

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : July 28th, 2017

+ Crl. A. No.214/2002
JAGPAL SINGH & ANR. Appellants
Through: Mr.R.N. Mittal, Senior Advocate with
Mr.Amitej Kumar Nagar, Ms.Arushi
Tangri, Ms.Vasudha Bajaj, Mr.R.P.
Singh, Advs.

versus

STATE (GOVT NCT OF DELHI) Respondent
Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellants-Jagpal Singh and Rajinder Kumar @ Titu being aggrieved by the judgment of conviction dated 21.02.2002 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 342/305/34 of Indian Penal Code (hereinafter referred to as I.P.C.) and order on sentence dated 25.02.2002, whereby the appellants have been sentenced to undergo rigorous imprisonment for a period of six months for the offence under Section 342/34 of IPC and to undergo rigorous imprisonment for seven years with fine of Rs.500/- each and in default of payment of

fine to further undergo rigorous imprisonment for six months for the offence punishable under Section 305/34 IPC.

2. The facts of the present case are that deceased Neelam was aged about 11½ years who was studying in class VI and used to take tuition from the wife of other son of accused Jagpal Singh. On 25.03.2000, deceased Neelam went to take tuition to the house of accused persons and after coming from there, she set herself on fire. She was admitted in Safdarjung Hospital with 100% burn injuries. The police reached the hospital and recorded statement of Neelam. As per the statement made by Neelam, on 25.03.2000 when she had come to her house after tuition, accused Jagpal came to her house and had said that she had stolen Rs.200/-. On checking the school bag of Neelam a sum of Rs.200/- were found. Accused Jagpal scolded Neelam, whereas accused Rajinder said to her that it was a bad thing that she had stolen the money. Thereafter, Neelam closed the door of her house and set herself on fire by pouring kerosene oil on herself.

3. Thereafter, Neelam died of her injuries on 26.03.2000. Post mortem on the dead body of deceased was conducted in which the doctor opined the cause of death as shock due to ante mortem 100% burn injuries. Thereafter, mother of the deceased made a complaint to the police and then only the FIR of the instant case was registered. Both the accused persons were arrested. On completion of investigation, charge sheet was filed in the Court.

4. The trial court framed the charge under Section 342/34 and 305/34 IPC against both the accused to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 14 witnesses, namely, PW1 Sunita, PW2 Suresh Kumar, PW3 Ram Pal, PW4 Ranjeet, PW5 Yogesh, PW6 Ashutosh @ Dablu, PW7 Dr.A.K. Sharma, PW8 HC Mahavir Singh, PW9 Ct.Gajinder Singh, PW10 SI Anil Kumar, PW11 HC Tara Chand, PW12 Babu Lal, PW13 Dr.Sanjay Saraf and PW14 Insp. Puran Singh.

6. After completion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded in which they claimed innocence. In support of their defence, accused persons had examined DW1 Ram Kishan and DW2 Ram Sewak.

7. After considering the facts, evidence led on behalf of both the sides and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under Section 342/305/34 of IPC vide judgment and sentenced the appellants vide order on sentence, as indicated above.

8. Argument advanced by the counsel for the appellants is that in the dying declaration Ex.PW11/A, the deceased did not blame anybody but the same has been discarded by the trial court. There was delay of more than 18 days in lodging the FIR and no explanation had come on record. It was argued that the deceased committed the suicide out of fear of her mother when she was caught red handed for

stealing the money. It was submitted that no case for abetting the suicide is made out against the appellants inasmuch as accusing a person of stealing cannot come within the purview of abetting of suicide. There are material contradictions in the testimony of witnesses which makes the case of prosecution doubtful. In support of his contentions, learned counsel for the appellants relied upon the following judgments: Ramesh Kumar vs. State of Chattisgarh, 2001 AIR SC 3837; Mool Chand & Anr. Vs. State, 2017 (2) AD(Delhi) 709; Gangukla Mohan Reddy vs. State of Andhra Pradesh, 2010 (1) SCC 750; S.S. Cheena vs. Vijay Kumar Mahajan, 2010 (9) SCR 1111; Chitresh Kumar Cheena vs. State (NCT of Delhi), 2010 AIR SC 1446 and M. Mohan vs. State, 2011 AIR SC 1238.

9. Arguments advanced by both the sides were heard and the evidence as well as material placed on record has been gone into.

10. At the very outset it is explicitly clear from the dying declaration of the deceased that she did not blame anyone for her committing the said act of setting herself ablaze. After returning from her tuition when the accused persons reached her home to question her with respect to their lost money, and upon checking the same was found in her bag, the deceased was scolded by her mother and the accused persons. The accused told her that it was a bad thing that she had stolen money subsequent to which she shut herself inside her house and set herself on fire after pouring kerosene oil on herself and nobody else had burnt her.

11. PW1 is Sunita, the mother of the deceased. She has stated in her testimony that on 25th March, 2000 her daughter, the deceased had gone to take tuitions at the house of the accused persons from Ritu. She returned home at around 6 PM and immediately after accused Jagpal came to her house and asked her to check the bag of the deceased. This witness asked the accused to check the same himself. The accused took the deceased to his house where the co-accused was also present along with Ritu and this witness followed all of them. Both the accused beat up her daughter and accused her of stealing Rs.200/- and thereafter accused took the deceased inside a room and questioned her there. The deceased was crying and shouting but this witness was stopped from going inside the room by the accused Jagpal and Ritu. Thereafter, the deceased was let go by the accused persons.

12. From the facts and circumstances of the case and testimony of the mother of the deceased, it is clear that the deceased was questioned by the accused persons with respect to their money and Rs.200/- was found in the deceased's bag by the accused persons. The accused persons and also the mother of the deceased thereafter, scolded the deceased for her act of stealing money from the accused persons. Thereafter, she locked herself in her house and set herself ablaze.

13. In ***Ramesh Kumar v. State of Chattisgarh (2001) 9 SCC 618***, the Supreme Court while considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of the dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been a 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 the Hon'ble Apex Court said: **The word “urge forwards” means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, especially by pushing or forcing such person. Therefore, a person instigating another has to “goad” or “urge forward” the latter with the intention to provoke, incite or encourage the doing of an act with a latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as “abetment”.**

14. Further, in *Gangula Mohan Reddy v State of Andhra Pradesh* (2010) 1 SCC 750 it was held that abetment involves a mental process of **instigating** a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained under Section 306 IPC. A word uttered in a fit of anger or emotion **without intending** the consequences to actually follow, thus, **cannot be said to be instigation.**

15. Furthermore, in *State of West Bengal v. Orilal Jaiswal & Another.* (1994) 1 SCC 73, the Hon'ble Apex Court has cautioned that

Courts 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.

16. Based on the above discussion and relevance of the case laws discussed along with placing reliance on the dying declaration of the victim it cannot be said that the accused persons, in any way, instigated or goaded the deceased to commit suicide. The accused persons had no doubt reprimanded the deceased for her act of stealing money from their house but the same cannot be said to have been with any intention, knowledge or desire to instigate her to commit suicide. Further, the deceased herself has explicitly mentioned in her dying declaration that nobody had in fact pressurized her into committing suicide and the said act was of her own doing. It is also a matter of fact that in her earlier statement made to the police, the complainant (mother of the deceased) had herself stated that when it was found that a sum of stolen money i.e. Rs.200/- were recovered from the bag of

her deceased daughter, she was reprimanded by her also apart from others. Thus, the testimony made by the complaint during her examination in the Court is in no way can be said to be convincing to held the appellants guilty of commission of abetment of suicide.

17. In view of the above discussion, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the appellants with respect to abetment of suicide by the deceased. Therefore, the conviction of the appellants under Section 342/305/34 IPC deserves to be set aside.

18. As observed above, the judgment of conviction and order on sentence passed by the Trial Court are set aside. The appellants are on bail. Their bail bond and surety bonds stand discharged.

19. A copy of this order be sent to the Trial Court for information.

20. With aforesaid directions, the present appeal is disposed of.

JULY 28, 2017

dd

(P.S.TEJI)
JUDGE