

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 29 OF 2016

State of Goa,
Through Panaji Police Station,
Panaji Goa.

.... Applicant

V e r s u s

Shri Kanhaiy Naik,
S/o Shantaram Naik,
Aged 36 years,
R/o H. No.G-5, Block-B,
Vastu Heritage, Chimbhel,
Ribandar, Goa.

..... Respondent

Shri M. Amonkar, Additional Public Prosecutor for the
Petitioner/State.

Shri S. Naik, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 23rd August, 2016.

ORAL ORDER:

The challenge in this Revision application is to the order dated 1.4.2016 passed by the learned Children's Court in Special Case No.112/2013. By the impugned order the Children's Court has discharged the respondent/accused of the offence punishable under Section 305 of I.P.C. and

section 8(1) of the Goa Children's Act, 2003.

2. The brief facts necessary for the disposal of the petition may be stated thus:

The respondent is working as a drawing teacher in a school where the deceased was a student. According to the prosecution there was an incident on 18/1/2012 wherein the respondent had called the victim who was then aged about 16 years to his house and had clicked some obscene photographs. It was also alleged that the respondent had sexually assaulted the victim. On the basis of a complaint lodged by a NGO with Panaji Police Station, an offence at Crime no.5/2012 was registered against the respondent under sections 341, 354 and 376 of I.P.C r/w Section 8 of the Goa Children's Act, 2003. The prosecution in respect of the said offence is said to be pending before the Children's Court.

3. It so happened that this Court by an order dated 10/7/2012 in Criminal Application (Bail) No.162/2012 released the respondent on bail in the aforesaid offence. According to the prosecution the victim was distressed. The

victim girl set herself on fire on 24/7/2012 at about 1p.m. in her house. She died during the course of the treatment on 27/7/2012 whereupon the present offence under section 305 r/w Section 8(2) of the Goa Children's Act was registered and a charge sheet was filed before the Children's Court.

4. The Children's Court by the impugned order has discharged the respondent.

5. I have heard Shri Amonkar the learned Additional Public Prosecutor for the Petitioner/State and Shri Naik, the learned counsel appearing for the respondent.

6. It is submitted by the Additional Public Prosecutor for the Petitioner that there is a dying declaration by the deceased which shows that the deceased committed suicide as the respondent was released on bail in the earlier offence. The learned Additional Public Prosecutor has pointed out to the observations of the learned Children's Court in para 44 of the impugned order, in order to submit that the involvement of the respondent in the earlier offence of rape was the cause

for the deceased to take the extreme step of setting herself on fire and committing suicide and therefore, there is an element of abetment, which has to be inferred. The learned Addl. Public Prosecutor submits that at the stage of framing of charge this was sufficient and an in-depth examination of the material allegations, was neither necessary nor warranted.

7. It is contended on behalf of the respondent that there was no abetment of the suicide of the deceased at the instance of the respondent which is sine qua non for the offence under section 305 of I.P.C. It is submitted that the fact that the respondent was released on bail cannot amount to abetment of an offence under section 305 of I.P.C. The learned counsel for the respondent submits that the Children's Court after carefully considering the circumstances and the material on record has rightly come to the conclusion that no case for framing of charge is made.

8. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for

interference is made out. Section 305 of I.P.C. defines the offence of abetment of suicide of a child or insane person and it reads thus:

“305. Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or 1[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.”

It can thus be seen that the abetment of the commission of said suicide is the essential element of the offence. Abettment of a thing is defined under section 107 of I.P.C 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 wilful misrepresentation, or by wilful 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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. 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.

For the present purpose, clauses (i) and (iii) of section 107 of the I.P.C. would be relevant which would require that there is either instigation or an intentional aiding of the commission of the suicide by the accused. In the present case, the only circumstance which is alleged against the respondent is that because he was released on

bail in the earlier offence, the victim committed suicide and this would amount to intentionally aiding the commission of suicide. I am not able to persuade myself to fall in line with the said submission. The mere fact that the respondent got himself released on bail in the earlier offence, can by no stretch of imagination be said to be sufficient for the respondent to have abetted the commission of the suicide by the victim. There has to be a direct and proximate causal connection between the act of the accused which would indicate that the accused had either instigated or intentionally aided the commission of the suicide by the victim. I have carefully gone through the impugned order and in my considered view the same does not suffer from any infirmity. The Revision application is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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