

Mahesh Kumar and Others Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-30-2000

Reported in : 2001(2)MPHT222

Judge : Mr. S.C. Pandey, J.

Acts : [Penal Code \(IPC\), 1860](#) - Sections 107 and 306

Appeal No. : Criminal Revision No. 1189/99

Appellant : Mahesh Kumar and Others

Respondent : State of M.P.

Advocate for Def. : Ku. Kiran Mehta, Adv.

Advocate for Pet/Ap. : Shri Surendra Singh, Adv.

Disposition : Criminal revision allowed

Judgement :

ORDER

S.C. Pandey, J.

1. This revision is directed against the orders dated 19-7-99 and 24-7-99 passed by IVth Additional Sessions Judge, Sagar. The facts and the points of law involved in this revision as well as Criminal Revision Nos. 1205/99 and 1237/99 are of the

same nature and therefore this order shall also govern the disposal of aforesaid two criminal revisions.

2. The undisputed case of the prosecution is that on 15-11-95 the deceased Sushil Chand committed the murder of his wife Smt. Neelma Jain by means of knife because he suspected her to be of bad character and thereafter, he committed suicide by hanging himself. The deceased had left one suicide note-cum-letter dated 9-11-95 addressed to Superintendent of Police Sagar whereby he alleged that the applicant Vjjay and Sarla, father and mother of his wife deceased Neelma Jain were responsible for her illicit activities as they encouraged her to have clandestine relations with the applicants Mahcsh Kumar, Surya Kant Bhura, Ashok Kuroar, Rajendra Kumar and Neelesh. So far as applicants Anil Kumar and Dev Chand are concerned, it is alleged in the suicide note-cum- letter addressed to Superintendent of Police, Sagar that they were also responsible for his committing suicide as they also teased him and insinuated that he was impotent as his wife had not given birth to a child. These are the basic allegations.

3. After going through the suicide note-cum-letter addressed to Superintendent of Police, Sagar dated 9-11 -95, which was read over to me during the arguments, it appears to this Court that the deceased suspected the character of his wife and he thought that Mahesh Kumar and Surya Kant Bhura were the chief guilty persons who had illicit relations with his wife. He suspected that Rajendra Kumar, Ashok Kumar and Neelesh too had enticed his wife. He blamed the father and mother of his wife, Vijay Kumar and Smt. Sarla, because according to him they encouraged their daughter to have illicit relations because they did not restrain her from meeting these persons. So far as Anil Kumar and Dev Chand are concerned, he also blamed them that they had teased him for not producing a child and thereby compelled to commit the deceased Sushil Chand to commit suicide.

4. Looking to the facts and circumstances of the case, this Court is of the opinion that no offence could be made out against all the applicants in all three revisions. So far as offence under Section 306 of IPC is concerned, it is necessary that applicants should have abetted suicide within the meaning of Section 107 of IPC. It appears to this Court that they did not do any act covered by under Section 107

of IPC and could be held to abet the commission of suicide on the part of the deceased.

5. It appears to this Court that the real case for committing suicide was that he murdered his wife. Perhaps there may be no cause for suspicion. In Shakespcar's 'The Tragedy of Othello, the Moor of Venice'; when Othello, misled by Iago, begins to suspect the character of his wife Desdemona she complains to Emilia, the wife of Iago, that she had given him no cause for suspicion. This incident is dramatised as follows in a very telling manner :

'Desdemona : Alas the day, I never gave him cause !

Emilia : But jealous souls will not be answered so : They are not ever jealous for the cause, But Jealous for they're jealous. 'Tis a monster Begot upon itself, born on itself.'

Act III SC. IV 160

And when he prepares to murder Desdemona, the Black Moor says in the favour passage :

Othello : 'It is the cause, it is the cause, my soul :

Let me not name it to you, you chaste stars!

It is the cause. Yet I'll not shed her blood,

Nor scar that whiter skin of hers than snow,

And smooth as monumental alabaster.

Yet she must die, else she'll betray more men,

Put out the light, and then put out the light:

If I quench thee, thou flaming minister,

I can again thy former light restore,

Should I repent me : but once put out thy light,
Thou cunning'st pattern of excelling nature,
I know not where is that Promethean heat
That can thy light relume, When I have plucked thy rose,
I cannot give it vital growth again, It needs must wither.....'.

Act V SC.II 5-10

It is apparent that Sushil Chand murdered his wife on account of the same motive as had driven Othello to do away with his wife. However murder under our criminal law is never justified; be it on account of suspicion of the character of wife of the murderer.

6. However, Sushil Chand was not satisfied. He wanted to get the applicants punished after he committed suicide. He regarded Mahesh Kumar and Surya Kant Bhura as main culprits. He did not spare Ashok Kumar, Neelesh Kumar and Rajendra Kumar from the web of his suspicion. He took for granted that his father-in-law Vijay Kumar and mother-in-law Smt. Sarla must be guilty because they omitted to restrain their daughter from having relations with the aforesaid men. Such vengefulness could not forgive even Anil Kumar and Dev Chand who had lightly insinuated that he may be impotent because he had not given birth to a child. The fact was otherwise and he knew it. According to Sushil Kumar himself his wife was pregnant twice through him and he had stated so in the suicide note-cum-letter. In fact that letter clearly implies that he had led normal married life with his wife.

The following excerpts from the suicide note-cum-letter :--

^Jh fot; dq- tSu O;k[krk] Jherh ljk tSu] Jhegs'k dqekj fljokuh] Jh lw;Zdkar Hkwjk] Jh jktsUnz tSu dks Qkalh dh ltk t:jfnykuk rkfd ,d funksZ'k ,oa de ZB ukxfjd dh cfynkuh csdkj u tk;sA

gk esjh cqvk fj'rs dh dk yM+dk Jh vfuydqekj tSu] Jh eksrh yky tSu lxM+k ,oa nso pUn tSu] Jh eksrh yky Hkh eq>svkRegR;k djus ds fy;s oclZ ;nk dnk izsfjr djrs jgs ,oa esjh iRuh dks yM+dk ugksus dk rkuk nsrs jgs tcfd jkuh dks nks ckj xHkZorh gks xHkZikr gks pqdk gSAvw m QZ vfuy ,oa xqM~Mk m QZ nso pUn dks gj laHko dfBu ls dfBu ltk nsuk os Hkhesjh vkRegR;k ds iw.kZ ugha rks dqN va'k rd nks'kh vo'; g SA

iqu% fy[k jgk gw egs'k fljokuh] lw;ZdkarHkwjk] fot; dqekj tSu] Jherh ljk tSu dks vo'; gh ltk nh tkuh gS vU;Fkk esjhcfynkuh csdkj tk;sxh ,oa vfuy ,oa xqM~Mk dks Hkh u NksM+saA

lq'khy pan tSu

lgk;d-----**

These paragraphs show that the deceased suspected the character of his wife perhaps without any foundation. One thing is however, clear that he held all the applicants responsible for his predicament and did not want them to go unpunished. But the facts reveal that he himself committed a dastardly crime of murdering his own wife and then committed suicide. The traces of Shakespear's 'Othello' can be seen in the crime committed by Sushil Chand. Indeed the green eyed monster overtook the discretion which he should have ordinarily possessed.

7. It has been held by the this Court in the case of Ved Prakash Tarachand Bhaiji v. State of M.P. (1995 MPU 458) that as per definition given in Section 107 of the Indian Penal Code abetment is constituted by :--

'(i) instigating a person to commit an offence; or

(ii) engaging in a conspiracy to commit it; or

(iii) intentionally aiding a person to commit it.'

A person said to 'instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word 'instigate' means to goad or urge forward or to provoke, incite, urge or

encourage to do any act.

8. There is no material on record for holding that any of the applicants in all the revisions allegedly did an act of commission or omission whereby the applicant was driven to commit suicide. Even if the applicants indulged in the activities alleged in the letter-cum-report to Superintendent of Police, Sagar, it cannot be inferred that they intended that applicant be urged or goaded to commit Suicide. The intentions of these persons judged from their actions or omissions were otherwise even if the contents of the letter be entirely true. They did not enter into any conspiracy. Nor were guilty of aiding Sushil Kumar in the act of commission of suicide. Therefore, reading the Section 107, IPC alongwith the two explanations appended to it, the conclusion is there was no abetment to commit suicide. The actions and omissions of applicants in all the three revisions would not be culpable under Section 306, IPC. In fact circumstances do indicate that real cause of committing suicide was that Sushil Kumar had planned to murder his wife and thereafter to commit suicide. He succeeded in his plan but left an unsavoury tale in form of the letter to Superintendent of Police, Sagar that has hounded the applicants with the criminal prosecution. It is in the interest of justice that this Court must undo the injustice that is being done to them in accordance with the criminal law of this land.

9. Consequently, all these revisions succeed and the impugned orders dated 19-7-99 giving reasons for framing of charge as well as order dated 24-7-99 whereby charges were framed against all the applicants under Section 306, IPC, are hereby set aside. The applicants are discharged of charges framed against them.

10. All the three revisions filed by the applicants are allowed.

11. Criminal Revision allowed.