
(2004) 04 MP CK 0012

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 456 of 1996

Santosh Vishwakarma and Another

APPELLANT

Vs

State of M.P. (Now Chhattisgarh)

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2004) 04 MP CK 0012

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

Bench : Single Bench

Advocate : V.C. Ottalwar and Mr. Arun Kochar, for the Appellant; Bhaskar Pvasi, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—The accused/applicants have preferred this criminal revision u/s 397 read with Section 401 of the Cr. P.C. being aggrieved by the order dated 16.5.1996 passed by the Additional Sessions Judge, Bilaspur, in Sessions Trial No. 454/ 1994, whereby the learned Additional Sessions Judge after hearing the Advocate for the accused Prosecutor and after perusal of the record reached the conclusion that prima facie offence u/s 306 read with Section 34 of the I.P.C. was made out against the accused persons and accordingly, he framed the charge for the said offence against the accused/applicants.

2. Brief facts relevant for the disposal of this criminal revision are that on 5.12.1994 at about 7.30 in the evening, Kartikram Dhruv lodged a missing report of his son Anand Kumar Dhruv at the Police Station: Sarkanda, which was registered at Serial No. 5/94 and on 6.12.1994 a railway gang man lodged a report at the Police Station: Civil Lines, that one dead body of unknown person is lying on the railway track. The merge was registered at Serial No. 75/94. The Police reached the place of occurrence and prepared Panchnama of the dead body, and post-mortem, of the dead body was got conducted. On 17.12.1994.

The Police reached the place of occurrence and prepared Panchnama of the dead body, and post-mortem of the dead body was got conducted. ON 17.12.1994, Kartikram Dhruv identified the clothes and the cycle and said that these clothes and cycle are of his son Anand Kumar Dhruv. ON the basis of the missing report and merge report, enquiry was conducted and it was found that on 4.12.1994 at about 6 p.m. when deceased Anand Kumar Dhruv along with Manoj Dhruv was strolling, on the way, Khageshwar, one of the accused came on the cycle and hit the cycle on the leg of Anand Kumar Dhruv, on which Anand Kumar Dhruv raised objection. On this, Khageshwar alongwith the present accused/applicants namely Santosh Vishwakarama & Manoj Singh beaten Anand by slaps and fists and they also threatened to kill him. Thereafter, Anand Kumar Dhruv came to his residence and after taking the bicycle left the house, at that time, his mother and sister were present at the residence. Thereafter, Anand Kumar Dhruv did not return, therefore, the missing report was lodged by Kartikram Dhruv at the Police Station and ultimately on 17.12.1994 after receiving the report from Police Station: Civil Lines, he reached there and identified the clothes and cycle that they were of his son. On investigation, it was found that Anand Kumar Dhruv could not tolerate the beating of Khageshar, Santosh Vishwakarma & Manoj Kumar, he committed suicide by jumping before a running train. The Police registered the case against the accused/applicants and Khageshwar and after completion of the investigation filed charge-sheet against the accused persons for the commission of offence u/s 306 read with Section 34 of the I.P.C. After perusing the record and hearing the counsel for the parties, the learned Additional Sessions Judge framed the charge against the accused/applicants and accused Khageshwar as mentioned above :

3. I have heard the learned counsel for the parties.

4. Learned counsel for the accused/applicants submitted that even if the facts as mentioned in the F.I.R. and the evidence are taken on their face value as it is, even then, no prima facie offence against the accused/applicants was made out as the ingredients constituting the offence of abetment were missing. In fact, there was no instigation or abetment by the accused persons to the deceased to commit suicide.

5. On the other hand, learned Penal Lawyer supported the order of the trial court.

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

If any person commits suicide, whoever abets the commission of 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 I.P.C. 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 I.P.C. 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 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. 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 cannot be said to be instigation. If it transpires 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 the accused charged of abetting the offence of suicide should be found guilty.

Further, in the matter of Sanju alias Sanjay Singh Sengar v. State of M.P. 2002 SCC (Cri) 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", cannot 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.

7. For framing of charge the Hon"ble Apex Court in the matter of State of M.P. v. S.B. Johari and Others 2000 (1) JLJ 142 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 material 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, cannot 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 emergent 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 cannot be expected even at the initial stage to accept all that the prosecutions 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 I.P.C. it is necessary that the prosecution must prima facie establish with 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 basing a finding that the accused, charged of abetting the offence of suicide should be found guilty, (i) The act or instigation of the accused and committing of the suicide by the deceased must be so direct, co-related, 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, mens rea of the accused that by his act and instigation the deceased had committed suicide is also necessary.

8. If we look into the facts of the present case in the light of the above principle of law and the statements of the father, mother and sister of the deceased, it is admitted position that in the evening of 4.12.1994 Khageshwar hit his cycle on the leg of deceased Anand Kumar Dhruv to which he objected and thereafter, the present accused/applicants along with Khageshwar had beaten the deceased and also threatened him with dire consequences, as a result of which he went to his house and after taking the cycle left the house and he never returned, thereafter, his dead body was found on the railway track on 6.12.1994. Merely on the basis of the quarrel took place between the deceased and the accused persons had beaten the deceased does not constitute abetment. As has been mentioned in the earlier part of this order, in order to constitute the offence it is necessary that the accused must have provoked, incite or induced the deceased to commit suicide and that too with mens rea that as result of their act or instigation or inducement the necessary outcome was suicide by the deceased. Beating on account of quarrel and merely uttering the word on the spur of the moment with a threat of dire consequences without any mens rea, the act of the accused cannot be termed as abetment. The act of the accused must be such that the deceased was left with no alternative but to commit suicide. The act of the accused and committing of suicide must be so direct, proximate and co-related with committing of suicide and must be direct result of the instigation or act of the accused. These ingredients are missing in the present case.

9. Thereafter, the impugned order cannot be sustained. In the circumstances, it cannot be held that the accused/applicants abetted deceased Anand Kumar Dhruv to commit suicide. Even if the prosecution case is accepted in totality as it is on the face of it, the essential ingredients to constitute the offence u/s 306 of the I.P.C. are missing. Hence, the impugned order cannot be sustained.

10. In the result, the criminal revision is allowed and the order dated 16.5.1996 is quashed.