

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2103/2010

V.P.SINGH ETC.

Appellant(s)

VERSUS

THE STATE OF PUNJAB & ORS.

Respondent(s)

WITH

CrI. A. No. 2104/2010

CrI. A. No. 2105/2010

O R D E R

SANJAY KISHAN KAUL, J.

The criminal justice system of ours can itself be a punishment! It is exactly what has happened in this case. 14 years on an issue of abetment of suicide in an episode where a student was reprimanded for misconduct in the College and on endeavor to take disciplinary action and call the father, though the parent did not turn up and subsequently the child committed suicide. An unfortunate situation! However, we are concerned with the issue whether there is any element of an abetment to suicide in the present case which was at the threshold of charges having been framed.

On 16.4.2008, the deceased viz. Mr. Gaurav WahI was attending the last lecture under Mr. Nitin Shyam, one of the accused, and is alleged to have misbehaved with him in the class under the influence of alcohol. When Mr. Shyam asked Mr. Gaurav to leave the class, he ran out of the class. This incident was reported by Mr. Nitin Shyam to Mr. Sarabjit Singh, the acting Head of the Department. The incident was reported in writing by Mr. Nitin Shyam on the next date i.e. 17.4.2008 to the then Head of the Department. An order was passed suspending the deceased from the class and calling upon him to call his parents as an exercise of legitimate disciplinary action.

To redeem himself, Mr. Gaurav WahI, the deceased wrote a letter of apology to the Head of the Department on 21.4.2008 in a way accepting the incident but denying that he was under the influence of alcohol. On 23.4.2008, the Principal, Mr. V. P. Singh issued a notice whereby he directed action against two students including the deceased in separate incidents calling for a security amount of Rs.10,000/- to be deposited with the College as security deposit as a disciplinary exercise and to bring the parents to the office. This

deposit was to be refunded at the end of completion of course.

Unfortunately the deceased, instead of complying with the disciplinary action, chose to take his own life by jumping in the canal. Before doing so, he sent an SMS to his brother viz. Mr. Himmat Wahi. The purport of the message when translated into English and even read in the original language, was an intimation that he was jumping into the deep side of the river. He stated that amongst all, he loved his mother the most and wanted his father not to be troubled. The obvious purport of this is that while he was closest to his mother, he sought to anticipate that his father may be blamed for the episode and that the father should not be troubled by it.

On the complaint of the father, an FIR No.62 of 2008 was registered at P.S. Sardar Rupnagar District, Punjab on 29.4.2008 under Section 306 of Indian Penal Code (IPC) on the complaint that the said suicide was instigated by the three accused i.e. the teacher, the Head of the Department and the Principal.

It is interesting to note that on the bail

application on 06.8.2008, one of the factors which weighed with the High Court while granting bail was that the conduct could not be construed to make the accused liable for offence under Section 306 of IPC as it was to ensure discipline in the class and the campus and even if the teachers are stated to be acting harshly, it could not be said that they wanted to incite, urge or provoke the deceased to commit suicide.

On investigation the charge sheet was filed on 13.9.2008 and charges were framed on 16.4.2009. Aggrieved by the said order, three accused preferred criminal revision petition before the High Court which was dismissed on 30.4.2009 with a cryptic order only stating that the proceedings were at an early stage and did not call for any interference.

The present appeals were preferred assailing that order and interim stay was granted at the threshold. The trial of course naturally did not proceed in view of the stay by this Court. The matter has rested at that for the last thirteen years!

In the present appeal proceedings, the appellants

were called upon to file the complete records of the trial Court proceedings vide order dated 26.9.2019 which has been accordingly filed.

We have heard learned counsel for parties and examined the record.

If we turn to the complaint, the charge sheet is simply an incorporation of what the complainant has said. It is the say of the father, complainant (who was certainly not present to witness what happened) that some students were causing the noise and it was not the son/deceased. The son stated that he was not at fault but he was shouted at by Mr. Nitin Shyam to go out of the classroom. The deceased did so and closed the door. It is alleged that thereafter Mr. Nitin Shyam ran after the son and caught hold of him by the arm and dragged him towards the office of the Head of the Department. On the next day i.e. 17.4.2008, when the deceased went to college, he found the notice to him pasted on their notice board recording that he had been suspended and calling upon his parents, failing which, he will not be permitted to appear in the examination. He was not permitted to enter the classroom on 17.4.2008 and even

on making a grievance to the Head of the Department, he did not succeed as he was threatened to spoil his career but on meeting Mr. Nitin Shyam, he was turned away and also stated that if he were to die, it would not bother him. Since nothing happened for the next few days despite the best endeavour of the deceased, he committed suicide.

On perusal of the charge sheet, it was found that there is no other independent witness whose statement was recorded or who is cited as a witness to the actual incident. In view of the letter exchanged including his apology letter, it is quite obvious that the complaint has embellishments and endeavour to make out a case of abetment of suicide. If one may say, on even reading of the charge sheet, on the basis of the complaint as it is, there is still no case made out for abetment of suicide.

Learned senior counsel for the appellants has relied inter alia on the judgment of this Court in "S. S. Chheena Vs. Vijay Kumar Mahajan and Anr." reported as (2010) 12 SCC 190 more specifically paragraph 24 & 25. The Court examined the matter in the conspectus of the

prevalent legal position in the Country. While suicide by itself is not an offence but an attempt to suicide is an offence under Section 309 of IPC. The Court thereafter turned to the definition of abetment under Section 107 of IPC which reads as under:-

"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"

In the conspectus of the different judgments referred to in that case it was opined that the words "instigation" and "goading" should be intention to provoke, incite or encourage the doing of an act by the latter. While each person's suicidability pattern is different from others, each person has his own idea of self-esteem and self-respect and therefore it was

difficult to lay down any straightjacket formula in dealing with such cases. In this context paragraph 25 reads as under:-

"25. 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 this 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."

Learned counsel has also referred to the judgment in "Sanju Alias Sanjay Singh Sengar Vs. State of M.P." reported as 2002 (5) SCC 371 to contend that the opinion of this Court is that even where a person stated that his death would not make any difference or that he could go and die. That itself would not amount to an instigation in absence of mens rea.

One other judgment referred before us is in the case of "State of West Bengal Vs. Indrajit Kundu and Ors." reported as 2019 (10) SCC 188 in which earlier judgment in "Ramesh Kumar Vs. State of Chhattisgarh" reported as (2001) 9 SCC 618 cited for approval setting

out the consideration of the scope of section 306 and ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word instigation it was observed in paragraph 20 of Ramesh Kumar Case (Supra) as under:

"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 an 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.

In fact in Indrajit Kundu case (Supra) the judgment referred to us in Sanju case (supra) was once again referred to where the husband and wife's quarrel resulted in the husband telling the wife "to go and die" and the suicide was committed two days later, was not said to have proximity to the quarrel even if stated in the suicide note.

To examine the factual matrix in the present case, in view of the aforesaid legal position, we find not an iota of material on record even assuming the complete charge sheet to be correct which could lead to a conviction in a case of abetment as there was absence of the necessary ingredients to make the offence. While we appreciate the anguish of a father who has lost a young son, that cannot result in blaming the world (in the present case, the institution and its teachers) for what is a basic disciplinary action necessary for running the institute. A contra position would create a lawless and unmanageable situation in an educational institution. The suicide note further shows that there is something to be said about the relationship between the deceased and his father where in fact the deceased thought that his father could be blamed for the episode and thus asked to not to trouble his father. The anguish of the father ought not to have been converted into a case of abetment of suicide and certainly the investigation and the approach of the trial Court could have been more realistic keeping in mind the surrounding facts and circumstances in which the suicide episode occurred.

We thus set aside the order framing charges dated

16.4.2009 and impugned order of the High Court sustaining the same and discharge the accused in respect of FIR No.62 of 2008.

The appeals are accordingly allowed leaving parties to bear their own costs.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(ABHAY S. OKA)

NEW DELHI
24th November, 2022

ITEM NO.101

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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Respondent(s)

WITH

CrI.A. No. 2104/2010 (II-B)

CrI.A. No. 2105/2010 (II-B)

Date : 24-11-2022 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ABHAY S. OKA

For Appellant(s)

Mr. Sudarshan Rajan, AOR
Mr. Mahesh Kumar, Adv.
Mr. Hitain Bajaj, Adv.
Mr. Rohit Bhardwaj, Adv.

Mr. P. S. Patwalia, Sr. Adv.
Mr. Saksham Maheshwari, Adv.
Mr. Jagjit Singh Chhabra, AOR
Mr. Manoj Rajpoot, Adv.

Petitioner-in-person

For Respondent(s)

Ms. Rooh-E-Hina Dua, AOR
Mr. Harshit K., Adv.

Mr. Prem Malhotra, AOR

Respondent-in-person

**UPON hearing the counsel the Court made the following
O R D E R**

**The appeals are allowed in terms of the signed reportable
order.**

Pending application(s) stand disposed of.

**(RASHMI DHYANI PANT)
COURT MASTER**

**(POONAM VAID)
COURT MASTER**

(signed reportable order is placed on the file)