

(2004) 09 GUJ CK 0051
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 4919 of 2003

Kanubhai Tapubhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 482
Penal Code, 1860 (IPC) — Section 107, 108, 306

Citation : (2004) 09 GUJ CK 0051

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Yogesh S. Lakhani, for the Appellant; A.Y. Kogje, APP for Respondent No. 1 and M.J. Buddhahatti, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Heard Id. counsel Ms. Krina Thakkar for Id. counsel Mr. Yogesh S.Lakhani for the petitioners -accused, Id. APP Mr. AY Kogje for respondent Nos. 1 & 3 and Id. counsel Mr. MJ Buddhahatti for respondent No. 2.

2. By invoking the jurisdiction of this Court under Sec.482 of CrPC, the petitioners have prayed that a complaint filed before Paliad Police Station being CR No.60/2003 by respondent No.2 for the offence punishable under Sec. 306 of Indian Penal Code (IPC for short), be quashed and set aside.

3. The backbone of the contentions of Id. counsel Ms.Krina Thakkar for the petitioners is that even if the case of the prosecution is accepted substantially on facts, even then, there is no element of abetment within the meaning of sec.107 of IPC emerging and, therefore, the petitioners can not be said to be "abettors" in the commission of the offence punishable under Sec.306 of IPC. The person who has committed suicide namely Rayeshbhai, at the relevant point of time, was serving as Bus Conductor with Gujarat State Road Transport Corporation (hereinafter referred to as GSRTC for short) and undisputedly, both the petitioners were serving as Asstt. Traffic Inspectors with GSRTC (Amreli Division).

4. Ld. counsel Ms. Krina Thakkar appearing for the petitioners has taken this Court through the facts revealed from the papers of investigation and especially two main documents i.e. FIR and Dying Declaration recorded by the Executive Magistrate. It is contended that by virtue of the part of their duty, the petitioners were supposed to check the buses plied by GSRTC and their duties are normally scheduled in advance and they have no control over the route or the area. On 22.06.2003, the petitioners as per their assignemnt were supposed to check the buses plying on a particular route and programme of Checking Squad was arranged accordingly by the superiors and, therefore, they had started from Morbi in the morning of 23rd and they had to reach Bhavnagar. One bus of Botad Depot was checked near village Targari at about 14.45 hours and they found that conductor Rayeshbhai had not issued tickets to three passengers. The said bus was plying between Botad and Surendranagar. Both the petitioners after intercepting the bus, had asked the conductor to hand over waybill which is required to be maintained in accordance with the norms fixed by GSRTC, by closing the same forth with after issuance of tickets. At that time, deceased conductor Rayeshbhai requested the petitioners to permit him to issue tickets to three passengers and also to collect money from them. It is the case of the prosecution that the petitioners refused to accept the request in a torturous manner. It is not a matter of dispute that the statements of passengers as well as of driver were also recorded and deceased was also informed about the graveness of the misconduct committed by him. As per the case of the prosecution, at that point of time, the deceased conductor had told both the petitioners that if his request i.e. request to permit him to issue tickets to three passengers and accept the money from them, is not acceded to, he may have to consume poison. As per the case of the prosecution, because of refusal to accept the request by the petitioners, the deceased conductor consumed poison after reaching Botad GSRTC Depot and committed suicide on 24.06.2003.

5. It is not a matter of dispute that even as per the case of the prosecution, both the petitioners were discharging their official duties, that they were not otherwise supposed to accept the request advanced by the deceased conductor. It is true that some of the witnesses and especially the driver of the bus and one more witness has said that the petitioners were told by the deceased conductor that in the event of not accepting the request advanced by him, he may consume poison. It is also on record that one of the accused is said to the deceased that he may be pulled out of a particular division of GSRTC.

6. It is argued by Id. counsel Mr. Buddhbhatti for respondent No.2 that the conduct of the accused persons was torturous and they were not supposed to give threats to the deceased and there was no business for them to tell the deceased that he will be pulled out of a particular division. It is one of the arguments advanced by Id. counsel Mr. Buddhbhatti that in view of the scheme of Sec.108 of IPC, it is not necessary that an offence must have been committed by the main accused. The abetment by itself is an offence and, therefore, he has placed reliance on one of the examples given below Sec.108 of IPC. It is not

necessary to reproduce last example given below Sec.108 of IPC, but as the abetment which is made punishable independently by the Scheme of Sec.306 of IPC, the examples/illustrations explaining the intention of the Legislature given below Sec.108 of IPC would not help the prosecution. Offence punishable under Sec.306 of IPC is an independent provision like the other such as an attempt to commit certain crimes. However, to link the accused with the offence punishable u/s 306 of IPC, the prosecution is supposed to bring cogent facts/evidence by which prima facie the Court can gather that there is an element of abetment as defined under Sec.107 of IPC.

7(i) To appreciate the say of the case of the prosecution emerging from the complaint and the relevant papers of investigation, it would be beneficial to quote relevant sections i.e. Sections 107 & 108 of Indian Penal Code. Sec.108 of IPC defines abettor and facts of the present case, if seen, it would be difficult to even conclude safely, prima facie, that any of the petitioners can be termed as abettor. Let us have a look on both the sections, but let me quote Sec.108 of IPC first which reads as under:-

"Sec.108. 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.

This section is to be read in reference to Sec.107 of IPC because a person abets the offence who abets either in commission of the offence or commission of an act which would be an offence. An element of intention and/or knowledge is totally missing in the present case.

(ii) In the same way, on facts, it can be held in a given set of circumstances that the conduct of the accused had instigated a victim and had given a grave provocation to commit suicide and simultaneously the accused persons by certain omissions abetted the act of suicide. In the present case, undisputedly when the deceased committed suicide, none of the accused persons were present. It is true that the time of checking of ST Bus was in close proximity timewise with the act of suicide. The words "abetment" and "omission" in sec.107 IPC need to be considered with reference to word "duty" especially when it comes to a relationship that is not of a member of the family or the husband and wife. In most of such cases, where there are no close relations between the deceased and the accused, the Court have taken into account dictionary meaning of the word "duty". There was no element of personal commitment between the victim and the accused person. On the contrary, the accused persons were under legal obligation to see that they discharge their duty in an honest and efficient manner. However, while dealing with this area, the moral obligation or moral duty should not be given undue weightage and it would be unsafe in cases where there is no evidence of an overt act or apparent omission qua a thing that has happened and resulted into a suicide. Sec.107 of IPC reads as under:-

"Sec.107 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; Thirdly:- Intentionally aids, by an 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.

The plain reading of section clearly reveals that unless there is some evidence to show that any of the petitioner or both of them jointly had instigated the deceased to do that thing or had intentionally aided by an act or illegal omission to do that thing, he can not be levied with abetment of a thing as defined in this section. It is not necessary to comment upon the phraseology used "if an act or illegal omission" and "secondly" in this section, because it is neither the case that accused had conspired nor the allegation. A person facing a charge of abetment of suicide should be viewed differently than the person who is facing charge of abetment of a murder and one of the dictionary meaning of word "duty" is "binding or obligatory force of that which has moral or legal right, moral or legal obligation." It is rightly argued by Ms. Thakkar that there is no major allegation against the accused. Even a rude response to a craving person who was responsible for a wrong committed by him in discharging the duty as a conductor, can not be placed parallel with abetment of a thing as defined in Sec.107 of IPC.

8. It is rightly argued that the Dying Declaration recorded by the executive Magistrate also does not reveal that the conduct of any of the petitioners was so torturous under which it can be inferred that they or any of them had given a grave provocation to the deceased conductor to commit suicide. The Court is not in agreement with the submission made by Id. APP Mr Kogje and Id. counsel Mr. Buddhbhatti that the petitioners ought to have approached the trial Court and should have prayed for discharge by making an application under Sec.227/228 of CrPC. The cases where the petitioners are able to satisfy the Court that there is no element of any criminal offence on the face of it if the facts are read as they are , then they should not be dragged to prosecution and should not be compelled to face criminal trial till it reaches to its logical end. At appropriate stage, the powers vested with the Court under Sec.482 of CrPC can be exercised.

9. So, there is not only the logic, but legal strength in the arguments advanced by Id. counsel that there is no element of criminal offence punishable under Sec.306 of IPC in the case of the prosecution.

10. It is true that such exercise of powers should be in some rare or exceptional case, but in view of facts narrated as above and circumstances emerging from record, this Court is compelled to observe that this case is one such case wherein the petitioners (original accused) who are officers of GSRTC should not be

compelled to face prosecution on account of some hasty decision taken by the deceased conductor. State of mind of an individual is found relevant in many such or similar cases. It is likely that because under a particular set of facts and in particular state of mind, unfortunate decision to commit suicide was taken by the deceased conductor.

11. For the reasons aforesaid, Cri. Misc. Application is allowed. The prosecution launched against the petitioners on the strength of the complaint being CR No.60/2003 registered with Paliyad Police Station for the offence punishable under Sec.306 of IPC, is hereby quashed and set aside and stand terminated and proceedings of the criminal case also stand terminated at the stage where they stand at present as Id. counsel appearing for the petitioners has no specific information as to the stage of further proceedings.

12. Rule is made absolute.