

(1994) 04 MP CK 0011

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 612 of 1993

Vedprakash Tarachand Bhaiji

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-04-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 397, 401, 482

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (1995) CriLJ 893 : (1994) ILR (MP) 224 : (1994) JLJ 758 : (1995) 40 MPLJ 458

Hon'ble Judges : R.P. Awasthy, J

Bench : Single Bench

Advocate : Manish Datta, for the Appellant; R.K. Khare, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.P. Awasthy, J.—It is a petition filed under Sections 397 and 401 read with Section 482, Cr. P. C. against the order dated 9-9-93 passed in Sessions Trial No, 134/93, by Shri R. B. Singh, Third Additional Judge to the Court of Sessions Judge, Sagar, by virtue of which order charges u/s 306 read with Section 34 of the IPC have been framed against the accused who are petitioners in Criminal Revision No. 597/93, Criminal Revision No. 612/93 and Criminal Revision No. 4186/93. As all of the three cases relate to one and single order passed by the learned AJ to SJ Sagar and in all of the said three cases, similar questions of law and facts are involved, all of the said three cases are being disposed of by this single order.

2. The facts of the case are as follows:--

According to the prosecution Vedprakash Bhaiji (petitioner in Criminal Revision No. 612/ 93), Prakash Chand and Vinod Kumar (petitioners in Criminal Revision No. 597/93) and Mahesh Vaidhya (Petitioner in Misc. Cr. Case No. 4186/ 93) as

well as Rajesh Godre had advanced loan amounting to Rs. 65,000/- to Ramesh Kumar Sadholia. Thereafter, Ramesh Kumar Sadholia paid Rs. 65,000/- to Rajesh Godre.

3. One day prior to the said incident i.e. on 1 -2-93 in the noon Vinod Kumar and his father Prakash Chand Taddaiya came to the shop of Ramesh Kumar Sadholia and both of them filthily abused him and demanded that Ramesh Kumar Sadholia should repay 30,000/- to them otherwise they would kill him.

4. Thereafter, in the night of the said date, i.e. 1-2-93 itself Vinod Kumar Taddaiya, Mahesh Vaidhya and Vedprakash Bhaiji came to the shop of Ramesh Kumar Sadholia and demanded repayment of the loan advanced by them. Thereupon, Ramesh Kumar Sadholia told them that he had given the said amount to Rajesh Godre from whom he would get the said amount repaid to all of the said three persons.

5. Thereafter, the said 3 accused and Ramesh Sadholia (since deceased) went to Rajesh Godre. However, when Ramesh Sadholia demanded the amount from Rajesh Godre, the latter started abusing Ramesh Sadholia and made an assault on him. Rajesh Godre told Ramesh Sadholia that at that time he had no amount for being paid to Ramesh Sadholia and whenever he would be having the said amount, he would pay it to Ramesh Sadholia (since deceased). Thereafter, all of the said 4 persons Rajesh Godre, Vinod Kumar Taddaiya, Mahesh Vaidhya and Vedprakash Bhaiji started abusing Ramesh Kumar Sadholia and they obtained, under objection, signatures of Ramesh Kumar Sadholia on blank papers as well as on a cheque. They threatened Ramesh Sadholia that if the amount of loan is not repaid by the next day, they would usurp the shop and the house of Ramesh Kumar Sadholia and would kill him.

6. When on returning home Ramesh Kumar Sadholia narrated the said incident in the said night itself to his wife. She (his wife Smt. Pusplata) advised him to lodge a report at police station. On the next date viz. on 2-2-93 when Ramesh Kumar Sadholia was proceeding from his house in the morning, he told his wife that he was going to lodge a report at police station. However, at about 1 P.M. she received an information that Ramesh Kumar Sadholia had fallen sick and was vomiting repeatedly, Smt. Pusplata went along with her relatives to the shop of Ramesh Kumar Sadholia from where he was shifted to Tili hospital Sagar. There medical treatment was given to Ramesh Kumar Sadholia but he died on account of having consumed selphas tablet.

7. Ramesh Kumar Sadholia had written a suicide note also in which he had blamed all of the 5 accused viz Prakash Chand Taddaiya, Vinod Kumar Taddaiya, Vedprakash Bhaiji and Mahesh Vaidhya as well as Rajesh Godre, for his death and has mentioned in the said suicide note that only these persons were responsible for his (suicidal) death.

8. A report was lodged by Smt. Pushplata on the basis of which an offence punishable u/s 306 read with Section 34 of the IPC was registered against the

accused petitioners and the matter was investigated. After investigation, a report u/s 173, Cr. P. C. was filed. After considering the entire documents available on record, the learned A. J. to S. J. has come to the findings that a prima facie case of commission of an offence punishable u/s 306 read with Section 34 of the IPC has been made out and, on the basis of the said order, charges for alleged commission of an offence punishable u/s 306 read with Section 34 of the IPC have been framed against the present accused/ petitioners.

9. The question in the present case is as to whether, considering and accepting the entire material available on record as absolutely correct and true, a prima facie case for alleged commission of an offence punishable u/s 306 of the IPC is made out against the accused/petitioners.

10. As per definition given in Section 107 of the IPC abetment is constituted by :--

(i) Investigating a person to commit an offence; or

(ii) engaging in a conspiracy to commit it; or

(iii) intentionally aiding a person to commit it.

11. A person is said to "instigate" another to an Act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect,, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word "instigate" means to goad or urge forward or to provoke, incite, urge or encourage to do an act. In the present case none of the accused goaded or urged forward provoked, incited or urged or encouraged the deceased to commit suicide. They merely goaded him to refund or repay the amount advanced by them to him. They never intended that the deceased should commit suicide. On the other hand they wanted the loan advanced by them to the deceased to be repaid by him. For the said purpose it was at least needed, if not essential, that deceased Sadholia should live.

12. There is no question of abetment by conspiracy. Now regarding abetment by aid it has to be seen that no aid was provided by the accused to commit suicide. It also cannot be said that Ramesh Sadholia was left with no other option but to commit suicide.

13. As was advised by his wife, Ramesh Sadholiya could have lodged a report against the Said persons who had allegedly tortured him. May be, as it some times happen, the police officials might not have had agreed or, declined to record the report of Ramesh Kumar. Then the question arises as to whether those police officials would. also have been guilty to committing an offence punishable u/s 306 of the IPC. They would obviously not have been guilty of the said offence. In that case, even if police officials would have had declined to record the report, Ramesh Kumar could have moved higher officials of the police department or could even have lodged a complaint. However, instead of taking this legal and legitimate action, Ramesh Kumar adopted an escapist course of

committing suicide which, had he survived, would itself have been a punishable offence. According to the letter written by him just prior to his death to his wife, he had opted for the said course to take revenge from his alleged tormentors who were allegedly, threatening to kill him. However, he killed himself, leaving his wife and children as destitutes and deprived of their bread earner. Nobody knows as to what good a revenge being taken does, to a person, who is already dead.

14. As the case may be, in my opinion, it is the need of the day that it should be made clear by the persons having legal knowledge that it should be made to know to all and sundry that by doing such escapist act of committing suicide, one gains nothing but, on the other hand a life which could be useful for his family and society is lost for nothing.

15. For the present there appears to be an impression in the minds of persons having an escapist attitude, as was that of Ramesh Sadholia, that if they commit suicide they would be able to put their alleged tormentors to trouble. However, in my opinion, it is very clear that even if the entire allegations levelled against the accused be accepted as correct and true on their face value (as are being accepted as correct and true at this stage on their face value), no case for alleged commission of an offence punishable u/s 306 of the IPC is made out against the accused/petitioners.

16. In *Surinder Kumar and Anr. v. State of Punjab* 1983 Cri LJ NOC 35, it was held that in a case where the accused got himself photographed with a young girl and subsequently he tried to blackmail her and threatened her to marry him else she would die or would be kidnapped, the girl committed suicide and while dying wrote a letter to her father that because of the deception practiced, by the accused and on account of the said threat she was going to end her life. Under the said circumstances, it was held that the said accused could not be convicted for abetting the said suicide.

17. In *Panchram & Samailal v. State of M.P.* 1971 J LJ S. No. 80, the facts were that the accused developed illegitimate intimacy with another lady and started neglecting his wife. The accused wanted his father-in-law to take her away and had on one occasion expressed that it would be better if she died. Therefore, on one day when the brother of the wife of the accused had come to his house, she committed suicide. Under the said circumstances, it was held that the behaviour of the husband may be a cause for suicide of his wife. However abetment requires positive step to be taken by a person to induce the commission of the abetted offence. Therefore, no case of abetment of committing suicide was made out.

18. Section 113A of the Evidence Act brought into existence by Act 46 of 1983 lays down that when the question is as to whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of 7 years from the date

of her marriage and that her husband and or such relatives of her husband had subjected her to cruelty, the court may presume, having regard to all of the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

19. Therefore, under the said circumstances, and in view of the fiction created by Section 113A of the Evidence Act a husband or his relative can be said to have abetted the commission of suicide by the wife, under the particular circumstances of that case. This fiction has obviously been created looking to very peculiar, particular and special circumstances in which a wife is placed in her husband's house in Indian society. Nevertheless, the said fiction will obviously not apply in other cases where there is no such relationship. In such other cases, an alleged cruel behaviour may be a cause for commission of suicide but it cannot be equated with abetment, which requires a positive step to be taken by a person to induce the commission of the abetted offence.

20. Therefore, in my opinion, prosecution of the accused would be nothing but abuse of process of law and therefore, the petition filed u/s 482, Cr. P. C. for quashing the charge-sheet filed against the accused/petitioners Prakash Chand Taddaiya, Vinod Kumar Taddaiya, Vedprakash Bhaiji and Mahesh Vaidya deserves to be and is hereby quashed. The order passed on 9-9-93 of framing charge against the accused/petitioners also deserves to be and is hereby quashed. In the result petition filed u/s 482, Cr. P. C. is allowed and the said petitioners Prakash Chand Taddaiya, Vinod Kumar Taddaiya, Vedprakash and Mahesh Vaidya stand discharged from the allegations of committing an offence, punishable u/s 306 read with Section 34 of the I.P.C.