

Shaik Ibrahim Vs. the State of A.P., Rep. by the Public Prosecutor, High Court of A.P.

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Court : Andhra Pradesh

Decided On : Aug-04-2004

Reported in : 2005(1)ALD(Cri)163; I(2005)DMC535

Judge : P.S. Narayana, J.

Acts : Indian Penal Code (IPC) - Sections 107, 108, 109, 305, 306 and 506;
Evidence Act - Sections 32

Appeal No. : Criminal Appeal No. 274 of 1997

Appellant : Shaik Ibrahim

Respondent : The State of A.P., Rep. by the Public Prosecutor, High Court of A.P.

Advocate for Def. : B. Vijayasen Reddy, Adv. for Respondent Nos. 1 and 2, ; The Public Prosecutor

Advocate for Pet/Ap. : A. Prabhakar Rao, Adv.

Judgement :

P.S. Narayana, J.

1. Heard Sri C. Padmanabha Reddy, learned Senior Counsel representing Appellant No. 1 (A-1) and Sri B. Vijayasen Reddy, learned counsel representing Appellants 2 and 3 (A-2 & A-3) and the learned Additional Public Prosecutor Sri T. Niranjan Reddy.

2. Appellants-Accused 1 to 3 aggrieved by the judgment made in S.C. No. 542 of 1993 dated 27.3.1997 on the file of the Sessions Judge, Warangal, had preferred the present Criminal Appeal. Sri C. Padmanabha Reddy, learned senior counsel representing first appellant-A1 would contend that the ingredients of Section 305 of the Indian Penal Code (for short 'IPC') are not attracted. The learned counsel would submit that for the purpose of constituting abetment of offence within the meaning of Section 107 IPC, instigation, intentional aiding and engaging in conspiracy are definitely essential and none of the ingredients are satisfied. The learned counsel also had drawn attention of this Court to the evidence of P.W.2 and P.W.4 and pointed out the omissions and other inherent improbabilities. The learned counsel had taken this Court through Ex. P.5 and had explained the averments made in Ex. P.1. Ultimately, the learned senior counsel would contend that even though the evidence on record is to be believed, so far as it relates to the first appellant-A1, at the best Section 506 IPC alone will be attracted and definitely the offence would not fall under Section 305 IPC. The learned counsel placed reliance on several decisions and would submit that the test of proximity may be available while deciding the case based on a particular piece of evidence and not beyond that and definitely this cannot be extended for the purpose of satisfying the Court whether the ingredients of offence had been satisfied or not.

3. Sri B. Vijayasen Reddy, learned counsel representing Appellants 2 & 3-A2 and A3 would contend that as far as the incident is concerned, except hearsay evidence, there is no legally acceptable evidence and hence it cannot be said that there is any conspiracy in between A2, A3 and A1 since it is the case of prosecution that A1 alone had entered into the house of the deceased and that his mother was present. The learned counsel would also submit that, no doubt, P.W.2 deposed that A2 and A3 were outside the house, but that by itself will not amount to an offence within the meaning of Section 305 IPC unless the other ingredients are satisfied. The learned counsel also pointed out that the allegations made by

P.W.1 in Ex. P.1 are also very specific and they are against A1 and A1 alone and in the light of these circumstances and also in view of several inherent improbabilities in the prosecution version, appellants 2 and 3 are entitled for acquittal.

4. Per contra, the learned Additional Public Prosecutor Sri T. Niranjan Reddy would submit that in this traditional rural India when a girl of such an age is insulted in the manner as uttered by A1 and as deposed by P.W. 1 and if this will not constitute instigation or abetment of offence, what else would constitute such an offence. The counsel also contends that not only the dying declaration, even Ex. P.1 is specific and the first information report need not be an encyclopedia of all the details if the substance of the offence or the accusation are satisfied it would be sufficient. The evidence available on record is so natural and on the strength of this evidence, the Court may have to reach an irresistible conclusion that this young girl of about 15 years of age who was about to complete her 10th Class, but for the incident, she could not have resorted to commit suicide on the fateful day, hence this definitely would fall within the meaning of Section 305 IPC and, therefore, the conviction and sentence imposed by the learned Judge in this regard are to be confirmed. The Additional Public Prosecutor had taken this Court through the findings recorded by the Sessions Judge while explaining the facts and circumstances of the case.

5. The charge framed as against appellants 1 to 3 is as hereunder:

'That all of you on or about 25.6.1993 at about 8 AM at Chinnaboinapali village harassed the deceased Thakur Bhavani D/o Mohan Singh, R/o Chinnaboinapally village, a person under 18 years of age by pelting stones and by attributing illicit intimacy with A1 of you, that unable to bear the teasing and harassment and the attribution of illicit intimacy to her she committed suicide on 25.6.1993 at 8 AM at Chinnaboinapally village and that you abetted the commission of suicide by her by teasing her and harassing her and have committed an offence punishable under Section 305 of the Indian Penal Code and within the cognizance of this Court'.

6. The case of the prosecution, in brief, is that one Thakur Bhavani, aged about 15 years and three accused are residents of Chinnaboinapally village and she was

studying S.S.C. at Eturunagaram and she used to go from her village to Eturunagaram for the purpose of studies. It is also the case of prosecution that since two or three months prior to the date of offence, A1 to A3 who were also students, teased the said Bhavani and also pelted stones on her. When she made complaint to her mother (PW1) and grandmother (PW2), they assured to warn the accused, but the eve-teasing was continued by the accused. On 25.6.1993 P.Ws. 1 and 2 asked A1 and his mother about the misbehaviour and on that A1 picked up quarrel and uttered that Bhavani was having illicit intimacy with him and attributed unchastity and she could not bear the insult, went inside the house and doused herself with kerosene at about 8 a.m. and lit fire to commit suicide and she was shifted to Government Hospital at Eturunagaram and from there to M.G.M. Hospital, Warangal for treatment. On 26.6.1993 at about 10 a.m., P.W. 1 lodged report with the Eturunagaram Police and they have investigated into the case and filed charge sheet. The statement of Bhavani was recorded by the Magistrate-P.W.7 and she died of Septicemia, acute renal failure and shock as a result of 85 to 90% superficial burn injuries. Charge sheet was filed before the Judicial First Class Magistrate, Mulug and after observing formalities, the case was committed to the Court of Sessions, Warangal. A charge as aforesaid was framed and inasmuch as accused pleaded not guilty, prosecution had examined P.Ws. 1 to 8 and Exhibits P.1 to P.7 were marked and also M.Os. 1 to 3 (Langa Rose Colour, Ooni white colour and blouse in Nashyam colour), and on appreciation of oral and documentary evidence available on record, the learned Sessions Judge came to the conclusion that the prosecution could bring home the guilt of accused 1 to 3 under Section 305 IPC, and convicted and sentenced them to undergo rigorous imprisonment for five years and also to pay a fine of Rs. 1,000/- each, in default, to undergo imprisonment for six months for the offence under Section 305 IPC. Aggrieved by the same, the present Appeal had been preferred.

7.P.W.1, the mother of deceased deposed that she is a resident of Chinnaboinapally and was working as Attender in the office of Mandal Revenue Officer, Eturunagaram. She further deposes that her husband Mohan Singh has worked in the Revenue Department as Senior Assistant and during the employment, he passed away, therefore she was provided with the job of Attender on compassionate grounds since she is a non-matriculate and that her husband

died in the year 1986. P.W. 1 further deposed that she is having two daughters and one son and deceased Bhavani is her youngest daughter completed 9th class and had to enter 10th class. P.W. 1 further deposed that the deceased died three years back by pouring kerosene on herself and setting fire at her house at Chinnaboinapally. She was studying in Eturunagaram High School, and was regularly going from the village to School, but she used to start a little earlier than her and she was having a bus pass and at times she used to go to the school in an auto rickshaw. P.W.1 deposed that all the accused belongs to Chinnaboinapally. The house of A3 is opposite to her house and A1's house is at a little distance of 20 or 25 yards and two to three houses away, A2's house is situated. P.W. 1 further deposed that A1 to A3 used to ask her daughter and whenever she used to go to the school, they were threatening her to come with them to Guest House at Eturunagaram for enjoyment purpose. Since she was not having her father and she was alone, they used to threaten her to lie with them and two to three months prior to the date of incident, her deceased daughter complained that accused were harassing her and that kill P.W. 1 and her family members if she does not go with the accused. She also complained that at that time, accused used to throw pebbles on her private parts and the deceased narrated all these incidents to P.W. 1. No doubt, this evidence is more in the nature of hearsay since P.W. 1 had narrated what had been stated by the deceased to her. P.W. 1 further deposed that she was heart-patient and underwent heart surgery for change of valve in the year 1992 and she used to go to RMP Doctor in the village after her duty hours for regular checkup with the support of her deceased daughter, for which the accused floated a rumour in the village that P.W. 1 was bringing her daughter to the Doctor regularly for getting abortion done since she became pregnant with somebody and she was not coming to them. P.W. 1 deposed that two months prior to the date of incident, A1 wrote on tar road that the deceased has become 'POOJAKU PANIKIRANI PUVVU' referring to her daughter Bhavani and she had narrated this incident also to P.W. 1. P.W. 1 further deposed that on 25.6.1993 between 8.00 to 8.30 a.m. when her daughter was about to leave for school, A1 and his mother and his uncle Moin came to her house and she was present at the house apart from her mother P.W.2 and others. A1 complained to her that deceased abused him and on

enquiry, deceased stated that A1 was threatening her to kill if she does not go with him for enjoyment, therefore she abused A1. A1 further stated to P.W.1 that the deceased was not sleeping with him, but was sleeping with some others and started abusing her. P.W. 1 deposed, being felt insulted and humiliated at the words of Accused No. 1, deceased went into the kitchen and poured kerosene on herself and set fire. P.W. 1 stated that her elder daughter, who was pregnant at that time, saw the deceased and raised hue and cry, on which all of them went inside and saw the deceased burning and her mother P.W.1 poured some water and extinguished flames, and shifted the deceased to Government Hospital at Eturunagaram in an auto rickshaw and as per the advice of the Doctor, deceased was taken to M.G.M. Hospital, Warangal. P.W.1 stated that on the same day, she lodged a complaint-Ex. P.1 before the Eturunagaram Police. In Ex. P.1 P.W.1 specifically stated as under :

'My younger daughter Bhavani used to go to School and return back everyday and Ibrahim, Sridhar and Lakshmaiah used to come across her and tease her. 2 or 3 times, my daughter informed me the said incident. On 25.6.1993 in the morning at about 8 a.m. Ibrahim and his mother came to my house and abusing my mother and my daughter. When Ibrahim said that your daughter was having illicit intimacy with me, my daughter was insulted and doused herself with kerosene and lit fire. My mother poured water on the flames. I could not understand anything due to flames. Immediately we went to Government Hospital, Eturunagaram. In view of the harassment made by the said persons, my daughter committed suicide. Therefore, I request to take action against the said persons'.

8. Therefore, at the earliest point of time, P.W.1 no doubt, mentioned the names of all the accused, but as far as the specific incident of the day is concerned, it was stated that Ibrahim and his mother came to their house and abused her mother and daughter and subsequently narrated as to what had transpired in the incident in question. P.W.1 further deposes that her daughter was alive for four days and on fourth day, she died in the MGM Hospital, Warangal and P.W.1 specifically deposed that she herself witnessed the three accused teasing her daughter.

9. In the cross-examination, P.W.1 deposed that she does not remember whether the date of birth of her daughter was 10.5.1975 and certain questions are put in this regard to know the age of the deceased. The witness was cross-examined at length. She also deposed that as the reputation of the family was involved, she had not given report to the Police in writing. She states that in Ex. P.1 she got mentioned all the aspects, however, she does not know why all were not incorporated in Ex. P.1. P.W.1 also deposed that it is not true to say that she did not state before the Police in her 161 Cr.P.C. statement that the accused asked the deceased to come to the Guest House to have sex with them or otherwise they will kill her and her son and that A.1 wrote on the road as 'POOJAKU PANIKIRANI PUVVU' referring to Bhavani (deceased) and that they have spread the rumour that she was going to hospital to get abortion done and that they asked Doctor about the aspect of the abortion. She deposed that she personally saw the accused teasing the deceased Bhavani and A1 abused that Bhavani was not coming to live as she was living with others. P.W.1 also deposed before the Police that two or three months earlier to the incident when deceased Bhavani narrated that accused were throwing pebbles at her, she told her that she would talk to the accused. She deposed that it is not true to say that she did not state before Police about the arrival of Moin in her 161 Cr.P.C statement, but however, she adds that Moin came and sat outside. Even in the cross-examination P.W.1 had specifically stated that A.1 came to her house and told that he was loving Bhavani, but Bhavani is living with A2 and A3 also. She admits that A1 belongs to different religion and deposed that it is not true to say that the incident did not take place on account of anything done by any of the accused. It is also pertinent to note that it was suggested to P.W.1 that Bhavani was not keeping good character and on that score she committed suicide and accused have nothing to do with the offence, and this suggestion was denied. It is also pertinent to note that certain suggestions were also put to P.W.2 that though it is a love affair between A1 and deceased Bhavani who belong to two different religions and further it was suggested that Bhavani committed suicide only due to her not keeping good character, but the same was denied. Apart from the evidence of P.W.1, the evidence of mother of P.W.2 who is the mother P.W.1, an aged lady is available on record. She had deposed about the incident, which had happened, in corroboration to that of

evidence of P.W.1. The evidence of P.W.2 is natural and convincing and by any stretch of imagination, the way in which the incident happened cannot be disbelieved. She also deposed that A2 and A3 came to their house and they were present. The nature in which P.Ws. 1 and 2 deposed would definitely inspire the confidence of the Court as far as incident is concerned. P.W.3 is the husband of P.W.4 who are relatives of P.W.1. He deposed as to what had happened and he helped P.W.1 in shifting the deceased to Eturunagaram and, subsequently, to Warangal. P.W.4 is the wife of P.W.3. The evidence of P.W.4 also would assume some importance. She had deposed that she talked with mother of A.1 and she told her that deceased was burning and let her burn. No doubt, this portion was omitted. She deposed that on seeing her, A1 fled away. It is pertinent to note that this witness specifically states that she asked the deceased as to why she received burns and on that, deceased replied that A1 said on the date of incident that he was loving her and she slept with him for which she poured kerosene and set fire to herself. She also deposed that P.Ws. 1 and 2 stated to her that since two or three months prior to the incident, accused were teasing the deceased. P.W.4 was examined by the police. P.W.5 is the panch witness for the inquest held over the dead body of the deceased at M.G.M hospital, Warangal and this witness opined that the deceased received burn injuries and died due to them. This witness also deposed that Ex. P.2 was prepared and he signed along with other panchas. P.W.6 is the Doctor who conducted autopsy over the dead body of the deceased Bhavani and opined that she was 15 years old. It is pertinent to note that this witness was not cross-examined relating to the age of the deceased, though an attempt was made by putting this question to P.W.1. This witness deposed that he started post-mortem examination on 29.6.1993 between 3.00 to 4.00 p.m. and observed about 85 to 90% superficial burns, anti-mortem in nature, were present on the face, neck, front and back of the chest, front and back of the lower part of the abdomen and both upper and lower limbs and opined that cause of death was due to septicemia acute renal failure because of the burns and issued post-mortem certificate Ex. P.3. P.W.7 is yet another important witness who was working as I Additional Munsif Magistrate, Warangal during the relevant time. He deposed that on 25.6.1993 he received Ex. P.4 requisition from HC 1272 to record the dying declaration of Takur Bhavani who was taking treatment in M.G.M.

hospital for burns and he proceeded to M.G.M. Hospital and Bhavani was identified by Dr. Smt. Vijayalaxmi and initially he had put formal questions to know the mental capacity of Bhavani and fitness to make the statement. He informed her that he is a Magistrate and came to record her statement and he recorded the statement of the deceased. This witness also deposed that the deceased Bhavani stated that there was a quarrel between herself on one hand and Ibrahim, Sreedhar Reddy and Laxmaiah on the other hand as they have written her name on the wall and that she got herself poured kerosene and set ablaze. He deposed that he read over the statement and the deceased Bhavani admitted the contents to be true and correct and he appended the certificate and as both the hands of Bhavani were burnt, he took her right big toe impression. The Doctor was present throughout and appended her certificate that Bhavani was conscious and fit to give the statement and none else were present when the statement was recorded. Ex. P.5 is the statement.

10. It is pertinent to look at the dying declaration of the deceased-Bhavani (Ex. P.5), which reads as under :

'Q. What is your name ?

A. Bhavani.

Q. What happened to you ?

A. As the quarrel occurred between myself and Ibrahim, Sreedhar and Lakshmaiah as they have written my name on the wall, so I got myself set fire after pouring kerosene on me. Thus I got ablazed whole body'.

11.P.W.8 is the Sub-Inspector of Police, Eturunagaram who deposed that Mohd. Rahmatulla H.C. 129 who was the Station House Officer on 25.6.1993 at 8.00 a.m. issued F.I.R. on receipt of report from P.W.1 and as the said Rahmatulla is no more, he can identify his handwriting and signatures on F.I.R. Ex. P.6. He deposed that he had examined the witnesses and recorded their statements; he also conducted inquest over the dead body of Thakur Bhavani and the inquest report is Ex. P.2.; he also prepared scene of offence panchanama Ex. P.7 and

seized M.Os. 1 to 3. He also deposed that he arrested the three accused and filed charge sheet. In the cross-examination, certain suggestions were put to this witness and he deposed that P.W. 1 had not stated in her 161 Cr.P.C. statement that Bhavani told her that A1 wanted Bhavani to come to Guest House for sexual intercourse, otherwise he would kill her and A1 wrote on the walls that Bhavani is 'POOJAKU PANIKIRANI PUVVU' and that P.W.1 saw A1 harassing Bhavani and that Moin was present at that time. This witness also deposed that P.W.2 Kalavathi had not stated in her 161 Cr.P.C. statement that the deceased Bhavani was called to the Guest House and A1 was stating that he loved Bhavani. This witness further deposed that P.W. 4 had not stated in her 161 Cr.P.C. statement the presence of A2 and A3 and the presence of mother of A1 and that she asked mother of A1 and she told her that let her burn and that she questioned P.Ws. 1 and 2 and they told the above incident. Other suggestions were denied by this witness.

12. Submissions at length were made that the prosecution had not proved the charge under Section 305 I.P.C. beyond all reasonable doubt as against appellants-A1 to A3 and hence the conviction and sentences are liable to be set aside. An attempt was made by the learned Senior Counsel Sri C. Padmanabha Reddy that the prosecution had not proved the age of the deceased, so as to attract the ingredients of Section 305 I.P.C. Section 305 and 306 I.P.C. read as under:

Section 305 - Abetment of suicide of child or insane person:

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

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.

Sections 107 and 108 of I.P.C. read as under:

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.

Section 108 - Abettor :

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

13. Submissions at length were made that the evidence on record would not amount to instigating or aiding the deceased which should be intentional or engaged in conspiracy and since these ingredients are absent, it cannot be said that the prosecution had proved its case beyond all reasonable doubt.

14. In *Sonappa Shina Shetty v. Emperor*, AIR 1940 Bom. 126 the Division Bench while dealing with abetment, held as under :

'The definition of abetment in S.107 I.P.C., includes not merely instigation, which is the normal form of abetment, which is the normal form of abetment, but also conspiracy and aiding, and those three forms of abetment are dealt with in the proviso to S.111'.

15. In *R. Pattusamy v. Union Territory of Pondicherry by the Station House Officer, Pondicherry*, 1992 MLJ (Crl.) 665 on the aspect of abetment-ingredients-mens rea and instigation, it was held as under:

'The three ingredients of abetment are (a) instigation to commit an offence, (b) engaging in conspiracy to commit an offence, and (c) aiding commission of offence. Abetment thus necessarily means some active suggestion or support to the commission of the offence. Abetment is by itself made substantive offence and is made punishable as such whether the offence abetted is committed or not, the object being to deter and prevent the commission of offence which is often the result and consequence of abetment. In order to constitute the offence of abetment there must be mens rea i.e. guilty intention or knowledge. In order to convict a person of abetting the commission of a crime, it is only necessary to prove that he has taken part in those steps of the transaction which are innocent but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. In order to constitute an offence of abetment, there must be mens rea or community of intention, there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. The word 'instigate' literally means to goad, urge forward, provoke, incite or encourage to do an act'.

16. In *Jamuna Singh v. State of Bihar*, : 1967 CriLJ541 the Apex Court held as under:

'It cannot be held in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence.'

17. In *Trilok Chand Jain v. State of Delhi*, : AIR 1977 SC666 the Apex Court while dealing with the offence of abetment, observed as under:

'Intention to aid the commission of the crime, is the gist of the offence of abetment by aid.'

18. In *Shri Ram v. the State of U.P.*, : [1975]2SCR622 on the aspect of intentional aiding, the Apex Court held as under :

'In order to constitute abatement, the abettor must be shown to have 'intentionally' aided to commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abatement under the third paragraph of Section 107.

19. With the material available on record, it is no doubt true that the evidence of P.Ws. 1 and 2 is to the effect that on the date of incident, it was A1 alone who had uttered the words which have the direct cause resulting in the deceased pouring kerosene on herself and setting ablaze. It is no doubt true that as far as the pre-incident events are concerned, except P.W. 1 stating that she had also witnessed the teasing, there is no other clear evidence available on record and there are certain omissions also in this regard. Unless it is shown that A2 and A3, who stood outside on the fateful day even as per the evidence of P.Ws. 1 and 2, had a pre-plan which had resulted in the ultimate act of deceased committing suicide, this Court is of the considered opinion that on the material available on record, A2 and A3 cannot be convicted and sentenced to imprisonment under Section 305 of I.P.C. especially in the light of clear statement made by P.W. 1 in the evidence and also in Ex. P.1. It is no doubt true that in the dying declaration, the deceased mentioned the names of the accused, but if the evidence of P.Ws. 1 and 2 and the

oral dying declaration which the deceased made to P.W.4 are taken into consideration in the light of the omissions relating to pre-incident events, inasmuch the evidence of P.W. 1 is more on hearsay on these aspects, this Court has no hesitation in arriving at a conclusion that as against A2 and A3, the prosecution had miserably failed to establish the ingredients of Section 305 IPC beyond all reasonable doubt. The episode does not stop there. It is pertinent to note that in Ex. P.1 specific allegation is made against A1. P.Ws. 1 and 2 clearly stated as to what had transpired on the fateful day of incident. The only question that may have to be decided now is whether on the material available on record can it be said that the ingredients of Section 305 IPC are satisfied or in the alternative whether the ingredients of Section 506 IPC are satisfied or whether A1 also has to be acquitted giving the same benefit of doubt which had been given to A2 and A3.

20. The learned Senior Counsel made serious attempt by pointing out certain omissions and also would submit that on a careful reading of Sections 305 and 107 IPC, the ingredients of abetment to commit suicide had not been established and hence the conviction and sentence as against A1 also cannot be sustained.

21. In the dying declaration, no doubt the deceased stated about the quarrel with the accused including A1 as already referred supra, but, in Ex. P.1, on the date of incident, specific allegations were made as against A1 only. It is needles to say that the dying declaration wherein the events had been explained relating to the cause of death is admissible.

22. In *Kans Raj v. State of Punjab and others*, : 2000 CriLJ2993 at para 10, the Apex Court held as under :

'Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without an amount of delay or expense or he is

incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words 'as to any of the circumstances of the transaction which resulted in his death' appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. The phrase 'circumstances of the transaction' were considered and explained in *Pakala Narayana Swami v. Emperor*, AIR 1939 PC 47 : (1939 (40) Cri LJ 364) :

'The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. 'Circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae'. Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that 'the circumstances' are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the

admissibility of the evidence is that 'the cause of (the declarant's) death comes into question.'

There cannot be any controversy relating to the admissibility of dying declaration, but the question which may have to be decided is whether the ingredients of Section 305 IPC are satisfied in the present case.

23. In *Wazir Chand v. State of Haryana*, : 1989 CriLJ809 at para 5, the Apex Court while dealing with Section 305 I.P.C. held as under:

'Section 306 of the Indian Penal Code states inter alia that whoever abets the commission of suicide shall be punished with imprisonment and fine as set out in the said section. Section 107 of the Indian Penal Code defines abetment. Reading Sections 306 and 107 together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under S. 306 of the Indian Penal Code for abetting the commission of suicide. A plain reading of this provision shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide.'

24. The prosecution version may have to be examined in the background of factual matrix. P.W. 1 is an unfortunate widow having lost the husband living with children. The deceased is not a well grown up woman. As already referred to supra, F.I.R. need not be an Encyclopedia of all the details. The substance of accusation if well narrated would be sufficient.

25. Apart from the dying declaration of the deceased, the evidence of P.Ws. 1 and 2 and also oral dying declaration made by the deceased to P.W. 4 are available on record. As far as pre-incident events are concerned, there are omissions, which had not been proved by the Investigating Officer and these were highlighted by the learned Senior Counsel.

26. A family in the Indian Society, whether big or small, rich or poor, wants to live in peace with some dignity and reputation. Indian women do not tolerate insults and

get offended at the slightest remarks made against them, and more so, when touching remarks with respect to their chastity are made, and they become so sensitive that they even go to the extent of giving up their lives, and in fact, give up their lives, instead of leading an unceremonious life. In Indian society, chastity is regarded as a woman's virtue, and no women would digest if any person makes touching remarks or casts aspersion against her chastity or doubts her chastity, even if it be her husband. Indian woman prefers to lead honourable life than lead a life of unchastity or with insults touching her honour. In spite of modernization in the world, yet rural India continues to be traditional and follows the customs with utmost regard. In the instant case, the deceased was unable to bear the words uttered by A1, and such utterances, on the fateful day, made her to kill herself by dousing kerosene on her body and lighting it up. P.W.1 spoke about the incident and P.W.2 corroborated the same and this is direct evidence. No doubt their evidence in relation to pro incident is more in the nature of hearsay, but the fact remains that the accused teased her by making touching remarks against her chastity, and if this conduct of the A1 on the fateful day, is not construed as instigation or abetment, then what else would constitute abetment, and this Court is at a loss to understand. Instigation or abetment has to be understood in the context of age of the deceased, the society in which she lives, and the social acceptance of the nature of the words uttered by A1 and the attending circumstances.

27. Several decisions were relied on by the learned Senior Counsel to substantiate his contention that even against A-1 the ingredients of Section 305 IPC are not satisfied and relied on the case of V. Shankaraiah v. State of A.P., 2002(1) ALD (Crl.) 812 (AP) where suicide committed by a girl whose marriage with the accused got cancelled and there was no evidence to show that the accused aided or induced the deceased to commit suicide. It was held that the charge against the accused is liable to be quashed.

28. In Neelam @ Bondila Lachaiah v. State of A.P., 2002(1) ALD (Crl.) 539 (AP) where the deceased committed suicide due to humiliation by the appellants and appellants suspecting the deceased for the offence of theft humiliated him on the previous day, that does not by itself amount to abetting the suicide by the

deceased on the next day and the conviction was set aside and appellants were acquitted.

29. In *S. Rekha Prasad v. State of A.P.*, 2002(1) ALD (Crl.) 886 (AP) it was held that when no averment in charge sheet or material on record to show that the accused either induced or abetted the deceased to commit suicide, accused cannot be charge sheeted for the offence under Section 306 and prosecution is liable to be quashed.

30. Reliance was also placed on the decision in *Mahendra Singh and another with Gayatribai v. State of M.P.*, 1995 Supp (3) SCC 731 where on facts the Apex Court held that conviction for abetment of suicide was not sustainable, as the ingredients relating to abetment are not attracted.

31. In *Swamy Prahaladdas v. State of M.P.*, 1995 Supp (3) SCC 438 while dealing with the case of sexual jealousy between the appellant and the deceased, during quarrel the appellant allegedly remarking to the deceased to go and die and thereafter the deceased going home and committing suicide, it was held that it cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant and the proceedings against the appellants were quashed.

32. Reliance was also placed on the decision in *Mahendra Singh and another with Gayatribai v. State of Madhya Pradesh*, 1996 Crl. L.J. 894 in relation to ingredients to be satisfied for an offence of abetment of suicide.

33. In *Ramesh Kumar v. State of Chhattishgarh*, : 2001 CriLJ4724 while dealing with the meaning of instigation, the Apex Court held that there must be a reasonable certainty to incite the consequence and having regard to the dying declaration and suicide note of the deceased along with all other circumstances, the offence under Section 306 was also not made out and the word 'instigation' and the meaning thereof had explained at length.

34. Strong reliance was placed on the decision in *V. Adinarayana v. State of Andhra Pradesh*, 2001(1) ALD (Crl.) 59 (AP) where the facts are that the accused

were threatening and accusing the mother and daughter that they will reveal the illicit contacts of her to her would be husband and therefore both of them went and jumped in a high level canal and daughter was drowned and somebody rescued the mother and subsequently she committed suicide by setting fire on herself.

35. The learned Senior Counsel while dealing with abetment of suicide under Section 306 read with Section 109 I.P.C. held that mere threatening words by accused does not amount to instigating the commission of suicide and offence was not made out and accused are entitled to acquittal.

36. Reliance was also placed on the decision in *Bura Manohar v. State of A.P.*, 2002(2) ALT (Cri.) 184 (AP) this Court explained the definition of abetment under Section 107 I.P.C.

37. In *Sanju alias Sanjay Singh Sengar v. State of M.P.*, : 2002 CriLJ2796 the Supreme Court while considering the ingredients of Section 107 held that instigating a person to do a thing denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite, and, further held that presence of mens rea is the necessary concomitant for instigation. The Supreme Court also held that words uttered in a quarrel or on the spur of moment, such as 'to go and die' can not be taken to be uttered with mens rea.

38. On the strength of the decisions referred supra, the learned Senior Counsel would urge that at the best the charge against A1 may attract Section 506 and definitely the ingredients of Section 305 are not satisfied.

39. It is a case of young girl of 15 years and the allegation made against her is relating to her chastity. On hearing the allegations, the immediate reaction is that she went into the kitchen and poured kerosene and set fire on herself. This is the direct proximate action and the result of the utterances made by A1. It may be that there was no intention on the part of A1 or A1 might not have expected that this young girl would resort to such maximum step which is unfortunate. As per clear evidence available on record that A1 made such utterances, which cannot be disbelieved. Suggesting that the deceased is not having good character and that though some love affair was suggested and that, because both the accused and

deceased belong to two different religions, the problem had erupted, these suggestions in the considered opinion of this Court are definitely uncharitable. It is no doubt true that for want of legally acceptable evidence, the Accused 2 and 3 are entitled to benefit of doubt, but this cannot be stretched too far and extended to A1 in the light of his direct involvement as spoken to by the P.Ws. 1 and 2. Hence, this Court is of the considered opinion that on consideration of both factual aspects and questions of law involved in the matter, the deceased Bhavani, young girl would not have committed suicide, but for the acts and utterances made by the accused on the fateful day. Hence, in the light of the peculiar facts, this Court is satisfied that the ingredients of Section 305 are attracted. Though serious attempt was made by the learned Senior Counsel to bring the offence under Section 506 IPC. In fact the learned Judge after recording the findings in detail, had taken a lenient view taking into consideration the age of the accused.

40. For the foregoing reasons, the conviction and sentence imposed as against Appellants 2 and 3/A-2 and A-3 are hereby set aside for want of legally acceptable evidence, giving benefit of doubt. As far as Appellant No. 1/A-1 is concerned, taking into consideration his age at the relevant point of time, the conviction recorded by the learned Sessions Judge, Warangal in S.C. No. 542/93 is confirmed, but the Appellant/A-1 is sentenced to undergo rigorous imprisonment for a period of two years, instead of five years, and also to pay a fine of Rs. 1,000/- and in default, to undergo imprisonment for six months. It is brought to the notice of this Court that the fine amount was already paid. It is needless to say that Appellant No. 1/A-1 is entitled to set-off in relation to the period of imprisonment which he had already undergone and Appellant No. 1/A.1 shall serve rest of the sentence. Accordingly, in as much Appellants 2 and 3 are hereby acquitted, this Criminal Appeal is partly allowed to the extent indicated above and the sentence as against Appellant No. 1/A.1 is modified as referred to supra.