

(2010) 01 SC CK 0109
In the Supreme Court Of India
Case No : Criminal Appeal No. 1301 of 2002

Gangula Mohan Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Indian Penal Code, 1860 — Section 107, 306, 309

Citation : (2010) 1 ACR 393 : AIR 2010 SC 327 : (2011) AIRSCW 12 : (2010) AIRSCW 337 : (2010) AIRSCW 6188 : (2011) AIRSCW 1435 : (2010) CLT 876 : (2010) CriLJ 2110 : (2010) 1 JT 17 : (2010) 1 OLR 779 : (2010) 1 RLW 639 : (2010) 1 SCALE 1 : (2010) 1 SCC 750 : (2010)

Hon'ble Judges : Dalveer Bhandari, J;A. K. Patnaik, J

Bench : Division Bench

Advocate : D. Ramakrishna Reddy, for T. Anamika, for the Appellant; I. Venkatnarayana Manoj Saxena, Rajnish Singh and Bachita Barua for T.V. George, for the Respondent

Final Decision : Allowed

Judgement

Dalveer Bhandari, J.—This appeal is directed against the judgment of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1039 of 1996 dated 30.3.2002. The appellant was convicted by the Assistant Sessions Judge, Nagarkurnool u/s 306 of the Indian Penal Code (for short 'the Code') and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/- and in default to suffer simple imprisonment for six months.

2. The appellant, aggrieved by the said judgment of the learned Assistant Sessions Judge filed an appeal before the High Court. The High Court upheld the judgment of the learned Assistant Sessions Judge, but while affirming the conviction of the appellant u/s 306 of the Code, the sentence of rigorous imprisonment of 10 years was reduced to 5 years. The appellant, aggrieved by the said judgment, approached this Court. This Court granted leave and released the appellant on bail.

3. The brief facts which are relevant to dispose of this appeal are recapitulated as under:

According to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs. 7,000/- from the deceased which was given in advance to him at the time when he was kept in employment.

4. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides. The prosecution in support of its case examined the father of the deceased as P.W.1 Urikonda Jammanna in which he had stated that his son Ramulu was a farm servant and used to work at the house of the appellant. He also stated that the appellant gave Rs. 7,000/- in advance to his son. PW1 also stated that about two years ago, the appellant had asked his son (Ramulu) that his wrist watch was missing from his house and harassed him on which his son had returned the watch to the appellant. PW1 in his statement stated that the appellant also levelled the allegation that the gold ear-rings were also missing from his house and the same were stolen by Ramulu. PW1 also stated that the appellant also demanded the advance of Rs. 7,000/- paid to Ramulu at the time of his employment. He further stated that Ramulu committed suicide because the appellant had levelled the allegation of theft of ornaments.

5. The prosecution also examined Balamma, the mother of the deceased as P.W.2. She also corroborated the statement of PW1 and gave same version of the incident in her testimony. On the basis of the testimonies of P.W.1 and P.W.2, the Trial Court convicted the appellant u/s 306 of the Code and his conviction on appeal was confirmed by the High Court.

6. Learned Counsel for the appellant submitted that the conviction of the appellant is totally unsustainable because no ingredients of offence u/s 306 of the Code can be made out in the facts and circumstances of this case. It would be profitable to set out Section 306 of the Code:

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.

7. 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.

8. Suicide by itself is not an offence under either English or Indian criminal law,

though at one time it was a felony in England. In England, the former law was of the nature of being a deterrent to people as it provided penalties of two types:

- Degradation of corpse of deceased by burying it on the highway with a stake through its chest.
- Forfeiture of property of deceased by the State.

9. This penalty was later distilled down to merely not providing a full Christian burial, unless the deceased could be proved to be of unsound mind. However, currently there is no punishment for suicide after the enactment of the Suicide Act, 1961 which proclaims that the rule of law whereby it was a crime for a person to commit suicide has been abrogated.

10. 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 u/s 309 of IPC.

11. 'Abetment' has been defined u/s 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 aids, by any act or illegal omission, the doing of that thing.

12. 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.

13. Learned Counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh and Another, Gayatribai Vs. State of M.P., . In the case of Mahendra Singh, the allegations levelled are as under:

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.

14. The court on 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 u/s 306 IPC

merely on the basis of aforementioned allegation of harassment of the deceased is unsustainable in law.

15. Learned Counsel also placed reliance on another judgment of this Court in *Ramesh Kumar Vs. State of Chhattisgarh*, . A three-Judge bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in paragraph 20 has examined different shades of the meaning of "instigation". Para 20 reads as under:

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.

16. In *State of West Bengal Vs. Orilal Jaiswal and another*, , this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trail 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 difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference 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.

17. The Court in the instant case came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema may necessarily be drawn.

18. In the instant case, the deceased was undoubtedly hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

19. This Court in *Chitresh Kumar Chopra Vs. 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 word "instigation" and "goadings". 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 straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. 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.

21. The intention of the Legislature and the ratio of the cases decided by this Court is clear that in order to convict a person u/s 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 committed suicide.

22. In the light of the provisions of law and the settled legal positions crystallized by a series of judgments of this Court, the conviction of the appellant cannot be sustained. Consequently, the appeal filed by the appellant is allowed and disposed of.

23. During the pendency of the appeal, the appellant was released on bail. He is not required to surrender. His bail bond is cancelled and he is set at liberty forthwith, if not required in any other case.

24. Consequently, the appeal filed by the appellant is allowed.