
(2006) 07 DEL CK 0154

In the Delhi High Court

Case No : Criminal Revision Petition 188 of 2005

Shri Kartar Singh and Others

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 107, 306, 34, 498A

Citation : (2006) CriLJ 4099 : (2006) 131 DLT 643 : (2006) 2 DMC 382 : (2006) 90 DRJ 734

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : O.P. Saxena, for the Appellant; R.M. Tiwari, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The petitioners are aggrieved by the order on charge dated 28.05.2005 as well as the formal charge framed on the same date by the learned Additional Sessions Judge whereby the petitioners have been charged of having committed offences (i) under Sections 498-A/34 IPC and; (ii) under Sections 306/34 IPC. The petitioners are the parents-in-law and two brothers-in-law of the deceased (Shobha). The said Shobha had committed suicide by hanging herself in the matrimonial home on 01.03.2000. She did not leave any suicide note. Her husband [Mangal Singh] with whom she was married on 23.01.1992 also tragically committed suicide in the year 2001. He was a handicapped person and was on a wheel-chair. It is stated that he committed suicide by driving his wheel-chair on to a railway line and he was hit by a moving train.

2. The facts as per the prosecution case in brief are that on the night intervening 1st and 2nd March, 2000, the deceased (Shobha) had committed suicide at about 2.00 a.m. by hanging herself from the ceiling of a room in the matrimonial home. It is alleged that she married Mangal Singh (since deceased) on

23.01.1992 and a girl child was born to them in the year 1999. Soon thereafter, in an accident, the said Mangal Singh became paralysed. As noted above, the deceased (Shobha) did not leave any suicide note. It is the case of the prosecution that after her marriage, Shobha was being taunted for bringing less dowry and was being harassed on account thereof. A sum of Rs. 50,000/- is alleged to have been given by her father a few days after her marriage to Mangal Singh for his business as he was allegedly unemployed. It is further the case of the prosecution that Mangal Singh squandered the said sum of Rs. 50,000/- in gambling and drinking and thereafter he raised a further demand of Rs. 2 lakhs which could not be fulfilled. The prosecution also alleges that Shobha was ill-treated and harassed by the present petitioners as she was not able to give birth to a child and this harassment continued till 1999 when she gave birth to a girl child as mentioned above. Till 1999, Shobha was being subjected to mental cruelty by being told that her husband would be married elsewhere. It is further alleged by the prosecution that since Mangal Singh, shortly after the birth of the girl child, was paralysed on account of the accident, the deceased (Shobha) was being taunted that she gave birth to a girl child which brought bad luck to the petitioners. It is these circumstances which, according to the prosecution, drove the said Shobha to commit suicide. On the basis of these allegations, the learned Additional Sessions Judge came to the following conclusion:

I am of the prima facie opinion that the cumulative effect of the prolonged ill-treatment and harassment of Shobha which compelled her to commit suicide.

3. The learned Counsel for the petitioners pointed out that the case of the prosecution, even if taken in its entirety and is assumed for the purposes of this petition to be established, does not disclose the offence u/s 306 IPC. He submitted that Section 306 IPC has to be read in the light of Section 107 IPC which defines "abetment". He submitted that the ingredients of Section 107 are not made out in the present case as there is no instigation or goading. Secondly, there is no allegation of any conspiracy and, thirdly, there is no intentional aiding in the doing of an illegal act. He also submitted that there is no suicide note in the present case. He referred to the following decisions:

i) Hira Lal Jain v. State 2000 (2) JCC 478;

ii) Netai Dutta Vs. State of West Bengal, ;

iii) Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh 2002 III AD (Cr.) SC 1.

4. He referred to these decisions to show that the ingredients of Section 306 were not made out in the present case and, Therefore, even if the entire case of the prosecution were to be believed, an offence u/s 306 IPC was not made out and, as such, the impugned order framing charges u/s 306 IPC was liable to be set aside. The learned Counsel for the petitioners also argued that the case u/s 498-A was also not made out even if all the allegations were taken to be true. He submitted that firstly, the allegations were directed against Mangal Singh, who

has also passed away. Secondly, he submitted that the allegations of cruelty and harassment continued till 1999. Therefore, because the child was born and because Mangal Singh became handicapped, the earlier allegations that no child was being born to the deceased (Shobha) and that Mangal Singh would be got married elsewhere did not survive thereafter. Thus, according to the learned Counsel for the petitioner, the charge u/s 498-A was also not made out.

5. Mr Tiwari, the learned Counsel appearing on behalf of the State, supported the order on charge as well as the charge framed. He submitted that at the stage of framing of charges, a detailed or in depth analysis of evidence is not required and if there is a grave suspicion of the offences having been committed, then the charge can be framed. He submitted that the harassment meted out to the deceased (Shobha) was to such an extent that it drove her to commit suicide and, according to him, this would, *prima facie*, be sufficient for the framing of charge u/s 306 IPC. He also submitted that it is not that the harassment or cruelty as alleged by the prosecution ended in 1999. With reference to the allegation that the birth of the girl child brought bad luck to the family, he submitted that these taunts and harassment continued even after 1999 as the birth of the child took place in 1999. The accident of Mangal Singh resulting in his becoming paralysed occurred thereafter. Therefore, the taunts continued well after 1999 right up to the death of Shobha on 01.03.2000.

6. In rejoinder, the learned Counsel for the petitioners submitted that insofar as the charge u/s 498-A is concerned, it appears that the same has been framed because the charge u/s 306 IPC was being framed. He submits that because the graver charge u/s 306 was being framed by the learned Additional Sessions Judge, he also thought it fit to frame charges u/s 498-A IPC. It is his contention that if the charge u/s 306 IPC is not to be framed, then the question of framing charges u/s 498-A might require a reconsideration.

7. Sections 306 and 107 IPC read 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.

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.

8. In *Hira Lal Jain (supra)*, a learned single Judge of this Court, after examining the provisions of Section 107, indicated that a reading thereof would make it

clear that the person who instigates another to do a thing, abets him to do that thing. A person is said to instigate another when he goads, provokes, incites, urges or encourages another to commit a crime. In that case, a suicide note had been left and the court was confronted with the question as to whether there was any material suggesting that the petitioner therein had incited the deceased to commit suicide. The court came to the view that the fact that the suicide note was recovered and from the contents thereof, it could not certainly be said that the petitioner had goaded, provoked, incited, urged or encouraged the deceased to commit suicide. After coming to this conclusion, the court was of the view that there being no material on record to show that the ingredients of the offence of abetment had been made out, the framing of charge u/s 306 IPC against the petitioner therein was bad in law. In that case, the deceased had committed suicide being dissatisfied with the conduct of his employer [Hira Lal Jain] and in his suicide note the deceased had held Hira Lal Jain responsible for his death. Despite this, the court came to the conclusion that the petitioner therein had not goaded, provoked or incited, etc. the deceased to commit suicide.

9. In *Netai Dutta* (supra), the Supreme Court was of the view that an offence u/s 306 IPC would stand only if there is an abetment for the commission of the crime. The supreme Court observed that "the parameters of 'abetment' have been stated in Section 107 of the Indian Penal Code. Section 107, according to the Supreme Court, states that a person abets the doing of a thing, who instigates any person to do that thing; or 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, or the person should have intentionally aided any act or illegal omission". In the case before the Supreme Court, a suicide note was involved, but the court came to the conclusion that in the suicide note there was no reference of any act or incident whereby the appellant therein was alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag to have committed suicide. Accordingly, the court quashed the proceedings u/s 482 of the Code of Criminal Procedure, 1973.

10. In *Sanju @ Sanjay Singh Sengar* (supra), the Supreme Court observed as under:

6. Section 107 I.P.C. 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.

xxxxx xxxxx xxxxx xxxxx xxxxx 9. In *Mahendra Singh and Another, Gayatri Bai Vs. State of M.P.*, , the appellant was charged for an offence u/s 306 I.P.C. basically based upon the dying declaration of the deceased, which reads as under:

My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.

10. This Court, considering the definition of "abetment" u/s 107 I.P.C., found that the charge and conviction of the appellant for an offence u/s 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

The Supreme Court further observed in paragraph 12 of the said decision that the word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of means rea, Therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in the spur of the moment cannot be taken to be uttered with means rea. It is in a fit of anger and emotional. The words expressed in the case before the Supreme Court were "to go and die". As a result of such an utterance, the deceased went and committed suicide. Yet, the Supreme Court was of the view that an offence u/s 306 IPC was not made out because there was no element of means rea.

11. Coming now to the facts of the present case, I find that the case of Mahendra Singh v. State of M.P. referred to in Sanju @ Sanjay Singh Sengar (supra), is quite apposite. A similar allegation of harassment was made against the in-laws, but that was not considered to fall within the four corners of Section 306 IPC. In that case, there were allegations of beating as well which are absent in the present case. Apart from all this, in the present case, I find that there is no element of means rea, which is an essential ingredient, even if the allegations, as per the case of the prosecution, were to be taken to be true and correct. In my view, the learned Additional Sessions Judge was entirely wrong in coming to the conclusion that a charge u/s 306 IPC could be framed against the present petitioners. The deceased (Shobha) may have been treated harshly and unfairly, if the allegations were to be believed, but, it cannot be said that the petitioners instigated, goaded or incited her to commit suicide. There is nothing on record to suggest that the petitioners had the means read to drive the deceased (Shobha) to commit suicide.

12. With regard to the charge u/s 498-A, I am in agreement with the submissions made by the learned Counsel for the petitioners that, perhaps this charge was framed because the learned Additional Sessions Judge was, in any event, framing charges u/s 306 IPC which was the graver offence. Without commenting on whether there exists a prima facie case u/s 498-A or nor, it would be appropriate if the consideration with regard to the offence u/s 498-A is sent back to the learned Metropolitan Magistrate for examination afresh on arguments to be advanced by the parties.

13. In view of the aforesaid discussion, the impugned orders, insofar as the charge under Sections 306/34 IPC is concerned, are set aside. As regards the charge under Sections 498-A/34 IPC, the same is remitted to the court of the learned Metropolitan Magistrate for consideration afresh.

This revision petition stands disposed of.