
(2016) 04 MP CK 0030

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 310/15

Lajja Ram and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 397, Section 401
Penal Code, 1860 (IPC) — Section 107, Section 306, Section 34

Citation : (2016) 04 MP CK 0030

Hon'ble Judges : Sheel Nagu, J.

Bench : Single Bench

Advocate : Anjana Singh Tomar, Advocate, for the Appellant; Mohd. Irshad, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Sheel Nagu, J.—1. This revision petition under Section 397/401 of the Code of Criminal Procedure 1974 preferred by the petitioners-accused assails an order dated 20/3/2015 in Sessions Case No. 58/15 passed by Second Additional Sessions Judge, Gohad, district Bhind (M.P.) whereby a charge under Section 306/34 of I.P.C. has been framed against the present petitioners.

2. The factual matrix attending the present case reveal that the instigation which is alleged to be cause of abetment to suicide committed by Naresh is that the present petitioners threatened the said deceased that in case he does not return the loan extended to him by the petitioners/accused, then the accused would take possession of his house. There is no other allegation of causing any injury or any overt act to give effect to the said threat. The date and time of the instigation of said threat is also not specified in the FIR or in the statements under Section 161 of Cr.P.C.

3. This court has now to first consider as to whether the above said threat can be said to be a cause on prima facie basis for constituting an offence of abetment defined in section 107 of I.P.C. read with section 306 of I.P.C.

4. Section 306 I.P.C. under which the accused are charged reads as under:-

"306 I.P.C. 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."

5. Section 107 I.P.C. sets out as to what constitutes abetment. The Section reads as follows:-

"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; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing.

6. A plain reading of the provisions of section 306 of I.P.C. reveals that to justify framing of charge under this section, the following ingredients are necessary to co-exist:-

(a) Death due to suicide.

(b) Accused abets the commission of suicide.

7. In *Sanju @ Sanjay Singh Sengar Vs. State of M.P.*, (2002) 5 SCC 371 the Supreme Court observed as under:-

"6. Section 107 of I.P.C. defines abetment to mean that a person abets the doing of a thing if he 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."

8. The Supreme Court further observed in paragraph 12 of the said decision that the word "instigate" denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. The words expressed in the case before the Supreme Court were "to go and die". As a result of such an utterance, the deceased went and committed suicide. Yet, the Supreme Court was of the view that an offence under Section 306 of I.P.C. was not made out because the element of mens rea was missing.

9. In *Netai Dutta Vs. State of West Bengal* (, 2005 AIR SCW 1326), the Supreme Court reiterated the same view that an offence under Section 306 of I.P.C. would stand only if there is an abetment for the commission of the crime. The supreme

Court observed that the parameters of "abetment" have been stated in Section 107 of I.P.C.

10. Reference further may be made to the decision of this court in the case of Babbi @ Jitendra & others Vs. State of M.P. , 2008 (2) MPHT 160 wherein it has been held as under:-

"11. A person is said to "instigate" another to an act, when he actively suggests or stimulates him to the act by means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word "instigate" means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

12. On examining the facts of the present case as they are, it appears that none of the accused goaded or urged forward, provoked, incited or urged or encouraged the deceased to commit suicide. They merely refused to return or refund the money of deceased allegedly kept by them. They never intended that deceased should commit suicide.

13. Since there is absolutely no material on record to indicate that petitioners in any manner instigated, incited or provoked the deceased to commit suicide, or to indicate any intention on their part that deceased should commit suicide, it cannot be held that petitioners in any manner abetted deceased to commit suicide. In the absence of essential ingredient of abetment, no charge for the offence under Section 306 of Indian Penal Code can be framed against the accused persons."

11. In view of above it is evident that mere threat for return of money advanced by the accused cannot be a cause to constitute an offence even on prima facie basis.

12. It would be appropriate to mention here that if there is material on record to indicate that due to some social constraint or compelling psychological factor or the victim/deceased being of extreme weak or meek temperament and knowing so the accused extends threat then in that situation offence may prima facie be constituted for the purpose of framing of charge.

13. In the present case, there is no such material to indicate that the deceased Naresh was of weak temperament or was constrained by some social compulsion that mere threat of return of money advanced to him by the accused could have driven him to commit suicide. In the absence of any such material, mere threat by the accused cannot constitute abatement.

14. More so, the cause of threat shown on one side and suicide on the other do not have close and proximate link. The link between the cause (threat, instigation, conspiracy or assisting/aiding) and the suicide ought to be live and strong enough to persuade a man of ordinary prudence to be prima facie satisfied that in all probability the incident of suicide can be the outcome of threat, instigation, conspiracy or assistance/aiding extended by accused. It is

further necessary that the incident of said cause and that of the suicide should be in close proximity of time. Long time gap between the two, renders the all essential link, weak.

15. In view of the aforesaid analysis, this court is of the considered view that the essential ingredients of "abetment" are absent in the instant case so to constitute an offence under Section 306 of I.P.C. Therefore, the learned Additional Sessions Judge failed to exercise jurisdiction in accordance with law. In these circumstances, the petitioners are entitled to be discharged of offence under section 306 of I.P.C.

16. Accordingly, this revision petition is allowed. The impugned order dated 20/3/2015 framing charge against the petitioners for commission of offence under Section 306 of I.P.C. stands set aside and the petitioners are acquitted of the alleged charge.

17. A copy of this order be sent to the trial court for necessary compliance.