
(2018) 03 MP CK 0125
In the Madhya Pradesh High Court
Case No : MCRC 11138 OF 2017

Ramsingh Yadav	Vs	APPELLANT
State Of Mp & Anr		RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

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

Citation : (2018) 03 MP CK 0125

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

Bench : Single Bench

Advocate : Anshu Gupta, Devendra Chaubey

Final Decision : Allowed

Judgement

This application under Section 482 of CrPC has been filed for quashing the FIR in Crime no.258/2016 registered at Police Station Shamshabad,

District Vidisha for the offence punishable under Section 306/34 of IPC as well as consequential criminal proceedings.

The necessary facts for the disposal of the present application in short are that an information was given to the Police Station by the Community

Health Centre, Shamshabad, District Vidisha to the effect that one patient (boy) was brought to the hospital as he had consumed some poisonous

substance and during treatment, the said boy has expired. It is not out of place to mention here that applicant, who is the father of the boy, who had

committed suicide, had taken him to the hospital. On this intimation, the police conducted marg enquiry. The dead body of the deceased Sunil Yadav

was sent for postmortem. The statements of the witnesses were recorded. Statements of Pratap Singh, the material father-in-law of the deceased and

other maternal uncles of the deceased were recorded. It is alleged that Rukmani Bai was married to the applicant.Â Rukmani Bai has expired and at

the time of her death, deceased Sunil Yadav was aged about 5-6 months old. After death of Rukmani Bai, the applicant i.e. father of the deceased

Sunil Yadav, performed second marriage with Rekha Bai from whom he has two boys. Thereafter, the deceased Sunil Yadav was married to one

Puja Bai and has a girl child. Later on, Puja Bai, who is wife of the deceased Sunil Yadav, also committed suicide. The deceased Sunil Yadav used to

tell his maternal relatives that his relations with the applicant Ram Singh and stepmother Rekha Bai are not cordial and, therefore, he left his child with

his maternal grand-father and went to Vidisha for doing labour work. It was alleged that on 19/11/2005, the deceased Sunil Yadav came to his house

to take his belongings but his father Ram Singh/applicant and stepmother Rekha Bai did not allow him to take his belongings and it was alleged that the

father and the stepmother of the deceased was not giving the share in the property to the deceased Sunil Yadav and because of harassment at the

hands of the father and stepmother, the deceased has committed suicide.

It is submitted by the counsel for the applicant that even if the entire allegations are accepted, then it is clear that prima facie there is no ingredient of

abetment and, therefore, no offence under Section 306 of IPC is made out. The conduct of the applicant cannot lead to an inference that the applicant

had abetted the deceased to commit suicide. To buttress his contention, the counsel for the applicant relied upon the judgment of the Supreme Court in

the case of Sanju @ Sanjay Singh Sengar Vs. State of M.P. reported in (2002) 5 SCC 731.

Per contra, it is submitted by the counsel for the State that according to the prosecution case, the deceased Sunil Yadav was demanding his share in

the property and on 19/11/2015, he came back to his house, to take his belongings but the applicant did not allow the deceased to take his belongings

with him, as a result of which the deceased was left with no other option but to put to an end of his life and, therefore, at this stage, it can be inferred

that the applicant and the co-accused had abetted the deceased to commit suicide.

Heard the learned counsel for the parties.Â

The moot question is that even if the entire allegations are accepted as they are,

then whether can it be said that the applicant has committed an offence of abetment of suicide.

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

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."

Abetment is defined under Section 107 of I.P.C. which reads as under :

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 1.—"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.—"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."

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

term "instigation" held as under :-

16. 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 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 'instigation' 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 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goading' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction' or 'to keep irritating or annoying somebody until he reacts'.

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

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 in (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??

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 750Â 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 circumstances 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:-

“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”

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.'

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith 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.'

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 would be clear that after the death of the mother of the deceased Sunil Yadav, the

applicant performed second marriage. There is no allegation that the applicant had not taken care of the deceased properly or had shown any

negligence in his upbringing. According to prosecution case, the mother of the deceased Smt. Rukmani Bai died when the deceased Sunil Yadav was

5-6 months old. Although the applicant has two children from second wife but in absence of any evidence to the effect that the behaviour of the

applicant was cruel towards the deceased right from the date of his second marriage, it cannot be said that the applicant had ever ignored the

deceased. The only allegation is that the relations of the deceased were not cordial with the applicant and his step mother. The another allegation is

that the deceased was asking for his share in the property which was denied by the applicant. If a person commits suicide because of his father has

refused to give any share in the property, then it cannot be said that the deceased was abetted by his father to commit suicide. By no stretch of

imagination, it can be inferred that by refusing to give share in the property by his father (applicant) to the son, such act in any manner, would amount

to abetment to commit suicide. This Court by order dated 18/09/2017 passed in MCRC 3448/2017 has quashed the proceedings against Rekha Bai

who is the stepmother of the deceased.

Thus, considering the totality of the circumstances, this Court is of the considered opinion that even if the entire allegations are accepted, then there is

no prima facie material to show that the applicant in any manner had abetted the deceased Sunil Yadav to commit suicide. The FIR in Crime

No.258/2016 registered at Police Station Shamshabad, District Vidisha for the offence punishable under Section 306/34 of IPC as well as charge-

sheet filed against the applicant for the offence under Section 306/34 of IPC and

criminal proceedings pending against the applicant are hereby quashed.

The application succeeds and is hereby allowed.