



AFR

THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.385 of 2023

(In the matter of an application under Section 482 of the Criminal Procedure Code, 1973)

Dr. Priyank Tapuria **Petitioner**

-Versus-

State of Orissa & another **Opposite Parties**

For the Petitioner : Mr. Samir Kumar Mishra, Sr. Advocate

**For the Opp. Party
No.1** : Mr. P.K. Maharaj,
Addl. Standing Counsel

**For the Opp. Party
No.2** : Mr. Himanshu Sekhar Mishra, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 21.03.2024 : Date of Judgment: 20.06.2024

S.S. Mishra, J. The pain of loneliness, despair and agony suffered by a mind contemplating suicide have been realistically captured by the American President, Abraham Lincon in following lines:

“Yes! I’m prepared, through endless night,



*To take that fiery berth!
Think not with tales of hell to fright
Me, who am damn'd on earth!"*

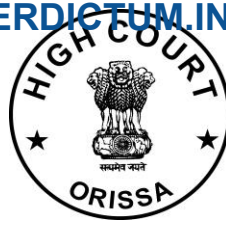
“ The Suicide’s Soliloquy”
by Abraham Lincon

The present case unveil the kind of damage caused in the minds of young people due to societal pressure, particularly in this age where psyche of the society as a whole is dominated by internet and social media platforms. It is unfathomable that a highly educated young girl like the deceased namely *Sheetal*, who was pursuing her Ph.D in Electrical Engineering, could even thought of taking her own life.

2. The uncontroverted facts germinating from the record are that:

(a) The families of the petitioner and the deceased were in the process of arranging and formalising the marriage between the petitioner and the deceased since 2019. The petitioner at that time was pursuing his medical education at AIIMS, Bhubaneswar so he insisted upon postponing the marriage ceremony by two years.

(b) Apparently, family of the deceased could not agree for waiting for such long time. Therefore, sometime in the month of November,

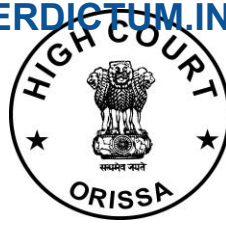


2020 they settled the marriage of the deceased with a boy from Nagpur and the ring ceremony took place at Nagpur.

The photographs of the ring ceremony as well as pre wedding photoshoots were posted on social media platforms. Be that as it may, this engagement at Nagpur could not be fructified into marriage and the same was called off sometime in February 2021 by deceased family due to discontentment.

(c) In May 2021, again talks between the families of the petitioner and the deceased to formalise the proposal of marriage of the petitioner and the deceased restarted, which culminated into the engagement/ring ceremony being celebrated on 30.05.2021.

(d) In between, in the month of August 2021, both the families organized birthday celebrations for petitioner as well as the deceased, whereafter, the deceased realized that the petitioner was not happy with the marriage proposal with her. The poor soul brought this fact to the notice of her parents and family members. The family members of the deceased brought this to the notice of the family members of the petitioner. However, parents and family members from both the side



insisted upon the petitioner as well as on the deceased that they should talk to each other and expected that over the period of time things will fall in place.

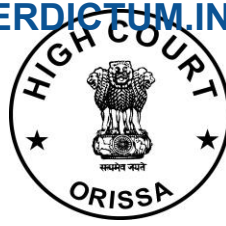
(e) The respective families encouraged the petitioner and the deceased to spend some time together, however, there is nothing on record to indicate that physical intimacy between the deceased and the petitioner was ever established. Although, in July 2021 deceased had gone to Bangalore, where sister of the petitioner was studying BDS course there. Both the petitioner as well as the deceased met for some time at Bangalore, but nothing seems to have worked in favour of alliance.

(f) It's borne out from the record that since the Petitioner wanted to pursue his Fellowship selection scheduled on 16.11.2021, he proposed to postpone the marriage but the family of the deceased insisted to conduct marriage ceremony on 21.11.2021. The petitioner came under the pressure of both the families to agree upon the schedule of marriage at the cost of his fellowship selection. Apparently it was not a happy situation.



(g) On 12.11.2021 the petitioner, his sister, deceased and her sister at about 2.30 P.M. had long group video call, it is alleged by the complainant (mother of the deceased) that they were having discussion about the marriage and preparation for it, to which the petitioner was not showing any interest. It has been further alleged by the complainant that father of the petitioner at about 10.20 P.M. called the deceased and informed that marriage between the petitioner and the deceased might not materialised as the petitioner was not willing to get married and further expressed his sorrow for that. Thereafter, at about 12.20 A.M. the sister of the deceased called the petitioner from deceased phone and talked to the petitioner for about two hours and after that the petitioner and the deceased remained on call till 4.00 A.M. during which the conversation was alleged to have taken an ugly turn and the petitioner was alleged to have communicated his decision to call off the marriage in a harsh manner to the deceased.

(h) It has been alleged that the telephonic conversation between the petitioner and the deceased made the deceased very volatile and mentally unstable, the complainant tried to console the deceased but after



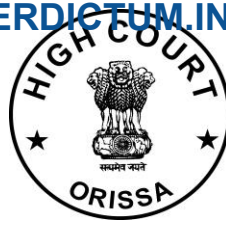
sometime the deceased was found to have committed suicide at 8 A.M. by hanging herself with ceiling fan with the aid of her “Odhani”.

(i) At about 9.45 A.M. on 13.09.2021, the incident was first reported to the IIC, Town P.S. Dhenkanal, by the complainant. In her complaint, she did not make any elaborate allegations against the petitioner other than stating that the deceased had discussed with her that between 3.30 A.M. to 4 A.M. the deceased had a “*hot discussion*” with the petitioner. So, she prayed for conducting an inquiry. On the basis of the same, U.D. Case No.40 of 2021 was registered at the P.S. The complaint made by the mother of the deceased is extracted herein below:-

“To
The IIC, Town Police Station,
Dhenkanal
Sub: FIR regarding suicide by hanging of my
daughter Sheetal Chandak.

Sir,

As above, I would like to intimate that I Smt. Kamala Devi Chandak aged about 53 years wife of Jugal Kishore Chandak of Laxmi Bajar, DKL that my daughter Sheetal Chandak aged about 30 yrs had a discussion with me today 13/10/2021 near about at 7.30 am and went to her Bedroom. After few time when I went there found the room was locked from inside. Suspecting foul play I called my family



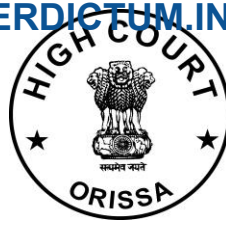
members and forcibly opened the door and found she was hanging by using her wearing napkin (Odni).

During discussion with my daughter she said me that around 3.30 am to 4 am the boy with whom her marriage was fixed had called her over mobile phone and there was a hot discussion with them. Please have an inquiry about that matter.”

3. The complainant for the second time reported the incident after 7 days on 20.09.2021 at about 9.30 P.M., wherein specific allegations against the petitioner were made by the complainant. This complaint was registered as F.I.R. No.382 of 2021 U/s.306 IPC against the petitioner.

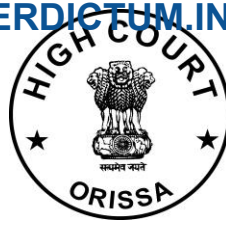
After investigation, police filed charge-sheet No.616 dated 23.11.2022 against the petitioner U/s.306 IPC. It may be pertinent to extract the relevant portion of the charge-sheet to have a meaningful appreciation of the prospective.

*“On 16.07.2021 Sheetal Chandak had been to Bangalore to the house of Kajal Tapuria where she spent some time with Kajal Tapuria and Priyank Tapuria. After return Sheetal was very unhappy. Getting this information Shibani Chandak @Kankari talked to Priyank Tapuria over telephone of Sheetal Chandak on 12.09.2021. On this Priyank Tapuria denied out rightly to marry Sheetal Chandak. On this Shibani and Sheetal tried a lot to make him understand that they have raised photographs of different occasions and sent all those in social media. The Marwari community in Odisha is very less and the breaking of marriage proposal **time and again of a girl of this community** after ring ceremony and proceeding a lot towards marriage is a matter of question mark on her for every one of this community. This is reason for which Sheetal was very much sad and felt ashamed. So,*



*she tried a lot to make understand Priyank Tapuria not to break the relationship. But Mr. Priyank Tapuria without thinking the mental condition of Sheetal, out rightly and harshly denied to marry Sheetal. **They talked hours together over telephone, but what he has told to Sheetal no one knows except this much that he has mentally harassed Sheetal.***

4. The learned S.D.J.M., Dhenkanal vide order dated 28.11.2022 took cognizance of offence punishable U/s.306 IPC against the petitioner in G.R. Case No.1111 of 2021 corresponding to Dhenkanal Town P.S. Case No.382 of 2021 on charge-sheet No.616 dated 23.11.2022. The petitioner has challenged the aforesaid order of taking cognizance in the present proceeding by invoking jurisdiction of this Court U/s.482 Cr.P.C.
5. Heard Mr. Samir Kumar Mishra, learned Senior Counsel for the petitioner, Mr. Himanshu Sekhar Mishra, learned counsel for the informant and Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State.
6. Mr. Samir Kumar Mishra, Ld. Sr. Advocate appearing for the petitioner has forcefully argued that no case of offence U/s.306 IPC is made out against the petitioner even if the allegation made in the charge-sheet as well as the material forming the part of the charge-sheet is taken on its face value to be true, as such material does not disclose the

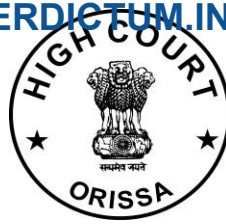


essential ingredient necessary for initiating the trial for the offence punishable U/s.306 of IPC.

Learned Sr. Counsel has argued that neither the F.I.R. nor the charge-sheet filed after the investigation whisper about any kind of explanation about the material improvement made in the complaint in the F.I.R. from the complaint made in the U.D. Case. This fact itself gives credence to his argument that the allegations made in the F.I.R. and the statements recorded thereafter are nothing but an afterthought and pre-planned attempt to harass the petitioner in vengeful manner by implicating the petitioner in false criminal case. The family of the deceased are bent upon to spoil the life of the petitioner under the false notion that he is responsible for the death of their daughter.

7. Learned Sr. Counsel for the petitioner, in support of his arguments has relied upon the ratio laid down by the Hon'ble Supreme Court in the case of *M. Mohan vs. State* reported in (2011) 3 SCC 626, wherein the Hon'ble Supreme Court has held that:

“37. The word ‘suicide’ in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. ‘Sui’ means ‘self’ and



‘cide’ means ‘killing’, thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

38. In our country, while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under section 309 of I.P.C.

39. ‘Abetment of a thing’ has been defined under section 107 of the Code. We deem it appropriate to reproduce section 107, which reads as under:

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

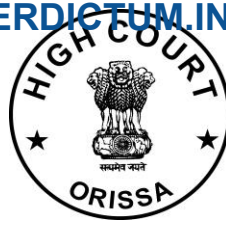
First - Instigates any person to do that thing; or Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly - Intentionally aides, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with section 107 reads as under:

“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.”

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.**”

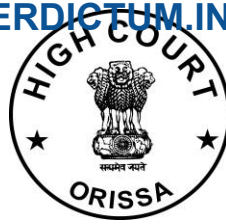


8. It has been further argued on behalf of the petitioner that ratio laid down by the Hon'ble Apex Court in the case of ***Prabhu vs. The State Rep. By Inspector of Police & Anr.***, SLP (Crl.) Diary No.39981 of 2022 squarely covers the case of the petitioner as the facts in the present case and the facts in the above cited judicial pronouncement are matching except for the fact that allegations in the case dealt by the Hon'ble Supreme Court are much graver than present case. Ld. Senior Counsel has relied on para 9 to 12 of the judgment in the case of **Prabhu** (supra) to elucidate upon the essential ingredients of offence punishable U/s.306 IPC, which reads as follows:-

“9. In a recent judgment of this Court in ***Kamalakar vs. State of Karnataka in Criminal Appeal No.1485 of 2011 (decided on 12.10.2023)***, one of us (Vikram Nath J.) explained the ingredients of Section 306 IPC. The Court has held as follows:-

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 v. State of Chhattisgarh***, this Court has analysed different meanings of “instigation”. The relevant para of the said judgment is reproduced herein:

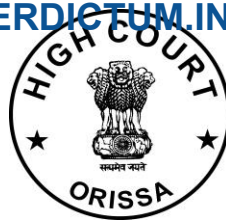


“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. 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 v. State*, 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 “goaded”. 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 self-esteem and self-respect. 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



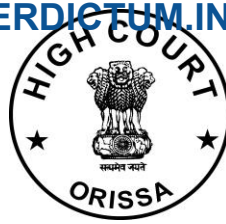
act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

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 306 IPC were also discussed in *Amalendu Pal alias Jhantu v. State of West Bengal* 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.”

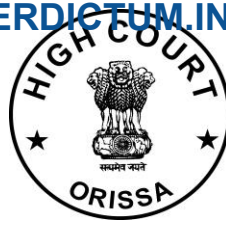
8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

10. On a perusal of the above, and relying upon this Court’s previous judgments discussing the elements of Section 306 IPC, the following principles emerge:

10.1 Where the words uttered are casual in nature and which are often employed in the heat of the moment between quarrelling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [**Swami Prahaladdas v. State of M.P. 1995 Supp. (3) SCC 438**, Paragraph 3; **Sanju v. State of M.P. (2002) 5 SCC 371**, Paragraph 12]

10.2 In order to constitute ‘instigation’, it must be shown that 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. The words uttered by the accused must be suggestive of the consequence [**Ramesh Kumar v. State of Chhatisgarh (2001) 9 SCC 618**, Paragraph 20]

10.3 Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide.



[**Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605**, Paragraph 20]

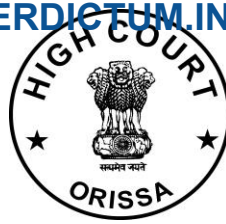
10.4 There must be direct or indirect acts of incitement to the commission of suicide. The accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide [**Amalendu Pal v. State of West Bengal (2010) 1 SCC 707**, Paragraph 12-14]

10.5 The accused must have intended or known that the deceased would commit suicide because of his actions or omissions [**Madan Mohan Singh v. State of Gujarat (2010) 8 SCC 628**]

11. Applying the above yardstick to the facts of the present case in question, even if we take the case as a whole and test the prosecution case on a demurrer, it could not be said that the actions of the accused instigated Kousalya to take her life or that he conspired with others to ensure that the person committed suicide or any act of the appellant or omission instigated the deceased resulting in the suicide.

12. **Broken relationships and heart breaks are part of everyday life. It could not be said that the appellant by breaking up the relationship with Kousalya and by advising her to marry in accordance with the advice of her parents, as he himself was doing, had intended to abet the suicide of Kousalya. Hence the offence under Section 306 is not made out.**”

9. The learned Sr. Counsel has further relied upon the judgment of the Hon’ble Supreme Court in the case of *Geo Varghese vs. State of Rajasthan and Anr.*, reported in *2021 SCC Online SC 873*. He has emphasized paragraphs-20 to 23 of the said judgment and submits that



the Hon'ble Supreme Court has enunciated the law regarding the offence U/s.306 IPC.

“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*, which elucidated on the essential ingredients of the offence under Section 306 IPC in the following words:

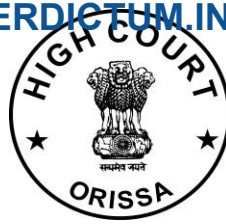
16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving 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



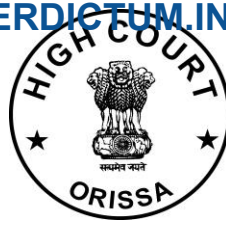
persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and 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 306IPC. 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*, 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 9-2-2015, there was a verbal altercation between the son of the informant and the accused and on 12-2-2015, 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 CrPC, 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:-

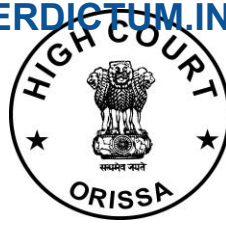
“We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation. 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 the 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 the 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 306IPC 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 are 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.”

Relying upon the aforesaid precedence, Ld. Sr. Counsel has contended that as a key ingredient for making out an offence U/s.306 IPC there should be clear *mens rea* to commit offence of abatement of suicide on the part of the accused, it requires commission of direct or



active act by the accused which led deceased to commit suicide finding no other option and such act must be intended to push the victim to a point of no return and she commits suicide which is clearly missing in the facts of present case as has been missing in the relied upon judgments, wherein the Hon'ble Apex Court quashed the criminal proceedings initiated against the accused persons U/s.306 IPC.

10. On the other hand, Mr. P.K. Maharaj, Ld. Additional Standing Counsel for the State as well as Mr. Himnshu Sekhar Mishra learned counsel for the complainant has vehemently opposed the petition. It has been argued that in the present case the complainant has lost her young daughter due to alleged mental pressure created by the accused-petitioner by harshly refusing to the proposed marriage after having been engaged with the deceased and after photographs of various ceremonies having been posted on the social media. In that view of the matter the deceased who belonged to Marwari community, which is a very small community in Odisha, the deceased would be facing hardship and humility for her future marriage alliances, as she has already suffered a broken

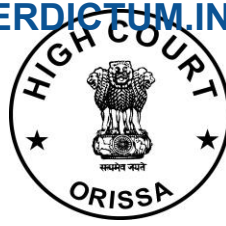


engagement at Nagpur, which forced the deceased to take the drastic step to commit suicide.

11. It has been strenuously argued by Mr. Himanshu Sekhar Mishra, learned Counsel for the complainant that in view of the fact that there are ample material on record in the form of statement of the complainant that immediately before the incident deceased disclosed to the complainant that she had a heated discussion with the petitioner on phone call where he has harshly called off the marriage. This statement itself attains relevance U/s.6 of Indian Evidence Act being *res gestae*. To substantiate his contention, Mr. Mishra, learned counsel relied upon a judgment of this Court in the case of *Nursingha Charan Dash @ Babulu vrs. State of Odisha*, reported in (2019) 76 OCR 565. The relevant is reproduced below:

“The immediate disclosure about the occurrence by the victim before her mother is admissible as *res gestae* under Section 6 of the Evidence Act as it is a spontaneous statement connected with the fact in issue and there is no time interval for fabrication.”

12. With regard to relied upon judicial pronouncements by the petitioner side, learned Counsels for the State as well as the complainant

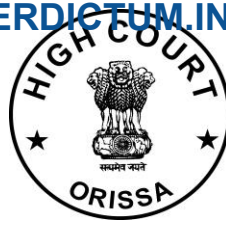


have argued that the same are very much distinguishable on facts. Moreover, prima facie case against the petitioner have been adequately made out, therefore, Ld. S.D.J.M. has rightly taken the cognizance of the offence punishable U/s.306/34 of IPC and this Court should not interfere with it at this stage by appreciating the material placed on record by the police in the charge sheet.

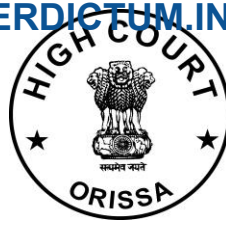
13. Having heard the counsel for the respective parties at length and having perused the material brought on record, this court is anguished to pose a question as to whether a young life of a highly qualified engineer could have been saved had the sequence of events been different or the petitioner deliberately created circumstances to push the deceased to take such drastic step of ending her life ?

Some of the factors which may be evaluated to answer the aforesaid question are:

- a) That the petitioner has been reluctant to enter into marital relationship with the deceased from the very beginning and had been postponing the marriage.



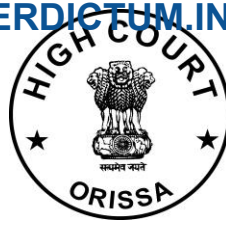
- b) That it is admitted case of the prosecution that initial reluctance showed by the petitioner led to engagement of the deceased with some other boy from Nagpur, however, unfortunately, the said engagement could not be converted into marital relationship and the engagement was broken by the deceased's family. According, to the prosecution the deceased was having a sense of humiliation and frustration due to the fact that one engagement was broken and the petitioner was not inclined to convert the engagement to marital relationship. Therefore, breaking of earlier marriage proposal with the boy from Nagpur was also a contributing factor to push the deceased to take her own life.
- c) That both the family members were very much aware about the fact that petitioner was trying to avoid the company of deceased and this was making the deceased very un-happy about the relationship. Despite this fact both the families tried to thrust the relationship upon the petitioner and the deceased.



d) The exact telephonic conversation that took place between the deceased and the petitioner between 3.30 A.M. to 4.00 A.M. is not known to anyone.

The only inference that could be drawn from the facts borne out of record is that the deceased has fell victim to reluctance of petitioner to get married and the desperation of parents of both the sides to get her married to the petitioner.

14. In this context the statement of the complainant mother and the sister of the deceased recorded U/s.161 Cr.P.C. acquires much importance, wherein complainant does not even say that she was told by the deceased about the heated arguments that took place between the petitioner and the deceased on the phone call between 3.30 A.M. and 4.00 A.M. rather she states that the deceased fell to sleep at about 4 A.M. with heavy heart. Which is contrary to two complaints lodged by the complainant i.e. one which led to registering of U.D. case and the other which became the foundation for lodging of F.I.R. The relevant portion of the statements of the mother/complainant witnesses are extracted herein above:-



“On 16.07.2021 my daughter Sheetal has gone to Bangalore to meet the would be sister in law Kajal Tapuria and there she spent time with Priyank Tapuria. Our family member realised that our daughter Sheetal has been upset for Priyank Tapuria after this my younger daughter Shivani Kankar on 12.09.2021 in the night tried to convince Priyank Tapuria by calling from the mobile phone of Sheetal. Despite all efforts to convince Priyank Tapuriya to marry my daughter, but he refused to marry her. My husband on that day i.e. 12.09.2021 had gone to Bombay. On that night after Shivani, Sheetal also tried to convince Priyank Tapuriya but he did not listen. At about 4 O’Clock in the morning Sheetal had gone to her bed room to sleep with a heavy heart. After date of marriage being fixed the behaviour of Priyank Tapuria caused mental shock to my daughter. On 13.09.2021 at about 8:00 O’clock I told my husband to come back from Bombay because Sheetal is upset. There after I came outside, the guest room door was closed, thereafter I peeped through the window by sliding the window pane with a stick and saw my daughter was hanging from the ceiling fan with her Odhni.”

Similarly, statement of the sister of the deceased is extracted

herein below:-

“I called Priyank Tapuria at night on 12.09.2021 by Sheetal Didi’s mobile phone to convince him to marry my sister, despite my best efforts Priyank Tapuria refused to marry her. My father was at Bombay on that day i.e. on 12.09.2021. On that night after I spoke, Sheetal didi also spoke to Priyank Tapuria and tried to convince him but he did not listen. My mother Kamala Devi Chandak called up my father and told everything about Sheetal. On that day i.e. 13.09.2021 at about 8 O’clock my mother called my father to come back from Bombay because Sheetal is upset. There after my mother came outside, the guest room door was closed, thereafter my mother peeped through the window by sliding the window pane with a stick and saw my sister was hanging from the ceiling fan with her Odhni.”

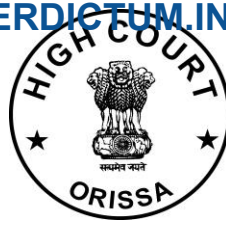
Although, the probative value of the statements of the witnesses cannot be gone into at this stage, but the statements of these witnesses do



not disclose what exactly transpired between the deceased and the petitioner. The same fact is also reflected in the Charge-sheet filed by the investigating officer. This aspect of the matter cannot be elucidated from the evidence of any witness and that would always be speculative.

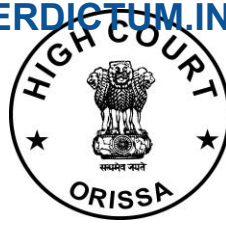
Therefore, in answer to the aforesaid question posed in the preceding paragraph I find that in the absence of exact conversations that had taken place between the deceased and the petitioner on that fateful night, crucial element of offence punishable U/s.306 IPC i.e. *mens rea* to commit offence of abatement of suicide on the part of the accused, which requires commission of direct or active act by the accused which led deceased to commit suicide seeing no other option and such act must be intended to push the victim to a point of no return and she commits suicide are clearly missing in the facts of present case.

15. Further, from the charge-sheet itself, the prosecution's case is that the deceased was very sad and felt ashamed as she had already suffered a broken engagement with the boy from Nagpur. Previous to that also, talks for finalising marriage between the petitioner and the deceased could not be finalised, such repeated breaking of engagement



of a girl belonging to Marwari community, which is a very small community in Odisha, would definitely cause severe mental stress. Therefore, in view of the fact that it is admitted case of the prosecution that breaking of the engagement with the boy from Nagpur also contributed to the mental stress and agony of the deceased for which the petitioner cannot be blamed for.

It's also eminent from record that the petitioner has shown his reluctance to the proposal of marrying the deceased from the very beginning. It is definitely expected from anyone to be very clear about his or her stand in any relationship, from the petitioner it was expected even more as he himself is a doctor, if he did not wish to marry the deceased he should have said no to the proposal at the very first instance without any caveats. Getting himself engaged with reluctance to marry the deceased was even worse. At the same time, it is to be considered, that every relationship carries very heavy emotional burden and feelings and hence, those are matter of emotions where rationality and objectivity takes a backseat. Thus, in such delicate issues of heart, much is expected from the elders of families and the parents of both sides to act maturely



and empathically, understands the views of the people engaged or going to be engaged in a relationship, the views so expressed vocally as well as the feeling which have not so expressly showed. Therefore, this court feels that act of entering into the engagement with the deceased by the petitioner with reluctance to marry her alone cannot be made a penal offence, much less under Section 306 IPC. Reluctance to give irrevocable commitment for life-time and to take responsibility cannot culminate into *mens rea* to commit a criminal offence.

16. In the light of above discussion, the petition is allowed and the order dated 28.11.2022 taking cognizance of offence punishable U/s.306 IPC against the petitioner in G.R. Case No.1111 of 2021 corresponding to Dhenkanal Town P.S. Case No.382 of 2021 on charge-sheet No.616 dated 23.11.2022, by the learned S.D.J.M., Dhenkanal and all the consequential proceedings are quashed.

17. The CRLMC is accordingly disposed of.

.....
(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
The 20th June, 2024/Asish Kumar Kar, ADR-cum-Addl. Principal Secretary