
(2005) 05 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2351 of 2005

Gundala Reddeppa Naidu and Others

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 08-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 108, 306, 34

Citation : (2005) 2 ALD(Cri) 206 : (2005) CriLJ 4702 : (2006) 1 RCR(Criminal) 547

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : E. Ayyappu Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—The petitioners, who are A.1, A.2, and A.4 in the Sessions Case No. 162 of 2004 pending on the file of the Principal Assistant Sessions Judge, Chittoor, seek to assail the charges framed against them in the said case.

2. The crime in this case was registered by Irala Police Station on 2-11-2003 u/s 306 read with Section 34 of the Indian Penal Code (for brevity "the IPC"). Eventually, after completing investigation, the Investigating Officer, namely, Sub-Inspector of Police laid the charge-sheet against four accused. A.1 and A.4 are the parents of A.2 and A.3. The case against the accused was that the deceased-Patnam Chengal Reddy was family friend of A.1 to A.4, A.2 and A.3 borrowed from him in all an amount of Rs. 4 lakhs. When the deceased demanded A.2 and A.3 for repayment of the amount so as to perform his daughter's marriage, the accused used to postpone the repayment. On two or three occasions, they even beat the deceased when he demanded repayment. On 1-11-2003 the deceased and his son Kishore Reddy went to the house of the accused and demanded them repayment. While refusing to repay the money all the accused acted in a high-handed manner and challenged the deceased and his son to do what they would

like to do. They went inside the house and brought pesticide poison and gave it to the deceased to consume and die. In that emotional mood the deceased consumed it and died on the way when he was being taken to the Government Hospital, Chittoor, by his son.

3. The learned Magistrate after taking cognizance eventually committed the case to the Court of Session and the case having been made over to the Principal Assistant Sessions Judge by the learned Principal Sessions Judge, Chittoor, framed two charges against the accused. The first charge was framed against A.3 u/s 306 of the IPC and the second charge was against A.1, A.22 and A.4 u/s 306 read with Section 34 of the IPC. As aforesaid, the petitioners are assailing the said charge.

4. The contention of the petitioners appears to be two fold. Firstly, that Section 306 of the IPC makes the abettor who abets another to commit suicide liable for punishment and, therefore, there cannot be any common intention to abet the abettors, and secondly in the Indian Penal Code, there is no provision of abetment to abettor.

5. The facts are obvious, Sri E. Ayyapu Reddy, learned senior counsel appearing for the petitioners seeks to contend that nothing has been attributed to the petitioners who are A.1, A.2 and A.4 in the statement of PW-1 recorded by the police or in the First Information Report except speaking about the presence of these petitioners along with A.3 against whom it is alleged that he abetted the deceased to commit suicide. Accepting even the said contention, it is to be seen as to whether the petitioners who are A.1, A.2 and A.4 can also be charged along with A.3 against whom the charge u/s 306 read with Section 34 of the IPC has been framed. It may be mentioned here that the charge framed against A.3 is now not being assailed.

6. The word "abetment" has been defined u/s 107 of the IPC, which reads as under :

"107. Abetment of a thing :

A person abets the doing of a thing, who--

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-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.

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 facilitates the commission thereof, is said to aid the doing of that act."

7. A person is said to have abetted doing of a thing when he instigates any person to do that thing; engages with one or more other person or persons in any conspiracy for the doing of that thing; and intentionally aids, by any act or illegal omission, the doing of that thing. It is obvious, therefore, that instigation, or intentional aid, or conspiracy to do or omit to do an act will make the offence complete. While Section 107 defines the expression "abetment"; Section 108, however, deals with a situation as to when a person is said to have abetted an offence. The five explanation appended thereunder further elucidate the meaning of the expression "Abettor". More particularly Explanation-4 appended thereunder, provides a suitable answer to the two-fold contention raised by the learned senior counsel. The Section reads as under :

"108. Abettor :

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.-- The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.-- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Explanation 3.-- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Explanation 4.-- The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Explanation 5.-- It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed."

8. A perusal of Explanation-4 leaves no room for any doubt. The illustration given thereunder amply exemplifies the act. It may profitably be excerpted hereunder thus :

"Illustration

A instigates B to instigate C to murder Z, B accordingly instigates C to murder Z and C commits that offence in consequence of B's instigation. B is liable to be

punished for his offence with the punishment for murder, and, as A instigated B to commit the offence. A is also liable to the same punishment."

It is thus obvious that abetment of an offence being an offence, the abetment of such an abetment is also an offence. In view of Explanation-4 appended u/s 108 of the IPC, the contention of the petitioners that there cannot be any abetment of an abetment and it is unknown to criminal jurisprudence, holds no water and merits no consideration.

9. The learned senior counsel seeks to place reliance upon the judgment of the Apex Court in Ramesh Kumar Vs. State of Chhattisgarh, . That was a case where the husband asked the wife to go away to any place she liked and to do whatever she wished. When the wife committed suicide, the husband was sought to be prosecuted u/s 306 of the IPC. The Apex Court held in para 21 (of SCC) : (para 20 of Cri LJ) thus :

"21. Instigation is to goad, urge forward, provide, 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."

The core issue germane for consideration in the instant case is altogether different. The question is whether there can be an abetment of abetment. Therefore, that judgment has no relevance, I, therefore, see no illegality or material irregularity that has been committed by the learned Principal Assistant Sessions Judge in having framed the two charges.

10. For the above reasons, the Criminal Petition fails and is dismissed at the thresh-old.