

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.7003 of 2013

Between:

- 1) Gotte Nageshwar Rao.
- 2) Gotte Anasurya. ... Petitioners/Accused Nos.2 & 3

AND

State of A.P.
Rep. by its Public Prosecutor,
High Court of A.P, Hyderabad,
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: **31.07.2018**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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... Respondents

! Counsel for Petitioners : Sri Ch. Dhanamjaya

^ Counsel for Respondent No.1 : Public Prosecutor (TG)

^ Counsel for Respondent No.2 : Sri P. Subba Rao

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> Head Note:

? Cases referred:

- 1) AIR 1994 SC 1418
- 2) AIR 2001 SC 3837 = (2001) 9 SCC 618
- 3) AIR 2004 SC 5097
- 4) 2005 CriLJ 4322 (Kerala)
- 5) AIR 2008 SC 2108
- 6) AIR 2010 SC 1446
- 7) (2010) 8 SCC 628
- 8) (2017) 1 SCC 433 = AIR 2017 SC 74
- 9) 2017 (2) ALD (CrL.) 231 (SC)
- 10) AIR 1992 SC 604

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.7003 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A2 and A3 seek to quash the proceedings against them in Crime No.489 of 2013 of Jeedimetla PS.

2) The prosecution case is that deceased—Ashwini aged about 20 years working in Uninor Call Centre, Panjagutta, Hyderabad fell in love with A1—Kranthi, resident of Huzurnagar, Nalgonda district. So, the mother of deceased along with one Bukya Pakeera went to A1's house and requested his parents—A2 and A3 to perform the marriage of her daughter with A1. At that time, they demanded Rs.3 lakhs as dowry. The complainant who was working as maid servant, expressed her inability to pay the amount and pleaded them to perform the marriage, but they rejected her plea. While so, on 17.06.2013 at about 10.00 PM, A1 made a phone call stating that he is not going to marry her and his engagement was performed with another girl, for which the deceased deeply depressed and committed suicide by hanging to the ceiling fan rod in their house on 18.06.2013. The mother of the deceased lodged a complaint with the police of Jeedimetla PS. Basing on the said complaint, the police registered a case in Cr.No.489/2013 under Section 174 Cr.P.C. and after investigation filed the charge sheet.

Hence the petition by A.2 and A.3 to quash the proceedings.

3) Heard both sides.

4) Severely denouncing the arraying of petitioners in the charge sheet, learned counsel for petitioners would argue in vehemence that even if the contents of the charge sheet are unrebutted, they would not disclose any offence muchless the offence under Section 306 IPC against petitioners/A.2 and A.3. He would submit that only allegation against petitioners is that when the mother of the deceased along with some elders approached petitioners with a proposal of marriage between the deceased and A.1, they curtly stated that unless the dowry of Rs.3,00,000/- was paid, they would not agree for the alliance and this allegation by no means can be termed as an abetment in the legal parlance to drive the deceased to commit suicide. He sought to present several decisions to buttress his argument. He argued that the petitioners/A.2 and A.3 are innocent and continuation of criminal proceedings against them would amount to abuse of process of the Court and quash the charge sheet against them.

5) Per contra, learned Additional Public Prosecutor would argue that the deceased and accused are relations and since their childhood, they were allowed to move closely and thereby the love developed between them and A.1 promised that he would marry her but all of a sudden, on the previous night of the incident, he telephoned and informed to deceased that his marriage was fixed with another girl and therefore, he cannot marry the deceased. Thus u-turn was taken by him only due to the ill-advice of his parents to marry another girl with bulky dowry. He further argued that the

sometime prior to the incident, when the mother of the deceased approached A.2 and A.3 for marriage negotiations, they demanded Rs.3,00,000/- as dowry knowing fully well that she cannot afford to pay such huge amount only to snap the love knot between the A.1 and deceased and thus petitioners/A.2 and A.3 directly incited their son to marry another person and indirectly instigated the deceased to commit suicide because, when the A.1, who was her close relation and a childhood lover, refused to marry her, there was no other go for her except to commit suicide. Therefore, petitioners are squarely liable for the offence under Section 306 IPC. He thus prayed to dismiss the petition.

6) The point for determination is:

“Whether the petitioners deserve quashment of the proceedings?”

7) **POINT**: Section 306 IPC defines abetment of suicide, thus:

“Section 306 - Abetment of suicide: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The term abetment is not defined in Section 306 IPC and its live nerve is related back to Section 107 IPC, which defines abetment as follows:

“Section 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.”

A conjunctive study of Sections 306 and 107 IPC would give an understanding that the abetment of suicide can be made in any of the three ways i.e, by instigating deceased to commit suicide; engaging with one or more persons in a criminal conspiracy which resulted in the suicide; and intentionally aiding the deceased in the commission of suicide. In the instant case, it is not the version of prosecution that the accused either engaged in a criminal conspiracy to see that the deceased committed suicide or they intentionally aided her to commit suicide. Predominantly the prosecution case is that the petitioners by demanding huge dowry knowing well that the deceased's parents cannot afford to pay the amount, scuttled the marriage negotiations and thereby indirectly instigated the deceased to commit suicide. So the crucial question is whether their acts even if unrefuted, would constitute abetment within the meaning of Section 107 IPC. The aspect when the instigation would amount to abetment to constitute an offence under Section 306 IPC is no more *res integra*.

- i) In *State of West Bengal v. Orilal Jaiswal and others*¹, the Apex Court observed thus:

“Para 17: x x x x... 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 differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced 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.”

- ii) In *Ramesh Kumar v. State of Chhattisgarh*², the Apex Court held thus:

“Para 20: 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. The present one is not a case 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 instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. (Emphasis supplied)”

¹ AIR 1994 SC 1418

² AIR 2001 SC 3837 = (2001) 9 SCC 618

iii) In ***Randhir Singh and others v. State of Punjab***³, it was held thus:

“Para 12: *Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.”*

iv) In ***Cyriac and another v. The S.I of Police and another***⁴, the High Court of Kerala held thus:

“Para 12: *In short, in order to prove that the accused abetted commission of suicide of a person, prosecution has to establish the following factors: 1) that the accused kept on irritating or annoying the deceased by words, deed or wilful omission or conduct which may even be a wilful silence until the deceased reacted; Or, that the accused strongly advised or persuaded the deceased to do something; or pushed or forced the deceased by deed, words, or wilful omission or conduct which may even be a wilful silence to make the deceased to move forward more quickly in a forward direction 2) that the accused had the intention to provoke, incite, urge or encourage the deceased to commit suicide, while acting in the manner stated above.*

Para 17: *An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence or abetment of suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot unfortunately, touch the issue. Those cannot fray the fabric of the provision contained in section 306 IPC. In short, it is not what the deceased 'felt', but what the accused 'intended' by his act which is*

³ AIR 2004 SC 5097

⁴ 2005 CriLJ 4322 (Kerala)

more important in this context (Emphasis supplied). Of course, the deceased's frail psychology which forced him to the suicide also may become relevant, but it is only after establishing the requisite intention of accused."

v) In ***Sohan Raj Sharma v. State of Haryana***⁵, the Apex Court held thus:

"Para 11: *Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."*

vi) In ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)***⁶, the Apex Court referring to its earlier decision in ***Ramesh Kumar***², observed thus:

"Para 19: *As observed in Ramesh Kumar [(2001) 9 SCC 618], where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:*

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

⁵ AIR 2008 SC 2108

⁶ AIR 2010 SC 1446

(ii) *that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation (Emphasis supplied).*

vii) In ***Madan Mohan Singh v. State of Gujarat and others***⁷, the Apex Court observed thus:

“Para 12: *In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC...(Emphasis supplied)”*

viii) In ***Gurcharan Singh v. State of Punjab***⁸, it was observed thus:

“Para 21: *It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The **basic** ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide (Emphasis supplied).*

⁷ (2010) 8 SCC 628

⁸ (2017) 1 SCC 433 = AIR 2017 SC 74

ix) In *Pawan Kumar v. State of Himachal Pradesh*⁹, it was observed thus:

*“**Para 41:** x x x x.... Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the Accused that led a person to commit suicide, a conviction in terms of Section 306 Indian Penal Code is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.”*

8) When the above jurisprudential jurisprudence is summed up, in order to indict a person to have abetted the suicide of another person, the following cardinal principles should be considered.

- (i) There must be *mens rea* or the intention of the accused to aid or to instigate or to abet the deceased to commit suicide.
- (ii) Instigation or goading or urge forward or provoke or incitement or encouragement on the part of accused must be such that there should be a continued course of conduct of accused creating such circumstances that the deceased was left with no other option except to commit suicide.
- (iii) A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be regarded to be instigation.

⁹ 2017 (2) ALD (CrL.) 231 (SC)

(iv) There shall be direct nexus between the words uttered, acts or omissions of the accused and the resultant suicide, for, sometimes the victim committing suicide might be hypersensitive to ordinary petulance discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide. The Court shall keep in mind, it is not what the deceased felt to commit suicide but what the accused intended by his act, which is more important in a given context.

9) With the above law on hand, I perused the charge sheet and the statements of the witnesses. They would reveal that the deceased and A.1 are close relations and since the time she was studying 7th class, she liked A.1 and both of them fell in love. A.1 used to tell the family members of deceased that he would marry her and he did not like her family members to search another match for her. While-so, on the night of 17.06.2013 at about 10:00 hours, all of a sudden he telephoned to her and informed that his parents arranged his engagement with another girl and therefore, he would not marry the deceased and asked her to forget him. On the next day morning, when her mother and aunt went for work and her younger brother went to school the deceased committed suicide in their house by hanging to the fan, obviously, unable to digest the fact that A.1 was not going to marry her. Be that it may, the allegations against A.2 and A.3 are concerned, about one year back when the mother and other elders of the deceased went

to the house of A.1 and brought a proposal for the marriage of A.1 and deceased, it is alleged, A.2 and A.3 told them that unless dowry of Rs.3,00,000/- was paid, they would not agree for the alliance. Since the mother of deceased was not able to pay that much amount, they arranged the marriage of A.1 with another girl. Now the crucial question is even if the allegations against A.2 and A.3 are unrebutted, would they constitute the abetment within the ambit of Section 306 IPC.

10) On a conspectus of the facts and record, it does not occur to me any *mens rea* on the part of petitioners to intend for the suicide of the deceased, when they refused the alliance. At best, they may be termed as dowry mongers but it is too remote a cause for the deceased to commit suicide. In the society, the breaking of marriage alliances due to the greediness of bridegroom's party for high dowry and other paraphernalia is not uncommon. It is highly doubtful whether a similarly circumstanced girl would commit suicide because the parents of the boy refused to perform marriage, since their dowry thirst was not quenched. As already stated supra, it is not what the deceased felt alone should be taken into consideration but what the accused intended by his act is also important. Therefore, in my considered view, continuation of the criminal prosecution against the petitioners/A.2 and A.3 would amount to abuse of process of the Court. As laid down in *State of Haryana and others v. Ch. Bhajan Lal and others*¹⁰, when the uncontroverted allegations in the FIR and other

¹⁰ AIR 1992 SC 604

materials do not disclose a *prima facie* case against the accused, the High Court while exercising its plenary powers under Section 482 Cr.P.C can quash the proceedings.

11) In the result, this Criminal Petition is allowed and the proceedings against the petitioners/A.2 and A.3 in Crime No.489 of 2013 of Jeedimetla PS, are quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 31.07.2018

Note: L.R copy to be marked: Yes / No
scs

U. DURGA PRASAD RAO, J

