

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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CRIMINAL APPEAL No. 434 / 2000

KAMRUNISA W/O IQBAL
VS.
STATE OF MADHYA PRADESH

* * * * *

Counsel for the petitioner : Mr. Sanjay Sharma, and Mr. Salil Ekadi,
Advocates for the appellant.

Counsel for the respondent : Mr. Ambar Pare, learned counsel for the
respondent State.

Whether approved for reporting : Yes

Law laid down : Accused telling the deceased that he will
give Talaq to her – that itself would not
constitute an ingredient to instigate. Presence
of *mens rea* is necessary concomitant of
instigation.
Dying declaration of the deceased stating
that the accused told her that he will be
giving Talaq to her, will not be enough to
hold the accused guilty of the charge framed
u/S. 306 IPC.
Held, conviction u/S. 306 IPC is liable to be
set aside, as ingredient of abatement are
totally absent.

Significant paragraph numbers : 05 to 10

J U D G M E N T

(01/08/2019)

The present appeal is arising out of the judgment of conviction dated 23/3/2000 passed in Session Trial no.464/1994. During the pendency of the present appeal, the sole appellant Iqbal expired and his widow Kamrunisa wd/o Iqbal, has been brought on record. She is challenging the conviction.

02. Facts of the case reveal that marriage of deceased Iqbal

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took place with Saida d/o Abdul, 10 years prior to the incident. That on 15/3/1994 co-accused Munna @ Rashid was showing some obscene photos to the deceased Saida and her husband Iqbal, at the relevant point of time, came on the spot i.e, the house of the accused. Heated arguments took place between them and as his wife was in the company of co-accused Rashid and she was seeing obscene photographs which were being shown by Rashid, the husband told the wife that he shall be divorcing her.

03. Facts of the case further reveal that only because of the aforesaid incident, the wife herself has poured the kerosene upon her and ultimately expired on 15/5/1994. A crime was registered at Crime No. 316/1994 and thereafter Iqbal has been convicted for offence u/S. 306 read with Section 498-A of the Indian Penal Code and sentenced to undergo 5 years Rigorous Imprisonment with fine Rs. 2000/- for offence u/S 306: one year RI for offence u/S 498A, with a default clause to undergo one year further RI in case of non-payment of fine amount.

04. During the trial, father of the deceased Abdul Gaffar was examined and the mother of the deceased Jaslin as well as her brother Md. Nasir was also examined. They have turned hostile. The only basis of convicting the present appellant (deceased Iqbal) is the dying declaration (Ex. P/4). Dr. Paritosh Dubey (PW 9) has recorded the dying declaration. The dying declaration of the deceased reads as

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under:

प्रश्न:- तुम्हारा और पति का नाम क्या है?

उत्तर- मेरा नाम सईदा बी है पति इकबाल ।

प्रश्न:- कहां रहती हो?

उत्तर- मैं यादव मोहल्ला में रहती हूँ ।

प्रश्न:- तुम कैसे जली?

उत्तर- मैंने अपने उपर घांसलेट डालकर माचिस से आग लगा ली ।

प्रश्न:- तुमने अपने आपको क्यों जलाया?

उत्तर- मैं बहुत परेशान हो गई थी मेरे पति ने मुझे बहुत तंग किया क्योंकि मेरे पड़ौसी रसीद ने मुझे नंगे फोटो की किताब बताकर मेरी उंगली पकड़ी जिसको लेकर मेरे पति ने मुझसे खूब झगड़ा किया और तलाक देने की धमकी दी जिससे परेशान होकर मैंने अपने आपको जला दिया मैंने पूरे होश हवाश में यह बयान दिया है बिना दबाव के मुझे किसी ने नहीं जलाया है ।

05. Based upon the aforesaid dying declaration, the trial court has arrived at a conclusion that there was an instigation on the part of the husband on account of which the deceased has committed suicide and accordingly he has been convicted.

06. It has been stated that infact there was no case of immediately instigation and therefore, in the light of the judgment delivered by the Hon'ble Supreme Court in the case on Sanjy alias Sanjay Singh Sengar Vs. State of M.P., reported in **2002 CrLJ 2796** conviction deserves to be set aside.

07. On the other hand, learned Government Advocate has vehemently argued before this Court that based upon the dying declaration, the question of interference with the judgment does not arise. There was a categoric statement made by the deceased before the Doctor and there is no

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reason to disbelieve the statement made by the deceased.

08. Heard learned counsel for the parties at length and perused the record.

09. This court has very carefully gone through the dying declaration which is the sole basis for convicting the appellant. She has stated that she herself poured the kerosene upon her. She has stated that her neighbour Rashid was showing her some obscene photographs, he caught hold of her and at the relevant point of time the husband came and therefore, a fight took place between them and, therefore, she has taken such a drastic step. The word "instigate" has been dealt with in a very exhaustive manner by the Hon'ble Supreme Court in the case of Sanju (supra). Paragraph 12, 13 and 14 of the aforesaid judgment reads as under :

12. In Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate , in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the

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conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. 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 unadvisable 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 in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and

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also told the deceased to go and die. This fact had escaped notice of the courts below.

14. The next and most important material is the suicide note left by the deceased. The translated copy is annexed to this appeal as annexure P-1. It is extracted: "SUICIDE NOTE Danik Bhaskar 581 South Civil Lines Jabalpur.

Agent Name Sengar New Agency Place Gosalpur No. of copies 409 Date Name of the person who prepared label Gosalpur Sengar has threatned to report under Dowery demand and threatned to involve family members due to this I am writing in my full senses that Sanjay Sengar is responsible for my death. Sanjay Sengar also Mukraj commander Loota Tha Sanjay ki. Sengar New Agency Gosalpur I was threatened therefore I am dying Sengar Gosalpur My name Chander Bhushan Singh Goutam Chander Bhushan Singh Goutam Babloo Goutam In my senses Sengar responsible for my death.

My moti Darling my moti. You look after my Chukho. My darling Moti Neelam Sengar @ Chander Bhushan Singh Goutam Gandhigram Budhagar.

Sengar is responsible for my death Sanjay Sengar is responsible for my death Sanjay Sengar is responsible for my death Chander Bhushan Singh Goutam Gandhigram Budhagar".

10. In the present case the husband has told the wife that he will be giving a divorce to her. In the case of Sanju the deceased was told to go and die and the apex Court has held that "to go and die" itself does not constitute the ingredient of instigation. The words uttered in a quarrel or in the spur of moment, cannot be taken to be uttered with *mens rea* and, therefore, this Court is of the considered opinion that the words uttered by the husband that he will be divorcing the wife, will not amount to instigation, within the meaning of Section 107 of the Indian Penal Code and therefore, the

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judgment dated 23/3/2000 convicting the appellant (deceased) deserves to be set aside and is accordingly set aside. As the deceased is no more the family shall be entitled for all the benefits flowing out of the order passed by this Court. No order as to cost.

(S. C. SHARMA)
JUDGE

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