
(2007) 11 MP CK 0022
In the Madhya Pradesh High Court

Sita @ Sita Pratap Vaishya

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227
Penal Code, 1860 (IPC) — Section 107, 109, 306, 354

Citation : (2008) ILR (MP) 74 : (2008) 1 MPHT 92

Hon'ble Judges : Rakesh Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Saxena, J.—The applicant has filed this revision against the order dated 22-5-2007 passed by the Sessions Judge, Sidhi, in Sessions Trial No. 186/2006, framing charge against him for the offence u/s 306 of the Indian Penal Code.

2. Learned Counsel for the applicant submits that, prima facie, on the facts and circumstances of the case, no offence u/s 306 of the Indian Penal Code is made out. From the facts of the case, it is not revealed that the applicant in any manner abetted the deceased to commit suicide. Since necessary ingredients of abetment are not present in the case, learned Trial Court has committed error in framing charge against the applicant u/s 306 of the Indian Penal Code.

3. In short, the prosecution's case is that, between 22-6-2006 and 23-6-2006, Lolar @ Siphailal committed suicide by hanging on Babool tree. A "Merg" report was lodged on 23-6-2006 at 9.00 A.M. by Bholanath (father of deceased). According to him, his son Siphailal had gone from the house at about 4.00 PM on 22- 6-2006 saying that he was going to Village Ghadsada. He did not come back in the night. In the morning, at about 5.00 AM when he was going to answer call of nature, on the west side of his house, he saw his son hanging on Babool tree by means of nylon rope. He did not know as to why his son committed suicide. During inquest proceedings, a letter allegedly written by the deceased Siphailal was seized from his clothes. In the aforesaid letter, it was mentioned that on

10-6-2006 he (deceased) had gone to Village Ghadsada, where his bicycle was stolen. He did not lodge the report with the police because Sarpanch of the village was inquiring the matter. He came to know that his bicycle was stolen by Devdhari Harijan, therefore, he went to the house of Devdhari. But, bicycle was not found there. On 15-6-2006 his enemy Sita Pratap Vaishya (applicant) in connivance with Devdhari got lodged a false report against him. Sita Pratap entertained grudge because he had also got lodged a report against him u/s 354 of the Indian Penal Code. Sita Pratap was intimidating him that he will involve him in some case under the Atrocities Act. He was insulting him everywhere; therefore, he was going to close his eyes.

4. Police registered Crime No. 105/2006 against the applicant u/s 306 of the Indian Penal Code. During investigation, Police recorded the statements of Mohanlal Vaishya, Jawahar Lal, Suresh, Richki (wife of deceased), Rajesh and Bholanath. All the aforesaid witnesses stated that the applicant was intimidating the deceased that he will involve him in some case under the Atrocities Act. The deceased had told them that, Sita Pratap had gone to lodge the report, with Devdhari and on 19-6-2006 two constables of Police Pipra has also called him to Police Station. All the witnesses stated that the applicant had threatened the deceased that he will not sit in rest until the deceased would be sent to jail. Feeling frustrated and annoyed, deceased had committed suicide by hanging on Babool tree-with the help of nylon rope.

On post-mortem examination, cause of death of the deceased was found to be "asphyxia caused by hanging".

5. Learned Counsel for the State submits that, sole reason for commission of suicide by the deceased was the conduct of the applicant. He got frustrated and compelled to commit suicide due to act of the applicant. As such, learned Trial Court committed no error in framing the charge u/s 306 of the Indian Penal Code.

6. After having heard the learned Counsel for the parties, I am of the opinion that this revision deserves to be allowed.

7. Prosecution has filed challan against the applicant for the offence punishable u/s 306, Indian penal Code, which reads as under:

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.

8. Abetment has been defined in Section 107, Indian Penal Code, which reads as under:

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 the that thing.

Under Section 109, Indian Penal Code punishment of abetment has been provided, which reads as under:

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for punishment of such abetment, be punished with the punishment provided for the offence.

Explanation: An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid A which constitutes the abetment.

9. Making a person liable for an offence punishable u/s 306 of the Penal Code, the prosecution has to establish that such person has abetted the commission of suicide. Unless the alleged act of an accused falls under any of the three categories of acts, enumerated in Section 107, Indian Penal Code, the same would not amount to abetment. Whatever has been stated by the witnesses u/s 161, Code of Criminal Procedure, do not bring the applicant under the ambit of Section 107, Indian Penal Code. The applicant's act of intimidating the deceased, did not fall under any of the three categories of Section 107 of the Indian Penal Code. The applicant's said act could be the cause for him to commit suicide, but that certainly would not amount to "abetment" to commit the same as defined u/s 107 of the Indian Penal Code.

10. In the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , the Apex Court while discussing the scope of Section 227, Code of Criminal Procedure, has held as under:

That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on.

Thus, under revisional jurisdiction this Court can scan the validity of the order of the Trial Court framing charge u/s 306, Indian Penal Code specially when there is no material to frame charge under that section.

11. Taking into consideration all the facts and circumstances of the case as revealed from the material and evidence on record adduced by the prosecution and accepting it as it is; I find that there is no material to make out the case of "abetment" on the part of the applicant. It is apparent that the deceased committed suicide out of sheer annoyance and frustration, for which the applicant cannot be blamed. There is nothing on record to indicate that the applicant in any manner intended or wanted that the deceased should commit

suicide. In absence of necessary ingredients of "abetment", no charge u/s 306 of the Indian Penal Code can be framed against the applicant.

12. In view of the above discussion, this revision is allowed. Impugned order of framing charge u/s 306 of the Indian Penal Code against the applicant, is set aside. Applicant is discharged.