



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2018

PRONOUNCED ON : 04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.No.10273 of 2010

and

M.P.No.1 of 2010

1.Balaji

2.Venkatesh

... Petitioners/Accused

Vs

Inspector of Police,
J4 Kotturpuram Police Station,
Kotturpuram,
Chennai - 85.
(Crime No.205 of 2008)

... Respondent/Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.339 of 2009 on the file of the V Additional Sessions Judge, Mahila Court, Chennai and quash the same.

For Petitioners: Mr.A.Ganesh

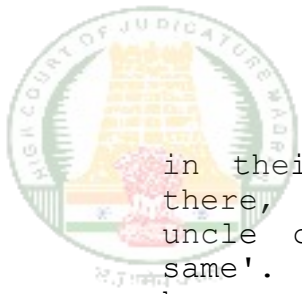
For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed by the petitioners to quash the proceedings pending against them in S.C.No.339 of 2009 on the file of the Mahila Court, Chennai.

2. The case of the prosecution, in a nutshell, is as follows:

2.1. The petitioners before this Court are nephews of one Radhakrishnan. The said Radhakrishnan married one Sushila in the year 1999 and they were bestowed with two children. Due to family dispute, the said Radhakrishnan committed suicide by hanging, on 27.05.2008. It is alleged that the relations of the said Radhakrishnan, who came for the funeral, scolded his wife / Sushila. On 30.05.2008, at about 08.45 am., the petitioners were



in their grandmother's house and when the said Sushila came there, the petitioners scolded her like 'because of her, their uncle committed suicide and they will take revenge for the same'. Triggered by these words, the said Sushila, went to her house and set herself ablaze, in order to commit suicide. On hearing the screaming, her mother and one Selvam rushed and dozed off the fire and took her to Royapettah Hospital, where she was given treatment.

2.2. On intimation from the Hospital, the respondent police went to the Hospital and registered a case in Crime No.205 of 2008, on 30.05.2008 at about 11.30 am., for the offence punishable under Section 309 IPC, as against the petitioners herein. On the same day, at about 12.05 pm, the learned 13th Metropolitan Magistrate, Egmore, Chennai, recorded the Dying Declaration of the said Sushila. On 13.06.2008, at about 09.00 am., due to the burn injuries, the said Sushila died and therefore, the police made a request for altering the charge and accordingly, the offence was altered into Section 306 IPC. Thereafter, the Inspector of Police conducted inquest over the body of the deceased and sent the same for autopsy.

2.3. The Inspector of Police, in conclusion of the investigation, has laid the charge sheet as against the petitioners herein and the same is pending before the learned Mahila Judge, Chennai, in S.C.No.339 of 2009. In order to quash the same, the petitioners have filed this Criminal Original Petition.

3. Learned Counsel for the petitioners would submit that even assuming without admitting the case of prosecution that the relatives of Radhakrishnan scolded his wife in a fit of anger and emotion, it cannot be termed as an offence punishable under Section 306 IPC. Even according to the complaint, the petitioners herein, who are the nephews of the said Radhakrishnan, have scolded that Sushila is responsible for her husband's suicide, as such, it is not an offence per se under Section 306 IPC. The presence of mens rea is necessary, which is lacking in this case and therefore, he prays for allowing the present petition.

4. Per contra, the learned Government Advocate (Crl. Side) would submit that Sushila's husband, one Radhakrishnan, committed suicide by hanging on 26.05.2008, due to domestic quarrel. The petitioners as well as their relatives, who attended the funeral of Radhakrishnan scolded his wife Sushila on 30.05.2008 that she is responsible for the suicide of her husband and that they will not allow her to live peacefully. Emotionally triggered by these words, Sushila took such an extreme step. In fact, in the Hospital, ie., in the Dying



Declaration recorded by the learned 13th Metropolitan Magistrate, Egmore, Chennai, she has specifically mentioned the names of the petitioners herein. Therefore, the learned Government Advocate (Crl. Side) prays for dismissal.

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5. Heard the learned Counsel appearing on either side and perused the documents placed on record.

6. The facts of the case are not in much dispute. One Radhakrishnan, due to some domestic quarrel, had committed suicide by hanging, on 27.05.2008. At the funeral, his relatives had scolded his wife / Sushila. On 30.05.2008, the petitioners herein, who are the nephews of the said Radhakrishnan, are said to have scolded the deceased / Sushila that they will not leave her to live peacefully. It is alleged that because of these words, the said Sushila was triggered to set herself ablaze. Though the case was originally registered for the offence punishable under Section 309 IPC, the same was subsequently altered into 306 IPC. Final report was also filed before the learned 9th Metropolitan Magistrate, Saidapet, Chennai, in P.R.C.No.13 of 2009 for the offence punishable under Section 306 r/w 34 IPC and the same was committed to Mahila Court, Chennai and is pending in S.C.No.339 of 2009.

7. The respondent police, based on the dying declaration of the deceased, has filed the charge sheet. The averment made in the final report is that the petitioners herein have scolded the deceased that they will not allow her to live happily. But, the issue to be decided is whether the allegations raised in the final report will constitute an offence under Section 306 IPC. For better appreciation, Section 306 IPC is extracted thus:

"306 - 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."

8. As per the above, whoever abets a person to commit suicide is liable to be prosecuted. The word 'abetment' is defined under Section 107 IPC and for better understanding, the same is extracted thus:

"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



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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."

9. Three days prior to the alleged incident, ie., on 27.05.2008, the husband of the deceased / Sushila, namely, Radhakrishnan committed suicide. The marriage between Radhakrishnan and Sushila was solemnised in the year 1999 and they were bestowed with two children. The death of Radhakrishnan is not a natural one and it is by way of hanging, due to domestic quarrel. The petitioners herein, who are the nephews of Radhakrishnan, on a fit of anger and emotion, have uttered the words, 'whether you will leave peacefully'.

10. In similar circumstances, the Hon'ble Supreme Court, in its latest decision, in Rajesh v. State of Haryana, reported in 2019 SCC OnLine SC 44 has held as follows:

"9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See Amalendu Pal alias Jhantu v. State of West Bengal, reported in (2010) 1 SCC 707).

10. The term instigation under Section 107 IPC has been explained in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), reported in (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, as follows:

"16. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C.Lahoti, J. (as His Lordship then was) said that 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



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consequence must be capable of being spelt out. 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, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See Oxford Advanced Learner's Dictionary, 7th Edn.)."

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. [See Praveen Pradhan v. State of Uttaranchal, reported in (2012) 9 SCC 734]"

11. In Sonti Rama Krishna v. Sonti Shanti Sree & another, reported in 2009 (1) SCC 554, the Hon'ble Supreme Court has held as follows:

"It is fairly well settled that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation."

12. The Hon'ble Supreme Court in Sontui Rama Krishna v. Sonti Shanti Sree & another, reported in AIR 2009 SC 923, has held that to constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of words 'go and die' itself will not constitute such abetment.

13. Even this Court has taken a similar view, in its latest decision, in the case of S.A.Margaret Angel and another v. State and another, in Crl.O.P.(MD)No.15407 of 2016 decided on 05.10.2018.

14. The words like 'go and die', 'better die today than tomorrow', or like in the case on hand 'whether will we allow you to live peacefully / whether would you live peacefully' are uttered during quarrels. Such words cannot be given literal meaning so as to say that the accused had abetted the commission of suicide. To constitute the abatement, it should be



established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of such words, by itself will not constitute such abetment. The words uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge will not constitute an offence.

15. The deceased has already lost her husband, out of which, she would already be in a depressed state of mind. Her relatives, of course, will advice her, which, to the least, would be like scolding. No normal prudent person would commit suicide, because of these words. Sensitivity to ordinary petulance, discord or differences in domestic life should not normally drive a person to commit suicide, unless the person is unduly hyper sensitive.

16. In view of the foregoing discussions, this Court is inclined to quash the proceedings in S.C.No.339 of 2009 on the file of the Mahila Court, Chennai and the same is accordingly, quashed. In fine, this criminal original petition is allowed and consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

gk
To

- 1.The V Additional Sessions Judge,
Mahila Court, Chennai.
- 2.The Inspector of Police,
J4 Kotturpuram Police Station,
Kotturpuram, Chennai - 85.
- 3.The Public Prosecutor,
Madras High Court, Chennai.

Crl.O.P.No.10273 of 2010
and
M.P.No.1 of 2010

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srg 11/04/2019