

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

CRL.A.No. 277 of 2006 ()

AGAINST THE JUDGMENT IN SC 618/2004 of ADDL.SESIONS COURT
(ADHOC)-II, THODUPUZHA DATED 05-01-2006
CP 20/2004 of J.M.F.C,THODUPUZHA

APPELLANT(S)/ACCUSED::

RATHEESH, S/O. PRASAD, PARAYAKUNNEL
VEETIL, EDAMARUKU KARA, UDUMBANNOOR VILLAGE
THODUPUZHA.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT(S)/COMPLAINANT::

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

'C.R.'

P.D. RAJAN, J.

Crl.Appeal No.277 of 2006

Dated this the 3th day of August, 2015

JUDGMENT

The appellant, who is the accused in S.C.No.618/2004 of Additional Sessions Judge, Thodupuzha, (Adhoc)-II, challenges the judgment of conviction u/s.309 r/w 109 IPC. He was sentenced to simple imprisonment for one year and fine of ₹5,000/-, in default of payment of fine, simple imprisonment for three months, being aggrieved by that, he preferred this appeal.

2. The prosecution case is that on 8.11.2003, accused abetted Bajitha to commit suicide and on 9.11.2003 at 11 a.m. she consumed poison entrusted by the appellant, as a result, she became unconscious, immediately, she was taken to Taluk

hospital, Thodupuzha and thereafter at Holy Family hospital, Muthalakodam where she had undergone treatment. Karimannoor Police registered crime No.200/2003 and after investigation, the Sub Inspector of Police, Karimannoor laid charge u/s.306 IPC before Judicial First Class Magistrate Court, Thodupuzha., from there it was committed to Sessions Court.

3. To prove the offence, prosecution examined PW1 to PW12 and marked Exts.P1 to P9 as documentary evidence. MO1 series were marked as material objects and Exts.D1 to D5 were marked during examination of witnesses. The incriminating circumstances brought out in evidence were denied by the accused while questioning him, and he was heard u/s.232 Cr.P.C, but he did not adduce any defence evidence. The trial Court convicted the accused.

4. The learned counsel appearing for the appellant

contended that there is no evidence to prove abetment. Moreover, no crime was registered against the persons who attempted to commit suicide. There is no medical evidence to show that appellant entrusted poison and she had consumed that poison. Mere oral evidence of PW1 and PW2 is not sufficient, when there is no evidence of abetment.

5. A person abets the doing of a thing means, firstly he instigates any person to do that thing or secondly engages with one or more persons in a conspiracy for committing an offence or thirdly intentionally aids, a person by any act or illegal omission to commit an offence or illegally omits the doing of an act which would prevent the commission of the offence. While determining the law of abetment, the Court has to consider what act he had abetted and secondly, with what intention and, as per that intention, what act was committed. Therefore, the

identity of the intention of the abettor and the actor is relevant. The act was committed by the actor only with the instigation of the abetted person. Therefore, the liability of the abettor and the actor is equal. Moreover, such abetment and act have to be proved by the prosecution. A person is said to instigate another to do an act, when he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Here, the allegation is that the revision petitioner instigated PW2 to attempt to commit suicide. Therefore, the prosecution has to prove that PW2 had attempted to commit suicide or she did any act towards the commission of such offence. A person who abets the commission of offence be punished, provided for the offence. Here, the person, who attempted to commit

suicide, was not charge sheeted by the Police, on the other hand, the abettor alone was charge sheeted.

6. The allegation in this case is that the appellant had intentionally aided PW2 to commit suicide in this case. For ascertaining this, I have examined the oral evidence of PW2, which shows that the appellant was her lover for the last four years and she had physical relationship with him. One Shaji once saw their physical relationship and thereafter he threatened her. After this incident, appellant demanded her to commit suicide, but she refused that demand and after two-three days, he disturbed her several times. On 8.11.2003, at 2 p.m. they again met in her property, the appellant reminded her to commit suicide, but she denied that request. Appellant offered a job at Ernakulam, which was refused by PW2, in the circumstances, he demanded either to commit suicide

or accompany him to Ernakulam and entrusted a poison packet. He told her to consume poison on the next day and she agreed.

7. On the next day, while she was proceeding to the house of Varghese, on reaching at Vellilavu, she consumed poison, she became unconscious and she was removed to Taluk Hospital, Thodupuzha and thereafter treated in the Holy Family Hospital, Muthalakodam. Her evidence shows that on 8.11.2003 at 2 p.m., when she refused to consume poison, the appellant caught on her hand and hit against a tree, her bangles were broken and she sustained injuries on her hand. PW1 supported the evidence of PW2. Her evidence shows that PW2 is her daughter and she became unconscious, after consuming poison, she removed her to Taluk Hospital, Thodupuzha and subsequently treated at Holy Family Hospital,

Muthalakodam for eight days. For this, she gave Ext.P1 statement to the Police. But, PW1 has no direct knowledge about the incident and no medical evidence to connect the appellant with the alleged offence. A close scrutiny of evidence of PW2, it is clear that there is no instigation, conspiracy or intentional aid by the appellant for committing any illegal act.

8. Apex Court, while dealing with similar situation observed in Praveen Pradhan v. State of Uttaranchal & Anr. [2012 (10) JT 478] that the offence of abetment by instigation depends upon the intention of the person, who abets and not on the person who acted on getting instigated by the accused. It is specific that an act on the part of the alleged abettor happens to facilitate the commission of the crime is not enough but has to prove the intentional aiding. Apex Court in Sri Ram v. State of U.P.

[AIR 1975 SC 175] observed that mere knowledge on the part of a person that his act would facilitate the commission of the offence does not make him an abettor. When there is no action as per the instigation, no offence will attract in such situation.

9. In this context, I have considered whether there is any medical evidence in this case. PW6 deposed that on 9.11.2003 at 2 p.m., PW2 was admitted in his hospital as a case of Organo Phosphorus poisoning and issued Ext.P4 certificate. She was treated from 9.11.2003 to 18.11.2003 with organo phosphorus antidote, along with other medicines. It is very interesting that the Police did not question the doctor, who treated PW2. But, they conducted a potency test with the help of PW7 and obtained Ext.P5 certificate.

10. PW12 registered Ext.P1(a) FIR and arrived at

the place of occurrence and prepared Ext.P3 mahazar. On 24.11.2003, the appellant was arrested and produced before PW7 for conducting potency test. After completing investigation PW12 laid charge before Court. PW8 issued Ext.P6 extract of school admission register and her date of birth is 25.5.1987. PW9, the Village Officer, Udumbannoor prepared Ext.P6 scene plan. PW10 had given counselling to PW2. PW11 and PW12 had only hearsay information with regard to the incident. Analysing the evidence of PW2, PW1 and PW11, it is clear that their evidence is not sufficient to prove the offence of abetment. Suicide as such is not a crime under IPC, however attempt to commit suicide is an offence against the person, who commit such act. When there is no evidence to show that the consumed article is poison and it was entrusted by the appellant, it is difficult to believe

that she attempted to commit suicide.

11. Similar question was considered by the Apex Court in Swamy Prahalad das v. State of MP & another [1995 (Supp 3) SCC 438], in which two persons quarrelled each other, one of them told the other to "go and die". Apex Court observed that it cannot be held that the suicide by the deceased was the direct result of the words used by the accused. In Praveen Pradhan v. State of Uttaranchal & Anr. [JT 2012 (10) SC 478] held as follows:

"14. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh, AIR 1991 SC 1532; Surender v. State of Hayana, (2006) 12 SCC 375; Kishori Lal v. State of M.P., AIR 2007 SC 2457; and Sonti Rama Krishna v. Sonti Shanti Sree, AIR 2009 SC 923.)

No offence has been charge sheeted against the person,

who attempted to commit suicide, since mens rea is one of the essential ingredients of the offence. When there is no instigation proved against the appellant, it is presumed that no abetment as alleged.

Analysing the evidence, it is found that there is no active and intentional assistance by the appellant to commit any offence, it is presumed that prosecution failed to prove the case against the appellant. Accordingly, the conviction and sentence passed by the trial Court u/s.309 r/w.109 IPC are set aside and the appellant is acquitted and set at liberty.

Crl.Appeal is allowed as above.

P.D. RAJAN, JUDGE.

acd