abets the doing of a thing, who--

First.--Instigates any person to do that thing; or \*\*\* Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing."

14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether the appellant had the mens rea for the crime he is held to have committed. The conviction of the appellant by the trial court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

16. The necessary ingredients for the offence under Section 306 IPC were considered in *S.S. Chheena v. Vijay Kumar Mahajan* [*S.S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] where explaining the concept of abetment, Dalveer Bhandari, J. wrote as under : (SCC p. 197, para 25) "25. 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 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."

17. While dealing with a case of abetment of suicide in *Amalendu Pal v. State of W.B.* [*Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13) "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."

18. In *Mangat Ram v. State of Haryana* [*Mangat Ram v. State of Haryana*, (2014) 12 SCC 595 : (2014) 5 SCC (Cri) 127], which again was a case of wife's unnatural death, speaking for the Division Bench, K.S.P. Radhakrishnan, J. rightly observed as under : (SCC p. 606, para 24) "24. We find it difficult to comprehend the reasoning of the High Court [*Mangat Ram v. State of Haryana*, Criminal Appeal No. 592-SB of 1997, decided on 27-5-2008 (P&H)] that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning."

9. Learned counsel for the applicant further placed reliance on the relevant paras of the judgment of Apex Court passed in the case of *Geo Varghese v. State of Rajasthan* and Another reported in (2021) SCC Online SC 873, which are quoted 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, 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. Abetment is defined under Section 107 of IPC which 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.

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.

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."

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 v. State of Chhattisgarh*<sup>1</sup> 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 co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of *S.S. Cheena v. Vijay Kumar Mahajan* (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."

18. In a recent pronouncement, a two-Judge Bench of this Court in the case of *Arnab Manoranjan Goswami v. State of Maharashtra* (2021) 2 SCC 427, while considering the co-relation of Section 107 IPC with Section 306 IPC has observed as under:--

"47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of the 14 (2014) 4 SCC 453 PART I 33 CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self

restraint imposed by law, has the jurisdiction to quash the investigation "and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in *State of Haryana v. Bhajan Lal* (*Bhajan Lal*) include a situation where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in *Kamal Shivaji Pokarnekar v. State of Maharashtra*.

48. The striking aspect of the impugned judgment of the High Court spanning over fifty-six pages is the absence of any evaluation even prima facie of the most basic issue. The High Court, in other words, failed to apply its mind to a 15 1992 Supp (1) SCC 335 16 (2019) 14 SCC 350 PART I 34 fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 of the CrPC. The High Court, by its judgment dated 9 November 2020, has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant's prayer for interim bail and relegated him to the remedy under Section 439 of the CrPC. In the meantime, liberty has been the casualty. The High Court having failed to evaluate prima facie whether the allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 of the IPC, this Court is now called upon to perform the task."

19. In the case of *M. Arjunan v. State, Represented by its Inspector of Police* (2019) 3 SCC 315, a two-Judge Bench of this Court has expounded the ingredients of Section 306 IPC in the following words:--

"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."

20. At this stage, we may also refer to another recent judgment of a two-Judge Bench of this Court in the case of *Ude Singh v. State of Haryana* (2019) 17 SCC 301, which elucidated on the essential ingredients of the offence under Section 306 IPC in the following words:--

"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 behaviour 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."

21. We may also refer to a two-Judge Bench judgment of this Court in the case of Narayan Malhari Thorat v. Vinayak Deorao Bhagat (2019) 13 SCC 598, wherein the judgment rendered by the High Court quashing the FIR under Section 482 was set aside. In the said case, an FIR was registered under Section 306 IPC stating that the son and daughter-in-law were teachers in a Zila Parishad School where the accused was also a teacher used to make frequent calls on the mobile of the daughter-in-law, and used to harass her. Despite the efforts of the son of the informant in trying to make the accused see reason and stop calling, the accused continued with his activity. On 09.02.2015, there was a verbal altercation between the son of the informant and the accused and on

12.02.2015, he committed suicide leaving a note stating that his family life has been ruined by the accused who should not be pardoned and should be hanged. Under Section 482 Cr.PC, a petition was filed by the accused challenging the FIR, which was allowed by the High Court and thereafter, was challenged before this Court. The appeal was allowed by this Court and made the following observations:--

"We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation. The record shows that 3-4 days prior to the suicide there was an altercation between the victim and the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abate the commission of suicide. At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of the respondent."

22. In the above quoted observations of this Court, there is a clear indication that there was a specific averment in the FIR that the respondent had continuously harassed the spouse of the victim and did not rectify his conduct despite being objected by the victim. Thus, as a matter of fact he had actively facilitated in the commission of suicide.

23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased."

10. Based upon the observations made by the Hon'ble Apex Court in the judgment dated 05.03.2024 passed in the case of Prabhat Kumar Mishra Alias Prabhat Mishra vs. State of U.P. and another reported in (2024) 3 SCC 665, it is also stated that only based upon the suicide note, the judgment of conviction cannot be passed and for convicting an accused under Section 306 IPC, the prosecution is under obligation to prove essential ingredients indicated under Sections 306 and 107 IPC.

11. Upon due consideration of the allegations levelled against the applicant in the FIR in the light of observations made by the Hon'ble Apex Court in judgments referred and the impugned order wherefrom it reflects that reasons for rejecting the discharge application after considering



allegations leveled in the FIR and the law on the issue have not been recorded, this court finds force in the arguments of learned counsel for the applicant.

12. Accordingly, the instant application is allowed. The order dated 13.08.2024 is hereby set aside.

13. The matter is remanded back to the court concerned for passing order afresh on the application of the applicant seeking discharge.

Order Date :- 4.2.2025 ML/-