

Madhya Alias Mahadev Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-05-2006

Reported in : 2006(1)MPLJ583

Judge : S.C. Vyas, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 109, 306 and 354

Appeal No. : Cri. Revn. No. 1050 of 2005

Appellant : Madhya Alias Mahadev

Respondent : State of M.P.

Advocate for Def. : Joshi, Penal Lawyer, Adv.

Advocate for Pet/Ap. : Mukesh Sinjoniya, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.C. Vyas, J.

1. This revision petition under Sections 397 and 401 of the Code of Criminal Procedure is directed against the order dated 17-10-2005 in Sessions Trial No.

130/ 2005 passed by Additional Sessions Judge, Manawar, District-Dhar, whereby trial Court had directed framing charges against the petitioner under Section 306 of the IPC.

2. As per the final report submitted by police Manawar, District-Dhar before the learned Lower Court the case of the prosecution was that on 21-2-2005 when Basanti Bai D/o Bhangda Bhil aged about 16 years of village Piplaj was attending natural call in the forest, then petitioner came there and caught hold of the girl with intend to outrage her modesty and tried to snatch her towards Nala. The said Basanti Bai was opposing the act of the petitioner. At that time Surbai W/o Mohan Bhil aged about 20 years, and younger sister of Basanti Bai, Rumu Bai D/o Bhangda Bhil aged 11-12 years, who were also attending natural call had witnessed the incident. Both of them pelted stones on petitioner and thereafter petitioner left Basanti Bai and ran away from the place of incident. The incident was narrated by the said eye-witnesses to the parents of Basanti Bai, Basanti Bai also came to know that the witnesses have informed her parents regarding the incident. She felt very much ashamed because of the incident and feeling herself defamed ultimately she committed suicide by hanging with the help of a rope. The matter was reported to the police and Marg No. 17/05 was registered. On enquiry the offences punishable under Section 354, 306 of IPC were registered against the petitioner and he was arrested. After completing the investigation charge-sheet was filed before the JMFC, Munawar who committed the case for trial to the Court of Session.

3. At the time of framing of charge a submission was made on behalf of the petitioner accused that considering the entire circumstances and the evidence available in the case offence under Section 306 of IPC is not made out against the petitioner even prima facie and, therefore, a prayer for discharge was made. Learned trial Court considered the arguments advanced by learned Counsel for the petitioner and ultimately held that prima facie offence punishable under Section 306 of IPC is also made out along with the offence punishable under Section 354 of IPC, therefore, charges were framed against the accused petitioner. Feeling aggrieved by this order present revision petition has been filed.

4. Learned counsel for the petitioner Shri Mukesh Sinjoniya submitted that if the entire story of the prosecution is believed even then the necessary ingredients of the offence punishable under Section 306 of IPC are totally missing in his case. He has submitted that for establishing an offence punishable under Section 306 of IPC, act of abetment as defined under Section 107 of the IPC is required to be established. He has further submitted that two days prior to the alleged suicide by the deceased Basanti Bai the alleged act of misbehaviour by catching hand of deceased Basanti Bai and trying to outrage her modesty was committed by the accused. On these facts at the most prima facie offence under Section 354 can be said to have been committed by the accused petitioner but by no stretch of imagination it can be said that the act of accused petitioner was to instigate the deceased Basanti to commit suicide, therefore, Shri Sinjonia Advocate prayed that the order passed by learned Sessions Judge is not sustainable in the eye of law and is required to be quashed so far as it relates to the offence punishable under Section 306 of the IPC is concerned.

5. Learned panel lawyer Shri Joshi appearing for the State submitted that prima facie there is sufficient material available on record to hold accused petitioner has committed an offence punishable under Section 306, IPC and, therefore, there is scope of interference in the order passed by the learned Sessions Judge.

6. To resolve the controversy it appears necessary first of all to have a look on the provisions of Section 306 and Section 107 of the IPC. Section 306 of IPC reads as under:

Section 306.-- 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.

Abetment has been defined in Sections 107 and 109 of IPC which reads as under:

Section 107.-- 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 of 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.

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 facilitates the commission thereof, is said to aid the doing of that act.

Section 109 of the IPC provides for punishment, of abetment which reads as under:

Section 109.-- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

7. As Section 306 of IPC makes abatement of commission of suicide punishable, therefore, making liable for an offence punishable under Section 306, IPC it is a duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused it is necessary to see that his act must fall in any of the 3 categories as enumerated under Section 107 of the IPC and, therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more other person in any conspiracy for seeing that the deceased commits suicide or he must intentionally act by any act or illegal omission, of the commission of suicide by the deceased,

8. When we considered the facts of the present case then it becomes manifestly clear that there appears no direct or indirect connection between the act of the accused petitioner on 21-2-2005 and the act of the deceased Basanti Bat on 23-2-2005 when she hanged herself by neck and committed suicide. On 21-2-2005 when accused petitioner was trying to outrage the modesty of the girl then there was no occasion for even thinking that because of this act the girl would commit

suicide. It appears that the girl was in great stress and depression and was feeling ashamed as the story of the incident was narrated by her younger sister and other girl to her parents. If the deceased Basanti Bai was thinking of commission of suicide because of the act of the accused then she could have done so on the date of incident i.e. 21-2-2005. The period of two days which elapsed between two incidents shows that, it was not the act of the accused petitioner which instigated her to commit suicide, but it was defamation and feeling of shame which ultimately became the cause of commission of suicide.

9. Our High Court and Hon'ble Supreme Court have considered the scope of Sections 107 and 306 of IPC in many cases. In Sanju v. State of M.P. : 2002 CriLJ2796 the Hon'ble Apex Court in paragraphs 9 to 12 observed as under:

Para 9:-- In Swamy Prahaladdas v. State of M.P. 1995 Supp (3) SCC 438, the appellant was charged for an offence under Section 306, IPC 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.

10. In Mahendra Singh v. State of M.P. 1995 Supp (3) SCC 731: 1996 Cri LJ 894, the appellant was charged of an offence under Section 306, IPC basically based upon the dying declaration of the accused, 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 abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning. 11. This Court, considering the definition of 'abetment' under Section 107, IPC, 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.

12. In Ramesh Kumar v. State of Chattisgarh : 2001 CriLJ4724 , this Court while considering the charge framed and the conviction for an offence under Section 306, IPC on the basis of dying declaration recorded by an Executive Magistrate, 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 difference in domestic life quite common to the society to which the victim belonged and such petulance discord the difference 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.

10. Learned counsel for the petitioner has placed reliance on the case of Mangleshwar Singh (Dr.) v. State of M.P. 2003 Cr LR (MP) 521 : 2003 Cri LJ (NOC) 271; Omprakash Agrawal v. State of M.P.. 2003 (1) MPHT 127 : 2003 Cri LJ 4138; Anant Kumar Denial v. State of Chhattisgarh 2003 (5) MPHT6 (CO); Nanka v. State of M.P. 1998 Cr LR (MP) 336; Utkal v. State of M.P. 1997 Cr LR (MP) 354; Raja Lal alias Kamlesh S/o Phillips v. The State of M.P. 1998 Cr LR(MP) 354; Manish Tiwari v. State of M.P. 2001 Cr LR (MP) 167, and on the basis of these reported cases he submitted that no offence under Section 306 of the IPC is made out against the accused petitioner.

11. The facts of the case Utkal v. State of M.P. (supra) are more similar to the facts of the present case in that case also it was found that the alleged misbehaviour may be a cause for committing suicide but would not amount to abetment to commit same as defined under Section 107 of the IPC and in the facts and circumstances of that case charge under Section 306 of the IPC was not found and, therefore, that charge was quashed.

12. In the present case also when we apply the definition of abetment as given in Section 107 of IPC then it becomes manifestly clear that the act of accused petitioner does not come in any of the categories enumerated in that section unless the act of the accused petitioner comes under any category mentioned in Section 107 of the IPC, he cannot be held guilty for commission of the offence punishable under Section 306 of the IPC.

13. Therefore, the learned trial Court committed a mistake of law in framing charges against the accused for offence punishable under Section 306 of the IPC, this revision petition succeeds and is allowed the order of learned trial Court for framing charge of the offence punishable under Section 306 of the IPC is set aside and the said charge is quashed, however, trial against the accused petitioner may proceed for remaining charges as per provision of law.

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