

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION No.9778 of 2011

ORDER:

Heard counsel for the petitioner and learned Public Prosecutor.

Though notice is served on the 1st respondent, there is no representation on his behalf.

The petitioner, who is the brother-in-law of the deceased and the sole accused, filed the present criminal petition to quash the proceedings initiated against him for the offence under Section 306 IPC in PRC.No.38 of 2011 on the file of the Court of the II Additional Judicial First Class Magistrate, Bhimavaram, West Godavari District.

The facts of the case are that the marriage of the deceased was performed with LW.1 in the year 1991 in Kuppanapudi Village, Akividu Mandal. The in-laws of the deceased, who are LWs.8 and 9, gave two acres of paddy land and also wanted to give a share in their property to the wife of the deceased. However, the accused used to oppose the same and used to pick up arguments with the deceased whenever the deceased visited their village saying that the deceased earned disproportionate assets with his job and threatened him that he would prevail upon the ACB officials to conduct raids on the property of the deceased. Apart from the same, the accused used to pick up disputes with the deceased. The accused insisted his father that the Will executed by him previously should be changed and again property to be divided into shares amongst his off springs. The father-in-law of the deceased

summoned the deceased to the family panchayat to sort out the disputes between them. Accordingly, on 09.03.2009, the deceased came to the house for settling the disputes. On that occasion, the accused threatened the deceased saying that the deceased had earned disproportionate assets with his job and he would make ACB officials to conduct raids on his property and also humiliated the deceased apart from saying that their property disputes would be solved only after his death. In those circumstances, the deceased felt humiliated and decided to put an end to his life and accordingly, he consumed pesticide poison at the house of LW.6 and after shifting the deceased to private hospital at Akividu while undergoing treatment, he died on 09.03.2009.

On the basis of the statement given by LW.1, Akividu police station registered a case in Crime No.20 of 2009 under Section 174 Cr.P.C., and investigated into it. After investigation, a charge sheet was filed by the Assistant Sub-Inspector of Police, Akividu Police Station. After filing of the charge sheet, the concerned Court has numbered the case as PRC.No.38 of 2011. Against the same, the present criminal petition is filed.

Counsel for the petitioner contended that the acts of commission and omission on the part of the petitioner would not amount to the offence under Section 306 IPC. That apart, the counsel strongly emphasized that the incident on 09.03.2009 is not the first time. The petitioner threatened the deceased on earlier occasion and *per se* those threatenings do not constitute abetment as defined under Section 107 IPC and therefore, sought to quash the proceedings initiated against the petitioner in PRC.No.38 of 2011.

Section 107 IPC reads as under:

“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 2 to Section 107 IPC reveals that 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.

In the case on hand, the petitioner was repeatedly threatening the deceased that he would prevail upon the ACB officials to conduct raids on the property of the deceased and also stated that the property disputes would be solved only after the death of the deceased. The abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by the Apex Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. In the instant case, the petitioner was not happy when his father wanted to share the

property in favour of his daughter i.e., the wife of the deceased and that he prevailed upon his father to conduct a panchayat for settling the disputes and also changing the previous Will executed by him. The petitioner also threatened the deceased that he will prevail upon the ACB officials to conduct raids on the properties earned by him. Therefore, these acts on the part of the petitioner clearly establish the motive behind him to do a particular act by the deceased. Coupled with that, the threatenings made by the petitioner appear to have been played a role in taking a step for committing suicide by the deceased.

Be that as it may, the disputes prevailing in the family of the petitioner and the threatenings made by the petitioner to the deceased vis-à-vis forcing the deceased to commit suicide would be appreciated only after adducing evidence during the course of trial, since these aspects cannot be gone into under Section 482 Cr.P.C. Even in the charge sheet, it is clearly mentioned that on the fateful day i.e., on 09.03.2009, the petitioner threatened the deceased saying that the disputes will be solved only after the death of the deceased. In these circumstances, it is not a fit case to quash the proceedings initiated against the petitioner. I see no merits in the criminal petition and the same is liable to be dismissed.

Accordingly, the criminal petition is dismissed. Interim order, if any, shall stand vacated.

Miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE P. KESHA RAO

Date: 24.10.2017.
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