

3

2011 Supreme Court Online 5

(CORAM : DALVEER BHANDARI & A.K PATNAIK, JJ.)

Criminal Appeal No. 1301 of 2002; Decided on :05-01-2010

GANGULA MOHAN REDDY

Appellant.

Versus

STATE OF ANDHRA PRADESH

Respondents.

(A) Indian Penal Code, 1860—Section 306 r/w Section 107—Abetment of suicide—A person committing suicide must commit it by himself, irrespective of means employed by him in achieving his object of killing himself—Deceased was hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life—Human sensitivity of each individual differs from other—Different people behave differently in same situation—Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained—Appeal allowed. (Paras 7, 16, 18, 20 and 22)

(B) Indian Penal Code, 1860—Sections 306 and 309—Suicide—Attempt and abatement—In order to convict a person u/s 306 IPC there has to be a clear mens rea to commit offence coupled with direct act which led deceased to commit suicide seeing no option—Each person's suicidability pattern is different from others—Each person has his own idea of self esteem and self respect—There cannot be any strait-jacket formula in dealing with such cases—Each case has to be decided on basis of its own facts and circumstances. (Paras 19, 20 and 21)

(1994) 1 SCC 73; 2009(11) SCALE 24—Relied on.

Held—1. Deceased was hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in same situation. (Para 18)

(ii) Intention of Legislature and ratio of cases decided by 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. (Para 21)

Important Point—Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing.

Counsel for the Parties

Ms. T. Anamika, Advocate for the Appellant.

Mrs. D. Bharathi Reddy, Advocate for the Respondent

<i>Alphabetical list of cases cited in this Judgment</i>	<i>Para</i>
• <i>Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)</i> , 2009 (11) SCALE 24	19
• <i>Mahendra Singh and another vs. State of M.P.</i> , 1995 Supp. (3) SCC 731	13
• <i>Ramesh Kumar vs. State of Chhattisgarh</i> , (2001) 9 SCC 618	15
• <i>State of West Bengal vs. Orilal Jaiswal and another</i> , (1994) 1 SCC 73	16

JUDGMENT

DALVEER BHANDARI. J.—This appeal is directed against the judgment of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1039 of 1996 dated 30.3.2002. The appellant was convicted by the Assistant Sessions Judge, Nagarkurnool under Section 306 of the Indian Penal Code (for short ‘the Code’) and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/-and in default to suffer simple imprisonment for six months.

2. The appellant, aggrieved by the said judgment of the learned Assistant Sessions Judge filed an appeal before the High Court. The High Court upheld the judgment of the learned Assistant Sessions Judge, but while affirming the conviction of the appellant under Section 306 of the Code, the sentence of rigorous imprisonment of 10 years was reduced to 5 years. The appellant, aggrieved by the said judgment, approached this Court. This Court granted leave and released the appellant on bail.

3. The brief facts which are relevant to dispose of this appeal are recapitulated as under:

According to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs. 7,000/- from the deceased which was given in advance to him at the time when he was kept in employment.

4. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides. The prosecution in support of its case examined the father of the deceased as P.W.1 Urikonda Jammanna in which he had stated that his son Ramulu was a farm servant and used to work at the house of the appellant. He also stated that the appellant gave Rs. 7,000/- in advance to his son. PW1 also stated that about two years ago, the appellant had asked his son (Ramulu) that his wrist watch was missing from his house and harassed him on which his son had returned the watch to the appellant. PW 1 in his statement stated that the appellant also levelled the allegation that the gold ear-rings were also missing from his house and the same were stolen by Ramulu. PW 1 also stated that the appellant also demanded the advance of Rs. 7,000/- paid to Ramulu at the time of his employment. He further stated

that Ramulu committed suicide because the appellant had levelled the allegation of theft of ornaments.

5. The prosecution also examined Balamma, the mother of the deceased as P.W.2. She also corroborated the statement of PW1 and gave same version of the incident in her testimony. On the basis of the testimonies of P.W.1 and P.W.2, the Trial Court convicted the appellant under Section 306 of the Code and his conviction on appeal was confirmed by the High Court.

6. Learned counsel for the appellant submitted that the conviction of the appellant is totally unsustainable because no ingredients of offence under section 306 of the Code can be made out in the facts and circumstances of this case. It would be profitable to set out section 306 of the Code:

“306. *Abetment of suicide*—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. The word suicide in itself is nowhere defined in the Indian Penal Code, however its meaning and import is well known and requires no explanation. ‘Sui’ means ‘self’ and ‘cide’ means ‘killing’, thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

8. Suicide by itself is not an offence under either English or Indian criminal law, though at one time it was a felony in England. In England, the former law was of the nature of being a deterrent to people as it provided penalties of two types:

- Degradation of corpse of deceased by burying it on the highway with a stake through its chest.
- Forfeiture of property of deceased by the State.

9. This penalty was later distilled down to merely not providing a full Christian burial, unless the deceased could be proved to be of unsound mind. However, currently there is no punishment for suicide after the enactment of the Suicide Act, 1961 which proclaims that the rule of law whereby it was a crime for a person to commit suicide has been abrogated.

10. In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under section 309 of IPC.

11. ‘Abetment’ has been defined under section 107 of the Code. We deem it appropriate to reproduce section 107, which 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 or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes

places in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aides, by any act or illegal omission, the doing of that thing.”

12. Explanation 2 which has been inserted along with section 107 reads as under:

“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 facilitate the commission thereof, is said to aid the doing of that act.”

13. Learned counsel for the appellant has placed reliance on a judgment of this Court in *Mahendra Singh and another vs. State of M.P.*, 1995 Supp. (3) SCC 731. In the case of *Mahendra Singh*, the allegations levelled are as under:-

“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.”

14. The court on aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under section 306 IPC merely on the basis of aforementioned allegation of harassment of the deceased is unsustainable in law.

15. Learned counsel also placed reliance on another judgment of this court in *Ramesh Kumar vs. State of Chhattisgarh*, (2001) 9 SCC 618. A three-Judge bench of this court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered “you are free to do whatever you wish and go wherever you like”. Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in paragraph 20 has examined different shades of the meaning of “instigation”. Para 20 reads as under:

“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.”

16. In *State of West Bengal vs. Orilal Jaiswal* and another, (1994) 1 SCC 73, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

17. The Court in the instant case came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema may necessarily be drawn.

18. In the instant case, the deceased was undoubtedly hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

19. This court in *Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)*, 2009 (11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word “instigation” and “goadings”. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. 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.

21. 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.

22. In the light of the provisions of law and the settled legal positions crystallized by a series of judgments of this Court, the conviction of the appellant cannot be sustained. Consequently, the appeal filed by the appellant is allowed and disposed of.

23. During the pendency of the appeal, the appellant was released on bail. He is not required to surrender. His bail bond is cancelled and he is set at liberty forthwith, if not required in any other case.

24. Consequently, the appeal filed by the appellant is allowed.