
(2013) 07 KL CK 0155

In the High Court Of Kerala

Case No : Criminal Appeal No. 968 of 2004 (A)

Sudhakaran, Somarajan and Shaji

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 232, 313
Penal Code, 1860 (IPC) — Section 107, 228, 306, 34, 376

Citation : (2013) 4 KHC 354 : (2013) 4 KLJ 665

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : A. Ahzar and Sri. Sanal. S, for the Appellant; Roy Thomas, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P. Bhavadasan, J.—Three brothers were prosecuted for the offences punishable under Sections 376 and 306 read with Section 34 of Indian Penal Code. While they were acquitted of the offence u/s 376 IPC, they were found guilty of the offence u/s 306 IPC and therefore, they were convicted and sentenced to suffer rigorous imprisonment for a period of four years each and to pay a fine of Rs. 1,00,000/- each with default clause of simple imprisonment for three years each. If the fine amount was realised, it was directed to be disbursed to PWs 4 and 5 in equal proportion. Set off as per law was allowed. The parents of PWs 4 and 5 along with their sister Priya committed suicide during the night on 01.04.1997. PW1, who is the brother of the father of Priya, furnished Ext. P1 First Information Statement which was recorded by PW9. He registered a crime as per Ext. P1(a) First Information Report for unnatural offence u/s 174 Cr. P.C. He conducted inquest on the body of deceased persons and prepared Exts. P9 to P11 reports. Later on, on learning that the deceased Priya was pregnant and all the three were driven to commit suicide and sexual assault had been committed on Priya, PW9 filed Ext. P12 report incorporating Sections 376 and 306 IPC.

2. PW10 took over the investigation. He prepared Exts. P13 and P14 mahazars. In the meanwhile, Ext. P4 was seized from the place of occurrence which is a letter alleged to be written by late Priya in her handwriting. PW5 thereafter produced Ext. P15 letters and they were seized by Ext. P16 mahazar. Subsequent investigation was conducted by PW11. The letters seized during investigation were sent for forensic examination and Ext. P21 is the report. PW11 recorded the statement of witnesses, completed the investigation and laid charge before court.

3. The court before which charge was laid took cognizance of the offence and on finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kollam. The said court made over the case to 1st Additional Sessions Court, Kollam. The latter court, on receipt of records and on appearance of the accused, framed charges for the offences under Sections 376 and 306 read with Section 34 IPC. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution, therefore, had PWs 1 to 11 examined and Exts. P1 to P22 marked. On the side of the defence, Exts. D1 and D2 were marked.

4. After the close of the prosecution evidence, the accused were questioned u/s 313 Cr. P.C. They denied all the incriminating circumstances brought out in evidence against them and maintained that they are innocent. On finding that the accused could not be acquitted u/s 232 Cr. P.C., they were asked to enter on their defence. But, they chose to adduce no evidence.

5. On appreciation of the materials produced before the court, the court below found the accused persons not guilty of offence u/s 376 IPC and therefore, they were acquitted of the said offence. It was also found that since the three members of the family of PWs 4 and 5 were driven to commit suicide due to the act committed by the accused persons, they are guilty of offence u/s 306 IPC and convicted and sentenced them as already mentioned. The said conviction and sentence are assailed in this appeal.

6. Learned counsel appearing for the appellants assailed the findings u/s 306 IPC on several grounds. According to the learned counsel, even going by Ext. P4 which is the trump card of the prosecution, the victim concerned had sex with all the three accused persons even though she would attribute the pregnancy to the 1st accused. It is pointed out by the learned counsel that in order to attract the ingredients of Section 306 IPC, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary. In the case on hand, there is nothing to show that the accused was aware that the victims were going to commit suicide and therefore, there can be no instigation in commission of suicide. Ext. P4 letter, according to the learned counsel, is self explanatory and even if there was any reason for the 1st accused in not marrying the deceased Priya, that is justified by the contents of the letter itself. It is also pointed out that there is nothing to show that the suicide note namely, Ext. P4 was written proximate to the date of death.

7. Relying on the decisions in *Purushothaman and Others Vs. State of Kerala*, , *Rajan vs. State of Kerala* (1994 (1) KLT 179), *Kishori Lal Vs. State of M.P.*, , *Sohan Raj Sharma Vs. State of Haryana*, and in *Mohan vs. State of Tamil Nadu* (2011 (2) KLT S.N. 59), it is contended by the learned counsel for the appellants that in order to attract the offence u/s 306 IPC, the mens rea has to be clearly established and in the absence of existence of mens rea, the offence is not committed. It is also contended that, in the case on hand, there is nothing to show that the appellants were aware that Priya and her parents would commit suicide and therefore, they could not be said to have instigated or aided them in commission of suicide.

8. Learned Public Prosecutor, on the other hand, pointed out that it is not always necessary that mens rea should be explicit. It may be implied. Relying on the wordings of Section 306 IPC, learned Public Prosecutor pointed out that it does not make mention of mens rea. It only makes mention of abetment to commit suicide. According to the learned Public Prosecutor, it is not always necessary that there should be direct evidence for aiding or instigation. It may be presumed from circumstances that the person concerned may be guilty of abetting suicide. In support of his contention, learned Public Prosecutor relied on the decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, which is referred to in *Amit Kapoor Vs. Ramesh Chander and Another*, . At any rate, according to the learned Public Prosecutor, the 1st accused is attributed with forced sexual violation and he is responsible for the pregnancy of the victim and it was his refusal to marry the victim that had driven the victim as well as her parents to commit suicide. At any rate, according to the learned Public Prosecutor, the 1st accused cannot be escaped from falling within the ambit of Section 306 IPC.

9. The accused were prosecuted for both the offences under Sections 376 and 306 IPC and all of them were acquitted of the offence u/s 376 IPC. There is no appeal by the State so that the question regarding offence u/s 376 IPC does not survive for consideration.

10. Coming to the offence u/s 306 IPC, reliance is placed on Ext. P4 which is said to be the suicide note in the handwriting of Priya which narrates the incidents in her life. The fact that Ext. P4 is in the handwriting of Priya is established by Ext. P21 which is the Forensic Science Laboratory Report. PW4, who is none other than the brother of Priya, also confirmed that Ext. P4 is in the handwriting of Priya though he, in the cross examination, stated that there were note books containing the handwriting of Priya which show a different handwriting. But that statement of PW4 may not be of much consequence in the light of the fact that Ext. P21 F.S.L. report as well as the statement of PW4 in chief examination that the handwriting contained in Ext. P4 letter is that of Priya admits of no doubt.

11. If one goes through Ext. P4, it tells the story of a girl who was first ravished, became pregnant at the hands of the 1st accused. She then had physical contacts with 2nd and 3rd accused also. But, Ext. P4 shows that it was

threatening late Priya that the first sexual intercourse was committed by the 1st accused. It appears thereafter there was several physical contacts between the two. When the lady became two months pregnant, she informed the 1st accused about the same but he did not react. Thereafter also, they had sex. Ultimately, when the issue became public, mediation occurred. PWs 5 and 6 speak about the medication that took place. It appears that in the mediation, there was an altercation between accused Nos. 1 to 3 regarding as to who was responsible for the pregnancy of Priya since even going by Ext. P4, it seems that she had sex with all the three accused persons. As a result of altercation between the three brothers, mediation got aborted and no decision could be arrived at. It is thereafter on 01.04.1997, Priya and her parents committed suicide.

12. The question that arises for consideration is whether the finding of the court below that offence u/s 306 IPC is made out is justified or not. True, in the decisions relied on by the learned Public Prosecutor, it could be seen that if a situation arose where the victim is left with no choice but to commit suicide, it should be presumed that the person concerned is guilty of abatement of committing suicide and it should be treated as instigation to the victim to commit suicide. In *Amit Kapoor Vs. Ramesh Chander and Another*, , the decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, has been referred to. In paragraph 35 of *Amit Kapoor's* case (*supra*), it is held as follows:

35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* to contend that the offence u/s 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshall the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in *Ramesh Kumar v. State of Chhattisgarh* to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. The husband of the deceased was a paralysed person. They were in financial crisis. They had sold their property. They had great faith in the accused and were heavily relying on him as their property transactions were transacted through the accused itself. Grabbing of the property, as alleged in the suicide note and the statement made by the son of the deceased as well as getting blank papers signed and not giving monies due to them are the circumstances stated to have led to the suicide of the deceased. The Court is not expected to form even a firm opinion at this stage but a tentative view that would evoke the presumption referred to u/s 228 of the

Code.

13. It would appear that the conduct of the lady is such that it may be virtually impossible for the 1st accused to marry her in the light of her admission that she had physical contacts with his brothers also. This conduct of the victim made her ineligible and if that be the reason, the 1st accused cannot be made responsible for the suicide of the victim and he cannot be termed as an abettor or instigator. As far as 2nd and 3rd accused are concerned, it is conceded even by the victim that she had consensual sex with them. A reading of Ext. P4 does show the above facts. Ext. P4, as already stated, is duly proved to be in the handwriting of Priya. But, it gives picture of a lady who initially might have been ravished by the 1st accused and later had sex with two brothers voluntarily and with consent. It is long thereafter that mediation talks had taken place and as could be seen from the evidence, there was altercation between the three brothers as to who should take up the responsibility. As to what made late Priya submit to the desires of 2nd and 3rd accused are not clear. No assistance is derived from Ext. P4 in that regard.

14. This Court had occasion to consider the question of abetment to commit suicide in Crl. Appeal No. 1755/2006 which was disposed of on 17.06.2013. After referring to various decisions cited by the learned counsel for the appellants therein, this Court, in paragraph 42, observed as follows:

42. Certainly not. There is nothing to indicate that the accused persons had any knowledge of the intention of the victim. Without that knowledge, it could not be said that they had either aided or instigated the victim to do what she did. That means, essential ingredients to attract Section 306 of IPC are not established in the case on hand. Merely because some acts on the part of A1 and A2 might appear to be cruel and inhuman, that does not lead the conclusion that they instigated or abetted to commit suicide. Much more evidence is required to reach that conclusion. The criterion has already been referred to. Viewed thus, the finding of the court below that the offence u/s 306 of IPC is not made out and is only to be sustained.

15. It is true that in Ext. P4, it is narrated that the 1st accused was told when Priya was two months pregnant about the pregnancy and he did not respond. Thereafter also she continued the physical contacts. It is evident from Ext. P4 that though on subsequent occasions also when she had voluntarily submitted to the desire of the 1st accused and informed him about the pregnancy, he did not react or respond. It was long thereafter that the mediation had taken place which resulted in altercation between the three persons. If, at that point of time, the 1st accused refused to accept and marry the victim, it is difficult to find fault with the 1st accused. Even assuming that the 1st accused had forcefully subjected her to sexual intercourse at the first instance, as there was physical contacts with the 1st accused on several occasions and also with his brothers, it will be difficult to come to the conclusion that any of the accused had instigated or aided in her suicide. Her conduct which is reflected in Ext. P4 makes it difficult to believe that

anyone of the accused as such is responsible for the suicide. May be the 1st accused was initially responsible for the situation in which she was placed. But, Priya had to blame herself for the subsequent conducts. It could not be said that it was the 1st accused alone who was responsible for the state of affairs in which she was placed. She had contributed in a large measure to the same. If it could be discerned that it was the 1st accused who was responsible for the pregnancy and also that she had no contact with other accused persons and she hoped that she will be married by 1st accused and then the 1st accused refused to marry her, it would be well presumed that he was responsible for creating the circumstances where Priya had been driven to commit suicide. But such a contingency is not available in the case on hand as already discussed. It is true that the case tells a sad story. But the necessary ingredients to establish the offence u/s 306 IPC are conspicuously absent in the case on hand. At the risk of repetition, it has to be said that the 1st accused alone could not be blamed for the situation in which Priya and her parents were placed which had driven them to commit suicide. For all the above reasons, this Court is unable to accept the finding of the court below that the accused are guilty of the offence u/s 306 IPC.

The appeal is allowed. The conviction and sentence for the offence u/s 306 IPC are set aside and it is held that the accused are not guilty of the said offence. Their bail bonds shall stand cancelled and they are set at liberty. If the fine amounts have already been paid, the same shall be refunded to them.