
(2004) 05 CHH CK 0001
In the Chhattisgarh High Court
Case No : Criminal Revision No. 1350/98

Rakesh Vaishnav

APPELLANT

Vs

State of Madhya Pradesh (now Chhattisgarh)

RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Penal Code, 1860 (IPC) — Section 107 , 306

Citation : (2004) 1 CGLJ 324 : (2004) 3 MPHT 65

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Ashok Vaishnav, for the Appellant; Bhaskar Pyasi, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—The accused/applicant has preferred this criminal revision being aggrieved by the order dated 10-10-1998, passed by the 2nd Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No. 316/98, whereby the learned Additional Sessions Judge after perusal of the record ordered for framing of charge for commission of offence u/s 306 of the IPC against the accused/applicant and accordingly, he framed the charge.

2. Brief facts giving rise to filing of this criminal revision are that on 19-4-1998, Sub Inspector R.M. Tiwari of Police Station, Baloda Bazaar, received information from the Government Hospital, Baloda Bazaar, that Sanjay Vaishnav, aged about 27 years, resident to Village Risda, was brought to the hospital in unconscious condition and he expired at about 12.10 p.m. He had died on account of consumption of poisonous substance namely, pesticides. On receiving this report, Merg was entered at Serial No. 23/98 and investigation was conducted. During the investigation, it came on record that the behaviour of present accused/applicant Rakesh Vaishnav, who is the elder brother of deceased Sanjay Vaishnav, was not good towards his younger brother Sanjay Vaishnav (since

deceased) and on the fateful day, i.e., 19-4-1998 some dispute took place between the accused and the deceased about distribution of the sale amount of paddy, as a result of which the accused/applicant assaulted Sanjay, therefore, Sanjay committed suicide by consuming pesticides. Upon this, police registered a case for commission of offence punishable u/s 306 of the IPC and after completion of the investigation charge-sheet was filed against the accused/applicant.

3. The learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and Counsel for the accused and after perusal of the record was of the opinion that prima facie offence u/s 306 of the IPC was made out against the accused/applicant. Therefore, the learned Additional Sessions Judge framed charge against the accused/applicant for commission of offence punishable u/s 306 of the IPC.

4. I have heard Mr. Ashok Vaishnav, learned Counsel for the applicant and Mr. Bhaskar Pyasi, Panel Lawyer for the State/non-applicant.

5. Learned Counsel for the accused/applicant argued that even if the prosecution evidence is taken as it is on the face of it without cross-examining the witnesses, even then, the ingredients of constituting the offence u/s 306 of the IPC are missing. Therefore, no charge could have been framed against the accused/applicant.

6. On the other hand, learned Panel Lawyer appearing on behalf of the State/non-applicant supported the order of the Trial Court.

7. In this connection, if we look into the relevant provisions, in order to constitute the offence u/s 306 of the IPC, it is necessary that there must be some evidence that the accused has abetted the deceased to commit suicide. Section 306 of the IPC says that:--

"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."

Section 107 of the IPC defines the abetment, which lays down that:--

"a person abets the doing of a thing who - 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, is said to have been committed the abetment."

Therefore, in order to constitute the offence u/s 306 of the IPC it is necessary that the accused must have instigated the person who has committed suicide or intentionally aided by any act or illegal omission for doing of that thing. The Hon"ble Apex Court in the matter of Ramesh Kumar Vs. State of Chhattisgarh, ,

has held that:--

"Instigation is to good, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow can not be said to be instigation. If it transpires to the Court that a victim committing suicide was hypersensitive or 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 excepted 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 the accused charged of abetting the offence of suicide should he found guilty."

Further, in the matter of Sanju alias Sanjay Singh Sengar v. State of M.P., reported in 2002 SCC 1141, the Hon"ble Apex Court held that :--

"Instigating a person to do a thing-- Held, "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite-- Presence of mens rea is the necessary concomitant for instigation-- Words uttered in a quarrel or on the spur of moment, such as "to go and die", can not be taken to be uttered with mens rea-- Quarrel taking place between appellant and deceased in which appellant was said to have told the deceased "to go and die"-- Deceased found dead two days later-- Held, suicide was not proximate to the quarrel though the deceased was named in the suicide note-- Hence suicide was not the direct result of the quarrel when the appellant used abusive language and told the deceased to go and die."

8. For framing of charge, the Hon"ble Apex Court in the matter of State of M.P. Vs. S.B. Johari and Others, has held that :--

"At the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, can not show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial."

In the matter of Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , the Hon''ble Apex Court has held that:--

"At the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for the limited purpose, but it is not required to marshal it with a view to decide the reliability thereof."

In the matters of State of Bihar Vs. Ramesh Singh, and Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , the Hon''ble Apex Court has held that:--

"It seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material 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. The Court may for this limited purpose shift the evidence as it can not be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

Therefore, in view of the above, at the stage of framing of the charge the Court is required to evaluate the material evidence and to find out as to whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. In order to constitute the offence u/s 306 read with Section 107 of the IPC it is necessary that the prosecution must prima facie establish by the evidence that the accused/applicant had instigated the deceased by his acts or illegal omission or with continued course of conduct which compelled the deceased to commit suicide and the deceased was left with no alternative but to commit suicide. However, if the victim committing suicide was hypersensitive to ordinary petulance, discord and differences 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 the accused charged of abetting the offence of suicide should be found guilty. The act or instigation of the accused and committing of the suicide by the deceased must be so direct, correlated, immediate and proximate with each other that on the facts it can safely be inferred that the deceased has committed suicide only on account of instigation, inducement, abetment and provocation given by the accused and the act and instigation caused by the accused were so imminent that the deceased was not left with any other alternative but to commit suicide and, in the given facts and circumstances of the case, a man of ordinary prudence in the ordinary course of nature is not left with any other alternative but to commit suicide. Intention or knowledge of the accused, i.e., mens rea that by his act or instigation, the deceased has committed suicide as a result of abetment by the accused is necessary.

Mere harassment or indecent behaviour of the accused towards the deceased, as

a result of which abruptly the deceased ends his life by committing suicide, is not sufficient to constitute the offence. The alleged act of the accused in subjecting the deceased to harassment could be the cause for him to commit suicide, but that certainly would not amount to "abetment" to commit the same, unless and until the ingredients of Section 107 of the IPC regarding the abetment are satisfied.

9. In the light of the above principles, if we look into the facts of the present case, even if we take the prosecution case as it is, there was some dispute between the deceased and the accused, who is the elder brother of the deceased, regarding distribution of the sale amount of paddy and during that process, as per the prosecution case, the accused/applicant slapped the deceased, feeling frustrated the deceased consumed pesticides and committed suicide. In my opinion, these facts do not constitute abetment as per the principles enunciated by the Hon"ble Apex Court in the above cited cases, because in this case, the intention of the accused to abet the deceased for committing suicide is missing. Even the father of deceased has stated that since last few days deceased Sanjay was asking for some amount for making payment to the labourers and others as he was constructing one shop at Baloda Bazaar and his father has further stated that the deceased was an emotional person, and even once deceased Sanjay said if the amount is not immediately paid to him he would take unusual steps and thereafter he himself came to them and started repenting and weeping. As per the statement of Deepak Vaishnav, who is a shopkeeper of provisional stores, he purchased 15 bags of paddy from the accused/applicant and when the payment of the same was made to the deceased as the deceased was asking that he has to make payment to the labourers, the accused/applicant asked him that the payment ought to have been made to him, why the payment has been made to Sanjay. The perusal of the statement of Dinesh Vaishnav, who is the brother of the accused and the deceased, reveals that same story, but he has stated that only unpleasant words were used by the accused and even he has not stated that the accused had beaten the deceased. Rajesh Vaishnav, who is the elder brother of the deceased and the accused, has simply stated that the deceased was asking for money, but the behaviour of the accused was somewhat indifferent towards the deceased and on account of that Sanjay used to remain disturbed.

10. Therefore, in view of the above facts and circumstances of the case, the element of abetment as defined u/s 107 of the IPC and interpreted by the Hon"ble Apex Court in the above judgments, was missing in this case. Hence, the order passed by the learned Additional Sessions Judge can not be sustained. In the circumstances, the conclusion of the learned Additional Sessions Judge that the accused/applicant abetted the deceased, as a result of which Sanjay committed suicide, is not legal. Even if the prosecution case is accepted in totality as it is, on the face of it, the essential ingredients to constitute offence u/s 306 of the IPC are missing.

11. In the result, the criminal revision is allowed and the impugned order dated 10-10-1998 is quashed.