

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.334 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners herein challenging the judgment dated 27.02.2007, passed by the I Additional Sessions Judge, Mahabubnagar, in Criminal Appeal No.52 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioners herein for the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short, 'I.P.C') vide the judgment dated 28.02.2005 in S.C.No.414 of 2003 by the I Additional Assistant Sessions Judge, (Fast Track Court), Mahabubnagar, was confirmed.

2. The revision petitioners herein are the accused, whereas respondent is the complainant in S.C.No.414 of 2003 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Sessions Case before the trial Court.

3. The case of the prosecution is that on 07.05.2003, the *de facto* complainant-PW.1 gave a complaint stating that about 16 years back she performed the marriage of her daughter Peddamoni Bharathamma (hereinafter referred to as 'the deceased') with one Bheemaiah of Chowdoor village of Nawabpet mandal. After the marriage, they both lived for ten years and blessed with a male and a female children. Since then, the deceased was eking out her livelihood by doing coolie work at Chowdoor village. On 05.05.2003, the *de facto* complainant received a phone call from the said village stating that her daughter (deceased) set ablaze and was undergoing treatment in the Government Head Quarters Hospital, Mahabubnagar. She rushed to the hospital and found the deceased with burn injuries. The deceased

informed her that on 03.05.2003 while she was sleeping in her house, accused No.1 came to her house and asked her to come with him for fishing in the village river, for which she refused; that on the next day night, both the accused came to her, picked up a quarrel, beat her with hands, abused her in filthy language and threatened her on account of which she came to her house and attempted to commit suicide by pouring kerosene on her body and setting fire to herself, due to which she received burn injuries; and that her uncle shifted her to the hospital. Thereafter, on 06.05.2003 at 9:25 p.m, the deceased died in the hospital. The complaint given by PW.1 was registered as a case in Cr.No.59 of 2003 for the offence punishable under Section 306 read with 34 I.P.C against both the accused. During the course of investigation, the Investigating Officer recorded the statements of all the material witnesses, conducted the scene of offence panchanama and inquest panchanama in the presence of mediators. Further, he sent the dead body for post-mortem examination. In the post-mortem report, the doctor gave opinion that death was due to "Septicemia (94%-96%) due to extensive burns leading to shock and death". After receiving the said post-mortem report, the Investigating Officer arrested the accused on 24.06.2003 and after completing the investigation, filed the charge sheet into the Court.

4. On appearance of the accused, the Judicial Magistrate of First Class, Mahabubnagar, took cognizance of the case and as the case is exclusively triable by the court of Session, he committed the case to the District & Sessions Judge, Mahabubnagar, who in turn made over the case to I Additional Assistant Sessions Judge, (Fast Track Court), Mahabubnagar, for disposal according to law.

5. On appearance of the accused, the I Additional Assistant Sessions Judge, Mahabubnagar, framed a charge for the offence punishable under Section 306 I.P.C against the accused. During trial, to prove the case of prosecution, PWs.1 to 11 were examined and

Exs.P1 to P7 & MO.1 were got marked. Exs.D1 to D4 were got marked during the cross-examination of PWs.1 to 4.

6. After closure of prosecution evidence, accused were examined under Section 313(1)(b) Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral or documentary evidence on their behalf.

7. The trial Court, after hearing the arguments and after perusing the record, convicted the accused and sentenced them to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.200/-, and in default of payment, to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 306 I.P.C each.

8. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.52 of 2005 before the I Additional Sessions Judge, Mahabubnagar, where the Appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

9. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.52 of 2005 and S.C.No.414 of 2003, both the accused preferred the present revision case.

10. The learned counsel appearing for the revision petitioners/ accused argued that the evidence of PWs.1, 3 & 4 is hearsay evidence and basing on the evidence of those witnesses, the trial Court imposed the punishment against the accused; that the prosecution failed to prove that there is an abetment and the ingredients of Sec.107 I.P.C are not proved; that the evidence of PWs.1 to 4, who are closely related to the deceased, will naturally speak in favour of the deceased

and against the accused; that relying on the evidence of PWs.1 to 4 alone, the guilt of the accused cannot be proved; that the prosecution in this case has not proved the main ingredients of *mens rea* and the deceased, in a fit of anger committed suicide and accused never induced her and relied upon the case law reported in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**^[1], wherein it is held at paras 13 & 16 as follows:

13. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

16. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

He also relied upon a case law reported in **Ramesh Kumar v. State of Chattisgarh**^[2], wherein it is held at para 21 as follows:

21. In *State of West Bengal Vs Orilal Jaiswal* [1994 SCC (Cri) 107], 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 transpires 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 circumstances 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.

and finally prayed to allow the revision and acquit both the accused from the charge levelled against them.

11. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that the trial Court after considering the evidence of PWs.1 to 4 and the dying declaration-Ex.P4 recorded by PW.8, came to the conclusion that the accused abetted the deceased to commit suicide; that PW.2, who is the son of the deceased aged about 11 years, categorically stated about the harassment of the accused and he in his evidence clearly stated that his mother refused to go with the accused for fishing, due to which they beat and abused her in filthy language and also abetted her to commit suicide; that the evidence of PWs.1 to 4 clinchingly proved the ingredients of Sec.306 I.P.C and the trial Court after considering the evidence of all the witnesses, rightly convicted the accused and the same was confirmed by the Appellate Court; that the Appellate Court in its findings clearly stated that the accused repeatedly tried to provoke the deceased and had even poked their nose in her personal life and directly or indirectly suggested that it would be better for her to die if she did not agree for their proposal, and that having tolerated illegal conduct of the accused for 3 or 4 days, the deceased had lost her heart when it was reminded that her husband died and further suggested to die on the ground that already her husband had died; that the Appellate Court also gave a finding that accused has no business to disturb privacy of the deceased, who evidently modest and does not have any negative background of any nature; that therefore, both the Courts below rightly convicted the accused and the said finding needs no interference and prayed the Court to dismiss the revision case.

12. Now, the point for determination is --

Whether the revision petitioners herein are entitled to set aside the concurrent finding given by both the trial Court and Appellate Court below for the offence punishable under Section 306 I.P.C, as prayed for or not?

13. **P O I N T:** A perusal of the evidence produced by the prosecution shows that PW.1 is the mother of the deceased. PW.2 is

the son of the deceased and PWs.3 & 4 are the brother and sister of the deceased. As per the evidence of PW.1, she performed the marriage of the deceased with one Bheemaiah of Chowdoor village 16 years prior to the incident. They lived happily for about 10 years, blessed with two children PW.2 and another. After some time husband of the deceased died and the deceased was staying in Chowdoor along with her children and earning by doing coolie work. The accused also belongs to Chowdoor village. PW.1 came to know about the incident on 05.05.2003 and rushed to the hospital, where the deceased informed her about the harassment and torture made by the accused. Unable to bear the said harassment and torture, she committed suicide and accused are responsible for her death. PW.1 also stated that PW.5 father-in-law of the deceased brought her to the hospital and she gave Ex.P1 report. In the cross-examination of PW.1, nothing has been elicited to disprove her evidence and the manner of the offence as narrated by the deceased. PW.2 is the son of the deceased. In his evidence, he clearly stated that after the death of his father, the accused used to come to their house and accused No.1 insisted the deceased to come for fishing in the river; and that when the deceased refused to accompany with them, accused abused his mother in filthy language and uttered some words, which resulted the deceased to take such extreme step. The evidence of PWs.3 & 4 also supported the evidence of PWs.1 & 2. PW.5 is none other than the father-in-law of the deceased stated that after the incident, he took the deceased to the hospital with burn injuries; and that he heard about the harassment meted out by the deceased in the hands of accused when the deceased narrated the incident to her mother. The evidence of PW.6 is not relevant as he turned hostile. PWs.7 & 10 are the panch witnesses to the scene of offence panchanama Ex.P3. The evidence of PW.8 shows that on 05.05.2003 at about 4:25 a.m, he received requisition from the Station House Officer, Nawabpet police station for recording of the dying declaration of the deceased. He stated that in the

presence of the doctor, he recorded the statement of the injured, who was conscious, coherent and in a fit condition to make statement at that time and he recorded the statement under Ex.P4. PW.9 is the doctor, who conducted post-mortem on the dead body of the deceased on 08.05.2003 and issued post-mortem report Ex.P5 stating the cause of the death as "Septicemia (94%-96%) due to extensive burns leading to shock and death". The other evidence of the witnesses PWs.11 & 12 is of the Investigating Officers. From their evidence, nothing has been elicited by the defence to disprove the prosecution case.

14. The contention of the learned counsel for the revision petitioners/accused is that the accused are innocent and they never abused the deceased to commit suicide and there is no direct evidence adduced by the prosecution that accused abetted the deceased in committing the suicide.

15. A perusal of the evidence of PWs.1 & 2 along with Ex.P4 dying declaration clearly establishes the fact that after the death of the husband of the deceased, the accused are forcing the deceased to come along with them for fishing in the nearby river, for which the deceased is not interested and reluctant to go along with the deceased. Prior to the date of incident, during night time, both the accused came to the house of the deceased and pressurised her to come along with them. When she refused to go along with them for fishing, they abused her in filthy language. This evidence of PWs.1 & 2 coupled with Ex.P4 is corroborated with each other, which shows that the accused though they have no business to enter into the house of the deceased, forced the deceased to come along with them for fishing and thereafter, when she refused, they beat her and dragged her. Further, the words uttered by them also clearly establish that both the accused abetted the deceased to commit suicide. The trial Court as well as the appellate Court clearly gave a finding that the words used by the accused will attract the ingredients of abetment as defined

under Section 107 I.P.C.

Though, there is no dispute as to the proposition of law relied by the counsel for revision petitioners/accused, they have no bearing on the present facts of the case. 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. In the case on hand, the evidence of PW.2 is relevant. His evidence shows that accused uttered the words, due to which deceased was left with no other option except to commit suicide. Further in the dying declaration also, deceased clearly stated that both the accused are responsible for her committing suicide. Therefore, the evidence produced by the prosecution clearly established that accused committed the offence punishable under Section 306 I.P.C and the findings of the appellate Court in Criminal Appeal No.52 of 2005 and the trial Court in S.C.No.414 of 2003 need no interference and the criminal revision is liable to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 27.02.2007, passed by the I Additional Sessions Judge, Mahabubnagar, in Criminal Appeal No.52 of 2005.

17. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 02.03.2015
sr

[\[1\]](#) (2009) 16 SCC 605

[\[2\]](#) (2001) 9 SCC 618