
(2011) 08 AP CK 0048

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1932 of 2008

Manga Sridhar Rao and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 107, 306, 309, 506, 511

Citation : (2011) 08 AP CK 0048

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Advocate : M.K. Raj Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

G. Krishna Mohan Reddy, J.—This Criminal Petition is filed by the Petitioners/A-1 to A-5 u/s 482 of Code of Criminal Procedure seeking to quash proceedings in Crime No. 242 of 2007, dated 24-12-2007 of Kazipet Police station, Kazipet, Warangal District.

2. Whereas the Petitioners are A-1 to A-5, the Respondent No. 1 is the defacto complainant in the F.I.R.

3. For the sake of convenience, I refer the parties as arrayed in the First Information Report.

4. Heard the learned Counsel for the Accused and the learned Additional Public Prosecutor appearing for the Respondents-State.

5. The prosecution case is that about six months prior to 24-12-2007 one Saritha met the father of the de-facto complainant namely G. Ram Murthy (late) and sought advise from him with regards to her welfare and later, she used to meet him frequently with regards to her astrology and A-1 being the husband of Saritha, on knowing the same approached Ram Murthy and informed that the

character of her wife was not good and demanded Ram Murthy to inform the same to her blood relatives, which Ram Murthy did not agree and from then onwards A-1 started calling Ram Murthy by phone and threatened Ram Murthy with dire consequences and on 23-12-2007 at about 06-30 p.m. A-1 along with A-2 to A-4 and another went and threatened Ram Murthy at his house. The de-facto complainant who was present at that time, pacified the matter and sent away A-1 to A-5 from his house, consequent upon which Ram Murthy suffered a lot on the ground that he would lose his reputation and also anticipated life threat in the hands of A-1 and went away from his house 25-12-2007 and subsequently his dead body was found between Kazipet and Warangal railway stations and it was ascertained that he committed suicide because of the said threats.

6. It is the contention of learned Counsel for the Accused 1 to 5 that the prosecution record does not disclose that A-1 to A-5 got any intention to drive the deceased to commit suicide by way of making any threats and there was long gap between the alleged incidents and the commission of suicide and no nexus of their complicity in the matter is made out prima-facie and in fact, there is material to the effect that the deceased got illegal contacts with the wife of A-1 and further in any case, the allegations of threats made by A-1 and A-2 would not come within the scope of abetment to commit suicide within the meaning of Section 107 I.P.C. and hence Section 306 I.P.C. is not applicable here and accordingly the proceedings are to be quashed. In support of his contention he has relied upon the following decisions.

1. M. Mohan v. State TR. Deputy Superintendent of Police 2011 (2) ALT (CrL.) 1 (SC).

2. S.K. Khaleel and Ors. v. State of A.P. And Anr. 2011 (1) ALT (CrL.) 13 (A.P.),

3. Ramesh Kumar v. State of Chattisgarh 2002 (1) ALT (CrL.) 80 (SC).

7. Therefore, it is to be seen as to whether the ingredients of Section 306 read with Section 107 I.P.C are made out prima facie and therefore the proceedings which are pending against A-1 to A-5 are to be quashed.

8. It is emphatical that according to the prosecution the wife of A-1 used to meet the deceased frequently and having come to know about the same, A-1 approached the deceased and informed the deceased that the character of his wife was not good and also insisted upon the deceased to inform the same to her blood relatives which the deceased did not agree and thereafter A-1 frequently telephoned to the deceased and made threats and on 23-12-2007 A-1, A-2 to A-5 went to the house of the deceased and threatened him and the de-facto complainant who was present there, pacified and sent away A-1 to A-5 and through out that night the deceased suffered on the ground that he would lose his reputation and also felt that he got danger to his life and later he left the house and committed suicide.

9. What is significant here is that as per the record he committed suicide following such threats.

Section 306 I.P.C. reads as follows:

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.

Section 107 I.P.C. reads as follows:

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.

10. Therefore, in order to establish the charge u/s 306 IPC, the element of abetment to commit suicide should be established. In Ramesh Kumar's case (3 supra) the meaning of "instigation" was explained as follows:

10(c) 20. Instigation is to goad, urge forward, provoke, 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.

11. Emphatically, explanation 2 to Section 107 I.P.C. clearly contemplates that whoever 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 have aided in the commission of that act. Therefore, what is required here is whether there was mens rea on the part of

A-1 to A-5 to make threats to the deceased and hurt him on the grounds stated earlier. They need not have any mens rea to drive the deceased to commit suicide by their own acts, whereas what is required is whether their acts were sufficient to drive the deceased to commit suicide under normal circumstances. In any case, the question of mens rea is to be decided basing upon necessary evidence to be recorded during the trial of the case.

12. In M. Mohan's case (1 supra) the facts of which are that the deceased concerned therein was the wife of A-1 and A-1 along with A-2 to A-5 therein who were A-1's family members planned to visit Theme Park at Madurai from Karaikudi by family car and A-3 wife of A-2 alleged to have taunted the deceased that if she wanted to travel by car she should get a car from her parents and denied permission to the deceased to travel by their family car and also made the deceased and A-1 to travel by bus to reach the destination and immediately the deceased demanded a car from her father and after 4 days she committed suicide, it is observed by the Honourable Supreme Court that there are no allegations of abetting the deceased to commit suicide against A-1 to A-5 and there is no proximate link between the incident on 14-01-2005 to the earlier incident when the deceased was denied permission to use their family quallis car and the factum of her suicide which took place on 18-01-2005 and as per the facts and circumstances of the case the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which would happen in day-to-day life and in a joint family such incidents are common and human sensitivity of each individual differs from person to person and each individual has his own idea of self protection and self respect and different people behave differently in the same situation and it is further observed that the intention of the Legislature and the ratio of the cases decided by the Court are clear that in order to convict a person u/s 306 I.P.C. there has to be a clear mens rea to commit the offence and 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 and hence the ingredients of Section 306 I.P.C. are not established.

13. In S.K. Khaleel's case (2 supra) the facts of which are that the accused concerned therein alleged to have threatened the de-facto complainant therein to withdraw murder case registered against them expressing that otherwise they would kill him and afraid of frequent threats from the accused the de-facto complainant consumed some unknown poison to commit suicide and later he was treated in a hospital and survived, it is observed that in order to attract the provisions of Section 306 I.P.C. there should be suicide and if there was attempt to commit suicide Section 309 I.P.C. is applicable and further Section 506 I.P.C. is a non-cognizable offence which the police got no right to investigate into without necessary permission and in the facts and circumstances of the case Section 306 read with Sections 511 and 506 of I.P.C. are not attracted.

14. In Kishori Lal Vs. State of M.P., , it was alleged that the accused concerned

therein harassed his wife, following which, she committed suicide and thereby he was charged with offence punishable u/s 306 IPC and it was elicited that the accused tortured his wife for about 4 to 5 years prior to her death, whereas their marriage took place about a decade prior to that and under those circumstances, it was observed that the offence u/s 306 read with Section 107 IPC was not made out. Further, in *Balagoni Balaraj v. State of A.P.* 2007 (3) ALT (CrI) 312 AP, it was alleged that A1 and A2 in that case threatened one Kumar Goud who worked under the first of them for 15 years and who stopped attending his job frequently on telephone that he and his family members would be done to death unless his job was joined and later on 15.9.2006 also, A2 threatened him accordingly and thus, he got disgusted with his life and decided to commit suicide along with his family members and accordingly on 15.9.2006, he left his house by his own car along with wife, daughter and son and shot them to death and he also committed suicide by using revolver leaving a death note in which no allegation of such threats were made, following which A1 and A2 were charged with offence punishable u/s 306 IPC on the ground that they abetted the first of them to commit suicide and under those circumstances it is observed that as it was not written in the death note that the alleged threats were made against A1 and A2, no prima facie case was made out against them. In *Netai Dutta v. State of West Bengal* 2005 (2) ALT (CrI.) 125 (SC) similar observations were made under similar circumstances.

15. Absolutely there is no basis to say that the deceased possessed any negative qualities by reason of which only he was driven to commit suicide and further when the allegations made against A1 and A5 are very clear that A1 continuously threatened the deceased through telephone and also on 23.12.2007 at about 6.30 p.m. A2 to A4 went to the house of the deceased and threatened him with dire consequences in connection with the affair of his wife referred earlier following which, the deceased committed suicide, it cannot be said prima facie that the said acts of A1 to A5 were not sufficient to abet him to commit suicide, he being a normal person. Here the cumulative effect of all the alleged acts of A1 to A4 right from the beginning are to be taken into consideration in order to decide the question as to whether there was abetment of him to commit suicide.

16. The decisions relied upon by the learned defence counsel cited above were rendered under different circumstances as narrated and hence the principles laid down therein are not applicable to the facts and circumstances of this case, where the prosecution alleges that the deceased committed suicide under normal circumstances after receiving continuous threats from A1 and also threats from A2 to A5 with regards to which there is prima facie material as discussed earlier.

17. Therefore, as it appears that there is sufficient material prima facie to the effect that A1 to A5 abetted the deceased to commit suicide, necessary trial is to be conducted and the case is to be disposed of basing upon the evidence to be recorded.

For the foregoing reasons, the criminal petition deserves to be dismissed and is

accordingly dismissed.