

(2018) 03 MP CK 0164
In the Madhya Pradesh High Court
Case No : MCRC 1876 OF 2018

Pratap Singh And Anr.

APPELLANT

Vs

State Of Mp And Another

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 228, 482
Indian Penal Code, 1860 — Section 34, 107, 109, 306, 323

Citation : (2018) 03 MP CK 0164

Hon'ble Judges : G. S. AHLUWALIA, J

Bench : Single Bench

Advocate : Anshu Gupta, B.P.S. Chouhan, S.S. Tomar

Final Decision : Allowed

Judgement

Heard finally.

This application under Section 482 of Cr.P.C. has been filed challenging the charge sheet filed against the applicants for offence under Section 306

read with Section 34 of I.P.C. in Crime No. 269/2017 registered by Police Station Kurwai, Distt. Vidisha.

It is submitted by the Counsel for the applicants, that the charges have not been framed so far.

The necessary facts for the disposal of the present application in short are that the dead body of Avtar was found on the railway track.Â During the

investigation, it was found by the investigating agency, that the applicants had levelled an allegation of committing theft of Rs.300/- by the deceased in

their shop and because of that, the deceased, who is aged about 18 years was beaten by the applicants. Feeling ashamed because of allegation of theft

and beating, the deceased Avtar, committed suicide by jumping in front of a

running train. On these allegations, the charge sheet has been filed against the applicants for offence under Section 306 read with Section 34 of I.P.C.

Challenging the charge sheet, it is submitted by the Counsel for the applicants, that even if, the entire allegations are accepted, they may not amount to

abetment of suicide.Â The allegations made against the applicants would not amount to instigation. To buttress his contentions, the Counsel for the

applicants has relied upon Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) reported in (2009) 16 SCC 605, Sanju @ Sanjay Singh Sengar vs.

State of M.P. reported in (2002) 5 SCC 371, Praveen Pradhan vs. State of UttaranchalÂ reported in (2012) 9 SCC 734,Â Sanju @ Sanjay Singh

Sengar vs. State of M.P. reported inÂ (2002) 5 SCC 371,Â Gangula Mohan Reddy vs. State of A.P. reported in (2010) 1 SCC 750, M. Mohan vs.

State represented by the Deputy Superintendent of Police reported in AIR 2011 SC 1238.

Per contra, it is submitted by the Counsel for the State as well as Counsel for the Complainant, that by making false allegation of committing theft of

Rs.300/- in the shop and beating the deceased, the applicants have abetted the deceased to commit suicide. The Counsel for the complainant has

relied upon a judgment passed by a co-ordinate Bench of this Court in the case of Manmohan Vs. State of M.P. Reported in ILR 2010 MP 1006.

Heard the learned Counsel for the parties.

The moot question for determination is that even if the entire allegations are accepted as they are, then whether can it be said that the applicants have committed an offence of abetment of suicide.

Section 306 of I.P.C. reads as under :-

â??306. Abetment of suicide. â?"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."

â??Abetmentâ?? is defined under Section 107 of I.P.C. which reads as under :-

â??107. Abetment of a thing.â?"A person abets the doing of a thing, whoâ?

First.â?"Instigates any person to do that thing; or

Secondly.â?"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.â?"Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.â?"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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.â?"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 act.â??

The Supreme Court in the case of Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) reported in (2009) 16 SCC 605, while dealing with the

term â??instigationâ??, held as under :-

â??16.....instigation is to goad, urge forward, provoke, incite or encourage to do â??an actâ??. To satisfy the requirement of

â??instigationâ??, though it is not necessary that actual words must be used to that effect or what constitutes â??instigationâ?? must necessarily and

specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. 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 â??instigationâ?? may have to be inferred. A word uttered in a fit of anger or emotion without

intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute â??instigationâ??, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by

â??goadâ?? or â??urging forwardâ??. The dictionary meaning of the word â??goadâ?? is â??a thing that stimulates someone into action;

provoke to action or reactionâ?? ... to keep irritating or annoying somebody until

he reacts....â??

The Supreme Court in the case of Praveen Pradhan vs. State of Uttaranchal, reported in (2012) 9 SCC 734 held as under :-

â??17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person

who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in

a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v.

State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. ((2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC

554)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket

formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a

particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an

inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the

situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court

cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC.â??

The Supreme Court in the case of Sanju @ Sanjay Singh Sengar vs. State of M.P. reported inÂ (2002) 5 SCC 371 has held as under :-

â??6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.â??

Â Â Â Â Â Further, in para 12 of the judgment, it is held as under:

â??The word â??instigateâ? denotes incitement or urging to do some drastic or

inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.â??

The Supreme Court in the case of Gangula Mohan Reddy vs. State of A.P. reported in (2010) 1 SCC 750 needs mentioned here. In which Hon'ble

Apex Court has held that:

â??abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing â?" Without a positive act on part of

accused to instigate or aid in committing suicide, conviction cannot be sustained â?" In order to convict a person under section 306 IPC, there has to

be a clear mens rea to commit offence â?" It also requires an active act or direct act which leads deceased to commit suicide seeing no option and

this act must have been intended to push deceased into such a position that he commits suicide â?" Also, reiterated, if it appears to Court that a victim

committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim

belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to

commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guiltyâ?

Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under

Section 306 made out â?" Hence, appellant's conviction, held unsustainableâ??.

In the case of State of W.B. vs. Orilal Jaiswal, reported in 1994 (1) SCC 73 , the Supreme Court has held as under:-

â??This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence

adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide.

If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite

common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly

circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that that accused

charged of abetting the offence of suicide should be found guilty.â??

The Supreme Court in the case of *M. Mohan vs. State* represented by the Deputy Superintendent of Police, reported in AIR 2011 SC 1238 has held

as under :-

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 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/she committed

suicide.

The Supreme Court in the case of *Kishori Lal vs. State of M.P.* reported in (2007) 10 SCC 797 has held in para 6 as under:-

6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the

doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of

that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The

word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation,

conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence

of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the

original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is

charged with the abetment is normally linked with the proved offence.

In the case of *Amalendu Pal @ Jhantu vs. State of West Bengal* reported in (2010) 1 SCC 707, the Supreme Court has held 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 their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

14. The expression "abetment" has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause "thirdly" of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"Explanation 2.- 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

act.â??

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly along with explanation 1 or more

particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case

within the purview of Section 306 IPC.â??

The Supreme Court in the case of *Amit Kapur vs. Ramesh Chander* reported in (2012) 9 SCC 460 has held as under :

"35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of*

Delhi) ((2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is

not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has

been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word

'instigate' used in Section 107 IPC has been explained by this Court in *Ramesh Kumar v. State of Chhattisgarh* ((2001) 9 SCC 618) to say that

where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no

other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of

the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the

circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. "

Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language,

direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

If the allegations made in the present case are considered, then it is alleged that the applicants had levelled an allegation, that the deceased had

committed theft of Rs. 300 from their shop and because of that, the deceased was beaten by the applicants also. It appears that the deceased Avtar,

felt ashamed or humiliated because of allegation of theft or because of beating

given by the applicants, and out of frustration or humiliation, he committed suicide by jumping in front of running train.Â

This Court in the case of Narendra Kumar Jain Vs. State of M.P., by order dated 11-1-2018 passed in M.Cr.C. No. 8514/2017 (Gwalior Bench) has

held as under :

"19.....It appears that the deceased felt insulted or was hurt because of the allegations of theft.Â Even if the entire allegations are accepted, it

cannot be inferred that the applicants had in any manner instigated or abetted the deceased to commit suicide. It appears that because of the

allegations of committing theft, the deceased must have felt insulted. It appears that the deceased was of hyper sensitive in nature. Instead of facing a

small and meaningless situation, he adopted the path of putting his life to an end. It is unfortunate that because of some unfortunate incident which

took place, the deceased could not tolerate his insult, but it cannot be said that the applicantsÂ in any manner had abetted or instigated the deceased to

commit suicide."

Thus, where an allegation of committing theft is levelled against a deceased, and even if he is beaten on the suspicion of committing theft, then by no

stretch of imagination, it can be inferred that the applicants had in any manner, abetted or instigated the deceased to commit suicide. Unfortunately, a

young boy lost his life, but it appears that he could not withstand or tolerate the humiliation suffered by him due to allegation of theft or beating.Â But

the act of the applicants cannot be said to be an abetment or instigation to commit suicide.

It is next contended by the Counsel for the State that as there is an allegation of beating the deceased also, therefore, a charge under Section 323 of

I.P.C. would be made out.Â True it is, that the allegations of beating would certainly make out a charge under Section 323 of I.P.C., but the said

offence is noncognizable.

Accordingly, the charge sheet filed by the police station Kurwai, Distt. Vidisha, in Crime No.269/2017 against the applicants for offence under Section

306 read with Section 34 of I.P.C. is hereby quashed.

The application succeeds and is hereby allowed.