

Cr.R. No.2/2016

21/06/2017

Shri Jai Sharma, learned counsel for the petitioner.

Shri R.S. Parmar, learned Public Prosecutor for the respondent/State.

Heard finally with the consent of the learned counsel for the parties.

ORDER

This is a petition under Section 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') calling in question the legality, propriety and correctness of order dated 16.12.2015, whereby a charge under Section 306 in alternate S.306/34 of IPC has been framed against petitioner Rakesh Gupta.

Petitioner Rakesh Gupta and his brother Shyam Gupta have been prosecuted under Section 306 in alternate S.306/34 of IPC for abetting his brother Rajkumar Gupta to commit suicide who as per prosecution had committed suicide on 14.06.2015 at around 2.30 p.m. by jumping into Kshipra river from Mangal Nath temple bridge, Ujjain.

The allegation against the petitioner is that he was not willing to part away with half share of the deceased in the ancestral property and that he was harassing the deceased in this regard. Further allegation is that the petitioner did not permit the deceased for having reconnection of the electricity in his premises and, therefore, Rajkumar Gupta feeling harassed and humiliated committed suicide by jumping into

the river.

It is submitted by learned counsel for the petitioner that the allegations made against the petitioner do not even *prima-facie* make out a case for abetment to commit suicide within the meaning of Section 306 of IPC. The contention is that the allegations taken at their face value do not indicate that the petitioner at any point of time instigated, provoked, encouraged, incited or suggested the deceased to commit suicide. It is also contended that the house in question is the ancestral house and, therefore, the petitioner had not say in giving half share to the deceased. It is also submitted that the reconnection of the electricity was exclusively a matter within the power of the authorities of the Madhya Pradesh Electricity Board and, therefore, the petitioner cannot be held liable in that regard. Reference in this connection is made to Section 107 and 306 of IPC as well as decision of the apex Court in *Sanju @ Sanjay Singh Sengar v. State of M.P., AIR 2002 SCC 1998* equivalent to *(2002)5 SCC 371*. Lastly, it is submitted that the deceased has left a suicide note, a copy of which is available at page – 42 of the compilation and a perusal of the suicide note reveals that the deceased was suffering from some serious illness and to get rid of pain and and he ended his life.

Per contra, learned counsel for the State has opposed the prayer. It is submitted that the material collected by the police during the investigation *prima-facie* very much indicates that

the petitioner and his brother Shyam Gupta had abetted the deceased to commit suicide, however, no explanation is offered with regard to suicide note in which the deceased has stated that he is suffering from serious illness and wants to get rid of the same.

Heard the learned counsel for the parties and perused the record.

To constitute abetment within the meaning of Section 107 read with Section 306 of the IPC, it must be demonstrated that the accused had instigated, provoked, incited, suggested or goaded the deceased to commit suicide and that, such result was intended by the accused. In a number of decisions, the apex Court has considered whether harassment simplicitor can amount to abetment within the meaning of Section 107 read with Section 306 of the IPC. Each time, the apex Court has answered the issue in negative stating that harassment simplicitor cannot amount to abetment. In this regard, we can usefully refer to the decision rendered by this Court in *M.Cr.C. No.1742/2016 (Bittu @ Girroraj vs. State of M.P., Order dated 08.03.2017, Bench Indore)*, wherein the legal position has been considered in the light of various pronouncements of Hon'ble the apex Court; relevant paras whereof run as under:

09. '*Abetment to commit suicide*' is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and fine.

Expression '*Abetment*' has been defined in Section 107 of IPC which runs 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 or 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 of that thing. 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"

10. In the *State of Punjab Vs. Iqbal Singh, AIR 1991 SC 1532*, the apex Court explaining the meaning and expanse of word 'abetment' as used in Section 107 of IPC, has held as under:

"Abetment" as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor

as a person who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word "instigate" in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word "aid" is to give assistance, help etc.

11. In *Ramesh Kumar vs. State of Chhatisgarh*, (2001) 9 SCC 618, a three Judge Bench of the apex Court explaining the meaning and connotation of word "**instigation**" has held as under (para. 20):

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

12. Taking note of the fact that each person's suicidability pattern is different from others and that each person

has his own idea of self-esteem and self-respect, the apex Court in *M. Mohan Vs. State, Represented by the Deputy Superintendent of Police, 2011 CRI.L.J. 1900 (S.C.)*, referring to its earlier decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), 2009 (16) SCC 605*, held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

13. Reference can also be made to the decision of the apex Court in *Gangula Mohan Reddy Vs. State of Andhra Pradesh, 2010 (Suppl.) Cr.L.R. (SC) 261*, wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he committed suicide by consuming poisonous substance. The apex Court referring to its earlier decisions in *Mahendra Singh & Anr. Vs. State of M.P., (1995) Supp. 3 SCC 731* and *Ramesh Kumar Vs. State of Chhatisgarh, (2001) 9 SCC 618*, holding that offence of abetment to commit suicide under Section 306 of IPC is not made out, observed as under:

“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”.

14. In *Deepak V. State of M.P., 1994 Cri. LJ 767 (M.P.)*, the deceased girl was threatened with defamation, if she

refused to have sexual intercourse with two accused; within an hour she committed suicide leaving a suicidal note. Accepting the plea that the act of the accused might have been a reason for committing suicide but the same did not constitute abatement within the meaning of Section 306 read with Section 107 of the IPC, it was held that -

“neither there was any intention nor any positive act on the part of the accused to instigate her or aid her in committing suicide. The two accused persons, therefore, cannot be held guilty of the offence under Section 306 of the I.P.C. and their conviction on that count by the trial Court, is liable to be set aside.”

15. In the case of *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 S.C. 1998*, the accused was charged under Section 306 of IPC for abetting his brother-in-law to commit suicide; the accused allegedly said to him to '*go and die*'; the deceased left behind a suicide note stating that accused is responsible for his death. It was held that words “go and die” do not constitute instigation for mens rea of offence under Section 307 of IPC.

16. In *Mahendra Singh and Anr. Vs. State of M.P., 1996 Cri.L.J. 894=1995 Supp (3) SCC 731*, a case prior to the insertion of Section 113-A in the Evidence Act, the charge under Section 306 IPC proceeded on the basis of dying declaration of the deceased to the effect that –

“My mother-in-law and husband and sister-in-law (husband’s elder brother’s wife) harassed me. They beat me and abused me.

My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

Considering legal sustainability of the same the apex Court held as under:

“Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a thing, or secondly, engages with one or 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. Neither of the ingredients of abetment are attracted on the statement of the deceased.”

17. From the aforesaid pronouncements of the apex Court, it flows that to constitute abetment to commit suicide, there must be material, *prima-facie*, indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

18. In ***Devendra and others vs. State of Uttar Pradesh and another, (2009) 7 SCC 495***, it has been held as under:

“when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court

for nothing.”

From the aforesaid, it clearly emerges that to constitute abetment within the meaning of Section 107 r/w Section 306 of IPC, there should be active suggestion, instigation or encouragement on the part of the accused. Even harassment simpliciter cannot constitute abetment within the meaning of Section 107 r/w Section 306 of IPC. In the instant case though it is alleged that the deceased was being subjected to harassment or humiliation on account of refusal by the petitioner to grant him half share of the ancestral property and on account of his refusal to have the electricity connection installed in the premises of the deceased, however, these factors even after taking liberal approach with regard to the provisions of Section 306 r/w Section 107 of IPC cannot constitute abetment. Further, a perusal of suicide note, a copy which is available at page No.42, indicates that the deceased was having some sort of illness and he was having lot of agony because of the illness and, therefore, wanted to get rid off the same, hence, he opted for a flight mode instead of fighting with the illness.

In the aforesaid premises, even if entire case of the prosecution is accepted at its face value, an offence under Section 306 or for that matter S.306/34 of IPC is not made out against the petitioner. Therefore, in view the pronouncement of the apex Court in *State of Haryana & Ors. Vs. Bhajanlal & Ors., 1992 Supp(1) SCC 335*, it is a fit

case for quashment of impugned order.

Accordingly, this petition is hereby allowed and order dated 16.12.2015 framing charge against the petitioner for offence under Section 306, in alternate S.306/34 of IPC is hereby quashed. The petitioner stands discharged with regard to the aforesaid offences.

Cc as per rules.

(Ved Prakash Sharma)
Judge

soumya