
(2014) 04 MAD CK 0289
In the Madras High Court
Case No : Crl.O.P. No. 10096 of 2014

Mani	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 107, 306, 309

Citation : (2014) 3 MLJ(Cri) 18

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Judgement

P. Devadass, J.—Petition for bail. According to the learned counsel for the petitioner, petitioner is not responsible for the extreme decision taken by the deceased. He has not abetted her committing suicide. It is her own decision/wish. In the facts and circumstances of the case, an offence under section 306 I.P.C. is not attracted towards the petitioner.

2. The learned counsel for the petitioner further submits that the petitioner is languishing in jail from 1.4.2014. So far he has not been involved in any case. He has no bad antecedents. He is unmarried. A coolie. He is living with his parents. He will not flee away from justice. In the facts and circumstances, he may be granted bail.

3. On the other hand, the learned Government Advocate (Crl. Side), submits that it is because of the petitioner a young school going girl has committed suicide. Unable to bear his harassment, she has committed suicide. He is responsible for her death. He abetted her committing suicide. She had left a suicide note naming the petitioner for her death. Thus, an offence under section 306 I.P.C. is very much attracted towards him. Investigation is going on. In the facts and circumstances, no indulgence be shown to him.

4. I have anxiously considered the rival submissions and perused the averments in the bail petition and the case-diary.

5. Pavithra is daughter of Jagadeeswari (defacto complainant) and Venkatesh. She was 14 years old. She was studying IX Standard in a school near her house in Guindy.

6. 31.3.2014 was school holiday. Her parents have gone for work. Her younger brother Praveen has also gone out. She was alone in the house. At about 4.40 p.m., when her parents return home, they have seen her hanging using her thuppattah around her neck. She was dead.

7. Jagadeeswari reported her death to Guindy police. Initially, the police registered a case of suspicious death under section 174 Cr.P.C. On 1.4.2014, on search, Venkatesh found a suicide note left by his daughter. In the suicide note she had stated that the petitioner is responsible for her taking the extreme step. Soundar, a close relative of Pavithra also stated to police that there was love affair between Pavithra and the petitioner.

8. In the circumstances, police altered the section of law to Section 306 I.P.C.

9. On 1.4.2014, petitioner was arrested. Since then he is in jail.

10. Now, he seeks bail.

11. Now, the question is whether in the facts and circumstances of the case, petitioner is entitled to bail.

12. Petitioner has been booked under section 306 I.P.C.

13. From her suicide note, the material portion referred to by the prosecution runs as under:

(I am Pavithra. The reason for my death is that I have been loved by a boy. But, I did not love him. It is known to my family members. Even then my mother trusted me. My brother also knows this. He had also went to beat that boy. I told him not to do so. But, that has now become a problem for me. I like my mother. I took this decision because my mother should not be put to shame. The boy's name is Mani. He is responsible for my death. So, he should not be spared. Because of that I could not concentrate in my studies. My mother wished that I should study well and become a police officer. But, because of this problem, people will talk ill of me. That is why, I have taken this decision. On seeing my death, every girl should learn a lesson that while studying they should not love, anybody because that will end in death. Goodbye to all. But don't leave that boy. Sir, like him, there are many persons.

14. It is very very sad to read this suicide note.

15. In the Indian Penal Code, 1860, in Chapter XIV, in Section 306 I.P.C. "abetment of suicide" has been made an offence.

16. Section 306 I.P.C. runs as under:

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.

17. The twin requirements for an offence under section 306 I.P.C. are (1) Suicide and (2) Abetment to commit suicide.

18. "Suicide" is self-killing. It is self-murder. It is self-destruction. It is deliberate termination of one's own physical existence. It is a deliberate destructive act committed by a sane person. Suicide (felo de se) is where a man of age of discretion and composure is voluntarily kills himself.

19. In *M. Mohan Vs. The State* represented by The Deputy Superintendent of Police, the Hon'ble Supreme Court put "suicide" as under:

The word "suicide" in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

20. In age - old India, there is the evil practice of "Sati"- wife sacrificing her life on the death of her husband and becoming "Sati". During the British Raj, Rajaram Mohan Rai, a great social reformer voiced against this inhuman archaic practice. The Britishers took it seriously. They wished to punish those who aid/abet "Sati".

21. In our country, suicide as such is not punishable, but it is not encouraged. It is not recognised. It is not welcomed. Indirectly, it has been tackled. "Attempt" to commit suicide has been made punishable under section 309 I.P.C. And "abetment" to commit suicide is also made punishable under section 306 I.P.C.

22. In Section 306 I.P.C., the word "abetment" has not been defined or explained. In Concise Oxford English Dictionary (XI Edition 2004), "Abetment" (Abet, Abets, Abetting, Abetted, Abettor) has been explained as "encourage or assist (someone) to do something wrong in particular to do crime".

23. In Indian Penal Code, in Chapter V (Abetment), in Section 107 "abetment of a thing" has been explained. Though the word "abetment" has not been defined in section 306 I.P.C., to understand its meaning, we can refer to section 107 I.P.C.

24. Section 107 I.P.C. runs as under:

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: 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 thing.

25. It is seen that in statutorily explaining the word "abetment" (See section 107 I.P.C.) what the word abetment connotes in general English has been kept in view.

26. In Rattanlal and Dhirajlal's "commentaries on the Indian Penal Code" (32nd Edition) (2010), at page 1735 - 1736, "abetment", has been commented as under:

2. Abetting Suicide

The gravamen of the offence punishable u/s 306 I.P.C. is abetting suicide. Section 107, I.P.C. defines abetment as comprising:

- (a) instigation to commit the offence;
- (b) engaging in conspiracy to commit the offence, and
- (c) aiding the commission of an offence.

Abetment thus necessarily means some active suggestion or support to the commission of the offence. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act and a person is said to instigate another when he actively suggests or stimulates him to the act by any means, or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. It is also not necessary that the instigation should be only in words and may not be conduct.

27. In Randhir Singh and Another Vs. State of Punjab, the Hon"ble Supreme Court observed as under:

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In case of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

28. In Ramesh Kumar Vs. State of Chhattisgarh, "instigation" has been explained by the Hon"ble Apex court as under:

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.

29. In S.S. Chheena Vs. Vijay Kumar Mahajan and Another, the Hon''ble Apex Court observed that:

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. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to 6 commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

30. In Amalendu Pal @ Jhantu Vs. State of West Bengal, the Hon''ble Apex Court has opined as under:

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 let or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

31. In Vijay Kumar Rastogi Vs. State of Rajasthan, the Rajasthan High Court observed as under:

10. The word "urge" means to advice or try hard to persuade somebody to do something, to make a person to move more quickly or in a particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by

words, taunts or wilful omission or conduct which may even be wilful silence, until the deceased reacted, or pushing the deceased by his words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction. Secondly, the accused had the intention to provoke or urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly the presence of mens rea is the necessary concomitant of instigation.

32. In *Vijay Kumar Rastogi v. State of Rajasthan* (supra), it was also observed as under:

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.

33. The offence of abetment requires "mens rea" (guilty mind). There must be intentional doing/aiding or goading the commission of suicide by another. Otherwise, even a mere casual remark, something said in routine and usual conversation will be wrongly construed or misunderstood as "abetment".

34. In *Gangula Mohan Reddy Vs. State of Andhra Pradesh*, , it was held that to attract section 306 I.P.C., there must be clear "mens rea" to commit offence.

35. In *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, , the Hon''ble Supreme Court opined as under:

This court 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 straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

36. In *M. Mohan v. State by D.S.P., Karaikudi* (supra) the Hon''ble Supreme Court observed as under:

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.

37. In *State of West Bengal Vs. Orilal Jaiswal and another*, , the Hon''ble Apex Court cautioned as under:

The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

38. Generally, the person who commits suicide used to/liked to leave a suicide note naming certain person as responsible for his committing suicide. Merely because a person has been so named in the suicide note we are not to immediately jump to the conclusion that he is an offender under section 306 I.P.C.

39. The contents of the suicide note and other attending circumstances have to be examined to find out whether it is abetment within the meaning of section 306 I.P.C. read with section 107 I.P.C. There may be a case where in the suicide note victim had named a person, who is responsible for his committing suicide, but, on proper analysis, section 306 I.P.C. may not be attracted to him.

40. Recently, in *Rajamannar v. State rep. by The Inspector of Police, Sewapet, Police Station, Thiruvallur District* (CrI.O.P. No. 8230/2014 dated 3.4.2014). A-2 introduced A-1 to the deceased as a person who will get railway jobs for money. Relying on this, the deceased collected money from many and gave it to A-1. Ultimately, A-1 cheated him. The job seekers pressurised the deceased to return their money. Under these circumstances, the deceased and his family members have committed suicide and the deceased left a suicide note that A-2 is responsible for their death. A-2 was arrested for an offence under section 306 I.P.C.

41. In the facts and circumstances of the said case, this Court came to the conclusion that prima facie section 306 I.P.C. is not attracted towards A-2 and observed as under:

7. On reading the entire suicide note from the beginning to end, it is seen that A-1 duped Sugumar, who received money from many persons. They have asked him and humiliated him. Unable to bear this humiliation, Sugumar committed suicide.

8. For an offence under Section 306 IPC, there are twin requirements, namely, suicide and abetment to commit suicide. No need to explain what is suicide. But what is abetment has to be understood. It is not stated in Section 306 IPC. It is "instigation", "provocation", compelling a person to do certain things or not to do certain things. This may be by words, deeds or writing or even by signs. May be humiliation, degrading a person in the presence of others. The act must be such that it must force, desire, compel a person to take the extreme decision. But, it must be a positive act. Thus, the act alleged to have committed on the part of the accused must have played a key role for the victim to take a decision to commit suicide.

9. If a lover commits suicide due to love failure, if a student commits suicide because of his poor performance in the examination, a client commits suicide because his case is dismissed, the lady, examiner, lawyer respectively cannot be held to have abetted the commission of suicide. For the wrong decision taken by a coward, fool, idiot, a man of weak mentality, a man of frail mentality, another person cannot be blamed as having abetted his committing suicide. Now, in this case, the suicide note shows that unable to bear the humiliation given by the job seekers, Sugumar committed suicide. For this, petitioner cannot be blamed. Further, no act or deed in the nature of a positive act forced Sugumar and his family members emanated from the petitioner to force them to commit suicide. The conclusion would be Sugumar died like a coward. Instead of protecting the family, he perished like an unsuccessful man in life foolishly he also took along with him his other family members also. For this, how can the petitioner be directly blamed.

42. If a person makes an ordinary joke or a casual remark in routine course of ordinary life and when the victim commits suicide, that will not attract section 306 I.P.C. The circumstances under which the incriminating words spoken and the type and nature of the victim have also to be considered. Some positive act must have emanated from the accused towards the victim. And should be in the nature of forcing or urging the victim to take the extreme decision. If nothing had come from the accused, the accused cannot be blamed for the extreme decision taken by the victim.

43. Simple abuses are not sufficient to provoke the victim to commit suicide. It will not attract section 306 I.P.C. Simply because the lender has demanded repayment of his money, if the debtor commits suicide the creditor cannot be said to have abetted his committing suicide. Section 306 I.P.C. is not attracted towards him.

44. Mere reprimanding does not amount to instigation. The words stated in a fit of anger will not amount to abetment. Casual remark of husband towards his wife in the ordinary course of life will not amount to abetment to commit suicide. Because they did not say so with any mens rea. (see Swamy Prahaladdas Vs. State of M.P. and Another, .

45. In Naresh Marotrao Sakhre and another Vs. Union of India and others, the deceased poured kerosene on her body and set fire to herself in the presence of the accused But the accused did not do anything, he did not put off the fire and saved the deceased. It was held that the accused cannot be held liable under section 306 I.P.C. read with 107 I.P.C. and he has not committed any offence at all.

46. Sometimes, the decision to commit suicide might be taken by the victim himself/herself, unaccompanied by any act or instigation etc. on the part of the accused. A person may die like a coward. On his failure in the examination, a student may commit suicide. They are weak minded. They are persons of frail mentality. For their foolish mentality/decision, another person cannot be blamed.

47. Now, in the light of the general meaning, statutory definition and the judicial explanation for the word "abetment" to commit suicide, now let us approach the present case.

48. Petitioner is 20 years old. A bachelor . A coolie. The victim girl Pavithra is 14 years old. She was studying IX Std. Petitioner liked the deceased very much. He loved her. Pavithra knows that he is yearning for her love. But, she did not love him. It is one side love only.

49. She took the decision to commit suicide because of petitioner's one side love. She took the decision because she could not concentrate on her studies. She took the decision because if the love matter is known, her mother will be put to shame. She took the decision because she also will be ridiculed by others. Thus, for her extreme decision, there was any positive act emanated from the petitioner. The victim was not having any fixed mind. She simply worried by the petitioner's love towards her. She did not kept it aside and concentrated on her studies. She is a person of frail mentality. A weak minded girl. She is a coward. She is not bold. She is a fool. For her foolish decision, petitioner cannot be blamed. There was no positive act much less any mens real guilty mind on the part of the petitioner. He dreamt of her but not dreamt of her death. He did not wish that she should die. There was any intentional doing or instigation on his part which had provoked her to commit suicide.

50. The contents and the substance of the message/information in the suicide note have to be examined. In the light of the principles governing "abetment" under section 306 I.P.C. read with Sec. 107 I.P.C. nothing has been emanated from the petitioner with requisite mens rea, which had the effect of forcing the victim to commit suicide. In the absence of mens rea and a positive act, on the mere blaming of the accused by the victim for her foolish decision, petitioner cannot be roped in for a serious offence under section 306 I.P.C.

51. Thus, in the light of the above, prima facie an offence under section 306 I.P.C. is not attracted as against the petitioner.

52. This view has been taken for the limited purpose of finding whether there is

any prima facie case in favour of the petitioner to consider his bail plea.

53. In this case, Pavithra, died because of mental depression and she died because she is unable to take a decision and recover from her depression. Pavithra's death is a warning/message to every parent, every teacher and to the society.

54. Petitioner is 20 years old. A coolie. A bachelor . Poor man. No bad antecedents. So far no criminal history/background as against him. He is living with his parents. He has fixed place of residence. He has roots in the society. It is quite unlikely that he will interfere with the investigation. It is also quite unlikely that he will flee away from justice. He is in jail for a considerable period.

55. Considering all the above aspects, I am inclined to grant him bail. (i) Bail granted.

(ii) Petitioner shall execute a bond for Rs. 5,000/- (Rupees five thousand only) with two sureties, who shall be his parents and they shall each execute a bond for a like sum to the satisfaction of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

(iii) Petitioner shall report before the respondent police on every Monday and Friday at 10.30 a.m., for two weeks and thereafter, as and when required for interrogation.