
(2016) 01 MP CK 0004

In the Madhya Pradesh High Court

Case No : Cr.R.No. 2372 of 2015 and S.T. No. 79 of 2015

Jagatlal and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 397, 401
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2016) 1 JabLJ 401

Hon'ble Judges : C.V. Sirpurkar, J.

Bench : Single Bench

Advocate : Sushri Varsha Kothari, Counsel, for the Appellant; Sushri Hemlata Kshatriya, Panel Lawyer and Pramod Kumar Chaurasiya, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

C.V. Sirpurkar, J.—This criminal revision under Section 397 read with Section 401 of the Cr.P.C filed on behalf of the applicants Jagatlal, Omkar, Kallu, Anil, Savita, Vimla and Manisha is directed against the order dated 09.09.2015 passed by the Court of Additional Sessions Judge, Pawai, District Panna, in S.T.No.79/2015, whereby learned trial Judge has framed a charge against the accused persons for the Offence punishable under Section 306 of the IPC.

2. The Case of the Prosecution before learned trial Judge may briefly be summarised as hereunder:

Applicants/accused persons are members of the extended family of deceased Indrawati. The deceased and the accused persons were neighbours in a village Hardua. The accused persons used to utilise the piece of land belonging to the deceased Indrawati as a passage for ingress and egress to their house. This led to a dispute between the deceased Indrawati on one hand and accused persons on the other. At around 9:00 a.m on 26.01.2015, accused persons Savita and Vimla had passed through the dispute passage, whereon, the deceased had

asked them not to use that land as a way consequently, Savita and Vimla had abused Indrawati and had beaten her. On account of aforesaid dispute, the accused persons, Manisha, Jagatlal, Omkar, Kallu, Anil, Savita and Vimla always used to pick quarrel with Indrawati; therefore, Indrawati had become fed-up with frequent quarrels. At around 10:00 a.m at 02.03.2015 accused persons Savita, vimla, Manisha, Jagatlal, Kallu, Anil and Omkar had quarrelled with Indrawati, they were pressurising her to take her report back and had threatened that otherwise they would kill her. All accused persons had abused Indrawati and had beaten her. At that time, Indrawati had run away from the spot and was in terrible anger. At around 3:00 p.m, Indrawati locked herself inside a room in her house and after pouring kerosene upon herself, had set herself ablaze. Her son Bhanu Pratap called his father and uncle, thereafter, the door of the room was broken open and Indrawati was taken to hospital. On her way to hospital, she succumbed to burns suffered by her. Marg intimation was lodged. Investigation was conducted and a charge-sheet against aforesaid applicants/accused persons was filed under Section 306 read with Section 34 of the IPC. After hearing the applicants, learned Additional Sessions Judge framed charge against the applicants as aforesaid.

3. Inviting attention of the Court to various authorities, it has been argued on behalf of the applicant that even if all allegations made against the applicant are taken at their face value, their act and conduct would not fall under the ambit of abetment of suicide.

4. Learned Panel Lawyer for the respondent/State and learned counsel for the respondent Brijpal, husband of the deceased, have supported the impugned order mainly on the ground that the applicants/accused persons quarrelled with the deceased persistently, resulting in severe mental stress; therefore, the deceased was left with no alternative but to commit suicide.

5. The Court shall first consider whether there is sufficient material on record to proceed against the applicants/accused persons?

6. A perusal of the case diary reveals that the deceased had expired even before reaching the hospital. No suicide note has been left by her. As such, the prosecution case is based almost entirely upon marg intimation lodged by husband of the deceased, statement of witnesses Brajpal, husband of the deceased, Bhanu Pratap, son of the deceased, Shambhu Prasad, father-in-law of the deceased, Ramjanak, brother of the deceased and Shayamlal, father of the deceased, inquest memo and postmortem report. The post-mortem report reveals that deceased has died of asphyxia resulting from about 90% ante-mortem burns suffered by her. It is not disputed that the deceased committed suicide after pouring kerosene upon her and setting herself afire.

7. A perusal of the statements of aforesaid witnesses recorded under section 161 of Cr.P.C. reveals that the applicants/accused persons used to pick frequent quarrels with the deceased and insisted upon using the passage belonging to the

deceased. They threatened, abused and beat the deceased repeatedly resulting in severe mental stress to the deceased. As a result, she committed suicide in aforesaid manner.

8. Now the question that arises for consideration is whether the conduct of the applicants/accused persons as brought-forth in the statement of witnesses, constitutes abetment of suicide?

9. Section 306 of the Indian Penal Code reads as follows:

"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."

10. Term abetment has been defined under section 107 of the Indian Penal Code which is as hereunder:

"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 aides, by any act or illegal omission, the doing of that thing."

11. It has been held by the apex Court in the case of Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 that:

"To satisfy the requirement of instigation though it 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."

(Emphasis supplied)

12. The Supreme Court has observed in the case of Gangula Mohan Reddy v. State of Andhra Pradesh, 2010 Cr.L.J. 2110 (Supreme Court) that:

"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 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 committed suicide".....

(Emphasis supplied)

13. The Supreme Court further observed in the case of Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 that:

"The present one is not a case where the accused had by his acts or omissions or by a continued course of conduct created such circumstances that the deceased was left with no option except to commit suicide in which case an instigation may have been inferred."

14. Likewise in the case of Milind Bhagwanrao Godse v. State of Maharashtra and another, (2009) 3 SCC 699, it was observed that:

"The circumstances enumerated in the suicide note and oral evidence show that accused created circumstances which left no option for the wife but to take the extreme step of putting an end to her life."

15. On the same point, the High Court of Madhya Pradesh in the case of Aman Singh v. State of M.P., 2005 (2) J.L.J. 224 observed as hereunder:

More so, in this case the accused has not 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 an instigation may have been inferred.

16. It is pertinent to note that a co-ordinate Bench of this Court in the case of Ved Prakash v. State of M.P., 1995 Cr.L.J. 893, with regard to suicide committed following attempts by the accused to recover his loan held as hereunder:

"The accused persons were charge-sheeted under section 306 read with section 34 of Indian Penal Code on the basis of a suicide note left by the deceased in which he had blamed all the five accused and held them responsible for his (suicidal) death. However, it was found that none of the accused had goaded or urged forward, provoked, incited or urged or encouraged the deceased to commit suicide. They merely goaded him to refund repay the amount of loan advanced by them to him. They never intended that the deceased should commit suicide. Moreover, the deceased could have lodged a report against accused who had allegedly tortured him and threatened him to kill. May be, as it sometimes happens, the police officials might have declined to record the report. In that case, he could have moved higher officials. But, instead of taking this legal and legitimate action, the deceased adopted an escapist course of committing suicide in order to take revenge from his alleged tormentors. No case for alleged commission of the was made out against the accused persons. The prosecution of the accused would be nothing but abuse of process of law. The charge-sheet

filed against accused Quashed under section 482 of Criminal Procedure Code."

17. Reverting back to the facts and circumstances of the case at hand, it has been established prima-facie that the accused persons/applicants used to quarrel with the deceased on account of use of passage by them belonging to the deceased. During the course of such quarrels, she was abused, threatened and even beaten, which caused serious mental tension to her. It is apparent that the deceased committed suicide due to mental stress caused by such quarrels and humiliation perpetrated upon her by the applicants. However, it is equally apparent that the applicants had no intention of instigating or goading the deceased to commit suicide. The Court cannot ignore the fact that the applicants were a members of extended family of the deceased and were her neighbours. It is quite possible that the accused persons used the passage in bona fide assertion of their right of the way. There could be a bona fide and genuine dispute between the two parties. In all probability, accused persons did not even dreamt that their conduct would lead to such disastrous consequences. By no stretch of imagination can it be said that the accused persons had created such a situation by their persistent conduct, where the deceased was left with no option but to commit suicide. It appears that the deceased was probably ultra-sensitive to the beating and humiliation heaped upon him by the accused persons. As much is evident by her subsequent act of taking his own life by setting herself afire. If the deceased felt humiliated and wronged by the act and conduct of the applicants, she had the option to report the matter to the police, demanding action against the accused persons and even protection for herself. She could have initiated a civil action praying for injunction against the applicants/accused persons. Unfortunately, she did not exercise any of the aforesaid options and impetuously took the extreme step of committing suicide. This clearly was an overreaction on her part but in the circumstances of the case, no abetment or mens rea on the part of the applicants may be inferred. The applicants could not have conceived any nexus between their act of assault, abuse and intimidation and the result the thereof.

18. Thus, there is no sufficient ground to proceed against the applicants Jagatlal, Omkar, Kallu, Anil, Savita, Vimla and Manisha under Section 306 or 306 read with Section 34 of the IPC. Consequently, they are entitled to be discharged in respect of aforesaid offence. It is for the learned trial Court to consider whether any other offence is made out in the facts and circumstances of the case, on the basis of material available on record.

19. In the result, this criminal revision succeeds in part. Applicants Jagatlal, Omkar, Kallu, Anil, Savita, Vimla and Manisha are discharged in respect of the offence punishable under Section 306 of the IPC. The trial Court is directed to consider the matter with regard to the charge afresh and after giving the accused persons an opportunity of being heard, frame such charge, other than the one under Sections 306 or 306 read with Section 34 of the IPC, if any, and proceed with the matter accordingly.