

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

CRIMINAL REVISION No.639 of 2024

KHAIRU @ SATENDRA SINGH RAWAT

Vs

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

(SHRI RAMESHWAR RAWAT- ADVOCATE FOR THE
PETITIONER)

(SMT. ANKITA MATHUR - PUBLIC PROSECUTOR
FOR RESPONDENT/STATTE)

(SHRI SOORAJ BHAN LODHI – ADVOCATE FOR
RESPONDENT/COMPLAINANT)

Reserved on : 12.08.2024

Pronounced on : 20.08.2024

*This revision having been heard and reserved for order,
coming on for pronouncement this day, Justice Sanjeev S
Kalgaonkar pronounced the following:*

ORDER

This Criminal Revision, under Section 397 read with

Section 401 of the Code of Criminal Procedure, 1973 (for brevity “the Code”), is filed assailing the order dated 10.01.2024 passed by learned Sessions Judge, Shivpuri (M.P.) in Sessions Trial No.376 of 2023, whereby charge for the offence punishable under Section 306 read with 34 IPC is framed against petitioner Khairu @ Satendra Singh Rawat.

2. The exposition of facts, giving rise to this revision-petition, is as under:-

(A) As per the case of prosecution, Vikram Rawat S/o Jagdish Singh Rawat reported to Police Station Dehat Thana, Shivpuri (M.P.) on 18.06.2023 around 15:18 hours that on the same day, around 02:30 in the afternoon, he took his children for haircut to local barber shop at Neelgar square. When he returned home with children, his wife Vandana did not open the door. When he peeped inside the house through window glass, he saw that his wife Vandana was hanging with ceiling fan with the help of Saree. Vandana had died. On such intimation, Police Station Dehat Thana, District Shivpuri (M.P.) registered Unnatural Death Intimation No.26/2023 and started inquest proceedings. Dead body of Vandana was forwarded for post-mortem examination. Medical Officer opined that Vandana had died due to asphyxia caused by hanging. Statements of witnesses were recorded under Section 174

of the Code. Relatives of Vandana i.e. Phoolwati (mother), Dharmendra (father) and Ankesh (brother) alleged that Vikram and his cousin Khairu Rawat (present revision petitioner) had enticed and taken Vandana 12 years ago. Vikram performed marriage with Vandana. Vandana was residing with Vikram Rawat. They were blessed with two kids. Vandana used to complain that Vikram manhandle her after intoxication. Vikram and Khairu were harassing Vandana. Therefore, she had committed suicide due to manhandling after intoxication by Vikram and Khairu. On such allegations, Police Station Dehat Thana Shivpuri registered FIR at Crime No.211 of 2023 for offence punishable under Section 306 read with Section 34 of IPC. Petitioner Khairu was arrested. Statements of witnesses were recorded. After completion of investigation, final report was submitted before learned Judicial Magistrate First Class, Shivpuri (M.P.). The case was committed for trial to the Sessions Court.

(B) Learned Sessions Judge, Shivpuri *vide* order dated 10.01.2024 framed charge for the offence punishable under Section 306 read with Section 34 against Satendra @ Khairu Rawat for constituting common intention with co-accused Vikram Rawat to harass and instigate Vandana Rawat to commit suicide in furtherance of which, Vandana

had committed suicide by hanging.

3. Feeling aggrieved by the aforesaid charge, this revision-petition is filed on the following grounds:

(A) Petitioner is the maternal cousin of main accused Vikram. He occasionally visited Vikram. He is resident of village Pananair 18 kms away from residence of Vikram at Shivpuri. Vikram was married to Vandana Rawat through court marriage and they were blessed with two children i.e. a girl child presently aged around 7 years and a boy child presently aged around 9 years. Petitioner had no interference in day-to-day affairs of the family of Vikram and Vandana.

(B) There is no evidence with regard to abetment to commit suicide by the petitioner.

On such grounds, it is requested that the impugned order dated 10.01.2024 of framing charge against the petitioner be set aside.

4. Learned counsel for the petitioner, in addition to the grounds mentioned in the petition, contends that Vandana was married to Vikram 12 years ago, therefore, presumption under Section 113(a) of the Evidence Act would not apply. Learned counsel further submits that there is no allegation with regard to instigation to commit suicide against the petitioner, therefore, alleged offence is not made out.

5. *Per contra*, learned counsel for the State, referring to the statements of parents of the deceased, contends that in view of the direct allegation with regard to manhandling and harassment against the petitioner, no case for discharge is made out.

6. Heard learned counsel for both the parties and perused the case-diary.

7. Section 306 of IPC provides that punishment for abetment to commit suicide. Section 107 of IPC defines abetment 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.

The explanation to Section 107 IPC which defines instigation provides, thus:-

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.

8. In case of *Gangula Mohan Reddy V/s. State of Andhra*

Pradesh (2010) 1 SCC 750, the Apex Court opined as under :-

17. 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 this act must have been intended to push the deceased into such a position that he committed suicide.

9. This Court in *Hukum Singh Yadav V/s. State of M.P. reported in ILR (2011) MP 1089* considered the judgment of the Supreme Court in case of *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh* reported in *AIR 2002 SC 1998* and held as under :-

10. Considering these legal aspect this is to be observed that whether applicants have had same knowledge that deceased would commit suicide. As per the prosecution case when deceased was going with his father. Applicants restrained deceased and his father Jagdish and abused and threatened both of them, hence it cannot be assumed that applicants had knowledge that one of them particularly deceased will commit suicide. When act of abusing and threatening was alleged to be done with deceased as well as his father, so it cannot be said that applicants had knowledge or intention that deceased should commit suicide. There is no evidence that they provoked, incited or encouraged deceased to commit suicide. It is also not alleged that when applicants threatened to kill the deceased and his father Jagdish they were armed with some weapons. So it cannot be presumed that deceased was so frightened

that he had no option left except committing suicide and was compelled to do so.

10. The principle flowing from these judgments is that the overt act of accused person must be of such a nature where the victim had no option but to commit suicide. Even assuming that the petitioner misbehaved with deceased, the conduct does not fall within the ambit of "incitement" or "instigation".

11. As per the case of prosecution, petitioner Khairu instigated his sister-in-law (*bhabhi*) Vandana to commit suicide. Instigation means "to goad, urge, provoke, incite or encourage to do act". There is no positive or direct allegation that the petitioner intended death of Vandana or he has goaded, urged, provoked, incited or encouraged Vandana to commit suicide. The general and omnibus allegations which have been made against the applicant are trivial in nature, which generally take place in every household. Mere occasional harassment or misbehaviour does not amount to abetment to suicide.

(Amalendu Pal @ Jhantu Vs. State of West Bengal, reported in (2010) 1 SCC 707 and Arnab Manoranjan Goswami Vs. State of Maharashtra and Others reported in 2020 (SCC Online) SC 964 relied)

12. In view of discussion, this Court is of the considered opinion that the offence punishable under Section 306 read with Section 34 of IPC was not *prima facie* made out against the applicant/accused. Khairu @ Satendra Singh. The learned trial

Court committed patent error in framing charge against the petitioner for offence punishable under Section 306 read with Section 34 of IPC.

13. Consequently, the impugned order dated 10.01.2024 passed in Sessions Trial No.376/2023 by learned Additional Sessions Judge, District Shivpuri is hereby set aside. The petitioner stands discharged.

14. The criminal revision is, accordingly, **allowed.**

Pd/Avi

(SANJEEV S KALGAONKAR)
JUDGE