

(2009) 05 AHC CK 0036
In the Allahabad High Court
Case No : Criminal A. No. 1032 of 2006

Santosh alias Neetoo and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 107, 306, 323, 452, 504

Citation : (2009) 3 ACR 2620

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : Ashok Kumar Sharma, B.K. Srivastava and Dheeraj Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

R.N. Misra, J.—The Appellants Santosh alias Neetoo, Sanjay and Sangam alias Pintu have been convicted for the offences punishable under Sections 452, 323, 504, 506 and 306, I.P.C. and different sentences have been passed against them by the learned trial court (Addl. Sessions Judge, F.T.C. No. 1), Mathura, in S.T. No. 288 of 2000 vide judgment and order dated 23.2.2006 and they have preferred this appeal against the same. The sentence awarded u/s 306, I.P.C. is 5 years R.I. with fine Rs. 5,000 each, u/s 452, I.P.C., 3 years R.I. with fine Rs. 2,000, u/s 323, R.I. for two months with fine Rs. 500 and in default of payment of fine different imprisonment sentences have been passed. All the sentences have been ordered to run concurrently.

2. The facts giving rise to this case are as under:

That the complainant-informant Vinod Kumar Maheshwari was residing in mohalla Manasnagar of Mathura city, which was under the police station Krishna Nagar and the accused-Appellants were residing in mohalla East Shantinagar, Mohali Road, Mathura. The unfortunate day for the complainant-informant was 14.5.1999. The Appellant Santosh alias Neetoo reached the house of complainant informant at 4 p.m. and asked him to marry his daughter Kiran with him, failing

which the threats for dire consequences were given including burning of his house. The complainant-informant did not concede his demand. On the same day at about 6 p.m. all the Appellants reached the house of complainant-informant and abused him. They also assaulted his son Vishnu by entering his house. When the family members resisted they create ugly scene in the mohalla causing too much insult to the family. Km. Kiran daughter of the complainant-informant was inside the house and aggrieved by this incident she committed suicide by hanging herself. She was rushed to the hospital but died on the way. The complainant-informant reported the matter to the police vide Ext. Ka-3. The police registered a case on Crime No. 438 of 1999 against the Appellants under Sections 323, 504, 506, 452 and 506, I.P.C. as is evident from check report Ext. Ka-4. The police sealed the dead body of Km. Kiran and after completing the formalities, sent it for autopsy. The post-mortem report is Ext Ka-7. The cause of death was asphyxia as a result of ante-mortem hanging. The injured Vishnu was examined in District Hospital, Mathura. His injury report is Ext. Ka-6. The Investigating Officer visited the spot and prepared the site plan Ext. Ka-8, recorded statement of witnesses and submitted charge-sheet against the Appellants.

3. The Appellants were charged for the offence punishable under the aforesaid Sections. They denied the allegations levelled against them and alleged their false implications in this case. The Appellant Santosh alias Neetoo has stated that his family had close relations with the complainant's family. He wanted to marry Km. Kiran but her parents were not agreeable and were torturing her, due to which she committed suicide. In defence the Appellants have examined S. K. Sharma alias Bhutani D.W. 1 and Om Bihari D.W. 2.

4. In support of its case the prosecution has examined Mukesh Kumar P.W. 1, Samir Chaudhary P.W. 2 as eye-witnesses of inquest. P.W. 3 is Manoj Sharma, the witness of memo of rope with the help of which the deceased had committed suicide. P.W. 4 V. K. Maheshwari, P.W. 5 Smt. Indu Maheshwari and P.W. 6 Vishnu Maheshwari are the witnesses of fact. P.W. 7 is constable Munna Lal, who had prepared the check report and made entry in the G.D. P.W. 8 is Dr. V. S. Agnihotri, who had examined the injuries of Vishnu Maheshwari. P.W. 9 is Dr. Hira Singh, who had conducted autopsy on the dead body of Km. Kiran and P.W. 10 is Sub-Inspector Ashok Kumar, who had investigated the case and submitted charge-sheet against the Appellants.

5. After hearing the parties and considering the evidence on record, the learned trial court came to the conclusion that the charges against the Appellants were proved and convicted them as disclosed earlier, against which this appeal.

6. I have heard learned Counsel for the Appellants and learned A.G.A. for the State and gone through the evidence on record.

7. In this case the identity of the accused-Appellants was not disputed. Admittedly, the complainant-informant Vinod Kumar Maheshwari was residing in

Mohalla Manasnagar at the time of incident and the Appellants were residing in mohalla East Shantinagar, Mathura. The motive behind the occurrence as alleged by the prosecution was that the Appellant Santosh alias Neetoo wanted to marry Km. Kiran, daughter of the complainant-informant for which he did not agree. This fact is admitted by P.W. 4 Vinod Kumar Maheshwari also at page 5 in his statement on oath. Nowhere in the F.I.R. Ext. Ka-1 this fact has been disclosed that prior to the incident in question also the Appellant Santosh was harassing and torturing Km. Kiran for marriage. But in his statement on oath before the Court, the complainant has stated that Km. Kiran was being harassed by Santosh on the way to the school and he had persuaded him for not doing so, but he did not listen. However, no report was made by the complainant due to the prestige of the family. The complainant-informant has further stated in his cross-examination that there was no intimacy or any relations between his family and the family of Appellants. Some photographs were filed by the accused persons. P.W. 4 V. K. Maheshwari, P.W. 5 Smt. Indu Maheshwari and P.W. 6 Vishnu Maheshwari, the son of complainant-informant have identified some of the photographs in which the deceased Km. Kiran and P.W. 5 Indu Maheshwari were appearing. The accused-Appellant Santosh alias Neetoo says that both the families were acquainted with each other and before the incident in question they were living somewhere else and participating in each family functions. This fact has been admitted by P.W. 4 also that when he was living in the rented house in some other mohalla the accused persons were his neighbours. These are the facts which show intimacy between the two families.

8. Admittedly, the accused Santosh alias Neetoo was pressing the complainant-informant and his family members for his marriage with Km. Kiran but they were not agreeable. P.W. 4 V. K. Maheshwari says that Km. Kiran had also not agreed for this marriage. However, there is nothing on the record from the side of Km. Kiran in writing. She did not leave any suicide note. From the statements of P.Ws. 4, 5 and 6, it is crystal clear that on the unfateful day, i.e., 14.5.1999 at about 4 p.m., the accused-Appellant Santosh alias Neetoo came to the house of complainant-informant and asked him to settle the marriage of his daughter with him, failing which he gave threats of dire consequences. He also stated that he would put his house ablaze. On the same day at about 6 p.m. all the Appellants again came to the house of complainant-informant and insisted for marriage of Km. Kiran. When protest was made by the complainant-informant and his family members they entered his house and assaulted his son Vishnu, who sustained injuries. Anyhow, family members ousted them. They created ugly scene in the mohalla causing insult of the family. Ext. Ka-6 proved by Dr. V. S. Agnihotri shows that Vishnu had sustained injuries in the incident in question. There were two contusions and one abrasion on his body. The injury No. 4 complaint of pain in the abdomen was kept under observation and referred to surgeon, but nothing is on the record about the opinion of the surgeon. The post-mortem report Ext. Ka-7 shows that the deceased Km. Kiran died due to hanging. There was ligature mark in the size of 24 cm. x 1 cm. around neck, that was the cause of death.

However, none of the witnesses of mohalla was examined to prove the incident in question. The reason was very clear that at the time of evidence the complainant-informant had already left that mohalla and began to reside somewhere else. In such circumstances no residents of mohalla had any interest in the complainant-informant. However, nowhere in the F.I.R. there was mention of this fact that the complainant-informant and his family members had refused to marry his daughter with Appellant Santosh alias Neetoo because he was drunkard and bad character man. But in the evidence P.W. 1 had said so. It is clear from the evidence on record that for some reasons the complainant-informant was not in a mood to marry his daughter with the Appellant Santosh alias Neetoo, so he was aggrieved from him. The witnesses of fact have clearly proved this fact that the Appellants abused and gave threats to the complainant-informant and his family members and assaulted Vishnu. They also caused insult to the family by creating ugly scene in the mohalla at the house of the complainant-informant. The marpeet was committed by entering the house of the complainant-informant. The defence of the Appellant is not believable that entire incident was false.

9. The Appellants have examined Sunil Kumar Sharma D.W. 1 and Om Bihari D.W. 2, who have stated that the complainant-informant had settled the marriage of his daughter Km. Kiran somewhere in Jaipur, but the girl was not willing to marry there. She was resisting that marriage and there was tension in the family. These persons have claimed the well-wishers of the complainant-informant. From the evidence on record it transpires that there was something wrong with the deceased regarding her marriage. It also appears that she was not willing to marry there to fulfil the wishes of the parents. The accused persons say that Km. Kiran was willing to marry with the Appellant Santosh alias Neetoo, but her family members were not agreeable and that is why she committed suicide.

10. The learned Counsel for the Appellants has contended that no element of abetment is proved against the Appellants. Nowhere it has come in the evidence that the deceased was ever instigated by the Appellants for committing suicide. The evidence on the record show that Santosh alias Neetoo was willing to marry with the deceased and naturally he would have wanted a long life for her. There is nothing on the record to show any act of the Appellants for instigating the deceased to commit suicide. From the side of the prosecution the case of Pothyamsetti Satyanarayana Reddy and Others Vs. State of A.P., has been cited in which the suicide note of the deceased girl was treated as dying declaration u/s 32 of the Evidence Act. In the present case before me, there is no such suicide note. The abetment has been defined u/s 107 of the Indian Penal Code, which runs as under:

Abetment of a thing:--A person abets the doing of a thing, who--

First.-- Instigates any person to do that things ; or Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if

any 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.

Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does any thing in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

11. The abetment of suicide is punishable u/s 306 of the Indian Penal Code. There was no intention of Santosh alias Neetoo to instigate the deceased for committing suicide, rather he was persuading her parents to marry her with him. From a combined reading of Sections 306 and 107, I.P.C. it is clear that the offence of abetment depends upon the intention of the person who instigates. Therefore, the gist of the offence of abetment is the intention to aid the commission of suicide. In the absence of necessary intention no offence under this section can be said to have been made out. In order to bring the case within the four corners of abetment there must be mens rea or community of intention. Without knowledge or intention there can be no abetment and the intention and knowledge must relate to the commission of suicide and assistance must be something proximate and something more than a mere passive acquiescence. In the case of *Netai Dutta v. State of West Bengal* AIR 2005 SC 1775: 2005 (2) ACR 975 (SC), the Apex Court has opined that for instigation of suicide there must be intention and some positive act. In that case the employee of private company was transferred to some inconvenient place where he did not join and after some gap he committed suicide. It was alleged by the prosecution that there was harassment from the side of the company and that is why the employee committed suicide. Under these circumstances, it was held that there was no abetment merely by transferring the employee to some inconvenient place and no offence u/s 306, I.P.C. was made out. In the case of *Bhagwan Das Vs. Kartar Singh and Others*, it was held that mere harassment by husband was not abetment for the wife to commit suicide, when the harassment was not for the demand of dowry. The abetment involves a mental process of instigating a person or intentionally aiding that person in doing a thing. More active role which can be described as instigating or aiding the doing a thing, thus, required before a person can be said to be abetting suicide. In the case of *Sohan Raj Sharma Vs. State of Haryana*, , the wife was tortured and harassed by the husband for sex in many ways and she consumed poison. No abetment of suicide was held in that case. Similarly in the case of *Rajababu and Ors. v. State of Madhya Pradesh* AIR 2008 SC 3112: 2008 (3) ACR 2510 (SC) , the deceased wife wanted to marry in some literate family. She was not happy with the fact that her husband was illiterate and also with the status and condition of the family of her husband. She

was also required to do some domestic work as the family was poor, for which she was not happy. The deceased was of the view that her life had been spoiled. She left the suicide note and committed suicide. On such slender evidence, it was held that there was no persuasion or abetment from the side of the husband for committing the suicide.

12. The case before me is that the accused Santosh alias Neetoo wanted to marry Km. Kiran daughter of complainant-informant for which he was not agreeable. However, there is nothing on the record that the deceased was either willing or not to marry with Santosh alias Neetoo. As I have discussed earlier that the evidence indicates that the parents had settled the marriage of deceased somewhere else and she was not willing to marry there. Though there is no clear evidence that the deceased was in love with Santosh alias Neetoo but certainly there were close relations between the two families as were shown in the photographs identified by the complainant-informant, his wife and son. There was something wrong with the girl. Nowhere it has come in evidence that the accused Santosh ever harassed or tortured the girl for marriage rather he was persuading her parents and family members for marriage. The accused-Appellant Santosh alias Neetoo would have never wanted the death of a girl with whom he wanted to marry. Certainly, he would have wanted a long and prosperous life for her. No act was done for instigating the deceased to commit suicide. It appears that the girl was so sensitive that by the mere incident of marpeet she committed suicide. This was not under the purview of Section 107, I.P.C. The evidence on record show that on the fateful day the deceased was not present on the scene but she was inside the house where she committed suicide.

13. In view of above, I am of the opinion that no offence u/s 306, I.P.C. is made out against the Appellants and their convictions u/s 306, I.P.C. is unwarranted. But for the remaining offences the charges are proved and sentences awarded by the learned trial court need no interference. Consequently, the appeal is partly allowed and partly dismissed. The conviction and sentence awarded by the learned trial court u/s 306, I.P.C. against the Appellants are set aside but the conviction and sentences awarded for the remaining offences are in accordance with the evidence on record and in that respect the appeal is dismissed.

14. The Appellant Santosh alias Neetoo is in jail and the remaining accused Sanjay and Sangum alias Pintu are on bail. Their bail bonds are cancelled and sureties are discharged. Issue non-bailable warrants of arrest against the Appellants No. 2 and 3 Sanjay and Sangum alias Pintu to send them jail to serve out the sentences awarded by the learned trial court and confirmed by this Court.

Let a copy of this judgment be sent to C.J.M., Mathura for information and compliance.

Report be submitted within six weeks.