

(2024) 03 BOM CK 0033

In the Bombay High Court

Case No : Criminal Revision Application No.285 Of 2023

Mangal Kashinath Dabhade And Others

APPELLANT

Vs

State Of Maharashtra & Anr

RESPONDENT

Date of Decision : 06-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227

Indian Penal Code, 1860 — Section 107, 306

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(5A)

Citation : (2024) 03 BOM CK 0033

Hon'ble Judges : M. S. Karnik, J

Bench : Single Bench

Advocate : Tejas Hilage, Sangeeta D. Shinde, Pranali Kakade

Final Decision : Disposed Of

Judgement

M. S. Karnik, J

1. The challenge in this revision application is to an order dated 2/2/2023 passed by the Additional Sessions Judge, Thane, below Exhibit 18 thereby rejecting the application filed by the present applicants (original accused nos.2 and 3) for discharge under Section 227 of the Code of Criminal Procedure.

2. The facts in a nutshell are that the accused no.1 Amol Dabhade was in a love relationship with the deceased for 7 to 8 years. The present applicant no.1 is the original accused no.2. She is Amol's mother. The applicant no.2 herein is the original accused no.3. She is Amol's sister. The victim committed suicide on 8/2/2018. The victim's mother lodged First Information Report (FIR) bearing No. 170/2018 on 20/2/2018 under Section 306 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 3(2)(5A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 'the Atrocities Act' for short).

3. In the FIR dated 20/2/2018 there is no allegation against the present applicants. The allegations are against the accused no.1- Amol. It is alleged that Amol was in a love relationship with the deceased for 7 to 8 years. Instead of solemnizing marriage with the deceased, Amol was engaged to another girl which upset the deceased no ends. It is due to the conduct of the accused no.1 Amol, the victim was left with no alternative but to commit suicide.

4. The role of the present applicants figures in the supplementary statement of the first informant recorded on 3/3/2018. It is alleged that 2-3 months prior to the victim's demise, she had informed the first informant that on one occasion the present applicants told her that they refuse to accept her relationship with Amol as she belongs to a particular community which is not liked by them and therefore, the applicants expressed their disinclination to accept the victim as their daughter-in-law. It is alleged that the applicants insulted the victim and abused the victim in the name of her caste. This is the only material in the charge-sheet against the present applicants.

5. My attention is invited to the statement of one witness who is the friend of the deceased who says that the victim told her that the family members of Amol are opposed to Amol marrying her.

6. Learned APP and learned counsel for the respondent no.2 further submitted that the conduct of the applicants is sufficient instigation to make out an offence under Section 306 of the IPC. It is further submitted that the opposition of the applicants to the marriage only because the victim belonged to the Scheduled Caste is an offence within the meaning of the Atrocities Act.

7. Heard learned counsel for the applicants, learned APP for the State and learned counsel Ms. Pranali Kakade appointed by this Court to represent the respondent no.2.

8. The question is whether the materials on record are sufficient to constitute the ingredients of the alleged offence under Section 306 of the IPC and Section 3(2) (5A) of the Atrocities Act against the applicants. As indicated earlier there is only one instance pointed out by the first informant in her supplementary statement as told to her by the victim 2 to 3 months prior to the incident about the applicants opposition to the relationship and marriage on account of the caste to which the victim belonged. This according to the prosecution is the material against these applicants along with one statement of the victim's friend who says that the victim had told her that the family members of Amol are opposed to the relationship.

9. In the context of considering an application for discharge in respect of the offence punishable under Section 306 of the IPC, it would be profitable to refer to the decision of the Supreme Court in *Prabhu vs. The State rep. by the Inspector of Police & anr. in SLP (Crl. Diary No.39981/2022)*. The Supreme Court dealt with Section 306 of the IPC and 'abetment' as defined in Section 107 of the IPC. The relevant observations read thus :

"Offence under Section 306 IPC

7. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

8. Abetment is defined in Section 107 IPC and it reads as follows:

"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 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."

9. In a recent judgment of this Court in *Kamalakar v. State of*

Karnataka in Criminal Appeal No. 1485 of 2011 [decided on 12.10.2023], one of us (Vikram Nath J.) explained the ingredients of Section 306 IPC. The Court has held as follows:

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In *Ramesh Kumar v. State of Chhattisgarh*¹, this Court has analysed different meanings of "instigation". The relevant para of the said judgment is reproduced herein:

"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."

8.4. The essentials of Section 306 IPC were elucidated by this Court in *M. Mohan v. State*², as under:

"43. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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."

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in *Amalendu Pal alias Jhantu v. State of West Bengal*³ in the following paragraphs:

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased."

10. On a perusal of the above, and relying upon this Court's previous judgments discussing the elements of Section 306 IPC, the following principles emerge:

10.1. Where the words uttered are casual in nature and which are often employed in the heat of the moment between quarrelling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [Swami Prahaladdas v. State of M.P. 1995 Supp. (3) SCC 438, Paragraph 3; Sanju v. State of M.P. (2002) 5 SCC 371, Paragraph 12]

10.2 In order to constitute 'instigation', it must be shown that 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. The words uttered by the accused must be suggestive of the consequence [Ramesh Kumar v. State of Chhatisgarh (2001) 9 SCC 618, Paragraph 20]

10.3 Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide.

[Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, Paragraph 20]

10.4 There must be direct or indirect acts of incitement to the commission of suicide. The accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide [Amalendu Pal v. State of West Bengal (2010) 1 SCC 707, Paragraph 12-14]

10.5 The accused must have intended or known that the deceased would commit suicide because of his actions or omissions [Madan Mohan Singh v. State of Gujarat (2010) 8 SCC 628]."

10. Their Lordships thus culled out the principles which emerge after discussing the elements of Section 306 of the IPC and in the light of the previous judgments of the Supreme Court.

11. It will also material to refer to the observations made by the Supreme Court in Kumar @ Shiva Kumar vs. State of Karnataka in Criminal Appeal No.1427/2011. No doubt, the decision in Kumar @ Shiva Kumar (supra) was rendered after a full fledged trial. However, the observations in the context of Sections 306, 107 of the IPC in paragraph 32.1 are significant, which reads thus:-

"32.1. From a reading of Section 107 IPC what is deducible is that a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing.

Explanation 1 clarifies that even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise 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. Similarly, it is clarified by way of Explanation-2 that whoever does anything in order to facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act."

12. Applying the principles laid down by the Supreme Court to the facts of the present case in question, even if allegations of the complainant and the prosecution case is taken as true, it could not be said that the conduct of the applicants instigated the deceased to take her life or that the applicants conspired with others to ensure that the victim committed suicide or any act of the applicants or omission instigated the deceased resulting in the suicide. It is the accused no.1 Amol who was in a love relationship with the deceased for 7 to 8 years. In the supplementary statement of the first informant, that is the mother of the deceased, she says that the victim had told her 2-3 months prior to her death that the applicants were opposed to the marriage because of her caste. There is a very vague and general allegation in the statement of another witness who says that the family members of the accused no.1 Amol were opposed to him marrying the deceased.

13. The incident is really unfortunate. The victim was working as an airhostess committed suicide on account of such a broken relationship with the accused no.1 – Amol. A reading of the FIR would indicate that the accused no.1 – Amol was in a love relationship with the deceased for a considerable period of time. In the present facts, mere expression of opposition of the applicants to the relationship on one occasion without anything more is not sufficient to attract the ingredients of the alleged offences. In my view, a plain reading of Section 306 of IPC and applying it to the undisputed facts of the present case indicates that none of the ingredients are attracted to the case at hand. The impugned order is, therefore, quashed and set aside.

14. The application below Exhibit 18 before the trial Court for discharge is allowed. The applicants are discharged. The criminal revision application is

disposed of.

15. I appreciate the valuable assistance rendered by Advocate Pranali Kakade, who appeared on behalf of respondent No.2 in this proceeding at my request. Her engagement may be regularized by the Maharashtra State Legal Services Authority.