

(2005) 02 BOM CK 0130

In the Bombay High Court

Case No : Criminal Application No. 1865 of 2001

Shrikant Janardhan Chaudhari and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 107, 306, 34, 406, 506

Citation : (2005) CriLJ 2097

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : S.V. Manohar, for the Appellant; Deepak Thakre, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—By invoking the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, the applicants/original accused Nos. 1 to 4 have challenged the order dated 6-10-2001 passed by the learned Additional Sessions Judge in Criminal Revision No. 79 of 2001, whereby the Revision has been dismissed and the order regarding framing of charge by the trial Court for the offences punishable under Sections 306 and 406 read with Section 34 of Indian Penal Code in Sessions Trial No. 113 of 2000 has been confirmed.

2. The incident occurred on 29-8-2000 at about 3.00 p.m. The complainant Murlidhar, all the accused persons and the people of the village sat in a row for taking meal. At that time accused Shrikant was serving the food. The complainant asked him to serve a particular food item on which the accused Shrikant told him that he was a beggar and how he sat in the row of Patils for taking meal and refused to serve him. The complainant said that he had paid the contribution and had every right to take food by sitting in the row. Suddenly the accused Shrikant put the bucket on the ground and assaulted the complainant by fist and kick blows. The witnesses Gajanan :Choudhari, Vinod, Pandurang and

other persons intervened and thereafter the complainant went to his home.

3. Then after about 1 or 1 1/2 hour, all the four accused armed with sticks arrived in front of the house of the complainant and asked the complainant to come out. by raising their voices and also threatened that they would see as to how the daughters of the complainant, who were taking education at Shelu bazar, would go to school and on the way they would commit rape on both the daughters, namely Jyoti of age of 19 years and Meena of the age of 14 years. The accused persons also abused the complainant and his daughters in filthy language and due to fear of the accused the complainant, his wife and his daughters were dejected. The consequences was that both the daughters left the home by the rear door and went into the field at some distance and jumped into the well and did commit suicide. The complainant and his wife did not come out of the house due to fear. The accused persons were standing in the court yard for about 10 to 15 minutes and thereafter they left.

4. The first information report was lodged at police station Mangrulpur at about 19-05 hours. After investigation the charge-sheet against the accused was filed which was numbered as S.T. No. 113/2000. On 4-8-2001 the ad hoc Assistant Sessions Judge had framed the charge against all the four accused persons for the offence punishable under Sections 306 and 506 read with Section 34 of Indian Penal Code.

5. Being aggrieved by the fact of framing of charge, the accused persons carried Revision before the learned Sessions Judge, who on consideration of the material on record was of the view that prima face case has been made out by the prosecution for the offences with which they were charged and consequently dismissed the revision. This order dismissing the Revision is under challenge in this application.

6. Mr. Manohar, learned counsel, for the accused contended that no offence has been made out u/s 306 of Indian Penal Code. In order to constitute abetment, the abettor must be shown to have intentionally abetted the commission of the crime and there has to be an intentional aiding and an active complicity with the knowledge that the action on the part of the accused would drive the victim to commit suicide. He contended that mens rea on the part of the accused in this case is absent and the accused persons could not have anticipated and had no knowledge that by their utterances both the daughters of the complainant would commit suicide. He further contended that the learned Sessions Judge has committed an error in coming to the conclusion that prima facie offence u/s 306 read with Section 34 of Indian Penal Code has been made out and the impugned order is not sustainable in law. In support of these submissions he relied on the decision of Supreme Court in the case of 1995 Supp (3) SCC 438 , wherein it has been observed in para 3 that "at the time of framing of charge, the trial Court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Sessions was in error in summoning the appellant

to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is apparent requiring rectification. The appeal is accordingly allowed. The orders of the High Court and that of the Court of Session are thus upset. The appellant need not face the charge."

7. Mr. Manohar also relied on the decision of Rajasthan High Court in the case of Manish Kumar Sharma Vs. State of Rajasthan, wherein it has been held that demanding of money given on loan was not an offence under any provision of criminal law. There was also no evidence to suggest or indicate that the accused knew or had reason to believe that victim had purchased poisonous tablets and would commit suicide. Consequently, the charge framed against the accused for the offence punishable u/s 306 of Indian Penal Code was quashed and set aside.

8. The learned A. P. P. supports the order passed by the learned Sessions Judge and contended that prima facie offence u/s 306 read with Section 34 of Indian Penal Code has been made out. He contended that the material which was collected in the nature of statements of the witnesses during the course of investigation including the statement of the complainant would reveal that on the date of the incident, the incident occurred in two parts. The first part is in relation to the assault made on the complainant, by accused No. 1 at about 15-00 hours in the village when the people of the village along with the complainant sat in a row for taking meal and it was accused No. 1 who had assaulted the complainant by fist and kick blows after the quarrel ensued on a petty matter of non serving of food. He contended that after about 1 or 1 and 1/2 hour thereafter all the four accused armed with sticks had arrived in the court-yard of the complainant. They threatened and abused the complainant and his family members in a filthy language. The daughters of the complainant by name Jyoti and Meena due to fear left the house only after the accused had threatened them that they would commit rape on them while on the way. Then both the daughters had committed suicide by jumping into the well and in these circumstances prima facie case exist against the accused for the offence punishable u/s 306 read with Section 34 of Indian Penal Code. He, therefore, contended that no interference into the impugned order is warranted by this Court and the application may kindly be dismissed.

9. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is necessary to reproduce Section 306 of Indian Penal Code which reads as under :

"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."

However, Section 107 of Indian Penal Code will have to be taken into consideration which reads thus :

"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.

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 facilitate, the commission thereof, is said to aid the doing of that act.

10. In order to attract the provisions of Section 306 of Indian Penal Code, the prosecution has to prove (i) the commission of suicide by a person; and (ii) that the accused abetted the commission thereof vide Section 107 of Indian Penal Code. There cannot be any dispute that the abetment would imply an intentional abetment and there cannot be no abetment if mens rea is missing. The facts and circumstances of the present case are entirely different than the case of 1995 Supp (3) SCC 438 , cited supra, on which reliance is placed by the learned counsel for the petitioner. The only common fact is that the accused had uttered the words in relation to the deceased and thereafter the deceased had committed suicide. In the present case, the accused uttered the words that the daughters of the complainant were taking education in the school at Shelu Bazar and the accused will commit rape on them while on the way and this simply can be ignored. The incident occurred has to be taken into consideration as a whole. The incident occurred into two parts.

11. The first part occurred in the noon at about 15=00 hours. The people of the village including the complainant sat in a row for taking meal and at that time when accused No. 1 was serving some food, the complainant asked him to serve him a particular item of the food, upon which the accused No. 1 refused and said that how he sat in the row which was meant only for Patils. Then the quarrel ensued and accused No. 1 had assaulted the complainant with fist and kick blows. The witnesses intervened into the quarrel and then the complainant went

to his house.

12. The second part and main incident occurred after about 1 or 1 and 1/2, hour all the four accused had arrived armed with sticks in the court yard of the complainant and threatened him by saying that he should come out. This means that there was a mens rea on their part to make an assault on the complainant. Then the accused said that the daughters of the complainant were taking education at Shelu Bazar and they would commit rape on his both the daughters while on the way. This fact indicates that the accused knew very well that the daughters of the complainant were taking education at Shelu Bazar and they were bent upon to commit any overt act then and there itself. The first information report discloses that the accused did not leave the court-yard of the accused immediately and threatening and they were there for about 10-15 minutes waiting for the complainant to come out and to again do some overt act itself would attribute mens rea on the part of the accused and therefore it is not possible to accept that this is a case wherein mens rea to commit the offence is totally absent. However, it all depends upon the facts and circumstances of each case which is to be proved by the prosecution by leading cogent and reliable evidence. Therefore, it is obvious that prima facie offence under Sections 306 and 506 read with Section 34 of Indian Penal Code have been made out and no interference into the impugned order passed by the learned Additional Sessions Judge is warranted. The application is therefore dismissed. It is made clear that this Court should not be taken to have expressed any opinion on the merits of the case.