



**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. .... OF 2026  
[ARISING OUT OF SLP (CRIMINAL) NO. 6576 OF 2023]**

**CHANDAR SHEKHAR JAYSAWAL @ SONU JAYSAWAL ... APPELLANT**

**VS.**

**STATE OF UTTAR PRADESH & ANR.**

**... RESPONDENTS**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

1. Leave granted.
2. The High Court of Judicature at Allahabad<sup>1</sup>, *vide* its judgment and order dated 19<sup>th</sup> April, 2023<sup>2</sup>, having dismissed a revision petition<sup>3</sup> of the appellant, the same is under challenge in this criminal appeal at his instance. Appellant had unsuccessfully challenged an order dated 21<sup>st</sup> December, 2019<sup>4</sup> passed by the Additional Sessions Judge<sup>5</sup>, Court No. 3, Kushi Nagar at Padrauna in the revisional jurisdiction of the High Court, whereby the Sessions Court had allowed an application under

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<sup>1</sup> High Court

<sup>2</sup> impugned order

<sup>3</sup> CRLR No. 877 of 2023

<sup>4</sup> order under revision

<sup>5</sup> Sessions Court

Section 319 of Code of Criminal Procedure, 1973<sup>6</sup> and summoned the appellant to face trial<sup>7</sup>.

- 3.** A 17-year-old girl<sup>8</sup> allegedly committed suicide on 25<sup>th</sup> December, 2015. Following the incident, the father of the victim informed the police station concerned about the occurrence. On the same day, the State Police reached the scene of the incident. Upon entering the room, the police found the dead body of the victim along with a suicide note pasted on the wall. The police recovered the dead body, the suicide note, and a Samsung mobile phone from the spot. Subsequently, on 28<sup>th</sup> December, 2015, the victim's father once again submitted a handwritten complaint alleging that one Pintu Sarkar and his wife, Ragini, had instigated the victim to commit suicide. Based on the said complaint, FIR No. 1187 of 2015 was registered at P.S. Patherwa, District Kushinagar, under Section 306 of the Indian Penal Code, 1860<sup>9</sup>.
- 4.** Upon completion of investigation, a chargesheet dated 5<sup>th</sup> February, 2016 was filed against Pintu Sarkar alone under Section 305 of the IPC, for allegedly abetting the suicide of the victim by blackmailing her in connection with prior sexual exploitation.
- 5.** It is apposite to note that the appellant did not figure in any of the aforesaid two information given by the father of the victim nor in the chargesheet as an accused.

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<sup>6</sup> Cr. PC

<sup>7</sup> S.T. No. 290 of 2016

<sup>8</sup> victim

<sup>9</sup> IPC

6. Upon committal to sessions, trial commenced. The testimony of the father (PW 1) and mother of the victim (PW 2), recorded in September – October, 2017, suggesting, *inter alia*, the discovery of a second dying declaration led to filing of an application under S. 319, Cr. PC seeking arraignment of the appellant as an accused.

7. Relevant excerpts from the examination-in-chief of PW 1 are reproduced below:

... Pintu Sarkar and his wife Ragni had come to that house to stay on rent. At that time Ragni and our daughter met and Ragni took the mobile number of my daughter and by calling regularly, Ragni used to get her husband Pintu Sarkar and her friend Sonu to talk to my daughter xxx . All three used to talk obscenely with my daughter and use to invite her to meet outside. They also used to come at the room of my daughter. My wife had also told these things previously, therefore I called and scolded Pintu, Ragni and Sonu and warned them... Ragni had made an obscene photo of my daughter by calling at her beauty parlor, in which Pintu and Sonu were also involved, and repeatedly threatened to make it viral by putting it in Whatsapp and blackmailed her by mental harassment.

(emphasis ours)

8. Relevant excerpts from the examination-in-chief of PW 2 read as follows:

After the death of my girl, I brought her luggage home and found a small purse, a memory card, a suicide note in her bag. I took these articles to the IO. IO denied to take it on record and said that "whatever evidence you want to give, give it in the court."

(emphasis ours)

9. In the suicide note so recovered (which was in the form of an image of the note retrieved from the memory card), it is supposedly the version of the victim that Pintu and the appellant "*are troubling me a lot. Pintu wanted to marry me forcefully and Sonu has done a lot of wrong with me, I am going to take this step today because of the trouble caused by both of them.*"

10. The memory card allegedly also contained pre-death conversation between the victim and Pintu wherein, *inter alia*, it was stated that, on one occasion, the appellant had forced himself upon the victim.
11. On 12<sup>th</sup> December, 2017, the application under Section 319, Cr. PC was moved on the basis of the second suicide note and pre-death conversations, seeking arraignment of the appellant and Ragini as additional accused. The Sessions Court allowed the said application *vide* order dated 21<sup>st</sup> December, 2019, and the revision preferred thereagainst came to be dismissed *vide* the impugned order. Both the courts below took the aforesaid material into consideration and concluded that there existed more than *prima facie* evidence warranting exercise of powers under Section 319, Cr. PC.
12. We have heard learned counsel for the parties and perused the record.
13. In ***Hardeep Singh v. State of Punjab***<sup>10</sup>, a five-Judge Bench of this Court discussed the principles relating to exercise of powers under Section 319, Cr. PC. Relevant passages therefrom are quoted below:

**105.** Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

**106.** Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is

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<sup>10</sup> (2014) 3 SCC 92

more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "*for which such person could be tried together with the accused*". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.

(emphasis ours)

- 14.** Bearing the aforesaid principles in mind, we need to decide whether the objections raised by the appellant have substance or not.
- 15.** It is apposite to note that the appellant does not figure as an accused in the complaints filed by PW 1, the FIR, or the chargesheet. From the evidence of PW 1, it is clear that he knew of the appellant having misbehaved with the victim and causing mental harassment to her which made him even scold the appellant. If indeed such version were true that PW 1 was aware of involvement of the appellant, it is of some significance to observe that he (PW 1) did not lodge any protest petition under sub-section (8) of Section 173 of the Cr. PC when, in the chargesheet, the appellant was not arraigned as an accused with Pintu Sarkar. This points to one inference: PW 1 did not suspect the appellant and was unaware of any incident connecting the appellant to the crime. We, however, do not wish to view this omission *per se* to hold against PW 1. It would be reasonable to view the omission as a human error on his part, being rattled by the sudden demise of his daughter.
- 16.** Nonetheless, turning to the first suicide note, it clearly states that the victim "*had to take this step because of Pintu Sarkar*". Though

traumatized, before taking such extreme step of dying by suicide, a girl of the victim's age (little short of attaining majority) would not ordinarily omit to name all those who had left her with no option but to take her own life. This circumstance does weigh with us heavily. Absence of the name of the appellant in the suicide note pasted on the wall, contemporaneously recovered, is sufficient to infer that the appellant's alleged misdeed(s) was/were not the immediate reason driving the victim to end her life.

- 17.** The only other material that remains, based whereon the involvement of the appellant can be argued, is the memory card allegedly recovered by PW 2 belatedly. Bearing in mind the core principle that delay alone does not make evidence inadmissible, we would now proceed to examine the explanation and its reliability, not just the timing.
- 18.** In her testimony, PW 2 stated that the memory card was recovered from the victim's bag; however, she was remarkably remiss in testifying about the details of its recovery. She did not disclose when or on what date the memory card was discovered, the manner in which it was recovered, how its contents were accessed or retrieved, whether any person assisted her in extracting the data, or whether she informed PW 1 or any other person about the discovery who could have corroborated her version. Significantly, PW 1, the victim's father, made no mention whatsoever of the recovery of the memory card in his examination-in-chief, as though he was entirely unaware of it. The material was also produced without the certificate required under Section 65B of the

Indian Evidence Act, 1872<sup>11</sup>. Although this defect is curable and may be kept aside for the present, in light of the surrounding circumstances, we are led to the inevitable conclusion for the reasons to follow that the alleged discovery of such subsequent material, viewed in the context of the conduct of the said prosecution witnesses, is more of an afterthought.

- 19.** First, the bag of the victim was found in the room where she passed away. Surprisingly, there is no seizure of the bag by the police. At least nothing is on record. Had there been a seizure memo/panchnama following inventory of the articles found in the bag, the memory card would definitely have been found and seized. In the absence of such seizure memo and seizure of the memory card, the later discovery becomes weak and unreliable.
- 20.** Even otherwise, assuming that no seizure memo/panchnama had been prepared and PW 2 was allowed to take the bag home without inventory through oversight, the distance of time between the death of the victim and the date of retrieving the memory card assumes significance. It is in the evidence of PW 2 that the memory card was found in the victim's bag. Since the police allowed PW 2 possession of the victim's bag, it was for her to explain why she did not check the bag for months. Would a reasonable person in that situation act that way? Being the mother of the victim, natural human conduct would matter; however, we find her

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<sup>11</sup> Evidence Act

conduct to be quite unnatural notwithstanding the agony and trauma that she must have suffered having lost her daughter. In fine, there is no credible reason for the memory card to surface late and the conduct of PW 2 in producing the memory card does not appeal to us to be above board.

- 21.** Further question that arises is with regard to the chain of custody of the memory card. Was it intact? In our view, the chain of custody is suspect. There is no evidence of the victim's bag being placed in a secure place ever since PW 2 was permitted to take the same home, leading to a possibility of the memory card being planted or fabricated to implicate the appellant.
- 22.** Finally, we come to the contents of the conversation sought to be relied on to make the appellant face trial as an additional accused. Assuming *arguendo*, the contents are admissible under Section 32 of the Evidence Act, the truth thereof has to be established by the party relying on it using corroboration, explaining the delay and custody, as well as producing proof of authenticity and integrity. If suspicious circumstances exist, the value drops. There is indeed a contradiction when the two versions are read, but contradiction by itself does not make a document inadmissible; the court has to weigh which version is more probable.
- 23.** The victim's version, sought to be relied on, points towards misdeeds of, *inter alia*, the appellant driving her to put an end to her life that day. We have not found any date there. We are, therefore, left to guess when precisely the victim decided to put an end to her life. Were both the

notes of the same day? Assuming that the notes are of the same day, it has not been explained why would the victim leave the appellant out and name only Pintu in the suicide note, which was contemporaneously found pasted on the wall. Reading the two versions one after the other, and believing both of them, it is more probable that the version of the victim recovered later was in relation to a prior incident which did not have a direct nexus with the incident of commission of suicide by her.

- 24.** The main ingredients of the offence punishable under Section 305, IPC which the prosecution has to prove for a conviction to be recorded are not too dissimilar from the ingredients of Section 306 thereof. A reading of Section 306 would manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision being suicidal death and the abetment thereof, to constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306, IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. One may profitably refer to

***Gurcharan Singh v State of Punjab***<sup>12</sup> in this context. Also, that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, is the law propounded by this Court in ***S.S. Chheena v. Vijay Kumar Mahajan***<sup>13</sup>.

- 25.** In our considered opinion, the delay in production of the memory card and more so the manner in which it has been produced together with absence of proof of its integrity and other reasons discussed above raise serious doubt about its genuineness. We are, thus, satisfied that the test of more than a *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction, being the law propounded in ***Hardeep Singh*** (supra), is not fulfilled in the present case.
- 26.** Consequently, the impugned order passed by the High Court (affirming the order of the Sessions Court) cannot be sustained and, accordingly, both orders stand set aside. The appeal is allowed. Pending application(s), if any, shall also stand disposed of.
- 27.** Needless to mention, the Sessions Court shall not be influenced in any way by the observations made above. The appreciation of the witness testimonies has been embarked upon for the purpose of decision on the application under Section 319, Cr. PC *qua* the appellant. Nothing contained in this judgment shall be construed as an expression of opinion on the merits of the case against the accused already facing

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<sup>12</sup> (2017) 1 SCC 433

<sup>13</sup> (2010) 12 SCC 190

trial, and all issues shall remain open to be determined independently by the Sessions Court on the basis of the evidence that may come on record during the course of trial.

.....J.  
**(DIPANKAR DATTA)**

.....J.  
**(AUGUSTINE GEORGE MASIH)**

**New Delhi,  
June 3, 2026.**