
(2012) 03 BOM CK 0250
In the Bombay High Court
Case No : Criminal Appeal No. 6 of 2012

Ramdas Ajinath Bhandwalkar	Vs	APPELLANT
The State of Maharashtra and Ganesh Sawant		RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 372
Penal Code, 1860 (IPC) — Section 107, 306, 506

Citation : (2012) BomCR(Cri) 406 : (2012) CriLJ 2497

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Abhijit S. More, for the Appellant; Y.M. Kshirsagar, APP for Respondent No. 1. and Mr. M.S. Patil Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Thipsay, J

1. This is an appeal filed by the appellant above named, purportedly, under the proviso to Section 372 of the Code of Criminal Procedure. The appellant claims to be a victim, as defined under clause 2 (wa) of the Code. The facts of the case, as alleged by the appellant, are in brief, as follows;-

a) The appellant's daughter, Jyoti, who was of 16 years age and was studying in 10th standard, was found missing on 27.12.2009. A search for Jyoti was taken, but she could not be seen in the vicinity.

b) On 1.1.2010, the dead body of Jyoti was found floating in a well situated at about 300 to 400 ft away from the house of the appellant. The police registered an accidental death and conducted an enquiry, as contemplated u/s 174 of the Code.

c) Four days thereafter i.e. on 4.1.2010, the appellant lodged a report with the police, making allegations against the respondent no. 2. The appellant alleged that the respondent no. 2 used to ask Jyoti to marry him and was giving her

threats. According to the appellant, Jyoti used to state this to him and others. His allegation against the respondent no. 2 was that because of the torture caused by him to Jyoti, Jyoti had committed suicide.

d) On this allegation, a case in respect of offences punishable under Sections 306 and 506 of the I.P.C. was registered and investigation commenced. The respondent no. 2 was arrested and prosecuted.

2. The learned Additional Sessions Judge, Osmanabad, however, held that the prosecution had failed to prove the guilt of the respondent no. 2 and passed an order of acquittal.

It is being aggrieved by the said order of acquittal, the appellant, in his capacity as the victim, has filed the present appeal, as the State of Maharashtra, has not thought it fit to challenge the order of acquittal.

3. I have heard Mr. More, the learned advocate for the appellant, whose emphasis is on the improper appreciation of evidence, as done by the learned Sessions Judge. According to him, the evidence adduced during trial was not properly appreciated and therefore, the conclusions arrived at by the learned Sessions Judge, are not proper or legal.

4. However, this appeal can be disposed of without going into the question of the correctness of the appreciation of evidence, as done by the learned Sessions Judge. It is because on the facts alleged, it is not possible to hold that the respondent no. 2 can be said to have abetted commission of suicide by Jyoti.

5. The concept of abetment is found in Section 107 of the I.P.C. It reads as under:-

Section 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.

6. Thus, there are three modes in which the doing of a thing can be done abetted :- i.e.

i) by instigating a person to do that thing, or

ii) by engaging with one or more other person or persons in any conspiracy for doing of that thing, or

iii) by intentionally aiding the doing of that thing, by an act or illegal omission.

7. Clearly, in this case, the modes covered by the clauses "secondly" and "thirdly" of Section 107 of the I.P.C. are out of question. The only question will

be whether the respondent no. 2 can be said to have instigated Jyoti to commit suicide.

8. If the concept of abetment is examined, it cannot be doubted that it requires mens-rea on the part of the abettor. A person abetting the doing of a thing must intend happening of that thing. Thus, in this case, the respondent no. 2 can be said to have abetted the commission of suicide by Jyoti only if, by his acts he intended that Jyoti should commit suicide. Now, the acts, which are attributed to him, are repeatedly asking Jyoti to marry him. It is obvious that the respondent no. 2 liked Jyoti and wanted her to marry him. It would be absurd even to suggest, that by making requests to Jyoti that she should marry him, the respondent no. 2 intended that Jyoti should commit suicide. Not only such intention cannot be attributed to the respondent no. 2, but even that he could foresee that Jyoti would commit suicide, cannot be suggested seriously. This is so obvious, that it does not require any further elaboration.

9. Mr. More, the learned advocate for the appellant submitted that Jyoti had, indeed, committed suicide because of the insistence of the respondent no. 2 that she should marry him, and because of his giving threats to her.

10. It may be observed that, why Jyoti committed suicide is basically an inference drawn by the parents. Since no suicide note was left by Jyoti, why exactly she committed suicide is not clear. Moreover, that the death of Jyoti was suicidal is itself an inference drawn by the parents; and the learned Sessions Judge has doubted this aspect of the matter also - not without reasons.

11. However, even without going into this aspect, it may be observed that even if it is held (just for the sake of arguments and without examining whether there was satisfactory evidence to hold so) that Jyoti committed suicide; and that it was because of the torture caused to her by the acts of respondent no. 2; the respondent no. 2 cannot be held to have abetted commission of suicide by Jyoti. The legal position in that regard is well settled. As discussed earlier, the respondent no. 2 cannot be attributed with the necessary mens-rea. Any doubt with regard to this legal position can be removed by referring to the undernoted cases :-

- (i) Manish Kumar Sharma Vs. State of Rajasthan,
- (ii) Vedprakash Tarachand Bhairji Vs. State of Madhya Pradesh,
- (iii) Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh,
- (iv) Cyriac Vs. S.I. of Police,
- (v) Ramesh Kumar Vs. State of Chhattisgarh,

12. Apart from this, the appreciation of evidence, as done by the learned Sessions Judge does not seem to be suffering from any error or illegality. The F.I.R. came to be lodged after four days from the date on which the dead body of Jyoti was discovered. Rajkanya (P.W.2), a friend of Jyoti, did not support the

theory of respondent no. 2 having given threats to Jyoti. Even otherwise, the story of threats does not seem to be likely, in the background of the fact that no report in that regard had been lodged with the police and further, that even after the dead body of Jyoti was discovered, no report was lodged against the respondent no. 2 immediately.

13 The reasoning of the learned Sessions Judge is proper and legal.

14. Thus, looked at from any angle, there is no merit in this appeal, which deserves to be summarily dismissed. Ordered accordingly.