

SachIn Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : Mar-25-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Section 309

Appeal No. : W.P.(C) 5305/2010

Appellant : SachIn Kumar

Respondent : Uoi and ors.

Advocate for Def. : Mr.D.S.Mahendru; Mr.Bhupinder Sharma, Advs.

Advocate for Pet/Ap. : Ms.Rekha Palli; Ms.Punam Singh; Ms.Amrita Prakash, Advs.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. On 19.5.2009 at around 13:20 hours the petitioner had to be rushed to the Sub-Divisional Hospital at Sunderbani and therefrom to a Government Hospital, Jammu because his condition was serious. His colleagues found him unconscious and frothing from the mouth. Whereas the department claims that petitioner

attempted to commit suicide, the petitioner asserts that being under severe mental distress on account of his heart throb Harpreet Kaur having broken off her relationship with him, in a state of depression he consumed 25 tablets of Multivitamins and Proteins Forte tablets.

2. The petitioner was given a stomach wash and was saved. By save we mean his life was saved. But his career came under a cloud.

3. The Commandant of the Unit to which petitioner was attached took cognizance of the offence report and reduced the allegations into writing i.e. framed a charge and directed a Record of Evidence to be prepared and for which he deputed the Deputy Commandant of the Unit to be the officer concerned. The charge against the petitioner is as under:-

"BSF ACT 1968 Sec 42 (c) ATTEMPTING TO COMMIT SUICIDE AND IN SUCH ATTEMPT DOING AN ACT TOWARDS THE COMMISSION OF THE SAME in that he, at BSF Campus, Sunderbani on 19/05/2009 at 1320 Hrs, attempted to commit suicide by taking an overdose of medicines."

4. 8 witnesses were examined by the prosecution, none of whom were cross-examined by the petitioner in spite of opportunity being granted. HC N.Rajshekhar PW-1 deposed of having seen the petitioner semi-conscious and with froth coming from his mouth at 13:30 hours on 19.5.2009 and with the help of HC Inderjit Singh, Ct.Y.Guneshwar, Ct.Dullalkar and Ct.Satya Silan taking petitioner to the hospital as also having found a suicide note, while he packed the bedding of the petitioner, in which suicide note he had written that he was committing suicide as his love was not accepted by a girl. He deposed that he had picked up wrappers of medicine found at the incident site which he handed over to Dr.K.K.Chaudhary, Chief Medical Officer (SG). SI Sanwad Khan PW-2 deposed that when he received information of petitioner being found in a semi-conscious condition, he rushed to the spot where he saw petitioner semi-conscious, with froth coming out from his mouth and that with the help of all constables named by PW-1 as also PW-1 rushed petitioner to medical aid and that PW-1 had showed him empty wrappers of medicine and a suicide note found at the spot. ASI B.K.Srivastava PW-3 deposed of having rushed the petitioner in an ambulance to

Dr.K.K.Chaudhary and stated that at the emergency ward of SDH, Sunderbani when Dr.Govind Sharma was treating the petitioner he shouted mujhe mat pakdo, mujhe jinda nahi rehna hai, main marna chahta hoon. SI Atul Kumar Suman PW-4 deposed of transporting the petitioner from Sub- Divisional Hospital, Sunderbani to Government Medical College Hospital, Jammu. Ct.Y.Guneshwar PW-5 deposed same facts as were deposed to by PW-1 and PW-3 and stated that when Dr.Govind Sharma was treating the petitioner he shouted mujhe mat pakdo, mujhe jinda nahi rehna hai, main marna chahta hoon. SI Roshan Singh Tomar PW-6 deposed facts in harmony with what was deposed to by PW-1. Dr.Goving Sharma PW-7, the doctor who had treated the petitioner at Sub-Divisional Hospital Sunderbani deposed that petitioner was brought in an unconscious but irritable condition to the hospital. He was reported to have taken overdose of medicines like Parvan Forte and Multivitamins which had the potential to cause respiratory depression and other complications which were difficult to manage at SDH Sunderbani and after a stomach wash he was referred to the GMCH Jammu. He stated that initially the petitioner refused to take treatment and even physically resisted when he was given medical aid. Dr.K.K.Chaudhary PW-8 deposed that the petitioner was uttering mujhe mat pakdo, mujhe jinda nahi rehna hai, main marna chahta hoon when he gave treatment to the petitioner and that from the wrappers shown to him it was apparent that petitioner had taken overdose of Parvan Forte and Multivitamins.

5. After recording the evidence of the 8 witnesses, petitioner was given an opportunity to make a statement. He spoke thus:

"On 2nd May 09 I went on 11 days C/L to my home at Saket, New Delhi, there I met my girlfriend Ms.Harpreet Kaur of Deoband, U.P. with whom I intended to marry, we had already done marriage secretly in a temple on 18th November 2008 but it was not registered. We purchased household items also for us on which I spent approximately `80,000-90,000/-. On 8th May 2009 my girlfriend returned to Deoband from New Delhi where she had come to attend marriage ceremony of her friend, she went back only to tell her parents about our plan to marry and to live together. But on 10th May 2009 I received a phone call from her parents that they do not approve our plans and they will never let their daughter Ms.Harpreet

Kaur to marry me. I tried my best to convince them but to no avail. After that I tried several times to contact Ms.Harpreet Kaur but her parents did not even let me talk to her.

On 17th May 2009 I returned back to the Unit after expiry of my leave, on 19th May 2009 I contacted Ms.Harpreet Kaur over mobile phone of her friend, she was very upset as her parents were dead against our marriage. She told me to forget her as she cant marry me against the wishes of her parents. After listening all this I fell hopeless and became depressed, I thought a lot about the matter but no solution came to my mind so at about 12:45 hours I decided to commit suicide. I told my mother also over telephone about the matter and my intention to commit suicide. At about 13:30 hours on same day i.e. 19th May 2009 I engulfed/consumed all the medicines which were available with me at that time, I consumed approx. 25-30 tablets of Tab.Parvionfort, Multivitamin etc., I consumed these tablets in the bathroom of the ORs barrack and when I was going to throw the wrappers of the medicine I fell down on the ground unconscious near trademan shop. Later I came to know that I was saved by my unit persons."

6. It is apparent that the petitioner admitted having attempted to commit suicide, but gave a justification for what he did.

7. Considering the record of evidence, the Commandant decided that the matter needs to be tried at the Summary Security Force Court and on the same charge, the petitioner was tried. His plea of guilt was recorded. It stands recorded that the seriousness of the charges were explained to the petitioner with respect to his plea of guilt as also the difference to the procedure to be followed if the petitioner were not to plead guilty and in spite thereof the petitioner pleaded guilty.

8. Penalty of dismissal from service has been inflicted upon the petitioner. Statutory petition filed has been rejected.

9. It was urged by learned counsel for the petitioner that the plea of guilt was wrongly recorded and that the petitioner never pleaded guilty. That everything was pre- recorded and no stenographer was present. On merits it was urged that during Record of Evidence no witness has said that he had seen the petitioner

attempting to commit suicide. Lastly, it was urged that the sentence was disproportionate. Learned counsel urged that a person who attempts suicide has to be treated with compassion and not punished.

10. It would be difficult for us to believe that the record has been manipulated to record a plea of guilt by the petitioner, for the reason even at the stage of Record of Evidence, petitioner had admitted having attempted to commit suicide but gave justification for his action.

11. That no witness deposed having seen petitioner attempting to commit suicide is neither here nor there for the reason the testimony of each and every witness establishes the serious condition in which the petitioner was and in any case, it hardly matters what the witnesses have stated for the reason that the petitioner has himself admitted that life became a cage for him and the only escape he saw was to die and therefore he gobbled up 25-30 tablets of Multivitamins and Protein Forte. The seriousness of the situation has been brought out by the testimony of Dr.Govind Sharma as per whom the condition of the petitioner was so serious that at a Sub-Divisional Hospital it was difficult to treat him and therefore he was rushed to Main Government Hospital at Jammu, but after a stomach wash. The utterances spoken of by the petitioner as were heard by the witnesses which we have noted while briefly noting the testimony of the witnesses, bring out that the petitioner indeed attempted to commit suicide.

12. It is no doubt true that a person commits suicide out of a compulsion and as in the instant case, the cause of a suicide may be stress occasioned by a third person, for example, a broken heart. Now, Harpreet Kaur did what millions may have done before and thousands would be doing even today and billions would do so in the future. To make promises casually and break them cynically, may be a wrong, but societies have striven hard not to make them into offences. We all inculcate values of compassion in our children, but do not punish them for not being considerate and compassionate. But we are not concerned with Harpreet Kaurs conduct. We are concerned with the conduct of the petitioner.

13. In an extreme case where a person is left with no other choice, every suicide is an act of indiscretion because a person always has a choice and it is for this

reason an attempt to suicide is made a penal offence. Society places a very high value on human life and does not permit a person to take his own life.

14. Of course, a suicide would be the cause of an immediately pressing problem which disturbs the mind to such an extent that life becomes a drudgery and death becomes freedom. Thus, there will always be scope for a human argument that such persons should not be punished by society but should be treated with warm and loving hands of comfort so that they are brought within the fold of the society. We do appreciate the argument, but we are not concerned with the enforceability of the penal offence of attempt to suicide under Section 309 IPC. We are concerned with, whether the petitioner should be permitted to continue in service.

15. Had it been an ordinary service i.e. a ministerial job, one could have looked in the other direction, but as a constable with the Border Security Force, the petitioner would be armed with arms and ammunitions in the discharge of his duties and if he has shown a suicidal tendency, it needs to be considered whether the respondent was justified in dismissing the petitioner from service.

16. The duty of reasonable care is cast upon every person and enjoins upon the person concerned to reasonably foresee the consequences of his action or inaction. Greater the danger or the risk, greater is the duty of care to be exercised. This duty of care, in the instant case, keeping in view that the probability of petitioners suicidal tendency rising its head like a serpent and striking once again would make us think not twice not 10 times but a thousand times whether a risk would be worth taking by permitting petitioners re-induction in service.

17. What if when he felt extremely depressed on his love being betrayed, the petitioner was on duty with his service weapon! The consequences are not difficult to foresee. The petitioner could have shot himself and in the process the person in his neighbourhood as well.

18. We have opined hereinabove that millions in the past and thousands today and billions in the future would be the recipients of promises casually made but cynically broken i.e. persons with a broken heart. If committing suicide was a reasonable consequence of ones love being betrayed, one would have found

millions and millions of persons committing suicide, but we find extremely stray cases which if reduced to a percentage would be less than a fraction of a fraction. What we seek to highlight is that in the case of a broken heart there has to be a suicidal tendency which triggers the reaction of the victim because this is not the normal reaction of most of the victims. If such a person is a Member of a Para-Military Force and his duties envisage arms and ammunitions to be issued to him, the concomitant duty of reasonable care would compel the decision maker to ensure that the petitioner no longer serves with arms and ammunitions.

19. To this extent we agree that the petitioner would be unfit to serve in a Central Para-Military Force but we water down the penalty from one of dismissal from service to removal from service for the reason the penalty of dismissal from service would be a bar for petitioner to seek public employment and the penalty of removal from service is not a bar from seeking public employment. If the petitioner could find a job which does not require him to carry arms, it should be fine for him.

20. Petition stands disposed of in terms of para 19 hereinabove.

21. No costs.

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