



GAHC010219022021

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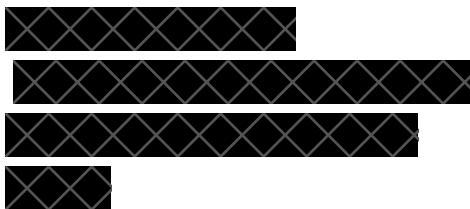


2025:GAU-AS:17369

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.Pet./800/2021

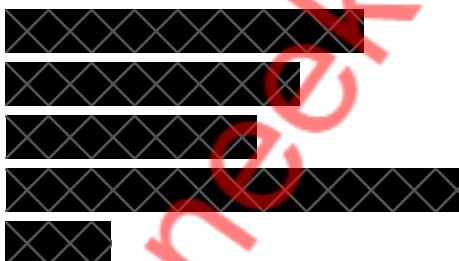
Hussain Md. Rijuan @ Hussain Muhammad Rizuwan



.....**Petitioner**

-Versus-

**1. The State of Assam represented by the Public Prosecutor,
Assam**



.....**Respondents**

- B E F O R E -

HON'BLE MR. JUSTICE ANJAN MONI KALITA

For the Petitioner(s) : P. J. Saikia, Senior Advocate,
Ms. M. Nirola, Advocate



For the Respondent(s) : Mr. R. J. Baruah, Addl. PP, Assam

Mr. S. Nawaz, Advocate for R-2

Date on which judgment is reserved : **16.10.2025**

Date of pronouncement of judgment : **15.12.2025**

Whether the pronouncement is of the operative part of the judgment ? : **Yes.**

Whether the full judgment has been

Pronounced : **Yes.**

**BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA**

JUDGMENT & ORDER (CAV)

Date : 15-12-2025

Heard Mr. P. J. Saikia, learned Senior Counsel assisted by Ms. M. Nirola, learned counsel appearing for the Petitioner. Also heard Mr. R. J. Baruah, learned Addl. PP for the State of Assam and Mr. S. Nawaz, learned Counsel for Respondent No. 2/Informant.

2. The instant application has been filed under Section 482 of Cr.P.C., 1973 read with Section 397/401 of Cr.P.C. assailing the order dated 12.01.2021 passed by the learned Special Judge, Nagaon in Special POCSO Case No.04/2021 (Rupahihat P.S. Case No.482/2020) taking cognizance of the offence under Section 417/306/376 of the Indian Penal Code read with Section 6 of the POCSO Act as well as continuation of the proceeding of the said case.

3. It is the case of the Petitioner that on 20.07.2020, one [REDACTED] i.e. the Opposite Party No. 2 had lodged an FIR before the Officer-in-Charge of Rupahihat Police Station alleging, amongst others, that the Petitioner was in a love relationship with his daughter for the last two years with a promise to marry her. It was alleged that on being asked, his daughter, she told him that the Petitioner loves her and he would be marrying her. It was alleged that the Informant and his family came to know that the Petitioner secretly called their daughter and took her to various places and established physical relationship with



her. It was alleged that on 16/17th July, 2020, the Petitioner communicated with his daughter on her mobile phone and informed that he would not be marrying her. It was alleged that since that incident, they saw their daughter crying in the house and on being asked, she informed them about the aforementioned facts. It was alleged that his daughter suffered from mental agony because of refusal of marriage by the Petitioner and therefore, she committed suicide by hanging herself in their house on 19.07.2020. On receipt of the FIR, the investigating authority registered Rupahihat P.S. Case No. 482/2020 under Section 417/306 of the Indian Penal Code.

4. It is mentioned that initially the case was registered under Section 417/306 of the Indian Penal Code but subsequently on the prayer of the Investigating Officer, the learned Judicial Magistrate First Class, Nagaon, vide order dated 13.10.2020 added Section 376 read with Section 6 of the POCSO Act and transferred the case to the learned Special Judge, Nagaon and since then, the matter is pending before the Special Judge, Nagaon.

5. It is the case of the Petitioner that coming to know about lodging of such FIR, the Petitioner voluntarily appeared before the I.O. of the case but on such appearance, the Petitioner was arrested and produced before the learned Special Judge, Nagaon on 17.10.2020. On completion of the investigation, the I.O. of the case submitted a part charge sheet against the Petitioner vide charge sheet No.01/2021 in connection with the aforesaid case under Section 417/306/376 of the Indian Penal Code read with Section 6 of the POCSO Act.

6. On receipt of the Part Charge Sheet, the learned Special Judge, Nagaon, vide order dated 12.01.2021 passed in Special POCSO Case No. 04/2021, took cognizance of the offence against the Petitioner under Section 417/306/376 of the Indian Penal Code, read with Section 6 of the POCSO Act and the next date was fixed on 22.12.2021 for hearing on charge.

7. Being aggrieved and dissatisfied with the order dated 12.01.2021 passed by the learned Special Judge, Nagaon, whereby cognizance of the offence was taken under Section 417/306/376 of the Indian Penal Code, read with Section 6 of POCSO Act as well as continuance of the proceeding of the said case, the Petitioner has filed the instant Petition challenging the aforesaid order dated 12.01.2021.

8. The learned Senior Counsel appearing for the Petitioner submits that the learned Special Judge, Nagaon committed gross error of law as well as on facts in passing the aforesaid order dated 12.01.2021, whereby the cognizance of the offence was mechanically taken without applying his judicial mind. The learned Senior Counsel submits that the deceased was about 19 years at the time of her death as per the Birth Certificate submitted by the Informant as well as since there is no material to suggest the age of the deceased to be less than 18 years at the time of the alleged offence, the learned Special Judge, Nagaon could not have taken the cognizance of the offence under Section 417/306/376 of the Indian Penal Code read with Section 6 of the POCSO Act. He further submits that to constitute an offence under Section 306 of the Indian Penal Code, the primary three (3) elements of section 107 of the Indian Penal Code must exist, however, in the instant case, neither any ingredients to constitute an offence under Section 306 of the Indian Penal Code nor any of the ingredients mentioned in Section 107 of the Indian Penal Code is present. He submits that there is also absence of any ingredients of the offence under Section 417 of the Indian Penal Code. He submits that without considering those vital aspects of the matter, the learned Special Judge, Nagaon has taken cognizance of the offence under the aforesaid sections and thereby, has committed gross error of law and on facts and therefore, the order dated 12.01.2021 without having any legal sanctity should be set aside and quashed.

9. The learned Senior Counsel submits that a vital aspect involving in the instant case is that the deceased clearly denied of having any physical relationship with the Petitioner which could be apparent from the *Whatsapp* conversation between the Petitioner and the deceased. He submits that the conversation was, in fact, annexed in the objection filed by the Informant in the Bail Application filed by the Petitioner i.e. BA No.694/2021. He, therefore, submits that since the deceased girl herself denied of any sexual intercourse between her and the Petitioner, the Petitioner could not have been charged under Section 376 IPC read with Section 6 of the POSCO Act.

10. The learned Senior Counsel submits that in view of the aforesaid categorical statement made by the deceased in her *Whatsapp* conversation with the Petitioner, the entire allegation made in the FIR by the Informant becomes totally false and the same is nothing but afterthought. Therefore, he submits that non consideration of this vital fact while passing the



order dated 12.01.2021 is not sustainable in law and therefore, the same should be set aside and quashed. The learned Senior counsel further submits that there is absolutely no materials on record which would make any reasonable and prudent man to come to a conclusion that there exist a *prima facie* case for proceeding against the Petitioner under Section 417/306/376 of the Indian Penal Code read with Section 6 of the POCSO Act, therefore, he submits that the order dated 12.01.2021 as well as continuation of the said proceeding in Special POCSO Case No. 04/2021 is liable to set aside and quashed.

11. The learned Senior Counsel submits that the allegation as alleged in the FIR does not make out any case for any offence under Section 376 of the Indian Penal Code read with Section 6 of the POCSO Act. He submits that in the FIR lodged by the Informant on 20.07.2020 does not reveal any kind of sexual relationship between the deceased and the Petitioner. He submits that though there is mention of physical relationship between the Petitioner and the deceased, it does not mention about any sexual relationship between them and therefore, Section 376 of the Indian Penal Code as well as Section 6 of the POCSO Act are not applicable in the instant case. In this connection, the learned Senior counsel referred to the case of ***Sahjan Ali through Parokar Banu Khatun-vs-State through SHO PS Madhu Vihar (Crl. A. 397/2024)***, decided by the Hon'ble Delhi High Court on 23.12.2024 as well as the case of ***Depesh Tamang-vs-State of Sikkim (Crl. A.2/2019)***, decided by the Hon'ble Sikkim High Court on 23.03.2020, reported in AIR Online 2020 SK 7. By citing these 2 (two) cases, the learned Senior Counsel submits that physical relationship without any further explanation cannot be termed as sexual relationship to activate Section 376 of the Indian Penal Code and Section 6 of the POCSO Act.

12. The learned Senior Counsel submits that mere insertion of a Section under POCSO Act does not let off the prosecution of the burden of proof contemplated under Section 101 & 102 of the Evidence Act. He submits that in the instant case though Section 29 & 30 of the POCSO Act have not been inserted, however, only on mere suspicion, Section 376 of the Indian Penal Code and Section 6 of POCSO have been invoked against the Petitioner. In this connection, the learned Senior Counsel has referred to the case of ***Balin Chetia-vs-State of Assam(Crl. A. (J)24/2019)***, decided by the Hon'ble Gauhati High Court on 24.07.2023 and the case of ***Manirul Islam-vs-State of Assam and Another***, reported in **2021 (3)**



GLT 128. By referring to the aforesaid cases, the learned Senior Counsel submits that the foundational facts which are the basic need to raise presumption under Section 29 of the POCSO Act are missing in the instant case and therefore, the insertion of Section 6 of the POCSO Act in the instant case without having any basis, is against the laws laid down under different judicial pronouncements.

13. The learned Senior Counsel submits that in the instant case, the ingredients of Section 107 of the Indian Penal Code are missing to invoke Section 306 of the Indian Penal Code. In this connection, the learned Senior Counsel has referred to the case of ***State of West Bengal-vs-Indrajit Kundu and Others***; reported in ***AIR 2019 SC 5164*** as well as the case of ***Kamaruddin Dastagir Sanadi-vs-State of Karnataka through SHO Kakati Police***; reported in ***AIR 2025 SC 153***. By referring to the aforesaid cases, the learned Senior Counsel submits that the ingredients mandatorily required to be present in the facts of a particular case to bring in section 306 of the Indian Penal Code are missing in the instant case as from the materials on record there is not a single fact which is available to implicate the Petitioner of instigating or doing anything or absenting from doing anything whereby the Petitioner could be said that he had abetted the suicide committed by the deceased.

14. In view of the aforesaid submissions, the learned Senior Counsel submits that the materials brought on record do not provide any foundational basis for invoking section 417/306/376 of the Indian Penal Code read with Section 6 of the POCSO Act in the instant case. Therefore, he submits that the cognizance of the offence taken by the learned Special Judge, Nagaon in the instant case, vide order dated 12.01.2021 is without any legs to stand on its own and therefore, the same should be set aside and quashed.

15. Mr. R. J. Baruah, the learned Addl. PP appearing for the State submits that there is no error in the order so passed by the learned Special Judge, Nagaon in passing the order dated 12.01.2021, He submits that the FIR as well as the Charge Sheet that has been filed in the instant case, clearly revealed the *prima facie* involvement of the Petitioner in the alleged offences under the aforementioned Sections and therefore, there is no illegality in the order passed by the learned Special Judge, Nagaon.

16. On the other hand, Mr. S. Nawaz, learned counsel appearing for the Informant/



Opposite party No. 2 submits that there is absolutely no error in taking cognizance of the offences under Section 417/306/376 of the Indian Penal Code read with Section 6 of the POCSO Act in the instant case by the learned Special Judge, Nagaon as the materials provide a crystal clear picture of involvement of the Petitioner. He submits that there is a clear allegation of sexual relationship established by the Petitioner with the minor daughter of the informant for last 2 (two) years before her commission of suicide. He further submits that the deceased was, in fact, compelled to commit suicide by the actions of the Petitioner which amounts to abetting of suicide. He submits that there is no such distinction between rape and alleged consensual sex, wherein, a person establishes sexual relationship with another person with the false promise of marriage. He submits that in the instant case, since there was a sexual relationship between the deceased and the Petitioner and the deceased being minor, even if there was a consensual sex, the same will attract the provisions of Section 376 and Section 6 of the POCSO Act. The learned counsel further submits that in the instant case, the learned Special Judge, Nagaon has not committed any error as a bare perusal of the materials brought on record including the FIR, statements of the Informant as well as other witnesses clearly show that the Petitioner was having a sexual relationship with a false promise to marry the deceased and due to his refusal to marry the deceased, the deceased was compelled to commit suicide. In view of the above factual matrix, he submits that the ingredients mandatorily required for attracting the aforesaid sections are clearly available in the instant case and therefore, he submits that the instant petition should be rejected by this Court.

17. In support of his submission, the learned counsel appearing for the Informant/Opposite party No. 2 has referred to the case of ***Ude Singh and Others-vs-State of Haryana***; reported in ***(2019) 17 SCC 301*** and the case of ***Pradeep Kumar Kesarwani-vs-The State of Uttar Pradesh and Anr(Crl. Appeal No. 3831 of 2025)***, decided by the Hon'ble Apex Court on 02.09.2025.

18. This Court has heard the submissions made by the learned counsel appearing for the respective parties.

19. TCR in the instant case has already been placed before this Court and this Court had the privilege of going through the materials available in the TCR.

20. This Court feels it necessary to refer to the relevant Sections of the Indian Penal Code relating to abetment of suicide which are involved in the instant case. Therefore, Section 107 and Section 306 are extracted hereinbelow for ready reference during the adjudication of the matter by this Court:-

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

First- Instigates any person to do that thing;

Secondly- Engages conspiracy 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”.

“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 year, and shall also be liable to fine”.

“Abetment of attempt to commit suicide

(i) It has been held that once the offence of abetment of committing suicide is clearly made out against accused, despite the fact that specific charge under section 306 was not framed against accused, would not preclude court from convicting accused for offence found;

(ii) The basic constituents of an offence under section 306, are suicidal death and abetment thereof;

(iii) To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary”.

21. A bare perusal of the aforesaid sections, it is very clear that Section 306 IPC mentions about abetment though it does not define abetment as such. The definition of abetment, however, could be found in Section 107 of the Indian Penal Code. Section 107 IPC provides for three (3) ingredients and any of those three (3) ingredients must be present for invoking section 306 IPC. The first being instigation which has been mentioned as "Instigates any person to do that thing". Second being conspiracy which has been mentioned as "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"; Third being intentional aids which has been mentioned as "Intentionally aids by any act or illegal omission, the doing of that thing". Therefore, in the instant case, this Court needs to examine and analyse the facts that have been brought before this Court, whereby this Court can come to a *prima facie* finding that any of the aforesaid three (3) ingredients are in existence in the instant case or not.

22. In this connection, the observation made by the Hon'ble Apex Court in the case of ***Pawan Kumar-vs-State of Chattisgarh***; reported in **(2017) 7 SCC 780** being relevant, Paragraphs 34, 36, 37 & 43 are extracted hereinbelow:-

"34. The word "abetment" has not been explained in Section 306 IPC. In IPC this context, the definition of abetment as provided under Section 107 is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element".

36. The word 'instigate' literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct".

“37. The words “urge forward” means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to “goad” or “urge forward” the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased should reacted. A casual remark or something said in routine or usual conversation not be construed or misunderstood as abetment”.

“43. Keeping in view the aforesaid legal position, we are required to clearly there has been abetment in committing suicide. Be it in stated that mere allegation of harassment without any positive action proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life”.

23. In the instant case, it is an admitted fact that the Petitioner and the deceased girl was in a love relationship and there are allegations of commission of sexual intercourse by the Petitioner on the deceased girl who was allegedly a minor when the offence was allegedly committed. It is also seen from the materials brought before this Court by way of print out of Whatsapp messages exchanged between the deceased and the Petitioner that the Petitioner had refused to marry the deceased girl just two (2) days before her commission of suicide stating that the Petitioner was going to marry another girl.

24. This Court has perused all the materials available in the TCR as well as the materials brought before this Court by way of annexures in the instant petition, however, other than the fact that the Petitioner refused to marry the deceased, no other vital material could be found which could *prima facie* bring the case under the purview of Section 107 of the Indian



Penal Code. There are no materials to suggest that there was any instigation from the Petitioner to commit any such action of committing suicide by the deceased. The element of conspiracy along with other person/s to commit suicide was also absent. This Court could not find the third element i.e. intentionally aiding by any act or illegal omission for the deceased to commit suicide. This Court could not find any *prima facie* materials also which could suggest or reasonably convince a person that the Petitioner was engaged in any such continuous activities which compelled the deceased to commit suicide. Though, there was allegation that the deceased went to a depression and her parents found her crying and depressed due to refusal of marriage by the Petitioner, that fact in the considered view of this Court is not sufficient to bring in the case under the purview of Section 107 of the Indian Penal Code and thereby invoking Section 306 of the Indian Penal Code. It is also relevant to mention in the context of the case that section 306 of the Indian Penal Code has two primary ingredients, first being, an act of suicide by one person and the second being the abetment to the said act by another person. In order to bring in a charge under Section 306 of the Indian Penal Code, it must necessarily be proved that the accused person had, in fact, contributed to the suicide by the deceased by some direct or indirect act or omission. As discussed above, to prove such contribution or involvement, one of the aforesaid three (3) conditions mentioned in Section 107 of the Indian Penal Code has to be satisfied. It is the further opinion of this Court that for an offence under Section 306, it is very much important to bring on record a proof of direct or indirect acts of instigation or incitement of suicide by the accused persons, which must be closely linked to the commission of suicide by the deceased. Another relevant factor in such cases of abetment is that the instigation or provocation must have a clear *mens rea* to abet the commission of suicide which should put the deceased in a position that other than commission of suicide there is no other option.

25. In this connection, the case of **S. S. Chheena-vs-Vijay Kumar Mahajan and Another**, reported in **(2010) 12 SCC 190**, being relevant, the relevant paragraphs i.e. paragraph 16,18,21,23,24&25 are extracted hereinbelow:-

“16. The word “suicide” in itself is nowhere defined in the 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”.

“18. In our country, while suicide in 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 IPC”.

“21. The learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh v. State of M.P. 1995 Supp (3) SCC 731. In Mahendra Singh, the allegations levelled were as under: (SCC p. 731, para 1)

“1. ... My mother-in-law and husband and sister-in- law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law”.

“23. In State of West Bengal v. Orilal Jaiswal (1994) 1 SCC 73, this Court has cautioned that:

“17 the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty”.



“24. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “gloating”. 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 other. 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”.

“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”.

26. The aforesaid observations of the Hon’ble Apex Court clearly lays down that abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Hence, in absence of a positive act on the part of the accused person to instigate or aid a person in committing suicide, a charge under Section 307 may not be sustainable. As observed by the Hon’ble Apex Court in the aforementioned case of ***S. S. Chheena*** (Supra), the intention of the legislator and the ratio of the Judicial Pronouncements of the Hon’ble Apex Court, it is clear that to convict a person under Section 306 of the Indian Penal Code, there has to be a clear *mens rea* to commit the offence. It was also held by the Hon’ble Apex Court that abetment requires active act or direct act which compelled the deceased to commit suicide having no other option and that act must have intended to push the deceased into such a position that the deceased person committed suicide.

27. Another case which is relevant in the facts of the case is that of ***Jayedeepsinh Pravinsinh Chavda and Others-vs-State of Gujarat***, reported in **2024 SCC OnLine SC 3679**, wherein, the Hon’ble Apex Court has held that the element of *mens rea* cannot simply

be presumed or inferred, instead it must be evident and expressively discernible.

“18 For a conviction under Section 306 IPC, it is a well-established legal principle that the presence of clear mens rea-the intention to abet the act is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide”.

28. From the aforesaid ratio laid down by the Hon'ble Apex Court, it could be also safely summarize that in cases of alleged abetment of suicide, there must be a proof of direct or indirect act of incitement to the commission of the suicide. However, this Court is also oblivious of the fact that every human being behaves in a different manner in a particular situation. A very normal act for a reasonable person may be something very hurting or unbearable to a very sensitive or emotionally different person. The suicide being an act of killing the person himself/herself, involves complex psychological and philosophical aspects of human behaviour. Therefore, this Court is of the opinion that while considering an allegation of abetment of suicide, the Court needs to look into the human behavioural history of the person who has committed suicide. The Court also needs to look into the aspect of *mens rea* or intentional commission of an act which leads to commission of the suicide with reference to the actual acts and deeds of the accused.

29. Having regard to the aforesaid facts as well as ratios that have been laid down by the Hon'ble Apex Court, this Courthas analysed the behavioural aspects of both the accused and the deceased. As far as deceased is concerned, there is no material on record which suggest that the deceased was having any history of being a very sensitive person or a different person who needs to be taken in a different footing. As far as, the accused person is concerned, though it is seen that he was boasting about his sexual triumphs on the deceased, other than that, this Court could not *prima facie* found any *mens rea* or intentional act which probably could have forced the deceased person to commit the suicide.

30. In view of the aforesaid *prima facie* finding on the basis of materials brought on record, this Court is of the considered view that there is no case that has been made out by the prosecution to invoke Section 306 of the Indian Penal Code in the instant case. Therefore, taking cognizance of the offence under Section 306 by the learned Special Judge, Nagaon, vide it's order dated 12.01.2021 is bad in law and therefore, to that effect, the same is set aside and quashed.

31. Now, let this Court examine the aspect of invocation of section 376 read with Section 6 of POCSO Act in the instant case, wherein, the learned Special Judge, Nagaon has taken cognizance under the aforesaid sections against the Petitioner, vide it's order dated 12.01.2021.

32. As far as the cognizance of the offence under Section 376 read with Section 6 of POCSO Act is concerned, Section 376 has been available in the Indian Penal Code, however, Section 6 of the POCSO Act has been brought in by way of inaction of Protection of Children from Sexual Offences Act, 2012 (POCSO). The POCSO Act has been brought in with an aim to protect children from all types of sexual abuse. After the UN Convention on the Rights of Child, 1989, the Government of India has adopted the same in December, 1992. It may be relevant to mention herein that Article 15(2) of the Constitution of India empowers the government to make special provisions for the children. The Preamble of POCSO Act provides that the Act was enacted to protect children from the offences of sexual act, sexual harassment and pornography. Looking into the object behind bringing in the legislation, the POCSO Act, the Court needs to be extra sensitive and careful while examining and analysing a case involving POCSO Act.

33. In the instant case, there is a submission made by the learned Senior Counsel appearing for the Petitioner that the materials brought before this Court do not suggest commission of any sexual act by the Petitioner on the deceased.

34. On perusal of the FIR, it is clear that the deceased girl and the Petitioner was in a love relationship. It was alleged in the FIR that the deceased daughter of the Informant had intimated the Informant that the accused person secretly called his daughter to various places and established physical relationship with her. By referring to the aforementioned cases of

Sahjan Ali (Supra) and **Depesh Tamang** (Supra), it was contended by the learned Senior Counsel appearing for the Petitioner that "Physical Relationship" cannot be automatically presumed to be penetrative sexual assault or any other sexual act to invoke the POCSO Act. In the case of **Sahjan Ali** (Supra), the Hon'ble Delhi High Court came to a finding that though consent would not matter, if the girl is a minor under POCSO Act, the phrase 'physical relations' cannot be converted automatically into sexual intercourse, let alone sexual assault. In the case of **Depesh Tamang** (Supra), the Hon'ble Sikkim High Court has also come to a finding that in absence of any material of any commission of penetrative sexual act, only with the allegation of physical relations, it cannot be termed as penetrative sexual assault to bring in Section 6 of the POCSO Act.

35. In the instant case on hand, wherein, the FIR was filed in vernacular medium i.e. Assamese, the word that has been used is 'Xaririk Sambandha'. In consideration of the vernacular word that has been used to explain the relationship between the deceased and the Petitioner, this Court is of the considered opinion that in general in Assamese language, the aforesaid term 'Xaririk Sambandha' means physical sexual relationship. This is how generally, the people use the word in Assamese to explain sexual physical relationship in absence of other precise meaning. This Court has also perused the statements of the Informant, an Aunt of the deceased and some other witnesses, recorded by the investigating authority under Section 161 Cr.P.C. On perusal of those statements, it is undoubtedly clear that the allegations of having a sexual physical relationship by the Petitioner with the deceased girl for the last two (2) years since her commission of suicide are present. Therefore, this Court is of the considered view that the aforesaid cases of **Sahjan Ali** (Supra) and **Depesh Tamang** (Supra) are distinguishable from the facts in the instant case.

36. As far as the contention of the learned Senior Counsel by referring to the cases of **Balin Chetia** (Supra) and **Manirul Islam** (Supra) that in the instant case, the foundational facts necessary to raise presumption under Section 29 of the POCSO Act are missing, this Court is of the considered opinion that there are *prima facie* materials against the Petitioner for invoking Section 376 of the Indian Penal Code and Section 6 of the POCSO Act in the instant case. As has discussed above, the materials by way of statements before the investigating authority, it is *prima facie* seen that the girl who was 19 years' of age at the

time of commission of suicide, was in a physical sexual relationship with the Petitioner for the last 2 years from the date of the commission of suicide.

37. It is also seen from the messages exchanged between the Petitioner and the deceased girl that the Petitioner was telling her about his various sexual escapades with the deceased girl. It was also seen from the records of *Whatsapp* that the accused person was himself admitting that the deceased girl was a minor girl when the accused person had engaged her in physical sexual relationship with him though the deceased girl denied the same. Since this Court is not running a mini trial of the instant case, the veracity of the statement of the Petitioner *viz-a-viz* the deceased girl, is to be looked into and considered by the learned Trial Court. However, this Court has come to a *prima facie* finding that there are elements of commission of an offence under Section 376 of Indian Penal Code and Section 6 of the POCSO Act.

38. Having found *prima facie* basic foundational materials against the Petitioner, this Court is of the considered opinion that there is no error in taking cognizance of the offence under Section 376 of the Indian Penal Code read with Section 6 of the POCSO Act in the instant case by the learned Special Judge, Nagaon. Another factor that has been considered by this Court while coming to the aforesaid *prima facie* finding is that the Certificate of Date of Birth of the deceased girl clearly establishes ***at this stage*** that the deceased girl was of 19 years at the time of commission of suicide by her, which means that while commission of the alleged offence, the deceased girl was a minor because the allegation was that the Petitioner had committed the offences during the last two (2) years since her commission of suicide to attract Section 376 of the Indian Penal Code and Section 6 of the POCSO Act.

39. In view of the aforesaid *prima facie* findings, this Court set aside and quashes the cognizance taken by the learned Special Judge, Nagaon under Section 306 of the Indian Penal Code, however, this Court does not find any error in cognizance taken by the learned Special Judge, Nagaon of offences under Section 417/376 read with Section 6 of the POCSO Act.

40. In terms of the aforesaid conclusion, the instant petition is partly allowed to the extent, mentioned above.



41. TCR to be sent back immediately.

JUDGE

Comparing Assistant

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