

(2015) 03 CAL CK 0088
In the Calcutta High Court
Case No : C. R. A. No. 168 of 2010

Gurubari Jana and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2015) 03 CAL CK 0088

Hon'ble Judges : Indira Banerjee, J; Sahidullah Munshi, J

Bench : Division Bench

Advocate : Abhijit Ganguly, Bijay Bikram Das and Asish Kumar Das, for the Appellant; Ranabir Roychowdhury, Advocates for the Respondent

Final Decision : Allowed

Judgement

Indira Banerjee, J.—This appeal is against a judgment and order of conviction dated 22nd February, 2010 and an order of sentence dated 23rd February, 2010 passed by the Additional Sessions Judge, Fast Track Court, Kakdwip, South 24-Parganas in Sessions Trial No. 4(10) 09 corresponding to Sessions Case No. 71(5) 2009 whereby the accused appellants have been convicted under Section 306 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5000/-, in default of which, they are to suffer further rigorous imprisonment for another one year.

2. The case is unfortunate. A young girl aged about 18 years apparently committed suicide by consuming poison. The question is whether the accused appellants could have been held guilty of abetment of her suicide and convicted under Section 306 of the Indian Penal Code.

3. On or about 21st September, 2008, one Biswanath Barui, father of the deceased, lodged a First Information Report in the Kakdwip Police Station wherein he complained that he along with his wife had gone out of his house at about 4-00 A.M. On returning at 12-30 P.M., he and his wife found the deceased

lying on bed. His younger daughter, Sankari, told him that at about 8-00 A.M., a little girl of the neighbourhood, Nani Jana, aged about 6 years, who is daughter of the accused appellant No. 1 and niece of accused appellant No. 2, came to the house of the de facto complainant and spat on his younger daughter Sankari whereupon she rebuked the child. After a while, the mother of the little girl, that is, the accused appellant No. 1 and her maternal aunt, that is, the accused appellant No. 2, both daughters of Upendranath Jana, came to the house of the de facto complainant and started quarrelling with their younger daughter Sankari and hurling abuses.

4. The de facto complainant alleged that his elder daughter, that is, the deceased, protested whereupon the accused appellant told her not to show her chastity, as she had eloped with a boy working at the battery factory. They further told her that they would make sure that she was not able to show her face at school and that she would have to die by consuming poison.

5. According to the de facto complainant, on hearing this, his deceased daughter was mentally shocked. She told the younger sister that she would not show her face to any one. When the de facto complainant and his wife called the deceased, she did not respond and they got the smell of the poison Thymed. The de facto complainant took his daughter to Kakdwip SD Hospital, where the doctors declared her dead at about 1-30 P.M. The de facto complainant alleged that the accused appellants had abetted the suicide of his elder daughter.

6. About nine witnesses were examined on behalf of the prosecution. The accused appellants did not adduce any oral evidence. The accused appellants were, however, examined under Section 313 of the Code of Criminal Procedure. They denied the allegations made by the prosecution witnesses and pleaded innocence.

7. The main witnesses who deposed on behalf of the prosecution are the Prosecution Witness No. 1, Biswanath Barui, father of the deceased and the de facto complaint and the Prosecution Witness No. 3, Sankari Barui, younger sister of the deceased, who was the only eyewitness to the incident.

8. The evidence of the Prosecution Witness No. 1, that is, the de facto complainant, is based on what he had allegedly heard from his younger daughter, Sankari, the Prosecution Witness No. 3.

9. The Prosecution Witness No. 1 stated that on returning home at about 12-30 P.M. on the fateful day, he found his younger daughter, Sankari, (PW 3), crying while she was cooking and he found his elder daughter lying on the bed. In the presence of the de facto complainant, his wife, asked Sankari (PW 3), what had happened? On being asked, Sankari told her mother, that is the wife of the de facto complainant that at about 6-00 A.M. the accused appellant No. 1's daughter Nani Jana, came to the house of the de facto complainant and spat on Sankari, whereupon Sankari remonstrated and rebuked her.

10. The younger girl, Nani, went back home and told her mother, that is, the accused appellant No. 1, and her maternal aunt, that is, the accused appellant No. 2, that Sankari had assaulted her.

11. Thereafter, the accused appellants along with their brothers and the wives of their brothers, all came to the house of the de facto complainant and started abusing Sankari. According to this deponent, when the accused appellant No. 2 assaulted his younger daughter, Sankari, his elder daughter protested after which the accused appellant No. 1 started assaulting his elder daughter saying "khanki tui satigiri dekhachchis. Tui karkhanar cheler sate paliye chili. Tui bara pet nabiachili tor hus nai, kalke amra dalbedhe jabo. Tui schoole ki kore mukh dekas dekhaba". Later the accused appellants and others, who had come to the house of the de facto complainant, left. However, his elder daughter was totally shocked mentally and she told her younger sister that she would not show her face to anyone.

12. After this incident, the deceased went out of the house. She came back after a while and she told her sister, that is, the de facto complainant's younger daughter that she was unwell. When the de facto complainant and his wife went to their elder daughter, she was still conscious, but was not responding. They found froth coming out of her mouth after which they took her to Kakdwip SD Hospital. Even while they were taking her to hospital, the family members of the accused appellants came to the house of the de facto complainant and started quarrelling with his wife. The deceased was ultimately admitted to hospital. After about half an hour, the doctors declared her dead.

13. The Prosecution Witness No. 3, Sankari, more or less corroborated what her father had deposed. She stated that while she was going to the pond at about 6-00 A.M. to clean the utensils, the daughter of the accused appellant No. 1, Nani, spat on her, whereupon she caught hold of her hand and remonstrated. Thereafter, the girl started crying. She went back home crying. Thereafter, her mother, that is, the accused appellant No. 1, her matrimonial aunt, the accused appellant No. 2 and other members of the family came to their house. On entering house, the accused appellant No. 1 told Sankari "Eai khanki tui amar mayke marli keno".

14. It appears that an altercation followed after which Moni Jana, brother of the accused appellants, slapped Sankari. When Sankari was slapped, her elder sister, that is the deceased, came out of her room and protested, whereupon the accused appellant No. 1 rushed towards her and started assaulting her saying "sati pana dekhasna. Battery karkhanar chaleke niya paliye gechilis janis na. Doktorer kache bara pet niye namiye diachhis janis na. Tui ar eai mukh dekhas na. Tui bis khey mor. Amra kalke schoole jachhi, chhatra chatri der sab balbo. Tui schoole kikore mukh dekhate paris tar babasta karbo. Tui kato chheler matha kheyachhis".

15. The Prosecution Witness No. 3 deposed that the accused appellants and

others thereafter left their house. When she entered the room, she found her elder sister crying. When asked why she was crying, she replied that the accused appellants would tell her classmates that she had run away with a boy from the battery factory and that she would not be able to show her face to them.

16. This deponent further stated that she told her elder sister to wait for their parents to come back and further asked her to come to the kitchen to cook, but she did not come to the kitchen, whereupon this deponent started cooking. Her elder sister lay on bed. When her parents returned, she reported what had happened, to her mother, in her father's presence. Thereafter, when she went to call her elder sister for lunch, she found her elder sister frothing from her mouth. She was not in a position to speak whereupon she informed her parents.

17. The PW 3 deposed that while her father was trying to take her elder sister to the hospital for treatment, the accused appellants and members of their family started assaulting her mother. The village people came and rescued her mother.

18. There are some minor discrepancies between the evidence of the Prosecution Witness No. 1 and the Prosecution Witness No. 3 which are not material. From their evidence, it transpires that a young girl aged about 6 years spat on the younger daughter of the de facto complainant, Sankari whereupon an altercation ensued, in course of which, the elder daughter of the de facto complainant was verbally abused. The de facto complainant and his younger daughter allege that the deceased ended her life because she had been insulted and abused by the accused appellants who had threatened to malign her before her schoolmates.

19. The Prosecution Witness No. 2 apparently drafted the First Information Report. In Court, he deposed that he had made the complaint as per the instruction of the complainant.

20. The Prosecution Witness Nos. 4, 5 and 6 are neighbours and co-villagers of the de facto complainant and the accused appellants. The Prosecution Witness No. 4 found the accused appellants quarreling with the mother of Dolon Barui at about 12-30 P.M. Afterwards, the accused persons left whereupon the de facto complainant and his wife entered the room and found their daughter in bed. There is discrepancy between the evidence of this witness and the evidence of the de facto complainant and his younger daughter, Sankari. In any case, when this witness found the accused appellants quarrelling with the wife of the de facto complainant, the deceased had already consumed poison.

21. The Prosecution Witness No. 5, another neighbour, claimed that she went to the house of de facto complainant and found the accused appellant quarreling with the deceased. The deceased was also crying. However, the younger daughter, Sankari, Prosecution Witness No. 3, has not stated that there was any other person present when the deceased was abused by the accused appellants and members of their family. The evidence of this witness does not inspire confidence of the Court.

22. The Prosecution Witness No. 6 deposed that when he was returning home, he found the accused appellants assaulting the wife of the de facto complainant. After about half an hour, he saw the de facto complainant's younger daughter crying and saying that her elder sister had committed suicide. He stated that he did not know why the deceased had committed suicide by taking poison. In cross-examination, this witness denied having seen the accused appellants assault the wife of the de facto complainant.

23. The Prosecution Witness No. 7 is the Magistrate before whom the statement of Sankari under Section 164 of the Code of Criminal Procedure was recorded. The Prosecution Witness No. 8 is the Assistant Sub-Inspector of Police posted at Kakdwip Police Station, who had received the complaint from the de facto complainant and the Prosecution Witness No.9 is the Investigating Officer, who investigated the case and his evidence is also not of much relevance.

24. Mr. Avijit Ganguly, appearing on behalf of the accused appellants submitted that there was no evidence on the basis of which the charge against the accused appellants of abetting the suicide of the deceased could be sustained. The Prosecution Witness Nos. 1 and 3 were interested witnesses and the Sessions Court ought not to have given credence to their evidence. In any event, even if the evidence given by the said interested witnesses is accepted, the charge of abetment of suicide of the deceased cannot be sustained.

25. Even assuming that the Prosecution Witness Nos. 1 and 3 truthfully narrated what had happened, from their evidence, it transpires that the accused appellants did not initially quarrel with the deceased. The quarrel broke out with the younger sister of the deceased, Sankari, after a young girl of 6 years, who had spat at Sankari and been reprimanded by Sankari, went back home crying and complained to her mother and her aunt that she had been beaten by Sankari. The accused appellants came and started quarrelling with Sankari, abusing her in filthy language and assaulting her. It was only after the deceased intervened that the accused appellants burst out against her, using filthy, abusive language.

26. In Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 AD 133 : AIR 2001 SC 3837 : (2001) CriLJ 4724 : (2001) 2 DMC 636 : (2001) 8 JT 599 : (2001) 7 SCALE 298 : (2001) 9 SCC 618 : (2001) AIRSCW 4282 : (2001) 7 Supreme 737 , the Supreme Court held as follows:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires 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 for abetting the offence of suicide should be found guilty."

27. In Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 SC 1998 : (2002) CriLJ 2796 : (2002) 1 DMC 773 : (2002) 1 JT 248 Supp : (2002) 4 SCALE 270 : (2002) 5 SCC 371 : (2002) 3 SCR 668 : (2002) 1 UJ 769 : (2002) AIRSCW 2035 : (2002) 3 Supreme 650 , cited by Mr. Ganguly, the Supreme Court affirmed that words uttered in a fit of anger or emotion, without intending the consequences that might have actually followed, could not be said to be instigation. The Supreme Court observed that it was common knowledge that the words uttered in a quarrel or on the spur of the moment could not be taken to be uttered with mens rea.

28. In M. Mohan Vs. The State represented by The Deputy Superintendent of Police, AIR 2011 SC 1238 : (2011) CriLJ 1900 : (2011) 2 JCC 1078 : (2011) 3 JT 32 : (2011) 2 RCR(Criminal) 272 : (2011) 3 SCALE 78 : (2011) 3 SCC 626 : (2011) 2 SCC(Cri) 1 : (2011) 3 SCR 437 : (2011) AIRSCW 1601 : (2011) 2 Supreme 220 cited by Mr. Ganguly, the Supreme Court held:

"44. 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.

45. The intention of the Legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide."

29. In Gangula Mohan Reddy Vs. State of Andhra Pradesh, AIR 2010 SC 327 : (2010) CLT 876 : (2010) CriLJ 2110 : (2010) 1 JT 17 : (2010) 1 SCALE 1 : (2010) 1 SCC 750 : (2010) 1 SCR 7 : (2010) 1 UJ 142 : (2011) AIRSCW 1435 : (2010) AIRSCW 6188 : (2011) AIRSCW 12 : (2010) AIRSCW 337 : (2010) 7 Supreme 1003 : (2010) 7 Supreme 681 : (2009) 8 Supreme 550 , cited by Mr. Ganguly, the Supreme Court reiterated that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial to find out whether the cruelty meted out to the victim had, in fact, induced her to end her life by committing suicide. If it appears to the Court that the 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 was guilty.

30. This is apparently a case of quarrel with uneducated, unsophisticated, rustic, quarrelsome neighbours who habitually use filthy, abusive, slang, unparliamentary language and do not hesitate to take recourse to character assassination and mudslinging, without thinking, in course of verbal altercations.

31. From the evidence on record, including in particular, the evidence of the Prosecution Witness Nos. 1 and 3, it does not appear that the accused appellants abused the deceased or insulted her with intention to abet her suicide. The accused appellants possibly did not even imagine that abusive words and insults hurled at the deceased in course of a quarrel could have actually lead to her suicide.

32. In this case, there can hardly be any doubt that the deceased was hypersensitive to ordinary petulance, discord and differences which happen in day-to-day life, particularly, in the society to which the victim belonged.

33. It is nobody's case, not even the case of the de facto complainant that the accused appellants insulted the deceased or abused her or hurt her feelings on any earlier occasion. On the basis of the evidence on record, it cannot be held that the accused appellants indulged in a designed course of action to lead the deceased to commit suicide. It is reiterated that the entire altercation made was sparked off by a 6 year old child, who spat on the younger daughter of the de facto complainant and after being reprimanded, went back home and complained that she had been beaten by the younger daughter of the de facto complainant. When the deceased intervened in an altercation between the accused appellants and her younger sister, the accused appellants became abusive, used filthy language and possibly made painful reference to an embarrassing incident of the past which might have aggravated the depressive and hypersensitive state of mind of the deceased. It is doubtful whether an ordinary reasonable person would commit suicide only on being insulted and threatened in course of a quarrel.

34. It cannot be conclusively held that the deceased committed suicide only because of the behaviour of the accused appellants. There may have been other reasons for her suicide. The behaviour of the accused appellants might at best have been an unintentional aggravating factor. It was the hypersensitivity of the deceased which led her to commit suicide. In our view, the Sessions Court patently erred in holding the accused appellants guilty of offence under Section 306 of the Indian Penal Code.

35. The appeal is allowed. The impugned judgment and order and the order of sentence are set aside.

36. The appellants are on bail. Their bail bond shall stand discharged.

37. Criminal Section is directed to supply urgent photostat certified copies of this judgment to the parties, if applied for, upon compliance of all necessary formalities.

Sahidullah Munshi, J.

I agree.