
(2015) 01 MP CK 0064

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 2336/2014

Neelesh Jat

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (2015) 01 MP CK 0064

Hon'ble Judges : C.V. Sirpurkar, J.

Bench : Single Bench

**Advocate : Manish Datt, Senior Advocate and Nishant Datt, for the Appellant;
Chandrakant Mishra, Government Advocate, Advocates for the Respondent**

Judgement

C.V. Sirpurkar, J.—This Criminal Revision filed under section 397 read with section 401 of the Code of Criminal Procedure on behalf of applicants/accused persons Neelesh Jat and Akash Jat, is directed against the order dated 1.10.2014 passed by the Court of 1st Additional Sessions Judge, Narsinghpur in Sessions Trial No. 253/2014, whereby the learned trial Court had framed a charge of the offence punishable under section 306 read with section 34 of the Indian Penal Code against the applicants.

2. The facts giving rise to this criminal revision may briefly be stated thus: Deceased Anand lived with his family members in a house built on their field. Accused persons Neelesh, Akash, Aditya and Rishab are distant cousins of one Rani Jat. At around 6:00 p.m. on 13.06.2014, the accused persons came to the house of deceased Anand and alleged that he was defaming Rani by linking her name to his name. Deceased Anand protested and said that he was not spreading any such rumor and he had nothing to do with aforesaid Rani. Accused persons threatened that they would kill the deceased and his family members. They also said that they had earlier expelled the family of the deceased from the village and now they would expel them from their house as well. Accused

persons were armed with rod, axe and shovel. They manhandled deceased Anand. Accused Akash sat on the chest and intimidated him. Other accused persons also raised their weapons upon him. Accused Akash assaulted Kalpana, the mother of deceased, breaking her bangles. Father of accused Akash and Rao Rajendra Singh, uncle of deceased and also came to the spot. They interceded in the matter. Thereafter, deceased Anand threw his mobile phone upon her mother Kalpana and ran towards the river. Ajit and Golu ran behind him but they could not find him. On the next day at around 10:30 a.m. dead body of deceased Anand was discovered on Railway track. He apparently committed suicide by lying under a running train.

3. The police filed charge sheet against the accused persons/applicants Neelesh and Akash in the Court of J.M.F.C., Narsinghpur. Accused persons Rishab and Aditya being below 18 years of age were proceeded against before the Juvenile Justice Board. After hearing the applicants, learned 1st ASJ framed the charge against them, as aforesaid.

4. Inviting attention of the Court to various authorities, it has been argued on behalf of the applicants that even if all allegations made against the applicants are taken at their face value, their act and conduct would not come under the purview of abetment of suicide. Learned Government Advocate for the State on the other hand supported the impugned order.

5. The Court shall first consider whether there was sufficient material on record to proceed against the applicants, namely Neelesh and Akash?

6. A perusal of the case diary reveals that deceased Anand left no suicide note. During investigation, statements of witnesses Bhagwat, father of deceased, Kalpana, his mother, Abhay, his brother, Rao Rajendra Singh, his uncle, Pradeep, Arvind, Rani @ Aparna, Golu @ Santram and Ajit were recorded. The essence of aforesaid statements is that accused persons Neelesh, Akash, Rishabh and Aditya suspected deceased Anand of defaming their cousin Rani by spreading rumors about their relationship. On the date of incident, they went to the place where the deceased resided and manhandled him. They were armed with axe, rod and shovel. They threatened to expel the family of deceased from the house on the field, they were residing in. They also threatened the family of deceased with life. One of the accused persons assaulted Kalpana with a rod breaking her bangles. Other persons were also present on the spot. Unable to bear this public humiliation and assault, the deceased rushed towards the river. He could not be found through the night. At around 10:30 a.m. on the following day, his mutilated body was recovered on Railway track. He had apparently committed suicide by lying under a running train.

7. Now the question that arises for consideration is whether the conduct of any of the accused person as brought-forth by the statements of the witnesses, constitute abetment of suicide? Section 306 of the Indian Penal Code reads as follows:-

"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." 8. Term abetment has been defined under section 107 of the Indian Penal Code 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 aides, by any act or illegal omission, the doing of that thing." 9. It has been held by the apex Court in the case of Ramesh Kumar Vs. State of Chhattisgarh, that:

"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".....

(Emphasis supplied)

10. The Supreme Court has observed in the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, (Supreme Court) that

"20. 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.

21. The intention of the Legislature and the ratio of the cases decided by this Court is 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 committed suicide".....

(Emphasis supplied)

11. It was observed by the Supreme Court in the case of Sohan Raj Sharma Vs. State of Haryana, (Supreme Court) that.....

"8. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases 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 it required before a person can be said to be abetting the commission of offence under Section 306 of IPC. 12. This Court in the case of Ashok Kumar Sawadiya and Others Vs. State of M.P., it has held that even where the accused persons had publicly beaten the deceased and deceased had left a suicide note regarding beating and public humiliation, the accused persons could not be deemed to have aided commission of suicide by the deceased.

13. Reverting back to the facts and circumstances of the case at hand, It has been established prima-facie that the accused persons had assaulted and threatened the deceased with life as they were annoyed at defamation of their cousin, regardless of the fact whether or not the deceased was responsible for the same. It is apparent that deceased committed suicide due to aforesaid beating and humiliation perpetrated by the applicants. However, it is equally apparent that the applicants had no intention of instigating or goading the deceased to commit suicide. In all probability they not even dreamt that their conduct would lead to such disastrous consequences. By no stretch of imagination can it be said that the accused persons had created such a situation by their persistent conduct, where the deceased was left with no option but to commit suicide. It appears that the deceased was probably ultra-sensitive to the beating and public humiliation heaped upon him by the accused persons. As much is evident by his subsequent act of taking his own life by lying under a running train. If the deceased felt humiliated and wronged by the act and conduct of the applicants, he had option to report the matter to police, demanding action against the accused persons and even protection for himself. Unfortunately he did not exercise that option and impetuously took the extreme step lying under a running train. This clearly was an overreaction on his part but in the circumstances of the case, no abetment or mens rea on the part of the applicants may be inferred. The applicants could not have conceived any nexus between their act of assault and intimidation and the result thereof.

14. Thus, there is no sufficient ground to proceed against applicants Neelesh and Akash under section 306 or 306 read with section 34 of I.P.C. Consequently, they are entitled to be discharged in respect of aforesaid offence. It is for the learned trial Court to consider whether any other offence is made out in the facts and circumstances of the case on the basis of material available on record.

15. In the result, this Criminal Revision succeeds in part. Applicants Neelesh and Akash are discharged in respect of the offence punishable under section 306 read with section 34 of the I.P.C. Learned trial Court is directed to consider the matter with regard to charge afresh and after giving the accused persons an opportunity of being heard, frame such charge, other than the one under section 306 or 306 read with section 34 of the I.P.C., if any, and proceed with the matter accordingly.

16. Moreover the sitting capacity of the tractor is only one and premium has been paid for one employee i.e. driver. No premium has been paid for any labourer or passenger. This is not a case where the deceased is said to have been

travelling in a trolley as a labourer and premium for labourer has been paid. Thus, it is clear that Ex.D/1 is a policy for basic act liability with Insurance cover for one employee. It was issued for agricultural purpose. This is not a policy where under risk arising from commercial operation of the tractor was covered. In this view of the matter, learned Tribunal was justified in holding that there was no insurance cover for labourer/passenger travelling in the tractor. Consequently, the Insurance Company was rightly exonerated from primary liability of paying compensation to the claimants.

17. It has been held by a Full Bench of this High Court in the case of Bhav Singh Vs. Smt. Savirani and Others, that mere fact that a passenger is a third party would not fasten a liability on the insurer unless such liability arises under section 147 or under terms and conditions of the Insurance Policy. The expression "third party" would mean a party other than the contracting parties to the insurance policy and would include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself, which is the subject matter of the insurance policy. Thus, any person other than the insurer and the insured, were parties to the insurance policy is a "third party". However, the insurer would not be liable for any bodily injury or death of a third party in an accident, unless the liability is fastened on the insurer under the provisions of section 147 of the Act or under the terms and conditions of the policy of insurance.

18. In these circumstances, the exoneration of the Insurance Company from liability to pay compensation cannot be found fault with.

19. Since this is not a case of breach of Insurance policy but a case of total lack of insurance cover, principles of pay and recover would also not be applicable.