

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 2nd OF FEBRUARY, 2023

CRIMINAL APPEAL No. 403 of 2000

BETWEEN:-

**ANIL PARIHAR S/O SOMPRAKASH, AGED ABOUT 32
YEARS, R/O A/1, DWARKAPURI, INDORE (MADHYA
PRADESH)**

.....APPELLANT

***(BY SHRI Z.A.KHAN, SENIOR ADVOCATE WITH SHRI RAMESH CHANDRA
GANGARE - ADVOCATE FOR THE PETITIONER)***

AND

**THE STATE OF M.P., THROUGH POLICE STATION -
MALHARGANJ, INDORE (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI R.S.BAIS - GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 419 of 2000

सत्यमेव जयते

BETWEEN:-

- 1. RAJENDRA KAUSHAL S/O KISHANLAL, AGED
ABOUT 30 YEARS, R/O 317-BADEE-GWAL TOLI,
INDORE (MADHYA PRADESH)**
- 2. SUSHIL TIWARI S/O RAMNATH TIWARI, AGED
ABOUT 32 YEARS, R/O 275 - GUMASHTA NAGAR,
INDORE (MADHYA PRADESH)**
- 3. SHRICHAND S/O GAGANDAS MAMTANI, AGED
ABOUT 35 YEARS, R/O - 108 - NEELKANTH
COLONY INDORE (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI RK.TRIVEDI - ADVOCATE FOR THE APPELLANTS)

AND

.....RESPONDENT

(BY SHRI SHRI R.S.BAIS - GOVERNMENT ADVOCATE)

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This appeal coming on for hearing this day, the court passed the following:

ORDER

Both the Criminal Appeals are filed under Section 374(2) of the Cr.P.C, being aggrieved by the common judgment of conviction and sentence passed by 14th Additional Sessions Judge, Indore in Sessions Trial No.428/92 whereby the appellants have been convicted and sentenced for offence under Section 306 IPC, R.I for 5 years and fine of Rs. 1000/- and in default 6 months R.I.

In Criminal Appeal No.419/2000 it was stated that one of the appellants Sushil Tiwari son of Ramnath Tiwari has expired during pendency of the Appeal. The said fact was verified and by order dated 14/11/19, this Court directed for deleting the name of the appellant No.2 Sushil Tiwari son of Ramnath Tiwari from the array of appellants.

The appeal has been dismissed as abated so far appellant No.2 Sushil Tiwari is concerned.

Facts of the case adumbrated in a nutshell are that the appellants and other co-accused persons are the employees of the Citizens Co-operative Bank, while the deceased was the collection agent of the said Bank. It is further alleged by the prosecution that the deceased had defalcated money out of the amount of daily collection made by him, therefore, action was taken by the Bank against him and the appellant and other co-accused persons being the employees of the Bank were sent to persuade the deceased for depositing the amount defalcated

by him. It is further alleged that after sometime the deceased had committed suicide. It is also alleged that the deceased had left a letter/suicide note alleging therein that the appellants/accused persons were pressurizing him for returning the Bank money, therefore, he had committed suicide.

After investigation, a case was registered under Section 306 IPC and the appellants have been convicted under Section 306 and sentenced to undergo R.I for 5 years with fine of Rs.1000/- with default stipulation.

Counsel for the appellants submits that the appellants were employees of the Bank and the deceased was working as a collection Agent for collecting the amount and since he defalcated the Bank money, therefore, they had gone to recover the said amount from him. The alleged act of the appellants cannot be said to be instigation or abetment within the definition of abetment under Section 107 or 306 of the IPC as also the necessary factors/ingredients to attract the aforesaid Sections are absent. There is no allegation against the appellants of instigating or abetting the deceased in any manner to commit suicide and it cannot be said that due to their acts, the deceased was left with no other option but to commit suicide and, therefore, their conviction and sentence is contrary to law. In support of his submission, he has relied on the judgments passed by the Apex Court in the case of **Sanju @ Sanjay Singh Sengar V/s. State of M.P., AIR 2002 SCC 1998** and judgment in the case of **Gangula Mohan Reddy V/s. State of Andhra Pradesh (2010) 1 SCC 750** and also in order passed by a co-ordinate Bench of this Court in **Shivnarayan & others Vs. State of M.P and others** passed in **MCRC No.15725/2022** vide order dated 13/12/2022.

Per contra, learned counsel for the respondent submit that the deceased was mentally as well as physically harassed by the appellants to such an extent

that he was left with no other option but to commit suicide and, therefore, the order of conviction and sentence is legal and valid.

I have heard learned counsel for the parties and perused the record.

Section 107 of the IPC makes it obligatory for the prosecution to show and establish the elements of instigation. The Apex Court in the case of **Sanju @ Sanjay Singh Sengar V/s. State of M.P., AIR 2002 SC 1998** has opined as under :-

Even if we accept the prosecution story that the appellant did tell the deceased to go and die, that itself does not constitute the ingredient of instigation the word instigate denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea it is in a fit of anger and emotion.

In the case of **Sanju @ Sanjay (supra)** the accused allegedly told the deceased "to go and die" yet Apex Court opined that it does not constitute the ingredient of "instigation". In the instant case, if story of the prosecution is read and believed as such, it would be clear that the appellants did not in any manner instigate the deceased to commit suicide. There is no element of "incitement" or "instigation" on their behalf. Thus, Section 306 of the IPC is not attracted against the appellants.

The ancillary question is whether their acts fall within the ambit of Section 306 of the IPC. In **Gangula Mohan Reddy V/s. State of Andhra Pradesh (2010) 1 SCC 750**, the Apex Court opined as under :-

17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the

part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

The principle flowing from this judgment is that the overt act of accused person must be of such a nature where the victim had no option but to commit suicide. Even assuming that the appellants mounted pressure upon the deceased to repay the Bank defalcated amount, this does not fall within the ambit of "incitement" or "instigation".

This Court in **Hukum Singh Yadav V/s. State of M.P.** reported in **ILR (2011) MP 1089** considered the judgment of Supreme Court in Sanju @ Sanjay Singh Sengar and held as under :-

10. Considering these legal aspect this is to be observed that whether applicants have had same knowledge that deceased would commit suicide. As per the prosecution case when deceased was going with his father. Applicants restrained deceased and his father Jagdish and abused and threatened both of them, hence it cannot be assumed that applicants had knowledge that one of them particularly deceased will commit suicide. When act of abusing and threatening was alleged to be done with deceased as well as his father, so it cannot be said that applicants had knowledge or intention that deceased should commit suicide. There is no evidence that they provoked, incited or encouraged deceased to commit suicide. It is also not alleged that when applicants threatened to kill the deceased and his father Jagdish they were

armed with some weapons. So it cannot be presumed that deceased was so frightened that he had no option left except committing suicide and was compelled to do so.

A co-ordinate Bench of this Court vide its order dated 23/2/2018 in **Criminal Revision No. 208/2018** in the case of **Hemchand Yashwant Fasatey Vs. State of M.P**, after referring to various judgments of the Apex Court held that demand of loan amount or asking to repay the money would not amount to abetment.

On the anvil of the aforesaid enunciation of law, if the facts of the present case are examined, it is evident that the appellants are employees of a Bank and they had gone to recover the defalcated amount by the deceased which would not amount to abetment. Further, the incident of *Maarpeet* is said to have taken place on 18/9/1990 whereas the deceased committed suicide on 10/10/1990 i.e after 22 days. Even if the allegations levelled against them are assumed to be true, still the necessary ingredients for attracting Section 306 of IPC are absent.

As a consequence, the Appeals are allowed, the conviction and sentence of the appellants are set aside. The appellants are acquitted of the charges. They shall be released, forthwith, if not required in any other criminal case and their bail bonds shall stand discharged.

Accordingly, both the Appeals are allowed and disposed off.

(VIJAY KUMAR SHUKLA)
JUDGE