
(2016) 06 MAD CK 0054
In the Madras High Court
Case No : Crl. A.(MD) No. 142 of 2016

Manikandan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306

Citation : (2016) 3 Crimes 143 : (2016) 4 MLJCriminal 240

Hon'ble Judges : Dr. P. Devadass, J.

Bench : Single Bench

Advocate : Mr. S. Rajaprabu, Advocate, for the Appellant; Mr. P. Kandasamy Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

Dr. P. Devadass, J.—The sole accused in the Sessions case in S.C.No.226 of 2013, on the file of the learned Additional Sessions Judge, Fast Track Mahalir Neethimandram, Thanjavur, is the appellant.

2. In the Trial Court, he was found guilty under Section 306 IPC and sentenced to 10 years R.I. and fined Rs. 5000/-, in default, directed him to undergo 6 months R.I.

3. The case of the prosecution may briefly be stated as under:

(i) The deceased is the second daughter of PWs1 and 2. Her sister is PW3. In 2011, the deceased was studying B.C.A. in a college in Kumbakonam. Then, the accused was studying a Diploma course in Kumbakonam. They fell in love. But, it did not long last. The deceased entertained doubt on his love. She avoided him.

(ii) On 09.12.2011, at about 5 p.m., in her house, the deceased attempted suicide by self-immolation. She was rushed to the Government Hospital, Kumbakonam. PW8, the casualty doctor admitted her as an inpatient (Ex. P6 Accident Register copy). On the next day, at about 7.30 p.m., she passed away

in the hospital.

(iii). On 11.12.2011, at about 8 a.m. at Thiruneelkudi Police Station, PW1 lodged Ex. P.9 complaint with PW14, Sub-Inspector of Police. She registered a case of suspicious death under Section 174 Cr.P.C.(EX.P.10 is FIR).

(iv). PW14 took up her investigation. She visited the scene place. In the presence of PWs.6 and 7, she prepared Ex.P.11, Observation Mahazer. She drew Ex.P.12, rough sketch of the scene place. In the presence of said witnesses, she seized M.O.1 plastic cane under PW13 Seizure Mahazer.

(v) At the mortuary in the Government Hospital, Kumbakonam, in the presence of panchayatars, PW14 held inquest over the dead body of the deceased (Ex.P.14 inquest report). PW14 examined the witnesses and recorded their statement. At her request, PW9 conducted postmortem on the dead body of the deceased. Pw9 opined that the deceased died of burn injuries and complications there of. (Ex.P.7 postmortem certificate). After postmortem, PW14 has handed over the dead body to the relatives to perform the last rites.

(vi). On 28.12.2011, PW1 handed over Ex.P.16-suicide letter of the deceased to Ex.P.14, with Ex.P.15 report. In the circumstances, PW14 handed over the case to PW15, then Inspector of Police, Thiruvidadaimaruthur. He continued the investigation. Examined the contents of Ex.P.16. He altered the section of law to Section 306 IPC. Sent Ex.P.17, alteration report to the Court. PW1 produced note books containing writings and signatures of the deceased. PW15, sent them to the handwriting expert for comparison and report. PW12, Handwriting Expert compared them with Ex.P.16. He opined that both are written by one and the same person (Ex.P.8 report).

(vii). PW15 arrested the accused. Produced him before the Court for Judicial custody. He was remanded to judicial custody. Concluding his investigation, PW15 filed the final report before the Court for an offence under Section 306 IPC.

4. This case came to be tried by the learned Additional Sessions Judge, Mahalir Neethimandram, Thanjavur. Upon, hearing both side and on consideration of the case-records, the Trial court framed a charge under Section 306 IPC. The accused pleaded not guilty to the charge.

5. To substantiate the charge, prosecution examined PWs.1 to 15, marked Ex.P.1 to P.17 and exhibited M.O.1.

6. On the incriminating aspects in the prosecution evidence, when the accused was examined under Section 313 Cr.P.C., he denied his complicity in this case. He did not let in defence evidence.

7. Upon consideration of the said evidence, mainly relying upon Ex.P.16, suicide note, the Trial Court convicted and sentenced the accused as already stated.

8. According to the learned counsel for the appellant, Ex.P.16 is the work of police in connivance with PW1. The truth and genuineness of Ex.P.16 has not

been established. PW3 herself has stated that out of compulsion, she wrote Ex.P.16 at the police station. Since the notebook stated to have been containing the hand-writings of the deceased has not been produced in evidence, Ex.P.8, report of PW12, Handwriting Expert cannot be accepted.

9. The learned counsel for the appellant further contended that even taking the contents of Ex.P.16, as true, it would not warrant an offence under Section 306 IPC. Ex.P.16 would not show any positive act on the part of the appellant, forcing the deceased to commit suicide. There is complete absence of intention on the part of the accused provoking the deceased to commit suicide.

10. In this connection, the learned counsel for the appellant would cite Mani v. State rep. by the Inspector of Police, J-3 Guindy Police Station, Chennai, [2014 (3) MLJ (CrI)18].

11. On the other hand, the learned Government Advocate (Criminal Side) would submit that though PWs.1 to 3 have turned hostile, still there is scientific evidence of PW12, handwriting expert, showing that Ex.P.16 was in the handwriting of the deceased. The genuineness of Ex.P.16 has been clearly established. A reading of Ex.P.16 would show that the accused is the root cause for her committing suicide. He abetted her commission of suicide. In the circumstances, the Trial court has rightly convicted him and appropriately punished him.

12. I have anxiously considered the rival submissions, perused the Trial court's judgment and also perused the entire materials on record and the decision cited.

13. The question is whether the prosecution has established the charge under Section 306 IPC, as against the appellant beyond all reasonable doubts.

14. The accused and the deceased were love birds. But, the love blossomed between them was short lived. The deceased did not believe his love. On 09.12.2011, in her house, the deceased attempted self-immolation. Out of extensive injuries, she breathed her last on the next day at the Government Hospital, Kumbakonam.

15. The prosecution says that the accused is responsible for her such extreme decision, he abetted her commission of suicide.

16. PWs.1 to 4, who are father, mother, sister and sister's husband of the deceased did not support the prosecution version of the case. They said that the deceased was suffering out of stomach pain and unable to bear the pain, she had taken the extreme step.

17. Prosecution mainly relies on Ex.P.16, stated to be a suicide note left by the deceased implicating the accused for her extreme decision.

18. Ex.P.16 has been attacked by the defence on twin grounds, namely, its truth and genuineness, has not been established. Further, even, if it's contents are taken as true, it will not warrant an offence under Section 306 IPC.

19. 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."

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

21. 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".

22. 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.

23. 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."

24. 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.

25. 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"

26. In *Randhir Singh and Another v. State of Punjab*, (2004) 13 SCC 129 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".

27. In *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618 "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."

28. In *S.S. Chheena v. Vijay Kumar Mahajan and Another* (2010) 12 SCC 190 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."

29. In *Amalendu Pal @ Jhantu v. State of West Bengal* (2010) 1 SCC 707 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."

30. 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".

31. In *Gangula Mohan Reddy v. State of A.P.*, (2010) 1 SCC 750, it was held that to attract section 306 I.P.C., there must be clear "mens rea" to commit offence.

32. 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."

33. 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.

34. 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.

35. 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.

36. 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."

37. 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.

38. The deceased committed suicide on 09.12.2011. She died on 10.12.2011. FIR was given on 11.12.2011. Long after that on 28.12.2011, Ex.P.16 came to the picture. It is stated to be produced by PW1 to PW14, Sub Inspector of Police. PW12, Handwriting Expert comparing the hand-writings and signatures in Ex.P.16 with note books, stated to have been containing her writings and signature, opined that they were written by one and the same person.

39. PW3, sister of the deceased, in her evidence stated that at the police station, she was asked to write Ex.P.16, letter and she did it. Further, the note book stated to have been containing the undisputed hand-writings and signatures of the deceased, which has been used by PW12 to compare Ex.P.16 has not been produced in evidence. Thus, the truth and genuineness of Ex.P.16 has not been clearly established by the prosecution.

40. It is also the contention of the accused that even if Ex.P. 16 is true, in the facts and circumstances of this case, it would not warrant an offence under Section 306 IPC.

41. A reading of Ex.P.16 shows a love story existed between the deceased and the accused and it also shows a love failure. Ultimately it became an one side love. It is mentioned in Ex.P.16 that the deceased was obsessed with the persistent phone calls from the accused in a bid to renew the love and she got distracted by this and she thought that he will not allow her to be peaceful, so she has decided to end her life and it is also stated in Ex.P.16 that the accused is responsible for her such a decision.

42. Suicide, as such is not punishable under IPC. "Abetment to commit suicide" alone is punishable under Section 306 IPC. So far as the offence of abetment to commit suicide, there must be suicide and there must be abetment to commit suicide on the part of the accused.

43. It is not the wish and willingness nor the desire of the victim to die, it must be the wish of the accused, it is the intention on the part of the accused that the victim should die that matters much. There must be a positive act on the part of the accused. It need not be by words. It may be by deeds. It may be by letters. But, at the same time, the decision of a weak minded or a woman of frail mentality cannot be misunderstood as abetment. For one's foolish act another person cannot be made liable.

44. In Mani v. State rep. by the Inspector of Police, J-3 Guindy Police Station, Chennai,(2014 (3) MLJ (CrI)18), the accused used to follow a school going girl. She did not like this. She got distracted by this. One day, in her house she wrote a letter that because of the accused following her, she could not concentrate on

her studies, so she had decided to commit suicide and she had taken such a decision only because of the accused. In Mani (Supra), this Court elaborately gone into the various aspects of the offence under Section 306 IPC in the light of Section 107 IPC and it was held that the accused except following the girl, did not do anything, he did not provoke her to commit suicide. For her foolish act/decision, the accused cannot be made responsible and thus, on facts, an offence under Section 306 IPC do not attracted.

45. In Mani (Supra), the deceased was distracted by the accused following her. In our case, the deceased got distracted by the telephone calls made by the accused. In both the cases factual matrix are almost similar.

46. Now, in the case before us, the accused did not instigate, provoke nor pressurise the deceased to commit suicide. But, if the contents of Ex.P.16 is taken as true, it would not warrant an offence under Section 306 IPC.

47. Thus, the charge under Section 306 IPC framed against the accused has not been proved beyond all reasonable doubts.

48. In view of the foregoing, this criminal appeal is allowed. The conviction and sentence imposed on the appellant under Section 306 IPC by the learned Additional Sessions Judge, Fast Track Mahila Neethimandram, Thanjavur in S.C.No.226 of 2013 are set aside. The appellant/accused is acquitted. Fine amount, if any, paid shall be refunded to the appellant. The Superintendent, Central Prison, Trichy, is directed to release the appellant forthwith, if he is no longer required in connection with any other case/proceedings.