

CASE NO.:
Appeal (crl.) 572 of 2002

PETITIONER:
SANJU @ SANJAY SINGH SENGAR

Vs.

RESPONDENT:
STATE OF M.P.

DATE OF JUDGMENT: 01/05/2002

BENCH:
M.B. Shah & H.K. Sema

JUDGMENT:

SEMA, J

Leave granted.

Heard Mr. R.P. Gupta, learned Senior counsel on behalf of the appellants and Mr. B.S. Banthia, learned counsel on behalf of the respondent.

The appellant felt aggrieved by an order dated 2nd July, 2001 passed by the Additional Sessions Judge, Sihora, in sessions trial No.469 of 1998 whereby the appellant has been charge-sheeted for an offence under Section 306 of the Indian Penal Code, filed a petition under Section 482 of the Code of Criminal Procedure for quashing the charge before the High Court without any result, hence the appeal.

Basic facts may be noted.

Appellant is the brother of Neelam Sengar, wife of the deceased Chander Bhushan @ Babloo. It is stated that the marriage between the sister of the appellant and the deceased took place in 1993. It is also stated that immediately after marriage she was subjected to continuous ill-treatment by the deceased and the family members forcing her to live separately along with her husband and children for about a year. Thereafter, she went to her parents' house and started living with her brother the appellant herein. About two months prior to the incident, the appellant advised the deceased to take his sister back to her matrimonial house and treat her properly. On 25th July, 1998 (crucial date), it is stated that the appellant visited the place of the parents of the deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or harassed. It is also alleged that on that day the appellant also said to have threatened the parents of the deceased that if they do not mend their behaviour towards his sister, he would be compelled to resort to filing a complaint under Section 498 A of the Indian Penal Code, to which the parents of the deceased expressed helplessness as the deceased Chander Bhushan had been living separately from them. It is further stated that on this story being narrated to the deceased by the mother of the deceased asking him to bring back his wife to avoid any police case against them, the deceased went to

the house of the parents of the appellant followed by a quarrel between them. Thereafter, the deceased returned alone and told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words.

On the next date i.e. 27th July, 1998, the deceased was found hanging with a rope by neck on the raft of his house and he was found dead. The deceased also left a suicide note on a stray piece of wrapping paper. The autopsy on the body of the deceased was held on 27th July, 1998 itself and it was revealed that the death was due to asphyxia as a result of hanging, within 24 hours. The investigating officer recorded statement of the witnesses under Section 161 Cr.P.C. and after completion of the investigation, submitted the charge-sheet and a charge was framed on 2nd July, 2001 against the appellant for an offence under Section 306 I.P.C.

Section 107 I.P.C defines abetment to mean that a person abets the doing of a thing if he firstly, 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.

Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

In *Swamy Prahaladdas v. State of M.P. & Anr.*, 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

In *Mahendra Singh v. State of M.P.*, 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

In *Ramesh Kumar V. State of Chhattisgarh* (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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 for abetting the offence of suicide should be found guilty."

Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

The next and most important material is the suicide note left by the deceased. The translated copy is annexed to this appeal as annexure P-1. It is extracted:

"SUICIDE NOTE

Danik Bhaskar
581 South Civil Lines
Jabalpur.

Agent Name

Sengar New Agency

Place Goshalpur
No. of copies 409 Date

Name of the person who prepared label

Gosalpur Sengar has threatened to report under Dowery demand and threatened to involve family members due to this I am writing in my full senses that Sanjay Sengar is responsible for my death. Sanjay Sengar also Mukraj commander Loota Tha Sanjay ki.

Sengar New Agency
Gosalpur

I was threatened therefore I am dying
Sengar Gosalpur
My name Chander Bhushan Singh Goutam
Chander Bhushan Singh Goutam

Babloo Goutam

In my senses
Sengar responsible for my death.

My moti

Darling my moti. You look after my Chukho. My darling Moti Neelam Sengar @ Chander Bhushan Singh Goutam Gandhigram Budghagar.

Sengar is responsible for my death
Sanjay Sengar is responsible for my death
Sanjay Sengar is responsible for my death
Chander Bhushan Singh Goutam Gandhigram Budhagar".

A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handy work of a man with sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 Cr.P.C. before the Investigation Officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26th July, 1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C. It is in the statement of the wife that the deceased always remained in a drunken condition. It is a common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25th July, 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.

In the result, this appeal succeeds. The charge-sheet dated 2nd July, 2001, framed by the Additional Sessions Judge, Sihora, in Sessions Trial No.469 of 1998 for an offence under Section 306 I.P.C. and the order of the High Court under challenge are hereby quashed.

The appellant is on bail. His surety and bail bond shall stand discharged.

.J
(M.B. SHAH)

..J
(H.K. SEMA)

May 1, 2002

JUDIS