

Bagdiram Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-23-2005

Reported in : I(2006)DMC183; 2005(4)MPLJ234

Judge : A.K. Shrivastava, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107 and 306; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 245 of 1994

Appellant : Bagdiram

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. A.G.

Advocate for Pet/Ap. : Sanjay Sharma, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. Being aggrieved by the judgment of conviction and order of sentence dated 8.4.1994 passed by Additional Sessions Judge, Ratlam in S.T. No. 172/93 convicting the appellant under Section 306 of the Indian Penal Code (in short

I.P.C.) and sentencing him to suffer rigorous imprisonment of 4 years and fine of Rs. 1,000 in default of payment of fine further rigorous imprisonment of 6 months, the appellant has knocked the door of this Court by preferring this appeal.

2. In brief the case of prosecution is that on 10.5.1993 Kalibai (hereinafter referred to as the deceased) who was living in the house of her parents, ablazed herself. She was sent to the Hospital where a dying declaration of her was recorded. The investigating agency investigated the matter and submitted the charge sheet in the competent Court which on its turn committed the case to the Court of Session and from where it was received by the Trial Court for the trial.

3. The learned Trial Judge on going through the charge sheet framed charge punishable under Section 306 of the I.P.C. against the appellant. Needless to emphasis the appellant abjured his guilt and pleaded complete innocence. His defence is of maladroitness implication.

4. In order to bring home the charge the prosecution examined as many as 10 witnesses and placed certain documents on record.

5. The Trial Court on the basis of the evidence placed on record came to hold that appellant did commit the offence for which he was charged and eventually convicted him and passed the sentence which I have mentioned hereinabove. Hence, this appeal.

6. Mr. S. Sharma appearing for appellant has submitted that if the entire case of prosecution is considered in toto it would be difficult to uphold the conviction. It has also been canvassed by him that the deceased was living along with her parents for near about last one year from the date of incident i.e., 10.5.1993 and if that is the position, according to learned Counsel, the Court erred in convicting the appellant. It has also been put forth by learned Counsel that none of the ingredient of Section 107, I.P.C. is made out in the present case and, therefore, the conviction cannot be upheld.

7. On the other hand, Mr. Desai learned Dy. AG argued in support of impugned judgment.

8. After having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed.

9. Plato has said:

Man is a prisoner who has no right to open the door of his prison and run away....
A man should wait, and not take his own life until God summons him.

10. As per the prosecution's own case the deceased was living with her parents for last one year from the date of incident (incident occurred on 10.5.1993). In the dying declaration it has been stated by her that she herself lit the fire as she was being harassed by her husband.

11. This fact cannot be marginalized and blinked away that as per the prosecution's own case the deceased was living for last one year from the date of incident along with her parents, therefore, it is very difficult to connect the present appellant with the incident. There is nothing on record in order to hold that during this period of one year, the deceased was harassed by the appellant. Before holding an accused to be guilty of the offence envisaged under Section 306, I.P.C., it should be proved that he had abetted the deceased to commit suicide. The provision regarding abatement has been emphasized under Section 107 of the I.P.C. which reads thus:

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.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C, here B abets by instigation the apprehension of C.

Explanation 2--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing to that act.

12. If the aforesaid provision is tested on the touch stone of the present factual scenario, it would be difficult to hold that appellant has abated the deceased to commit suicide. There is nothing on record nor there is any evidence of any prosecution witness that appellant ever abated the deceased to commit suicide. On the contrary (P.W. 1) Kamlabai who is the mother of the deceased in paras 10 and 11 has stated that on account of not doing some house hold work, the deceased was being scolded by the appellant. However, she has submitted that this type of incident is common between husband and wife and it happened with her also. Similar type of the evidence is of the father of the deceased (P.W. 3) Vijay Naik.

13. On bare perusal of the testimony of the parents of the deceased and on going through the dying declaration Ex. P/9 one cannot say that any of the ingredient of Section 107, I.P.C. exists in the present case. Even if the case of the prosecution is taken into consideration in its entirety, it is difficult to uphold the conviction. Merely because deceased was harassed by the appellant at one point of time would not attract any ingredient of Section 107, I.P.C. Even if it is held that the behaviour of the appellant, was not pleasant towards the deceased or he was harassing her, at the most, it may be a cause to commit suicide but it cannot be equated with the abatement to commit suicide. At this juncture I may profitably rely the decision of the Apex Court, Sanju @ Sanjay Singh Sengar v. State of M.P. : 2002 CriLJ2796 , wherein the Apex Court has held as under:

12. 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 25.7.1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, 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 inadvisable 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 on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25.7.1998 ensued by a quarrel. The deceased was found hanging on 27.7.1998. 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 25.7.1998 drove the deceased to commit suicide. Suicide by the deceased on 27.7.1998 is not proximate to the abusive language uttered by the appellant on 25.7.1998. The fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25.7.1998 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 Apex Court in this decision has placed reliance on earlier decisions *Swamy Prahaladdas v. State of M.P.* 1995 Supp (3) SCC 438 and *Mahendra Singh v. State of M.P.* 1995 Supp (3) SCC 731. On the similar point there is another decision of the Supreme Court, *Ramesh Kumar v. State of Chhattisgarh* : 2001

CriLJ4724 .

14. Looking to the entire gamut of the case the view of this Court is that the Court below erred in convicting the appellant. Judging from all angles the impugned judgment cannot be upheld and the same is, hereby set aside.

15. Resultantly, appeal succeeds and is allowed. The impugned judgment is, hereby, set-aside. The appellant is on bail. His bail bonds are discharged.

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