

(2015) 01 BOM CK 0198

In the Bombay High Court

Case No : Criminal Appeal No. 721 of 2013 and Criminal Application No. 284 of 2012

Tanaji Ambaji Nalawade

APPELLANT

Vs

Sanjay Gaurishankar Ause and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372
Penal Code, 1860 (IPC) — Section 106, 107, 108, 306, 34

Citation : (2015) ALLMR(Cri) 2126

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Siddheshwar B. Kalel i/b. Pollegal Juris, for the Appellant; Ujwal R. Agandsurve, Sachin Deokar instructed by V.V. Purwant, R.S. Alange and Deepak Thakre, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.M. Thipsay, J.—Criminal Appeal No. 721 of 2013 has been filed by a person who claims to be the victim of the offences allegedly committed by the respondent Nos. 1 and 2 herein. This appeal has been filed under the proviso to Section 372 of the Code of Criminal Procedure (Cr.P.C.), against the order of acquittal passed by the court of Sessions. The Criminal Application No. 284 of 2012 is an application filed by the State seeking leave to appeal against the same order of acquittal. As the appeal filed by the victim is required to be heard on merits, leave is granted, and after treating the application for leave as a memo of appeal, the appeal is also heard for admission. This order disposes of both the appeals.

2. The respondents in the said appeal (respondent Nos. 1 and 2 in the victim's Criminal Appeal No. 721 of 2013) were prosecuted on the allegations of having committed an offence punishable under Section 106 of the Indian Penal Code (IPC) read with Section 34 of IPC. After holding the trial, the learned Sessions

Judge. Solapur, found them not guilty and passed an order of acquittal, which as aforesaid, is being challenged by filing the above appeals.

3. The prosecution case before the trial court was that one Shrikant - son of Tanaji Nalawade (appellant in Criminal Appeal No. 721 of 2013) committed suicide by setting himself on fire. According to the prosecution, the respondents were harassing the father of Shrikant (appellant in Criminal Appeal No. 721 of 2013) and pressurizing him to vacate the premises, which according to them, had been taken by the father of Shrikant on rent. The prosecution case is that the respondents were threatening Shrikant's father, Shrikant and other members of the family of Shrikant with dire consequences, and that, because of the threats given by the respondents, Shrikant set himself on fire.

4. I have been taken through the impugned judgment. I have also glanced through the notes of evidence that was adduced during the trial.

5. The learned Judge doubted whether the death of Shrikant was indeed suicidal. He observed that there were two versions before the court -- one was of a suicidal death and the other of accidental death.

6. As contended by the learned counsel for the appellant (in Criminal Appeal No. 721 of 2013) this observation of the learned Judge does not seem to be proper or legal. It appears that the version of accidental death was based on certain admissions given by the Investigating Officer. In my opinion, the Trial Judge was not right in holding that there were two versions about the death of Shrikant. In my opinion, there was only one version and that was of suicidal death.

7. However, the question that still remains is, whether accepting the case of the prosecution as it is, the respondents can be said to have abetted the commission of suicide by Shrikant. The case of the prosecution is simply that "because of the trouble and torments caused by the respondents to Shrikant and his family members. Shrikant committed suicide." The question is whether, that, by itself, would indicate that the respondents had abetted the commission of suicide by Shrikant.

8. For answering this question, the legal concept of "abetment" needs to be fully comprehended. The law relating to it is found in Chapter V of the IPC. Section 107 of the IPC reads as under:

"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 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 willful misrepresentation, or by willful

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 that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z.B. knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here, B abets by instigation the apprehension of C.

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

9. Section 108 of the IPC defines "abettor". It reads as under:

"108. Abettor.--A person abets an offence, who abets either the commission of an offence, or the commission of an act which "would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."

(Explanations and illustrations omitted as not relevant for the present.)

10. Here, the case is of abetment by instigation; and other two modes of abetment, viz.:- by conspiracy and by aiding, as contemplated under the clause "secondly" and "thirdly" of Section 107 are out of question. The issue then comes to this : when a person is said to "instigate" another? The word "instigate" literally means to goad, or urge, forward, or to provoke, incite, urge, or encourage, to do an (evil) act. It is well settled, that in order to amount to abetment, there must be mens rea or community of intention. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute "abetment by instigation", there must be a direct incitement to do the culpable act.

11. The High Courts and even the Apex Court have, in a number of cases, considered as to what constitutes an offence under section 306 of the IPC.

12. In Criminal Writ Petition No. 1131 of 2011 (decided on 26th April 2012) I had an occasion to deal with this aspect and after considering the law laid down in the following pronouncements:

(i) Manish Kumar Sharma Vs. State of Rajasthan, (1995) CriLJ 3066 : (1994) 2 WLC 69 : (1994) 1 WLN 252

(ii) Vedprakash Tarachand Bhairji Vs. State of Madhya Pradesh, (1995) CriLJ 893 : (1994) ILR (MP) 224 : (1994) JLJ 758 : (1995) 40 MPLJ 458

(iii) Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 SC 1998 : (2002) CriLJ 2796 : (2002) 1 DMC 773 : (2002) 1 JT 248 Supp : (2002) 4

SCALE 270 : (2002) 5 SCC 371 : (2002) 3 SCR 668 : (2002) 1 UJ 769 : (2002) AIRSCW 2035 : (2002) 3 Supreme 650

(iv) Cyriac Vs. S.I. of Police, (2005) CriLJ 4322 : (2005) 3 ILR (Ker) 646 : (2005) 3 KLT 673

(v) Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 AD 133 : AIR 2001 SC 3837 : (2001) CriLJ 4724 : (2001) 2 DMC 636 : (2001) 8 JT 599 : (2001) 7 SCALE 298 : (2001) 9 SCC 618 : (2001) AIRSCW 4282 : (2001) 7 Supreme 737

(vi) Madan Mohan Singh Vs. State of Gujarat and Another, (2010) 4 Crimes 34 : (2010) 10 JT 641 : (2010) 4 LLJ 849 : (2010) 8 SCC 628 : (2010) 10 SCR 351

the legal position in that regard was summarized by me as under:-

"Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain or at least quite likely-to commit suicide. Unless that the victim should commit suicide, is either intended, or can be reasonably foreseen and expected a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as "go and die", in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.

I see no reason to change the view taken by me.

13. It is not the prosecution case that the respondents or any of them intended that Shrikant should commit suicide. As such, the acts attributed to the respondents, even if accepted as true, would not amount to their having abetted commission of suicide by Shrikant.

14. When such is the position, there would be no question of interfering with the impugned judgment and order of acquittal. The appeals are dismissed.