

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.618 of 2007

JUDGMENT:

The present Criminal Revision Case is preferred under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), questioning the dismissal of Criminal Appeal No.49 of 2005 on the file of Special Sessions Judge for Trial of Cases under SCs and STs (PoA) Act-cum-VII Additional District & Sessions Judge, Mahabubnagar, whereby and whereunder he affirmed the conviction recorded under Section 235 (2) of the Code for the offence punishable under Section 306 of Indian Penal Code (for short, 'I.P.C.') and sentence of rigorous imprisonment for one year inflicted and fine of Rs.100/- (Rupees One hundred only) imposed with default sentence of simple imprisonment for two months by giving set off against the sentence of imprisonment only the period of detention if any undergone by the petitioner during investigation, enquiry or trial under Section 428 of the Code.

2. Heard Sri Mummaneni Srinivasa Rao, learned counsel for the revision petitioner, and the learned Special Assistant Public Prosecutor for the State of Telangana.

3. Though, the concurrent findings have been recorded by the Courts below in convicting the petitioner and inflicting the sentence of imprisonment and fine for the offence punishable under Section 306 of I.P.C., certain relevant facts require advertence in appreciating the findings in order to arrive at whether there is any

utter perversity creeping in while recording the findings in which case alone the petitioner gets a chance of overturning the conviction as well as the sentence of imprisonment and fine amount imposed.

4. P.Ws.1 and 2, who are the parents of the deceased belonged to Mekaguda village. The revision petitioner-Garlapati Geeta @ Geethakka also belongs to the same village. Just before taking place of the incident the said Geetha sent the deceased-Kum. T. Pragati, 13-year-old girl, to purchase two Thread (Darapu) Reels. She brought two thread reels, but one of them matched and the other did not match with the colour, on which she sent her to shop along with her brother, Mr. Teja and she returned the reel and gave the amount to Teja, but he did not give the said amount to Mrs. Geeta. Thereafter, she went to Kirana shop and purchased Jaggery patties and went to the school. The said Geeta abused her that she was a thief and instigated her to commit suicide, on which she got vexed with the words of the said Geethakka and by writing a note showing the same for commission of suicide by hanging herself with chunni (long scraf) and, thus, committed suicide.

5. The said incident occurred on 22.8.2002 in the absence of her parents i.e., P.Ws.1 and 2. She was aged 13 years then. Her mother went to Gaganpahad, a nearby place to her village, whereas her father went to attend pooja in the Sarpanch's house, when her mother returned since the doors bolted inside and with the assistance of police she could gain entry and found her daughter's body was hanging to the roof and by then she had already died.

6. When her husband having noticed, lodged a complaint, basing on which crime was registered and inquest was held. While they were seizing the incriminating material they found a chit in Aluminium box written by the deceased the reason for commission of suicide attributing instigation of the revision petitioner. Therefore, Section of law was altered to Section 306 of I.P.C. from Section 174 of Cr.P.C. on 23.01.2003. Autopsy was conducted by the Doctor, who opined that the cause of death was due to “Mechanical Asphyxia due to hanging”.

7. It appears the petitioner surrendered before the Judicial Magistrate of First Class, Shadnagar, on 25.8.2003 and released on bail. After completion of investigation, charge-sheet was laid for the aforesaid offence in the month of September, 2003. The learned I-Additional Assistant Sessions Judge (FTC), Mahabubnagar, having examined the accused, proceeded with the trial.

8. The prosecution examined as many as six witnesses and exhibited Exs.P1 to P9. Ex.P2 is the letter written by the deceased before her death, which was treated as ‘suicide note’. Ex.P9 is the school note book of the deceased. For expert’s opinion the same was sent, who was examined as P.W.6, Scientific Assistant, A.P. State Forensic Science Laboratory, Hyderabad, opined that the writing in Ex.P2 and the writing in Ex.P9 school note book were written by one and the same person. The learned I-Additional Assistant Sessions Judge, having found the contents in Ex.P2-suicide note, sufficient to

arrive at the guilt of the accused recorded conviction and inflicted the aforesaid sentence of imprisonment and fine.

9. When the same was challenged by the revision petitioner, the learned Appellate Judge in Criminal Appeal No.49 of 2005 did not differ from the findings recorded by the trial judge on his independent appraisal of evidence on record and believing the FSL Report and the evidence of P.W.6 in regard to Ex.P2 suicide note, disagreed with the contention of the learned counsel for the accused that Ex.P2 suicide note does not prove the abetment and other contentions raised and opined that the evidence adduced by the prosecution would clearly prove the guilt of the accused for the offence punishable under Section 306 of I.P.C. while recording a definite finding on Ex.P2 suicide note, that it clearly establishes the accused abetting the deceased who was a tender aged girl in committing suicide by saying that “go and die” and affirmed the conviction and sentence of imprisonment without any modification.

10. Therefore, the present Criminal Revision Case is preferred contending in the grounds, that both the Courts failed to appreciate that there is no iota of evidence that the revision petitioner abused the deceased on which ground alone the revision petition is liable to be allowed. It is also stated that both the Courts below did not properly appreciate Exs.P2 and P9 though, they are not in accordance with law and despite the same convicted the accused, which resulted in miscarriage of justice, and, therefore, sought to set

aside the conviction recorded and sentence of imprisonment and fine imposed.

11. The definition of offence of abetment is provided in Section 107 of Indian Penal Code require presence of instigation, cooperation or intentional assistance given to the would-be suicide to render a person liable as an abettor and that the abettor should be something more than a mute spectator.

12. In the present case, Ex.P2 gains prominence. The learned Counsel, no doubt, would contend that the evidence of P.W.6, who tendered opinion as to the writing in Ex.P2 cannot be viewed as conclusive, as it is only an opinion tendered by an expert and the very tracing out Ex.P2 from the place from which it was said to have recovered is not convincing besides the contents therein amounting to either aiding, instigating or intentional assistance given to the deceased to commit suicide. Thus, what all the learned counsel would intend to express is that the attributes of abetment to commit suicide are present cannot be gathered from the contents of Ex.P2, and, therefore, the findings recorded by the Courts below basing on which conviction was recorded suffer from patent illegality warranting interference.

13. P.Ws.1 and 2, who are the parents of the deceased and their evidence would prove the commission of suicide by the deceased as the body of the deceased was found in the first instance by P.W.2 hanging with chunni. Initially, crime was registered under Section 174 of Cr.P.C. and only when Ex.P2 was found in the aluminium box

of the deceased, who was just 13-year-old and school going child basing on the contents therein, Section of law was altered to 306 of I.P.C.

14. The trial Court as well as the lower Appellate Court have examined Ex.P2 contents. In fact, both the Courts below considered the evidence of P.W.6 and arrived at the finding that Ex.P2 was in the handwriting of the deceased and, therefore, held that the contents therein amount to abetment of commission of suicide by the deceased and thereby held that the prosecution could prove the charge under Section 306 of I.P.C.

15. Ex.P2 is a leaf from the ruled note book which was written in black ink. She commences with prayer to her parents referring to the revision petitioner as to what she commented at her on one day, to the effect that she sent her to the shop to procure two thread reels and she brought them, that one of them tallied and the other did not tally and she was asked to return it, on which the revision petitioner sent Teja, brother of the accused, along with her and she went to the shop and returned thread reel and she collected the amount and handed over it to Teja to give the same to the revision petitioner. But, on that day she purchased jaggery patties from the shop and went to her school. Later, though, she has returned the amount of Thread reel to the said Teja, which was returned to the shop owner, the revision petitioner commented that she did such a mischief at a young age and heckled her, even commenting that instead of doing so she ought to have died. She, thus, mentions that on account

of the comments made by the revision petitioner she intended to commit suicide, and, therefore, she was dying.

16. It is no doubt true that the letter 'T' at the bottom and on the top of the note appears to be in a different ink, but that by itself Ex.P1 cannot be viewed with suspicion holding that it was created for the purpose of securing conviction of the revision petitioner. When looked at the evidence of P.W.6, the scientific assistant, he states in his chief examination that on comparison of S-1 to S-10, which are standard writings in the note book marked as Ex.P-9 with that of the writings in Ex.P-2, original document, he found that the person who wrote the red enclosed writings marked as S.1 to S.10 also wrote the red enclosed writings marked as Q.1 and Q.2. Thus, indicating that the handwriting is one and the same finding place in Ex.P2 suicide note and Ex.P9. Thus, it is clear that the deceased was the author of Ex.P2. P.W.6 was cross-examined, but only suggestions were made, which were bluntly denied by him but nothing concrete is brought out in his cross-examination either to discredit his testimony or to view that the opinion tendered by him was incorrect or biased.

17. Now, the question is whether the contents of Ex.P2 are sufficient to view the abetment to commit suicide by the deceased. The Courts below concurrently held that the comments certainly are in the nature of instigating the deceased to commit suicide and no different view can be taken as the contents therein mentioned in the above would clearly prove that the comments of the revision petitioner amounts abetment by her to commit suicide and thereby the

deceased committed suicide. Hence, neither patent illegality in the findings recorded is to be found nor can it be said that the findings recorded by the Courts below are utterly perverse.

18. Therefore, there is no merit in the present Revision and, accordingly, the same is dismissed confirming the conviction recorded by the Courts below under Section 235 (2) of Cr.P.C. for the offence punishable under Section 306 of I.P.C.

19. So far as the sentence of imprisonment is concerned, no doubt, small girl lost her life even at the budding stage, but keeping in view, the facts and circumstances that being on a flimsy issue suicide was committed by the deceased and the crime relates to the year 2002 and the revision petitioner has been facing the charge for abetment slightly less than 16 years, the ends of justice would be met if the sentence of imprisonment is reduced from one year rigorous imprisonment to six months simple imprisonment. Therefore, to the extent of modifying the sentence of rigorous imprisonment from one year to six months simple imprisonment, the other findings recorded by the Courts below are confirmed.

The revision petitioner herein is directed to surrender herself before the learned I-Additional Assistant Sessions Judge (FTC), Mahabubnagar, by 1.3.2018 to serve out the sentence. In case, the revision petitioner fails to surrender by that date, the learned I-Additional Assistant Sessions Judge (FTC), Mahabubnagar, is directed to secure her presence and commit her to the custody of concerned jail Superintendent to serve out the sentence by exempting

the period of detention she had already undergone, if any, by giving benefit under Section 428 of Cr.P.C.

As a sequel there to miscellaneous petitions, if any, pending in the present Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

January 29, 2018.

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