

(2009) 08 SC CK 0108

In the Supreme Court Of India

Case No : Criminal Appeal No. 1473 of 2009 (Arising out of Special Leave
Petition (Criminal) No. 1827 of 2007)

Chitresh Kumar Chopra

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (2009) 3 ACR 2608 : AIR 2010 SC 1446 : (2010) AIRSCW 645 :
(2009) CLT 1619 : (2009) 162 DLT 257 : (2009) 10 JT 698 : (2009) 4 PLJR 174 :
(2010) 3 RLW 2483 : (2009) 11 SCALE 24 : (2009) 16 SCC 605 : (2009) 13 SCR
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Hon'ble Judges : H. L. Dattu, J;D. K. Jain, J

Bench : Division Bench

Advocate : Ranjit Kumar, Mohit Mathur, Jasneet Kaur, Subramonium Prasad and
Atul Guleria, for the Appellant; Mohan Jain, ASG, Ashok Bhan, Kiran Bhardwaj,
Anil Katiyar and D.S. Mahra, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—Leave granted.

2. This appeal by special leave is directed against final judgment and order dated 1st February, 2007 rendered by the High Court of Delhi at New Delhi in Criminal Revision Petition No. 62 of 2004. By the impugned judgment, the High Court has dismissed the Revision Petition filed by the appellant herein u/s 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), upholding the order passed by the Additional Sessions Judge, Delhi, dated 8th January, 2004, framing charge against the appellant for commission of offence u/s 306 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC") arising out of FIR No. 329 of 2002 dated 4th July, 2002 registered at Police Station Mehrauli.

3. On 4th July, 2002, one Rahul Kaushik lodged the said First Information Report (FIR) with Police Station, Mehrauli stating that his father Jitendra Sharma (hereinafter referred to as "the deceased") had committed suicide on 3rd July, 2002 by shooting himself with his licensed revolver. It was alleged that the deceased was a partner with the appellant in this appeal along with two other persons viz., Jahuruddin and Mahavir Prasad and they were all engaged in the real estate business; he committed suicide on account of the problems created by these three persons; the deceased left behind a suicide note which mentioned that there were some money transactions between them and thus, these three persons had abetted the deceased to commit suicide. For the sake of ready reference, relevant portion of the suicide note is extracted below:

The money of Shri Bansi Dhar and Shri Grewal is with Ram Pashre. The money of Shri Puri and Rajendra has been given to Ramjan, Mehrauli by Jahur and Jahur has become dishonest. The money of B.C. Malik and K.S. Yadav is with Mahesh, who has written the same and given. The rest, the ex-SDE, Pamer Singh and had taken and did not do Puri's work.

My children known nothing about this matter. C.K. Chopra's money has been given by Jahur, Jahur and Chopra are saying things against me and are thereby troubling me. Kartar etc., money was taken by Jahur and Mahavir. They had taken it. The reason for the scandal are Chopra and his friends. They are troubling me and are pressurizing me to write all this. I am stressed and therefore, going away.

4. On completion of investigation, the police filed charge-sheet against the said three persons including the appellant for allegedly committing offence punishable u/s 306 read with Section 34 of the IPC. As per the charge-sheet, the case of the prosecution in short is that there appeared to be a dispute between the deceased and the appellant regarding share of profits from the sale of the lands; prior to the incident, the deceased was asked to sign a settlement paper, according to which, the share of the deceased was reduced from 25% to 10% in favour of one Tegh Singh Chabbra and the appellant, who were otherwise having 45% share each in the profits from sale proceeds of lands and that due to this dispute, the deceased was mentally harassed and pressurized by the appellant and the other two accused, as a result whereof, the deceased committed suicide.

5. On being charge-sheeted, all the three accused were put up for trial before the court of the Additional Sessions Judge. The trial court felt satisfied that there was sufficient material on record for framing of charge against all the three accused. Accordingly, on 8th January, 2004, the following charge was framed:

....

That you all on 3.7.2002 at about 3.10 p.m. at house No. 108, village Saidulajake, New Delhi in furtherance of common intention, mentally tortured Jitender Sharma and abetted him to commit suicide by your said act of mental torture and thus you thereby committed an offence punishable u/s 306 read with

Section 34 of IPC and within cognizance of this Court.

....

6. Aggrieved by the framing of the charge, the appellant preferred a Revision Petition before the High Court. As already noted, the High Court declined to interfere with the order framing charge. Being dissatisfied with the said order, the appellant (accused No. 1) is before us in this appeal.

7. We have heard learned Counsel for the parties.

8. Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant, submitted that even if the case of the prosecution is accepted on its face value, still on the basis of the material brought on record by the prosecution, offence u/s 306, IPC is not made out against the appellant. Referring to the undated suicide note (Annexure P-1) and the document recording some final settlement (Annexure P-3), learned senior counsel was at pains to explain that even assuming for the sake of argument, that there was some 'settlement' between the deceased, the appellant and the said Tegh Singh Chabbra, whereunder the deceased was allegedly forced to forego his share of profits in favour of the said Tegh Singh Chabbra, the settlement neither shows any instigation on the part of the appellant to the deceased to do something, nor any role of the appellant in any conspiracy which ultimately resulted in the commission of suicide by the deceased, and therefore, the appellant cannot be said to have abetted commission of suicide by the deceased. It was also argued that since as per the suicide note, the deceased owed some money to the appellant, he would not encourage or provoke his debtor to commit suicide so as to lose his money. In support of the proposition that to attract the offence of abetment u/s 107 of the IPC, an intentional aiding and active complicity is an essential ingredient of said provision, learned Counsel relied on the decision of this Court in *Shri Ram Vs. The State of U.P.*, . Reliance was also placed on the decisions of this Court in *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.*, and *State of Maharashtra Vs. Priya Sharan Maharaj and Others*, to contend that the trial court had failed to apply its mind to the question whether or not there was any ground for presuming that the appellant had committed the alleged offence.

9. Per contra, Mr. Mohan Jain, learned Additional Solicitor General, appearing on behalf of the State, supported the decision of the High Court. He submitted that the suicide note cannot be read de hors the other material, including the statements of some of the persons recorded during the course of investigations. It was contended that there is ample material on record for presuming that the accused, including the appellant, have abetted the commission of suicide by the deceased. The learned Counsel thus, submitted that the trial court has not committed any illegality in framing charge against the appellant and, therefore, the High Court was justified in dismissing the Revision Petition filed by the appellant, particularly when the scope of revision is very limited.

10. Section 306 of the IPC reads as under:

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 years, and shall also be liable to fine.

11. From a bare reading of the provision, it is clear that to constitute an offence u/s 306 IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence u/s 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the IPC, which defines abetment of a thing as follows:

107. Abetment of a thing

A person abets the doing of a thing, who -

First- Instigates any person to do that thing; or

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

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

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.

12. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence u/s 306 of the IPC.

13. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 IPC?

14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered by this Court in Ramesh Kumar Vs. State of Chhattisgarh, . Speaking

for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

16. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. 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. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

17. In the present case, the charge against the appellant is that he along with other two accused "in furtherance of common intention", mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and, therefore, clause firstly of Section 107 of the IPC was attracted. Briefly dealing with the material available on record, in the order directing framing of charge against the appellant, the learned trial court has observed as under:

In the present case the evidence shows threatening given to the deceased. One witness called Kartar Singh says that CK Chopra was heard saying to the deceased that the deceased had become dishonest because he was refusing to sign a paper in which the share in some joint property was shown to be 10%. On another occasion Chopra was heard by this witness to say that Chopra would ruin the deceased if he did not give up his claim for 25% and did not agree to accept 10%. Witness Padam Bahadur has stated inter alia that he overheard Jahoor and Mahavir telling the deceased that Chopra had asked them to say that this was the last opportunity to sign the document and that if he wanted to live in the society he should sign the agreement or should die by taking poison. Soon thereafter the deceased committed suicide.

Thus the evidence is not of a mere quarrel in which one person told the other go and die without actually suggesting that the opponent should commit suicide. In the present case the evidence collected by the investigation suggest that the deceased had been actually pushed to the wall and the escape by committing suicide was suggested by the accused persons.

18. In the light of the material on record, in our judgment, it cannot be said that the trial court was in error in drawing an inference that the appellant had "instigated" the deceased to commit suicide and, therefore, there was ground for presuming that the appellant has committed an offence punishable u/s 306 read with Section 34 IPC. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states.

At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See: Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others,).

19. In *Som Nath Thapa and Ors.* (supra), a three-Judge Bench of this Court explained the meaning of the word "presume". Referring to dictionary meanings of the said word, the Court observed thus:

...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

(emphasis supplied)

20. In view of the settled legal position, noted above, we are convinced that the trial court was correct in law in coming to the conclusion that a case for framing charge against the appellant had been made out. Similarly, the scope of revisional powers of the High Court u/s 401 of the Code being limited, the High Court was justified in dismissing the Revision Petition, preferred by the appellant.

21. In view of the foregoing discussion, we do not find any merit in this appeal, which is dismissed accordingly. It goes without saying that nothing said by the High Court or by us hereinabove shall be construed as expression of any opinion on the merits of the case pending trial.