
(2018) 04 OHC CK 0062
In the Orissa High Court
Case No : CRLMC No. 2942 Of 2006

BHIMSEN BAG AND ORS

APPELLANT

Vs

STATE OF ORISSA

RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 306, 380, 457

Citation : (2018) 04 OHC CK 0062

Hon'ble Judges : S.K. SAHOO

Bench : Single Bench

Advocate : Swapnil Roy, Prem Kumar Patnaik

Final Decision : Dismissed

Judgement

S. K. SAHOO, J.

1. The petitioners Bhimsen Bag, Susila Bag and Sheslal Mahananda in this application under section 482 of Cr.P.C. have prayed for quashment of the

criminal proceeding in G.R. Case No.529 of 2005 pending in the Court of learned S.D.J.M., Bhawanipatna which arises out of Bhawanipatna Sadar

P.S. Case No.112 of 2005 in which on submission of charge sheet, cognizance of offences under sections 306/34 of the Indian Penal Code has been

taken and processes have been issued against the petitioners as per the order dated 10.08.2006 of learned S.D.J.M., Bhawanipatna.

2. The prosecution case, in short, as per the first information report lodged by Prasant Bhupati, S.I. of Police who was also the officer in charge of

Sadar Police Station, Bhawanipatna is that one Parameswar Gahir and his son Pabitra Gahir were found lying dead in their house at Gahirpada,

Haldigarh and in connection with their death, Bhawanipatna Sadar P.S. U.D. Case

No.19 dated 04.11.2005 was instituted. The informant conducted inquiry and during course of inquiry, it revealed that on 13.10.2005 night, a sum of Rs.1,80,000/- was stolen from the house of petitioner no.1 Bhimsen Bag and therefore, he called petitioner no.3 Sheslal Mahananda who is a Black Magician (Gunia) on 03.11.2005 to utilize his services to detect the culprits and stolen cash. The petitioner no.3 performed puja and thereafter four young boys of the village were asked to hold a charpai to move with the spiritual power of the charpai. They moved in the village and came to the house of the deceased and accordingly, the two deceased persons were taken as culprits and stolen money was demanded from them. The two deceased along with Smt. Padmabati Gahir, wife of deceased Parmeswar Gahir were called to the house of petitioner no.1 in the evening hours where they were abused, blamed and money was demanded from them by petitioner no.1 in presence of the villagers. The deceased persons were put to insult and shame before the villagers. On the same night at about 8.00 p.m., the petitioner no.2 Susila Bag came to the house of the deceased persons, abused the deceased Pabitra Gahir and assaulted him with fist blows and the incident was witnessed by the villagers. The deceased persons being ashamed and insulted committed suicide by consuming poison in the same night. As the inquiry revealed that the petitioners were responsible for commission of suicide of the deceased persons, the officer in charge of Bhawanipatna Sadar police station drew up the plain paper F.I.R. and accordingly, Bhawanipatna Sadar P.S. Case No.112 of 2005 was registered on 04.11.2005 under sections 306/34 of the Indian Penal Code against the petitioners.

During course of investigation, the informant and other witnesses were examined and it was found that the deceased Pabitra Gahir was working in the house of the petitioner no.1 and he was suspected to have committed theft of cash from the house of petitioner no.1 which was witnessed by accused Uttam Gahir and since the petitioners tortured, insulted and assaulted the deceased Pabitra Gahir and his father Parmeswar Gahir on 03.11.2005, both the deceased committed suicide by taking poison and accordingly, charge sheet was submitted.

3. Mr. Swapnil Roy, learned counsel appearing for the petitioners contended that from the house of petitioners nos.1 and 2, theft was committed on

13.10.2005 and deceased Pabitra Gahir was working as a servant in their house and he was suspected of commission of theft and the matter was

reported before officer in charge of Kalarapada Outpost orally on 21.10.2005 and also written information was given on 22.10.2005 but no case was

registered against deceased Pabitra Gahir. Subsequently when the matter was brought to the notice of S.P., Kalahandi, officer in charge of

Bhawanipatna Sadar police station registered P.S. Case No.76 of 2006 under sections 457/380 of the Indian Penal Code. It is further submitted that

one Uttam Gahir who was working in the house of petitioners nos.1 and 2 also implicated deceased Pabitra Gahir to have committed theft. It is further

contended that the petitioners have played no role in the commission of suicide of the deceased persons and the ingredients of the offence under

section 306 of the Indian Penal Code are not attracted and therefore, invoking power under section 482 of Cr.P.C., the criminal proceeding should be

quashed. Learned counsel for the petitioners placed reliance in the case of Vedprakash Bhaiji -Vrs.- State of Madhya Pradesh reported in 1995

Criminal Law Journal 893, Manish Kumar Sharma -Vrs.- State of Rajasthan reported in 1995 Criminal Law Journal 3066,V. Adinarayana -Vrs.- State

of A.P. reported in 2000 Criminal Law Journal 1182, Pallem Deniel Victor -Vrs.- State of A.P. reported in 1997(1) Crimes 499 and Ramesh Kumar -

Vrs.- State of Chhattisgarh reported in (2001) 21 Orissa Criminal Reports (SC) 667.

Mr. Prem Kumar Patnaik, learned Addl. Government Advocate on the other hand contended that not only the petitioners brought unfounded allegation

against the deceased persons to have committed theft in the house of petitioners nos.1 and 2 but also humiliated them before the villagers and they

were also assaulted and out of shame and being dejected, they committed suicide and therefore, the conduct of the petitioners have got proximate link

with the commission of suicide and as such there is no illegality in the submission of charge sheet against the petitioners under sections 306/34 of the

Indian Penal Code and also taking of cognizance of such offence and issuance of process against the petitioners by the learned S.D.J.M.,

Bhawanipatna.

4. Let me first take note of the ratio in the decisions placed by the learned counsel for the petitioners. In case of Vedprakash Bhaiji (supra), it is held

as follows:-

11. A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word 'instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act. In the present case, none of the accused goaded or urged forward provoked, incited or urged or encouraged the deceased to commit suicide. They merely goaded him to refund or repay the amount advanced by them to him. They never intended that the deceased should commit suicide. On the other hand they wanted the loan advanced by them to the deceased to be repaid by him. For the said purpose it was at least needed, if not essential, that deceased Sadholia should live.

12. There is no question of abetment by conspiracy. Now regarding abetment by aid, it has to be seen that no aid was provided by the accused to commit suicide. It also cannot be said that Ramesh Sadholia was left with no other option but to commit suicide. In case of Manish Kumar Sharma (supra) it is held as follows:-

18. In the present case, it is extremely doubtful if all the circumstances taken cumulatively could indicate any mens rea on the part of the accused-petitioner. It is an admitted position that Smt. Kusum Devi was not in a position to repay the amount borrowed from the accused-petitioner and he had been demanding this money very often. Hence, if he made the casual remarks attributed to him as reproduced earlier, it cannot be said that he wanted or, intended Smt. Kusum Devi to commit suicide. There is no evidence to suggest or indicate that the petitioner knew or had reason to believe that Smt. Kusum Devi had purchased tablets of salphos and would contemplate or commit suicide.

19. Demanding a sum of money given on loan is not an offence under any provision of the criminal law. Taking out a willing and mature lady to Ram Niwas Garden or certain hotels, is also no offence. Frequent visits by the accused-petitioner to the house of Smt. Kusum Devi was also no offence because it is not said that he was visiting the house against the wishes of Smt. Kusum Devi. In case of V. Adinarayana (supra), it is held as follows:-

6.....Thus, in order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107. In case of Pallem Deniel Victor (supra), it is held as follows:-

3.....To attract the ingredients of abetment, the intention of the accused-petitioners to aid or instigate or abet the deceased to commit suicide is necessary. Mere non-payment of the debt by the deceased is not a sufficient proof to attribute the intention of abetment to the accused petitioners. Therefore the proceedings against the accused-petitioners under section 306 of the Indian Penal Code have to be quashed..... In case of Ramesh Kumar (supra), it is held as follows:-

20. The picture which emerges from a cumulative reading and assessment of the material available is this. Presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence, the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. May be, that was in a fit of anger as contrary to his wish and immediate convenience, the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing - you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having been given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had

freed her, she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the trial Court misspell out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free to commit suicide, as held by the trial Court and upheld by the High Court.

21. 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 constituted 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.

5. Coming to the case in hand, the statements of the witnesses indicate that a theft was committed in the house of petitioners nos. 1 and 2 and the matter was reported in the police station but no action was taken thereon. When it came to the knowledge of petitioner no.1 that the deceased Pabitra Gahir is involved in the commission of theft which was disclosed by Uttam Gahir, the petitioner no.1 did not approach the higher authorities of police nor did he file any complaint petition before the Magistrate. He adopted an illegal method and sought for the help of petitioner no.3 who was performing black magic for detecting the crime and after petitioner no.3 performed puja, four young boys were asked to move holding a charpai and while so doing as per the instruction of petitioner no.3, they came to the house of the deceased persons. The deceased persons were then suspected by the petitioners to have committed theft and the petitioner no.1 called them and they were challenged with accusation of commission of theft and

were abused in filthy language in presence of the villagers and they were also asked to refund the money. In the evening hours, the petitioner no.2 came to the house of the deceased persons and leveled unfounded allegations of commission of theft, abused the deceased Pabitra Gahir and assaulted him in the presence of the villagers. The deceased persons committed suicide in that very night and their dead bodies were found in the next morning. The post mortem over the dead bodies was conducted and it was suspected to be a case of poisoning but the final opinion was kept reserved awaiting chemical analysis of viscera and ultimately charge sheet was submitted against the petitioners. The conduct of the petitioners nos. 1 and 2 in bringing unfounded allegations against the deceased persons that they have committed theft which is based on the black magic performed by petitioner no.3, abusing them, assaulting the deceased Prabitra Gahir in presence of the villagers appears to be intentional. The deceased persons must have felt humiliated, insulted and depressed and in a rural background, they might be expecting further humiliation in future and therefore, in the factual scenario, the conduct of the petitioners prima facie seems to have created circumstances compelling the deceased persons to adopt the extreme step in committing suicide. Therefore, it cannot be said that the conduct of the petitioners has got no proximate link with the commission of suicide by the deceased persons. Therefore, on a cumulative assessment of the materials available on record, I am of the humble view that the learned Magistrate has not committed any illegality in acting upon the charge sheet submitted by police and taking cognizance of offence under sections 306/34 of the Indian Penal Code. There is no infirmity or illegality in the impugned order and therefore, I am not inclined to invoke the inherent power under section 482 of Cr.P.C. to interfere with the same. Any observation made in this judgment shall not prejudice the mind of the learned trial Court while adjudicating the guilt or otherwise of the petitioners and the Court has to decide the case on the basis of the evidence which would be adduced by both the sides during trial. Accordingly, the CRLMC application being devoid of merits, stands dismissed.