
(2012) 11 CAL CK 0012
In the Calcutta High Court
Case No : CRA No. 03 of 2008

Prangopal Goswami and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 107, 306, 34, 506

Citation : (2013) 1 CALLT 482

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Sekhar Basu and Mr. Soubhik Mitter, for the Appellant; Asraf Ali, for the Respondent

Final Decision : Allowed

Judgement

Toufique Uddin, J.—This appeal arose out of judgment and order dated 19/20.12.07 passed by the learned Additional Sessions Judge, 3rd Court Fast Track Court, Jalpaiguri in Sessions case No. 181 of 2006 convicting thereby the appellants of the charge framed against them for commission of offence punishable u/s 306/ 506 IPC and sentencing the appellant No. 1 to suffer simple imprisonment for 4 years and to pay a fine of Rs. 1 lac in default to suffer simple imprisonment for six months more for the offence u/s 306 IPC and also to suffer simple imprisonment for one month for the offence u/s 506 IPC and the appellant nos. 2 to 5 to suffer rigorous imprisonment for six years each and to pay a fine of Rs. 2000/- each in default to suffer simple imprisonment for one year each for the offence u/s 306 IPC and also to suffer simple imprisonment for two months each for the offence u/s 506 IPC. Both the sentences were directed to run concurrently. In the background of this appeal, the fact in a nutshell is that the informant one Jagannath Basak reported that on 17.7.2004 he left for Calcutta by Teesta Torsa Express from Jalpaiguri alongwith his seek wife and younger son for treatment as well as change of climate of his wife and from Calcutta they left for Digha. On 21.7.2004, he came to know over telephone that something wrong

had happened in his house. He readily left for Jalpaiguri and on reaching there on 22.7.2004, he learnt that his son Goutam Basak had committed suicide by hanging. It was stated that the day when they left for Calcutta, they called a rickshaw at their lane to go to Railway Station. At that time, the lane was waterlogged due to heavy rain. His neighbour Nupur Goswami and his father Prangopal Goswami abused in filthy languages on the ground of causing inconvenience by calling a rickshaw in that waterlogged lane. As they were going out, they did not raise any protest. Subsequently, he learned that when his elder son, Goutam Basak returned to his house from the station, Nupur Goswami and his father Prangopal Goswami abused his son in filthy languages. His elder son protested alongwith his brother and brother's wife. On 17.7.2004, his son informed the matter to the local Councillor Kamal Das in writing. On the following morning Sri Das came and enquired about the matter and requested Nupur Goswami and his father not to behave in such manner. After departure of the Councillor, Prangopal Goswami and his sons viz. Netai Goswami, Nema Goswami, Naru Goswami and Nupur Goswami raided their house and abused in filthy languages and also threatened all the members of informant's family. They disclosed that they were employees of Police Department and they would implicate Goutam Basak in false rape case and would also push prostitute into their house. Goutam reported the matter to Kotwali P.S. in writing on 18.7.2004 but the Police did not enquire the matter. On 19.7.2004, since morning till evening those persons repeatedly attacked informant's son. As a result, his son took shelter in his brother's house. His brother came back from his Office and learnt the incident and informed the matter to the neighbours. On 20.7.2004, since morning those men threatened to kill his son and also instigated him to commit suicide. Under such condition, his son broke down. On 20.7.2004 his brother returned in the evening and consoled him. Goutam cooked his food at night and his brother asked him to go to sleep without any fear. But Goutam repeatedly told his brother that he had no option but to commit suicide due to such provocation, made by the accused person.

2. On 21.7.2004, his brother's wife found that Goutam did not get up till 9.30 A.M. Even after the noon she noticed that Goutam did not awake. Then she informed her husband over telephone and his brother came back and broke glass of the window and found that Goutam was hanging. His brother informed the matter to the Police and the Police came and seized a suicidal note, claimed to have been written by Goutam and his some other note books.

3. On receipt of the written complaint, the O.C., Kotwali P.S., Jalpaiguri started P.S. case No. 24/04 dated 22.7.2004 and after completion of investigation submitted charge-sheet against the accused persons Prangopal Goswami, Netai Goswami, Nema Goswami, Naru Goswami and Nupur Goswami u/s 306/ 34 IPC.

4. The learned Chief Judicial Magistrate, Jalpaiguri committed the case to the court of sessions, Jalpaiguri.

5. On hearing of both sides, the learned trial court framed charges u/s 506/ 306/

34 IPC against the accused persons. The contents of the charges were read over and explained to them who pleaded not guilty and claimed to be tried.

To bring home the charges the prosecution examined as many as 19 witnesses while the defence side examined none. However, the accused persons were examined u/s 313 of the Code of Criminal Procedure. The defence case as appeared from the trend of cross-examination and the replies given by the accused persons at the time of examination u/s 313 of the Code of Criminal Procedure is denial of offence with a plea of offence.

Thereafter, the learned trial court convicted the accused persons by the impugned judgment.

6. Now, the point for consideration is if the judgment is sustainable in the eye of law.

7. Section 306 IPC reads as under:

S. 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.

From a bare reading of the provision, it is clear that to constitute an offence u/s 306 IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence u/s 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of "abatement" have been stated in Section 107 of the IPC, which defines abetment of a thing as follows:

107. Abetment of a thing

A person abets the doing of a thing, who

First - Instigates any person to do that thing or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation - 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.

8. It was contended by the learned counsel for the State that the case has been proved beyond all reasonable doubts and there is no scope for interference.

9. On the other hand, the learned counsel for the convicts submitted that there

are a good number of lacunas and loopholes as well as deficiencies and as such the prosecution has totally failed to prove this case. The learned counsel for the convicts submitted that the charges framed on 19.2.2007 and 20.2.2007 are defective.

The formulation of charge u/s 306/ 34 IPC was that "that you on or about 20.7.2004 at Anandapara Ghumti No. 3, P.S. Kotwali, Dist. Jalpaiguri, Goutam Basak, son of Jagannath Basak committed suicide by hanging and all of you abetted Goutam Basak for such commission of offence".

10. In criminal jurisprudence, framing of charge is the foundation of the case. It is true that the charge need not be framed with elaborate descriptions but yet it should contain the very ingredients in gist in order to show the grounds for framing of charge. There appears nothing from the charge that there was any indication of aiding, instigation, conspiracy or so. This is a flaw which appears to be incurable till this moment. Here reliance may be had on 2009 (4) AICLR 402. It is trite that at the stage of framing of charge, the court is required to evaluate the materials and documents on record with a view to finding out if the facts emerging therefrom taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. Here it is not available.

11. The prosecution has heavily relied on an alleged dying declaration (Ext. 4) purported to have been given by the deceased Goutam Basak before his death.

12. Some relevant portions of evidence require close scrutiny. PW 1 is a resident of Anandapara Ghumti No. 3, Jalpaiguri where the incident took place. She stated that over the issue of parking of a rickshaw a dispute arose. She heard from her house that four accused persons were telling Ghotna alias Goutam that they would see him in absence of his parents and she stated that after sometime Ghotna came to her and stated that accused persons abused him in filthy languages. In cross-examination, she stated that it is not possible for her to say who uttered what, against whom.

PW 2 is another lady who stated that few days before death of Ghotna around 12/1 P.M. an altercation took place and filthy language was used. She heard the voice of accuseds but did not see them to abuse Goutam @ Ghotna in filthy languages. PW 3 is the brother of Goutam (Uncle's son). He stated that on 17.7.2004 around 1 P.M. his uncle Jagannath Basak called a rickshaw in the lane which was water logged and at that time Prangopal Goswami in a bi-cycle came there and he started abusing by stating "eta ki tor babar rasta" and thereafter his companions started shouting and abusing. PW 4 is another lady and she heard the incident that due to altercation with Goswami brothers, Goutam committed suicide. PW 5 is a doctor and he opined that death was due to hanging. PW 6 is a S.I. He held the inquest. The inquest report is silent about anything of goading, inciting, provoking or urging, although he said that he learnt from the other persons present there that the deceased committed suicide. PW 7 is the father of the deceased. He stated that on 17.7.2004, when

he was about to start to catch Teesta Torsa Express alongwith his wife and son, they called a rickshaw to the lane near their house which was water logged but at that time Netai Goswami came and seeing the rickshaw, allegedly causing inconvenience to their movement abused in filthy languages. Later, PW 7 learnt that his son committed suicide. He proved the FIR and stated that the accused persons used to pinch his son, insult in filthy languages and as such his son could not bear with such pinching and abusing and hence committed suicide. But in cross-examination, he has stated that it was not possible for him to say why his son had committed suicide. PW 8 is the mother of the deceased. She attempted to corroborate PW 7 and stated that the accused persons mentally tortured her son and abused in filthy languages and that is why her son committed suicide. PW 9 heard that a quarrel took place between two families over parking of a rickshaw. PW 10 is a resident of the locality. He is also a relative of the deceased. Getting a call over telephone, he rushed to his sister-in-law's house and found Goutam hanging. He stated that Goutam committed suicide due to torture of the members of Goswami family. PW 11 is also a resident of the area. He stated about the dispute between two families over parking of a rickshaw and stated that Goutam committed suicide due to abusing and mental torture perpetuated by the accused persons. PW 12 is the uncle of the deceased. He stated that Sangita Basak, daughter of his cousin brother used to reside at the house of Jagannath. The accused persons used to abuse Sangita in filthy languages. So, is the evidence of PW 13. PWs 14, 15 and 16 are formal Police witnesses. PW 17 is another S.I. of Police. He examined some witnesses and submitted charge-sheet. PW 18 is also a resident of the area and he stated that the accused persons used to torture the para-people and on the relevant date over the parking of a rickshaw, the accused persons abused his uncle and others when Goutam strongly protested and they threatened Goutam to bring false charges in connivance with girls of pros-quarter. PW 19 is the main I.O. He did most of the investigation work and examined the witnesses.

13. Both sides advanced extremely high class of arguments. This case requires to be tested with reference to the purport and object of Section 306 IPC read with Section 107 IPC mainly.

14. Relevantly comes the question of mens rea. It appears from the evidence on record that in a waterlogged narrow lane, movement of the accused persons allegedly was inconvenienced that day due to calling of a rickshaw by the relations of the deceased for going to the railway station to board a train bound for Calcutta and over this matter, there was dispute between the parties. But nowhere in the evidence, it appears that prior to the day of 17.7.2004, there was such type of bickerings or dispute between the parties. It further transpires that one of the accused persons hurled remarks to Jagannath Basak by stating "eta ki tor baper rasta". Save and except this no detailed form of abusive words (by name) appeared to have been used. Mens rea is a state of mind. Unless it is found that the accused had "guilty intention" to commit the crime, he cannot be held guilty vide Director of Enforcement Vs. M/s. MCTM. Corporation Pvt. Ltd.

and others, In the given case, clear mens rea is not manifest.

15. "Abetment" is something different. Certain discord and differences are unavoidable but if the petulance, discord and differences are not expected to induce a similarity circumstanced individual in the given society to which the deceased belonged, the conscience of the court should not be satisfied to find that the accused abetted suicide of the deceased. We may put reliance on Ramesh Kumar Vs. State of Chhattisgarh, in this regard.

16. The Hon"ble Apex Court has laid down in (2005) SCC (Cri) 56 that 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 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 u/s 306 IPC. There should be proximity between alleged act of cruelty and suicide. We may put reliance on 2011 (2) SC 220 for analogy.

17. In this regard, one example may be taken as follows:

A man while hurling continuously serious remarks takes another man near a rail line and asked the man to jump on the rail to put an end to his life, and the other man did it out of frustration and died. This situation may create a case of abatement. Further, abatement does not develop by a single act. It constitutes a series of mental preparations and acts culminating to provoke another man to commit suicide. The term "instigate" was considered by the Hon"ble Apex Court in (2002) SCC (Cri) 1088 wherein it was held by Their Lordships that 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 consequences. The word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Thus, to construe "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction".

Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

As observed in Ramesh Kumar Vs. State of Chhattisgarh, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction, and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

18. The ingredients of abetment of suicide are as follows:

The prosecution has to prove -

(i) the deceased committed suicide;

(ii) the accused instigated or abetted for committing suicide (committing suicide by itself is a crime);

(iii) direct involvement by the accused in such abetment or instigation is necessary.

Barring the solitary statement "eta ki tor babar rasta" or "non-explained" alleged hurling of abusive words and threatening, nothing transpired in the present case in the form of goading, provoking, inciting as required for proof of a case u/s 306 IPC. Relevantly, it may be mentioned that there is a marked difference between "intimidatory" statement and "instigatory" statement. "Intimidatory" statements may give rise to two types of consequences, (a) either the person to whom such statements are made may be frightened and may be on receiving end or he may be angry enough to retaliate whereas (b) instigatory statements falls within the category of goading, provoking etc. The nature of languages used by the prosecution witnesses for commission of suicide by the deceased falls within the category of intimidatory statements in which the ingredients of Section 107 IPC for abetment of offence are wanting.

19. The prosecution banked upon very much on the suicide note (Ext. 4) as stated earlier.

But Goutam Basak wrote that the "kotukti" (ill-statement) caused shame to him and he felt insulted and the accused persons forced him to commit suicide. This is not enough. What are the languages and what are the pieces of ill-statements have not been disclosed in the suicidal note. This is one aspect.

The other aspect is that the defence side strongly disputed the said suicide note claimed by prosecution as dying declaration. The learned defence counsel contended that the dying declaration is of dubious nature because the appearance of the same on a paper does not seem to be normal. The length, breadth and the size of the paper appears to be not homogenous in nature. The document seemed to have been torned initially but rejoined with some pieces. This generates doubt.

The third aspect is that the defence side challenged the purported writing of Goutam and the prosecution did not bring any expert to prove the handwriting of so-called Goutam, the deceased. Above all, the dying declaration should be proximate to the cause of death and exhaustive in nature to give an impression that it was natural and voluntarily given by the person after a prolonged ponderance to put an end of his own life. There should be a continued course of conduct creating such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may be inferred. I do not find it. Reliance may be had on AIR 2001(4) 563. Further, in terms of decision as reported in 2009 (4) ALCLR 403 each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. What mental pain was experienced or what kind of threat or fear was generated in his mind has not been reflected in the dying declaration (Ext. 4).

20. PW 6 stated that at the time of holding inquest he noticed a suicide note in the next room which was visible. But why Police did not take himself any step to lodge any complaint is not clear. Further, the deceased's uncle is stated to have lodged a complaint but it was not proved. All these of pieces of evidence raised suspicion. The benefit of which should be given to the accused person.

21. At the time of examination u/s 313 of the Code of Criminal Procedure, no specific questions of goading, provoking or inciting appears to have been asked to the accused persons.

22. The materials on record do not go to show that also the offence u/s 506 IPC has been clearly proved.

23. This being the position, in view of the facts and circumstances of the case and the materials on record, there appears no necessity to dwell upon other points of the arguments advanced by the learned counsels for both the sides.

24. Accordingly, the appeal appears to have merit and stands allowed.

25. The conviction and the sentence as passed by the impugned judgment dated 19/20.12.97 are hereby set aside. The appellants be acquitted and released from bail bonds, if not wanted in any other case.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.