
(1986) 09 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 641 of 1986

Maruti Shripati Dubal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-09-1986

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 300, 309

Citation : (1987) 1 BomCR 499 : (1986) 88 BOMLR 589 : (1986) MhLj 913

Hon'ble Judges : P.B. Sawant, J; B.G. Kolse Patil, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : State of Maharashtra Vs. Maruti Shripati Dubal, (1996) 6 AD 533 : AIR 1997 SC 411 : (1996) CriLJ 4457 : (1996) 3 Crimes 262 : (1996) 6 SCALE 343 : (1996) 6 SCC 42 : (1996) 5 SCR 358 Supp : (1996) AIRSCW 3791 : (1996) 6 Supreme 643

Sawant, J.—The petitioner is a police constable attached to the Bombay City Police Force. As of today he has put in 19 years of service as constable. In 1981, he met with a road accident and suffered head injuries, and although he recovered from them, he became mentally ill continues to be so to some extent even till this date.

2. Since January, 1982, he was under psychiatric treatment and his ailments were diagnosed in July, 1982 as "Giddiness Chabrat (fright), reduced sleep and appetite, nervousness, confusion, etc." In August 1982 he was diagnosed as suffering from schizophrenia. He suffered from auditory and visual hallucinations. He used to sit lonely in bed, had a vacant look and was confused. He was given electric shock-treatment till September, 1982 and was also put on a doze of heave tranquilizers. He continues to take them even today.

3. The incident in question which has given rise to the impugned criminal prosecution occurred on 27th April, 1985 on which day about 10 a.m. he tried to

commit suicide outside the office of the Municipal commissioner, Greater Bombay by pouring kerosene on himself and by trying to light his clothes. The immediate cause of his attempt to commit suicide was the delay in disposal of his wife's application for licence for a stall for vending vegetable near Colaba Market. The delay in getting the licence was compounded by the fact that although an Honourable Minister of the State Government had given him a letter addressed to the Municipal Commissioner to look into his case sympathetically as he was mentally ill and the petitioner wanted to see the personally with the said letter, he was not allowed to do so by the security guard who was very rude to him on the occasion. Being excited, the petitioner had rushed in the office of the Commissioner but was chased by the security guard and shown his way outside.

4. The petitioner thereafter was taken to the Azad Maidan Police Station., Where an offence was registered against him under S. 309, Penal Code, (hereinafter referred to as S. 309) He was formally arrested and released on bail. Fortunately, he has been allowed to continue in service even thereafter. The criminal prosecution launched against him for the said offence is pending in the learned Additional Metropolitan Magistrate's 19th Court being Case No. 724/P of 1985. It is to challenge the said prosecution that he has filed the present petition under Art. 227 of the Constitution. The challenge is based on the ground of unconstitutionality of S. 309.

5. Since the constitutionality of S. 309 was under the challenge, while admitting the petition., We had not only stayed the present prosecution but also all the prosecutions for the offence under S. 309 pending in the lower Courts in the State. We had also issued a notice to the Attorney General. Mr. V. D. Govilkar has since appeared on behalf of the Union of India.

6. Mr. Bhat, the learned Counsel appearing for the petitioner, canvassed before us three propositions. His first contention was that an attempt to commit suicide cannot constitute an offence and in so far as S. 309 makes it an offence, it is violative of Arts. 19 and 21 of the Constitution. The second contention was that the section treats all cases of attempt to commit suicide equally and makes them an offence and prescribes punishment for them arbitrarily by the same measure. The section is therefore violative of Art. 14 of the Constitution. His last contention was that the assuming that an attempt to commit suicide is an offence, the punishment is barbaric, cruel, irrational and self-defeating.

7. Shri Govilkar, the learned Counsel appearing for the Union of India, countered the first submission by contending that neither Art. 19 nor Art. 21 creates or recognises the right to life as such. All that they do is to prevent the State from depriving an individual of his right to life otherwise than by a just, fair and reasonable procedure established by law. His reply to the second submission was that there is no obligation cast on the State to make classification of the offenders and, therefore, Art. 14 of the Constitution is not violated. As regards last submission, he contended that it is the prerogative of the State to prescribe the sentence, and the nature and the quantum of sentence prescribed for the

offence cannot be said to be barbaric, cruel, irrational or self-defeating. The sentence prescribed is to deter the prospective offenders.

8. Taking first the submission based on Arts. 19 and 21 of the Constitution, the submission essentially arises out of the content of Art. 21 which undisputably includes the right to life. The fundamental rights enumerated in Art. 19 are only extensions of the right to life and have no meaning without it. Essentially therefore we have to examine the precise contents of Art. 21. Since Shri Govilkar tried to raise a little controversy with regard to the exact content of Art. 21., it has become necessary to explain them in the light of the law which has developed on the subject till this date. Article 21 reads as follows :

"No person shall be deprived of his life or personal liberty except according to the procedure established by law."

The expression "procedure established by law" has been interpreted by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, to mean just, fair and reasonable procedure and not any procedure. However, it was contended before us that this article has only a negative content and it seeks to do no more than place a restriction on the State while depriving a person of his life or personal liberty by insisting that it shall be done only by following a just, fair and reasonable procedure established by law. For this proposition, reliance was placed on a decision of the Supreme Court reported in *In Re: Sant Ram, Civil Misc., Petn. No. 928 of 1959*. In Para 11 of the said judgment while dealing with the argument that the word "life" in the said article includes "livelihood", the Court has specifically observed that the question of the livelihood has not in terms been beheld by the said article. That question, according to the Court, was included in the freedoms enumerated in Art. 19 particularly Cl. (g) or even in Art. 16 in a limited sense. But the language of Art. 21 could not be pressed into aid of the argument that the word "life" in Art. 21 included "livelihood" also. According to us, this interpretation of Art. 21, has since undergone a radical change. The first of the decisions to pour a positive content in the said article was delivered in the case of *Sunil Batra Vs. Delhi Administration and Others etc.,* . In para 226 of the judgment, it has categorically been stated that Art. 21 guarantees protection of life and personal liberty. Though couched in negative language, it confers a fundamental right to life and personal liberty. It is best to quote the said paragraph :-

"Article 21 guarantees protection of life and personal liberty. Though couched in negative language it confers the fundamental right to life and personal liberty. To the extent, assuming sub-section (2) of S. 30 permits solitary confinement, the limited personal liberty of prisoner under sentence of death is rudely curtailed and the life in solitary confinement is even worse than in imprisonment for life. The scope of the words "life and liberty" both of which occur in Vth and XIVth Amendments of the U. S. Constitution, which to some extent are the precursor of Art. 21, have been vividly explained by Field, J. in *Munn v. Illinois*, (1877) 94 US 113 . To quote :

"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world by the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bonds of a prison."

The statement of law was approved by a Constitution Bench of this Court in *Kharak Singh Vs. The State of U.P. and Others*, as also in *D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others*, Personal liberty as used in Art. 21 has been held to be a compendious term to include within itself all the varieties of rights which go to make personal liberties of the man other than those dealt with in Cl. (d) of Art. 19(1). The burden to justify the curtailment thereof must squarely rest on the State."

9. The next in importance in this connection is the decision of the Supreme Court reported in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, In para 32 of the judgment after raising the specific question whether the right to life includes the right to livelihood, the Court answered it in the affirmative. According to the Court :-

"The sweep of the right of life conferred by Art. 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right of livelihood because, no person can live without the means of living, that is the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life."

It must be mentioned here that the Court has made the aforesaid observations while dealing with the argument that if the petitioners there who were pavement dwellers were evicted from their dwellings, their eviction would deprive them of their right to pursue their means to livelihood and would thus be tantamount do deprivation of their life. These later two decisions would show that according to the present interpretation, Art. 21 spells out not only a protection against an arbitrary deprivation of life and personal liberty but also positive rights to enable

an individual to live life with human dignity. For our present purpose what is necessary to note is that Art. 21 recognises right to live as a positive right.

10. As has been stated above, the fundamental rights, embodied in the other articles of Chap. III of the Constitution are only the further extensions of the right of life and it is no longer in dispute that all the fundamental rights are to be read together and are subject to each other as laid down in *Rustom Cowasjee Cooper Vs. Union of India (UOI)*, What is therefore true of one fundamental right is also true of other fundamental rights. It is not and cannot be seriously disputed that the fundamental right have their positive as well as negative aspects. For example, the freedom of speech and expression includes freedom of speech and expression includes freedom not to speak and to remain silent. The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere. Freedom of business and occupation includes freedom not to do business and to close down the existing business. If any authority is needed for his proposition, we have it in the decision of the Supreme Court reported in *Excel Wear and Others Vs. Union of India (UOI) and Others*, If this is so, logically it must follow that right to live as recognised by Art. 21 will include also a right not to live or not to be forced to live. To put it positively it would include a right to die, or to terminate one's life.

11. There is nothing unnatural about the desire to die and hence with the right to die. Whatever the circumstances which induce a person to end or terminate his or her life, the act of termination of life is the act of that individual. It is no less his than his act of living. The confusion between the circumstances which impel or urge a person to end his life and the termination of life often leads one to the mistaken conclusion that the desire to end one's life itself is not natural. The unnatural cause of death must also be distinguished from the natural desire to die. The means adopted for ending one's life may be unnatural varying from starvation to strangulation. But, the desire which leads one to resort to the means is not unnatural. To take a concrete instance, it may be that were it not for torture or cruel treatment in a given case that the person might not have ended his or her life. But the urge which the individual felt to end life on account of the treatment was only natural.

12. There is no doubt that the normal urge of a human being is to live and to continue to enjoy the fruits of life till nature intervenes to end it. But this is true of the normal and ordinary human beings, those in possession of their normal mental, intellectual and physical faculties and lead a life of ordinary mortals. Suicide or an attempt to commit suicide is not a feature of a normal life. It is an incident of abnormality or of an extraordinary situation or of an uncommon trait of personality. Abnormality and uncommonly are not unnatural merely because they are exceptional. Mental diseases and imbalances, unbearable physical ailments, affliction by socially dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the

senses, extremely cruel or unbearable conditions of life making it painful to live, a sense of shame or disgrace or a need to defend one's honour or a sheer loss of interest in life or disenchantment with it, or a sense of fulfilment of the purpose for which one was born with nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment are among the various circumstances in which suicide is committed or attempted. The reaction of the community to all the situations is not uniform and varies from condemnation to acclamation depending upon the situation. Nor all communities further react or have reacted in the same way at all times. The moral and sociological practices influenced in no small measure by the organised religions, have determined the varied responses of the different societies at different times and of the same society at different times.

13. The right to die or to end one's life is not something new or unknown to civilization. Some religions like Hindu and Jain have approved of the practice of ending one's life by one's own act in certain circumstances while condemning it in other circumstances. The attitude of Buddhism has been ambiguous though it has encouraged suicide under certain circumstances such as in the service of religion and country. Neither the old nor the new Testament has condemned suicide explicitly. However, Christianity has condemned suicide as a form of murder. In contrast the Quran has declared it a crime worse than homicide. It is interesting to know the circumstances in which the Hindu Dharmashashtrakar has approved and disapproved of the practices. We are tempted to quote here from pages 924 to 928 of Dr. Kane's History of Dharmashastra, Vol. II, Part II, on the subject :-

"The question whether ending one's life by starting on the Great Journey or by falling from a precipice is sinful, exercised the minds of many writers on Dharmashastra. The Dharmashastra writers generally condemn suicide or an attempt to commit suicide as a great sin. Parasara (IV. 1-2) states that if a man or woman hangs himself or herself through extreme pride or extreme rage or through affliction or fear, he or she falls into hell for sixty thousand years. Manu V. 89 says that no water is to be offered for the benefit of the souls of those who kill themselves. The Adiparva (179.20) declares that one who commits suicide does not reach blissful worlds. Vas. Dh. S. (23.14-16) ordains "whoever kills himself becomes abhisasta (guilty of mortal sin) and his sapindas have to perform no death rites for him; a man becomes a killer of the self when he destroys himself by wood (i.e. by fire), water, clods and stones (i.e. by striking his head against a stone), weapon, poison, or ropes (i.e. by hanging). They also quote a verse that dvija who through affection performs the last rites of a man who commits suicide must undergo the penance of Candrayana with Tapta-krcchra". Vas. Dh. S. 23.18 prescribes a prayascitta for merely resolving to kill oneself (even when no attempt is made). Yama (20-21) prescribes that when a person tries to do away with himself by such methods as hanging, if he dies, his body should be smeared with impure things and if he lives he should be fined two hundred panas; his friends and sons should each be fined one pana and then

they should undergo the penance laid down in the sastra.

"In spite of this general attitude, exceptions were made in the Smruti's the epics and puranas. When a man was guilty of brahmana murder, he was allowed to meet death at the hands of archers in a battle who knew that the sinner wanted to be killed in that way as penance or the sinner may throw himself head downwards in fire (Manu XI. 73. Yaj. III 248). Similarly the drinker of spirituous liquor expiated his sin by taking boiling wine, water, ghee, cow's milk or urine and dying thereby (Manu XI. 90-91, Yaj. III., 253, Gaut. 23. 1, Vas Dh. S. 20.22). Vide also Vas Dh. S. 13.14, Gaut, 23.1, Ap. Dh. S.I. 9.25. 1-3 and 6 for similar deadly penances for incest and for drinking liquor and for theft. The Ap. Dh. S. (I. 10.28. 15-17) quotes Harita who condemns such penances involving death. At extremely holy places like Prayaga, the Sarasvati and Banaras persons were allowed to kill themselves by drowning with the desire of securing release from samsara. The salyaparva (39. 33-34) states "whoever abandons his body at Prthudaka on the northern bank of the Sarasvati after repeating Vedic prayers would not be troubled by death thereafter". The Anusasanaparva (25. 62-64) says that if a man knowing the Vedanta and understanding the ephemeral nature of life abandons life in the holy Himalayas by fasting, he would reach the world of brahma. Vide also Vanaparva 85.83 (about suicides at Prayaga). The Matsya-purana (186. 34-35) eulogises the peak of Amarakantaka by stating "whoever dies at Amarakantaka by fire, poison, water or by fasting enjoys the pleasures (described in verses 28-33). He who throws himself down (from the peaks of Amarakantaka) never returns (to "samsara")"

"There are historical examples of this practice supplied by Epigraphy. The Khairha plates of Yasahkarnadeva (dated Kalacuri samvat 823 i.e., 1073 A.D.) narrate that king Gangeya obtained release along with his one hundred wives at the famous banyan tree of prayaga (E.I. Vol. XII, p. 205 at p. 211). King Dhangadeva of the Chandella dynasty is said to have lived for more than 100 years and to have abandoned his body at Prayaga while contemplating on Rudra (E.I. Vol. I, p. 140). The Chalukya King Somesvara after performing yoga rites drowned himself in the Tungabhadra in 1068 A.D. (E.C. Vol. II. Sk. 136). The Raghuvamsa VIII. 94 poetically describes how Aja in his old age when his health was shattered by disease resorted to fasting and drowned himself at the confluence of the holy rivers, the Ganges and the Sarayu, and immediately attained the position of a denizen of Heaven.

Apart from suicide for purposes of penance or at holy places the smrutis allowed, as said above, a forest hermit to start on the great journey to meet death and also allowed in certain circumstances death by entering fire, or by drowning or by fasting or by throwing oneself from a precipice even for those who were not hermits. Gautama (14.11) prescribes that no mourning need be observed for those who wilfully meet death by fasting, or by cutting themselves off with a weapon, or by fire, or poison or water or by hanging or by falling from a precipice. But Arti (218-219) states some exceptions viz. if one who is very old

(beyond 70), one who cannot observe the rules of bodily purification (owing to extreme weakness & c.), one who is so ill that no medical help can be given, kills himself by throwing himself from a precipice or into fire or water or by fasting, mourning should be observed for him for three days and Sraddha may be performed for him. Apararka (p. 536) quotes texts of Brahmagarbha, Vivasvat and Gargya about an householder "he who suffering from serious illness cannot live, or who is very old, who has no desire left for the pleasures of any of the senses and who has carried out his tasks, may bring about his death at his pleasure by resorting to mahaprasthana, by entering fire or water or by falling from a precipice. By so doing he incurs no sin and his death is far better than tapas, and one should not desire to live vainly (without being able to perform the duties laid down by the sastra). Apararka (p. 877) and Par. M. (I. part 2, p. 228) quote several verses from Adipurana about dying by fasting, by entering fire or deep water or by falling from a precipice, or by going on mahaprasthana in the Himalayas or by abandoning life from the branch of the vata trees at Prayaga, the verses declaring that not only does such a man not incur sin but he attains the worlds of bliss. In the Ramayana (Aranya, Chap. 9) Sarabhangha is said to have entered fire. We find that the Mrcchakatika (I.4) speaks of King Sudraka as having entered fire. In the Gupta inscriptions No. 42, the great emperor Kumaragupta is said to have entered the fire of dried cowdung cakes. The editor remarks that there is necessarily no reference to the fact that the emperor voluntarily embraced death by fire. But it appears that there is no great propriety in the description if all that is meant is that the Emperor's corpse was burnt with "karisa".

"Some put forward a Vedic passage "one who desires heaven should not (seek to) die before the appointed span of life is at an end (of itself)" as opposed to the permission for suicide given by the smruti Medhatithi on Manu VI. 32 quotes this Vedic text and explains it away by saying that if smruti intended to lay down an absolute prohibition against suicide in every case, it would have simply said "one who desires heaven should not (seek to) die". The Vaj. S. (40.3) contains a verse saying "whoever destroy their self reach after death Asura worlds that are shrouded in blinding darkness", which really refers to persons ignorant of the correct knowledge of the Self. But this has been interpreted by many as referring to those guilty of suicide (atmahan). Vide Uttararamacarita IV, after verse 3 and Br. Up. IV, 4.11 for a verse similar to that in the Vaj. S. The Rajatarangini (VI. 1411) refers to officers appointed by the king to superintend prayopavesa (resolving on death by fasting).

"Among Jains a similar rule prevailed. The Ratnakarandasravakacara (Chap. 5) of Samantabhadra (about 2nd Century A.D.) dilates on Sallekhana, which consists in abandoning the body for the accumulation of merit in calamities, famines, extreme old age and incurable disease. The Kalandri (Sirohi State) Inscription records the suicide of a Jain congregation by fasting in samvat 1389 (E.I. Vol. XX, Appending p. 98 No. 691) :

"From the account of the death of Kalanos the Indian gymnosophist at 73 given by Megasthenes (Mc Crindle p. 106) we can gather that the practice of religious suicide prevailed long before the 4th century B.C. Strabo (XV. 1.4) states that with the ambassadors that came to Augustus Caesar from India also arrived an Indian gymnosophist who committed himself to the flames like Kalanos who exhibited the same spectacle before Alexander.

"In the times of the puranas the method of starting on mahaprasthan and suicide by entering fire or falling from a precipice came to be forbidden and was included in Kalivarjya."

14. The attitude of the Hindu and Jain religions depicted in the aforesaid writings of the Dharmashastrakaras shows that though ordinarily suicide was disapproved, in certain circumstances it was tolerated, condoned, connived at, accepted and even acclaimed depending upon the person and the particular circumstances. What is instructive to note is that the exceptions made were more or less in conditions similar to those which are pleaded today as circumstances extenuating suicides or attempts to commit them. There is also no authoritative pronouncement as to why some religions and communities uniformly condemned suicides and attempts to commit them, while others ordinarily did so. The most approximate view suggests two different sets of reasons - moral, religious or ideological and social or economic. Life is sacred. It is the gift of God and He alone can take it. There is life after death and the individual's soul must complete the full cycle of births. Premature end of life whether accidental or suicidal keeps the soul hovering in the sphere of ghosts. That is the ideological or religious-moral objection which fails to appeal to reason. The socio-economic reason does not survive any longer at least in communities where the problem is to check and reduce the growth in population rather than maintain or increase it.

15. It will be helpful in this context to be acquainted briefly with the attitude, practices and law on the subject in the modern societies. Attitudes towards suicide vary from tolerance, condemnation to admiration. As in the past some philosophers see in suicide the ideal way of gaining freedom from suffering.

Others condemn it in principle but admire it in certain circumstances such as when it is resorted to escape political or religious persecution, and physical or mental torture or to vindicate or attain a principle or social or political cause. Although in the middle ages and up to the 20th century in the modern times, the canon and criminal law was used against suicide, following the French Revolution in 1789, anti-suicide legislation was repealed in European countries gradually. Even England which had provision similar to our S. 309 followed suit and repealed it, though belatedly in 1961. In the U.S.S.R. and many of the States in the U.S.A. attempted suicide is not a crime. Society's attitude today is less moralistic and punitive and more understanding, tolerant and humanistic. It believes in correction rather than coercion. Even in Japan where the custom of compulsory Seppuku (hara-kiri) or ritual self-emboweling as a mode of

punishment was made illegal in 1868, voluntary hara-kiri and an act of expiration for defeat or self-sacrifice has always been highly praised and occurs even today occasionally. But with all this change in the attitude and law on the subject in the modern societies, the rate of suicide has not increased, proving thereby that there is no causal connection between a liberal outlook on suicide and the act of suicide. The causes of suicide have to be looked for in other directions. But that is a different subject.

In our own country Johars (mass suicides or self immolations) of ladies from the royal houses to avoid being dishonoured by the enemies, Sati (self-immolation by the widow on the burning pyre of her deceased husband), Samadhi (termination of one's life by self-restraint on breathing), Prayopaveshan (starving into death) and Atmarpana (self-sacrifice) have always been acclaimed with reverence. Even after the ban on Sati, as early as in 1868, there have been incidents of Sati and even today they are not unknown, although their number is negligible. Such incidents would not occur without social approbation. The saints and savants, social political and religious leaders have immolated themselves in the past and do so even today by one method or the other and society has not only not disapproved of the practice but has eulogised and commemorated the practitioners. Suicide or attempt to commit it as such has thus never been an object of abhorrence or condemnation which would be so if life by itself was considered reverend. It is the cause of its termination or the condition in which it is terminated which has always and everywhere determined the societal attitude towards it.

16. That still leaves unanswered an important question. If attempt to commit suicide is not considered an offence, it must logically follow that aiding and abetting the attempt must also not be an offence. This will open door for euthanasia or mercy killing in particular and death baiters in general.

According to us this fear arises firstly out of a misconception of the concepts of "suicide" and "mercy-killing". Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own life by one's own act and without the aid or assistance of any other human agency. Euthanasia or mercy-killing on the other hand means and implies the intervention of other human agency to end the life. Mercy-killing thus is not suicide and an attempt at mercy-killing is not covered by the provisions of S. 309. The two concepts are both factually and legally distinct. Euthanasia or mercy-killing is nothing but homicide, whatever the circumstances in which it is effected. Unless it is specifically excepted it cannot but be an offence. Our Penal Code further punishes not only abetment of homicide but also abetment of suicide. Section 306 makes abetment of suicide of any person whereas S. 305 makes abetment of suicide of child or insane person, an offence and prescribes different punishments for the two. These provisions can certainly take care of situations or threats posed by death-baiters. If however, any further safeguards were needed they can be had by enacting such provisions as in S. 2, English Suicide Act of 1961, which makes

criminally liable a person who aids, abets, counsel or procures the suicide of another or an attempt by another to commit suicide.

As we will point out a little later, the question has hardly any practical significance. Suicide is nowhere defined in the Penal Code. Hence an attempt to commit suicide and an abetment of such attempt is bound to pose problems of definition in practice. The problem is therefore more imaginary than real.

17. That takes us to the challenges to S. 309 on the ground of the violation of Art. 14 and we are of the view that on this count also S. 309 is vulnerable.

The language of S. 309 is sweeping in its nature to say :-

"Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both."

The first difficulty which we encounter is that suicide is not defined in the Penal Code. In a broader sense any act which takes a person further from life and nearer to death can be regarded as felony. As the famous American Psychiatrist, Carl Manning in his book "Man Against Himself" has interpreted it, every kind of behaviour inimical to health and life can be described as the expression of the death instinct directed against the self, and suicide can be termed as the extreme manifestation of the said instinct. Sometimes the term "partial suicide" has been used for self-mutilation and "chronic suicide" for habitual behaviour injurious to life, such as alcohol and drug addiction. There is also a distinction sometimes made between "fatal" suicide and "attempted" suicide or non-fatal suicidal act. If these definitions are accepted, every act or a step taken, by a person which takes him nearer his death or brings about the end of his life ultimately has to be characterised as suicidal or an attempt at suicide. This throws up a wide variety of questions. Which act or acts in a series of acts will constitute suicide or attempt to commit it ? Where do we draw the line ? What may be injurious to one may be good for another. What may constitute a felony in one case may be an innocent act in other cases. And, pray, how do you probe the mind of the individual to decipher his intention and by reference to which act of his ? He might recoil or withdraw from the fatal act at one but the last stage. The fatal act might further have been committed by an individual quite innocently or without any intention to commit suicide. On what basis is the inference to be drawn ? The intention no doubt is to be inferred from the various circumstances including the means adopted for committing suicide. But these inferences may be of doubtful validity. For, the mere acts themselves may not indicate a definite intention and different persons may resort to the same and or acts with different intentions and not necessarily with a view to terminate one's life. Some attempts may be serious while others non-serious. These and other questions must arise while attempting to provide even a workable definition of suicide and more so while defining an attempt to commit it. In fact philosophers, moralists and sociologists are not agreed upon what constitutes suicide. What

may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community as we have seen earlier. While some suicides are eulogised, others are condemned. That is why perhaps wisely no attempt has been made by the legislature to define either. But the difficulty in providing a plausible definition cannot certainly be pressed in favour of the validity of the provision particularly when it is penal. The want of plausible definition and even of guidelines to distinguish the felonious from the non-felonious act itself therefore makes the provisions of S. 309 arbitrary and violative of Art. 14. As is rightly said arbitrariness and equality are enemies of each other.

18. The equality guaranteed by Art. 14, stands further violated by the provisions of S. 309 because it treats all attempts to commit suicide by the same measure without regard to the circumstances, in which the attempts are made.

Durkheim has classified suicides on the basis of the disturbance in the relationship between society and the individual, in three types : (i) Egoistic suicide which results when abnormal individualism weakens society's control over him. The individual in such cases lacks concern for the community with which he is inadequately involved. (2) Altruistic suicide which is due to an excessive sense of duty to community and (3) Anomic suicide which is due to society's failure to control and regulate the behaviour of individuals. This classification is not regarded as adequate by many, but gives us the broad causative factors of suicide.

There is further no situation or no experience to which suicide is the only possible reaction. Different persons react differently to different situations and experiences, depending upon their personality traits. That is why a suicidal act cannot be explained by the situation alone and all persons in the same situation and facing the same experience cannot be painted by the same brush.

It is estimated that about one third of the people who kill themselves have been found to have been suffering from mental illness requiring psychiatric treatment. Depressive illness with a feeling of worthlessness and despair and a wish to die accompany most of the mental disorders. But even in this condition the urge to commit suicide varies. Schizophrenia which is one of the other major mental disorders also takes an above-average toll of suicides. Most of the rest have unstable and vulnerable personalities. Abnormal personalities with aggressive tendencies show increased liability to suicide. Frustration, loss of social status, social isolation, inability to cope up with the stress and strain are still other factors of the like nature responsible for suicides.

But in addition to these, there are other equally important factors which we have pointed out earlier, such as extreme mental and physical torture or cruelty, inhuman and unbearable living conditions, poverty, unemployment and inability to make a living for oneself and the dependents, affection by incurable or socially

dreaded diseases, physical incapacitation to perform even bodily chores, need to defend one's honour or to save oneself from social disgrace, protest against certain acts or practices, vindication of certain causes, principles or rights, a sense of fulfilment and a genuine desire to take leave of the worldly affairs and so on. The list which is not meant to be exhaustive only illustrates the different mental, physical and social causes and which may lead different individuals to attempt to commit suicide for different ends and purposes. There is nothing in common between them. Section 309 however makes no distinction between them and treats them alike.

The arbitrariness of the section becomes more obvious when it is realised that some individuals resort to suicide to escape from the cruel conditions of life which are every moment a punishment to them. The deliverance from such mundane existence is in reality a boon to them. Yet, society which is either unable or indifferent to improving his conditions of life, seeks to punish him for his attempt at self-help or self-deliverance.

Suicide involves no damage to person or property of others. If destruction of one's property or its deliverance to others for a cause or no cause is not an offence, there is no reason why sacrifice of one's body for a cause or without a cause or for the mere deliverance of it should be regarded as an offence. Much less an attempt at doing so. One's life, one's body with all its limbs are certainly one's property and he is the sole master of it. He should have the freedom to dispose it of as and when he desires. Even at present the relevant statutes permit donation by individual of certain parts of his body under certain conditions, thereby recognising the right of the individual to deal with his body as he chooses.

19. The discriminatory nature of S. 309 becomes particularly prominent when its provisions are compared with S. 300, Penal Code. While defining murder, the legislature has taken pains to make a distinction between culpable homicide amounting to murder and one not amounting to murder and has prescribed different punishments for the two. However, S. 309 prescribes the same punishment to all individuals irrespective the different sets of circumstances under which the suicide attempt is made. This is strange although murder is a more heinous offence with consequences to the other member or members of the society.

We are therefore of the view that the provisions of S. 309 being arbitrary are ultra virus Art. 14 of the Constitution.

20. That takes us to the last contention which seeks to assail the very basis of the punishment prescribed by S. 309. The section punishes the attempt to commit suicide with simple imprisonment for a term which may extend to one year or with fine or with both. "We have already enumerated the different sets of circumstances in which a person may attempt to commit suicide. If the purpose of the prescribed punishment is to prevent the prospective suicides by

deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the attempts. Those who make the suicide attempt on account of the mental disorders require psychiatric treatment and not confinement in the person cells where their condition is bound to worsen leading to further mental derangement. Those on the other hand who make the suicide attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement need nursing homes and not prisons to prevent them from making the attempts again. No deterrence is further going to hold back those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. Thus in no case the punishment serves the purpose and in some cases it is bound to prove self-defeating and counter-productive. On this account also the provisions of the section are unreasonable and arbitrary.

21. For all these reasons, we are of the view that S. 309 is ultra vires the Constitution being violative of Arts. 14 and 21 thereof and must be struck down.

22. In view of our conclusion as above, it is unnecessary to deal with the facts of the present case. They only reveal the unjustness of the prosecution launched against the petitioner. Hence, the prosecution pending against him is hereby quashed.

Since we have struck down S. 309 being ultra virus the Constitution, all prosecutions launched under the said section and pending in any of the Courts in the State shall also stand quashed.

Rule is made absolute accordingly.

23. We cannot part with this judgment without pointing out that the Law Commission of India in its 42nd Report published in June, 1971 had recommended deletion of S. 309. It also appears that a Bill to delete it was introduced in Rajya Sabha in 1979, but it lapsed on the dissolution of Lok Sabha soon thereafter. The only judicial attempt here before to assail prosecutions under the section which was brought to our notice was by the Delhi High Court. In the first of the decisions, 1985 CriLJ 931, State v. Sanjay Kumar, the prosecution was quashed on the ground of delay in investigation. In the seconds case (Cri. Revns. Nos. 230 of 1985 and others decided on 13-12-85 : Reported in 1986 RajLR 348 again the prosecutions were quashed under the inherent powers of the Court under S. 482, Criminal P.C., a course, we are afraid, not open for us to adopt. However, the fact remains that in none of the decision, the validity of S. 309 was examined. We had, therefore, to tread a fresh ground and to examine the validity of the section for the first time, with such assistance as we could get.

Rule made absolute.