

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.142 OF 2015

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

ANURAG ANIRUDH SING @ RAHUL)...RESPONDENT

Shri V.B.KondeDeshmukh, APP for the Applicant - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 5th JANUARY 2016.

P.C. :

1 The respondent was prosecuted on the allegation of having committed offences punishable under Sections 306, 420 and 495 of the Indian Penal Code. After holding a trial, the learned Assistant Sessions Judge, Mumbai, found him not guilty and passed an order of acquittal. The State of Maharashtra is aggrieved by the said order of acquittal, and is therefore, by the present application, seeking leave to file an appeal therefrom.

2 I have heard Shri V.B.KondeDeshmukh, the learned APP for the State. With his assistance I have glanced through the application. I have also gone through the impugned judgment, a copy of which is annexed to the application.

3 The prosecution case, as put forth before the trial court, in brief, be stated thus :

Sonam Gupta, unmarried daughter of the First Informant Dilip Gupta, committed suicide on 2nd April 2012, in her house by hanging herself. She had left a suicide note stating that the respondent herein (hereinafter referred to as the accused) was responsible for her death. In the said suicide note, she mentioned that the accused had kept physical relationship with her for a period of three years, but that, inspite of the same, he married someone else. The suicide note also mentioned that the accused had been repeatedly telling Sonam, the deceased, that he would marry her, but married somebody else. The suicide note also mentioned that she suspected that the accused had married someone else, but kept quite, as she was waiting for her T.Y.B.Com exam to be over. That, after the exams were over, she went to the

house of the accused by concealing her identity and projecting herself to be a sales girl; and found that there was a lady in the house of the accused, who claimed to be the wife of the accused. The suicide note mentioned that the deceased was taking the step of putting an end to her life only because of the accused, and that, there was no other reason for her to take that step. The suicide note indicates that the accused had threatened to lodge a report against Sonam, the deceased, with the police, and that, the deceased wanted that the accused should be punished.

4 The suicide note, which was supposedly written by the deceased, was sent to handwriting expert for his examination and opinion. The learned Assistant Sessions Judge did not place much reliance on the said suicide note and doubted whether it had indeed been written by the deceased. He observed that there were a number of weaknesses in the opinion expressed by the handwriting expert. He also took into consideration the internal matter in the suicide note, which created a doubt in his mind as to whether it had indeed been written by the deceased.

5 It cannot be said that the doubt felt by the learned Assistant Sessions Judge about the genuineness of the suicide note was unreasonable. The appreciation of evidence, as done by the learned Assistant Sessions Judge, does not seem to be suffering from any error or infirmity. However, the matter can be viewed in a totally different perspective. It is that, 'even assuming that the deceased had indeed committed suicide on being frustrated by the fact of the accused having married somebody else despite previously having relations with the deceased, whether the accused, for that reason, can be said to have abetted the commission of suicide by the deceased.'

6 The learned Assistant Sessions Judge has come to the conclusion that the acts attributed to the accused would not amount to abetting the commission of suicide. From the impugned judgment it appears that the legal position was properly understood by the learned Assistant Sessions Judge. The concept of abetment is found in Chapter V of the IPC. Section 107 of the IPC 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 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 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 facilitates the commission thereof, is said to aid the doing of that act."

Section 108 of the IPC defines 'abettor'. It reads as under :

"108. Abettor.-- A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."
(Explanations and illustrations omitted as not relevant for the present.)

7 Here, the case is of abetment by instigation; and other two modes of abetment, viz.:- by conspiracy and by aiding, as contemplated under the clause 'secondly' and 'thirdly' of Section 107 are out of question. The issue then comes to this : *when a person is said to 'instigate' another?* The word 'instigate' literally means to goad, or urge, forward, or to provoke, incite, urge, or encourage, to do an (evil) act. It is well settled, that in order to amount to abetment, there must be *mens rea* or community of intention. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute '*abetment by instigation*', there must be a direct incitement to do the culpable act.

8 The concept of 'abetment' in the context of abetment of suicide, which is punishable under Section 306 of the IPC, has been often discussed by the High Courts and also by the Apex Court in their pronouncements. (See Manish Kumar Sharma Vs. State of Rajasthan¹, Vedprakash Bhajji Vs. State of Madhya Pradesh², Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh³, Cyriac, S/o Devassia and another Vs. Sub-Inspector of Police, Kaduthuruthy and another⁴, Ramesh Kumar vs. State of Chattisgarh⁵, Madan Mohan Singh vs. State of Gujarat⁶)

9 The legal position that emerges from a perusal of the case law is as follows :

Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that

1 1995 Criminal Law Journal 3066

2 1995 Criminal Law Journal 893

3 2002 Criminal Law Journal 2796

4 2005 Criminal Law Journal 4322

5 2001 Criminal Law Journal 4724

6 (2010) 8 Supreme Court Cases 628

would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain-or at least quite likely-to commit suicide. Unless that the victim should commit suicide, is either intended, or can be reasonably foreseen and expected a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as "go and die", in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.

10 It is nobody's case that the accused intended that Sonam should commit suicide.

11 Thus, there was a fundamental defect in the prosecution case itself. It did not spell out any offence punishable under Section 306 of the IPC.

12 As regards the allegation of cheating, the learned Assistant Sessions Judge observed that there was clear evidence that the deceased used to go to meet the accused at his residence, and that, there was an affair between them which was consensus. The learned Assistant Sessions Judge observed that it could not be said that the deceased kept physical relationship with the accused due to the false promise made by him. The learned Judge further held that even if it was so, it would not amount to cheating. I find this observation of the learned Assistant Sessions Judge also proper and in accordance with law. Even if it is assumed that the accused had broken the promise made to the deceased to marry her, an action only for the breach of promise would lie against him, and the case would not necessarily be of cheating.

13 So far as the charge of offence punishable under Section 495 of the IPC was concerned, there was no case that the accused had performed two marriages. There was no substance in that charge.

14 The view of the matter, as taken by the learned Assistant Sessions Judge, is certainly a possible view of the matter – to say the least. It is well settled that in such cases, grant of leave to appeal would be futile.

15 Leave refused.

16 The application is rejected.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**