

**(2005) 07 KL CK 0040**

**High Court Of Kerala**

**Case No:** Criminal M.C. No. 6318 of 2002

Cyriac

APPELLANT

Vs

S.I. of Police

RESPONDENT

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**Date of Decision:** July 13, 2005

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 107, 306

**Citation:** (2005) CriLJ 4322 : (2005) 3 ILR (Ker) 646 : (2005) 3 KLT 673 : (2005) 4 RCR(Criminal) 525

**Hon'ble Judges:** K. Hema, J

**Bench:** Single Bench

**Advocate:** Abraham Vakkanal, Roy P. Kuriakose, Saji Kuriachan, M.R. Nandakumar and Paul Abraham Vakkanal, for the Appellant; S.B. Jayachandran and Thavamony, Public Prosecutor, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Hema, J.

Can a person be said to have abetted another person to commit suicide u/s 306 of Indian Penal Code (IPC, for short) by merely telling the other in public, "why can't you go and die etc."? What is meant by "abetment" ? What is "instigation" ? What is the scope of such expressions in Sections 306 and 107 IPC? My endeavour in this case will be to decide these questions in the factual back ground of this case.

2. Petitioners seek to quash proceedings initiated against them by a Judicial First Class Magistrate's Court in so far as charge u/s 306 IPC is concerned. He is charge sheeted for other offence also. According to prosecution, deceased Joseph owed Rs. 200/- to one of the accused/petitioners, on account of purchase of certain articles from his bakery. He did not pay back the money and hence on the date of occurrence, accused/petitioners called deceased Joseph to the bakery of accused,

wrongfully restrained him and abused him in public. Second accused also beat him on his face. Petitioners allegedly acted in furtherance of a common intention.

3. Deceased Joseph felt insulted and on reaching his house he divulged his embarrassment to his wife. On the same night, deceased Joseph consumed poison from his house and in the course of treatment in the Medical College Hospital, Kottayam, he died. According to prosecution, it was because of the words uttered by first accused to deceased Joseph and the manner in which the deceased was dealt with by the petitioners in public that the deceased committed suicide on the same day. The words allegedly uttered by first accused from his bakery verandah to deceased Joseph are to the effect as to why the deceased was walking around as if he was a big person, if he did not have even Rs. 200/- and as to why he was remaining as a burden to the earth. He was also asked, "why can't you go and die?".

4. In short accused allegedly abetted commission of suicide in furtherance of common intention by making insulting statements in public, "why are you remaining as a burden to earth, why can't you go and die?". Does this act of petitioners constitute offence u/s 306 IPC? To get an answer to this question, a study of the meaning of the expression "abetment" u/s 107 and a reading of Section 306 IPC will be essential. Those provisions can be extracted below:

"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."

"Section 107: Abetment of a thing.-- A person abets in doing of a thing, who-

Firstly- 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, in doing of that thing."

5. From the above provision, it is clear that to constitute offence u/s 306 IPC, prosecution has to establish, 1) that a person committed suicide and 2) that such suicide was abetted by the accused. As per Section 107 IPC, a person can be said to have abetted in doing of a thing, 1) if he instigates any person to do that thing 2) if he engages with one or more other person or persons in any conspiracy for the doing of that thing, and if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing 3) if he intentionally aids, by any act or illegal omission, in doing of that thing.

6. On the facts of this case, present case appears to fall under the first clause of Section 107 IPC. Because, nobody has a case that accused in any manner

intentionally "aided" in the commission of suicide in any manner. Allegations to attract the clause "secondly" in Section 107 IPC are also totally absent in this case. But according to prosecution, accused "instigated" deceased to commit suicide by making insulting statements in public, "why can't you go and die?" and also assaulting him. In the above circumstances, clause "firstly" coming u/s 107 of IPC requires a detailed consideration. .

7. As per clause "firstly" in Section 107 IPC, a person can be said to have abetted in doing of a thing if he "instigates" any person to do that thing. But, when can a person be said to have "instigated" another to do an act? What is meant by the expression, "instigate"? The word "instigate" is not specifically defined in IPC. As per Oxford dictionary, "instigate" means, "to goad or urge forward to provoke, incite, urge, encourage to do an act". The meaning of the word "instigate" was considered by Supreme Court also. In *Ramesh Kumar v. State of Chhattisgarh* JT 2001(8) 569 , a decision cited by learned counsel appearing for petitioners, Supreme Court held, "instigation is to goad, urge forward, provoke, incite or encourage to do "an act"". As per another decision cited by counsel for petitioners in [Vedprakash Tarachand Bhaiji Vs. State of Madhya Pradesh](#), the word "instigate" means "to goad or urge forward to provoke, incite, urge, encourage to do an act".

8. It is clear from the above discussion that to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward. Going by the dictionary meaning (vide Oxford Advanced Learners Dictionary, Sixth Edition) the word "goad" means, "keep irritating or annoying somebody until he reacts." So also, "urge" means "to advise or try hard to persuade somebody to do something or to make a person to move more quickly in a particular direction especially by pushing or forcing" such person. "Urge forward" means in this context, "urge" a person "forward". Thus, a person who instigates another has "to goad or urge forward" the latter, with intention to provoke, incite, urge or encourage doing of an act by the latter.

9. A close, combined reading of the meaning of the word "instigation" with the meaning of the terms "goad" and "urge" will reveal that "instigation" involves two things. One is a physical act or omission, while the other is a mental act. The physical act or omission involved in "instigation" is, "goading or urging forward" another. Such physical act of goading can be committed either by words or deed, as the meaning of the word suggests. "Goading" can be committed also by any other wilful conduct-may be, by even an adamant silence. Thus, by words, deeds wilful omission or wilful silence also, one can goad a person i.e., keep irritating or annoying a person until he reacts.

10. So also, the physical act of "urging forward" or "instigation" involves doing of an act by strongly advising, persuading to make a person do something or by pushing or forcing a person in order to make him move more quickly in a forward direction. Thus, both the physical acts in "goading or urging forward" can be committed by

doing some act, either verbal or physical or even by a wilful omission or conduct.

11. But, apart from such physical act or omission, one more factor has to be established to constitute "instigation". That is a mental act. While a person instigates another by the act of "goading or urging forward", such person must also have, the intention to provoke, incite, urge or encourage doing of an act by the other. Such intention to provoke, incite, urge or encourage doing of an act by the other is an essential factor in "instigation". A person can be said to have instigated another, if such person, with intention to provoke, incite, urge or encourage the latter to do an act, has goaded or urged forward the other person.

12. I shall make the position clearer. If a person commits suicide as instigated by another the following facts will be involved. The person who instigates the deceased to commit suicide must do some act by words, deed or wilful omission or conduct which may even be a wilful silence, in order to irritate or annoy the deceased until he reacted. Or, the person who instigates the deceased must push or force the deceased by deed, words, or wilful omission or conduct which may even be a wilful silence to make the deceased to move forward more quickly in a particular direction. Or, he must strongly persuade or advise the other to do some act. While acting so, the person who instigates the other must also have the intention to provoke, incite, urge or encourage the latter to commit suicide.

13. In short, in order to prove that the accused abetted commission of suicide of a person, prosecution has to establish the following factors: 1) that the accused kept on irritating or annoying the deceased by words, deed or wilful omission or conduct which may even be a wilful silence until the deceased reacted; Or, that the accused strongly advised or persuaded the deceased to do something; or pushed or forced the deceased by deed, words, or wilful omission or conduct which may even be a wilful silence to make the deceased to move forward more quickly in a forward direction 2) that the accused had the intention to provoke, incite, urge or encourage the deceased to commit suicide, while acting in the manner stated above.

14. Now, having understood the meaning of the term "instigate" and "abet commission of suicide", I shall proceed to consider whether the accused in any manner abetted commission of suicide, or instigated him to commit suicide, as alleged. Learned counsel for the petitioners submitted that even if the entire prosecution case is admitted, offence u/s 306 IPC is not made out in this case.

15. According to him, intention behind the act of the accused cannot be said to abet commission of suicide, but it can only be inferred that accused's only intention was to get back money which deceased owed to accused. He placed reliance on a decision reported in [Vedprakash Tarachand Bhaiji Vs. State of Madhya Pradesh](#), in support of his contention. Here is the relevant portion:

"Where the prosecution case prima facie revealed that the accused persons intimidated and goaded the deceased that if he does not repay the loan advanced to

him, he will have to face with dire consequences and immediately thereafter he committed suicide, it could not be said that the accused persons provoked, incited, urged or encouraged the deceased to commit suicide. A person is 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".

16. It is further contended that words uttered in fits of anger or emotion also, will not amount to abetment. To substantiate the contention, learned counsel for petitioner cited decision in Ramesh Kumar v. State of Chhattisgarh JT 2001(8) 569. In the said decision, the Supreme Court held as follows:

"To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation".

17. From the discussion already made by me, I hold as follows: The act or conduct of the accused, however insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Even if the words uttered by the accused or his conduct in public are sufficient to demean or humiliate the deceased and even to drive him to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the accused intended by his acts, consequence of a suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide.

18. An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot unfortunately, touch the issue. Those cannot fray the fabric of the provision contained in Section 306 IPC. In short, it is not what the deceased "felt", but what the accused "intended" by his act which is more important in this context. Of course, the deceased's frail psychology which forced him to the suicide also may become relevant, but it is only after establishing the requisite intention of accused.

19. Now, coming to the facts of this case, I find that as per records in this case, all what the accused did was to make insulting statements to the deceased in public

and to assault him. The words allegedly uttered by first accused from his bakery verandah to deceased Joseph were to the effect that as to why the deceased was walking around as if he is a big person, if he did not have even Rs. 200/- and why he was remaining as a burden to the earth and why could he not go and die. By making a statement "why can't you go and die" etc., and insulting the deceased in public alone, accused cannot be said to have goaded or urged forward the deceased to commit suicide.

20. Records in a case must disclose the requisite intention of the accused or mens rea to abet commission of suicide. Mens rea is an essential factor to be proved under clause "firstly" in Section 107 IPC. While insulting the deceased, accused must have had the intention to provoke, incite, urge or encourage the deceased to commit suicide. Even if the entire allegations made by prosecution in this case are accepted, no such intention can be spelt out from records. It only appears that accused wanted to get back Rs. 200/- from the deceased and infuriated by the deceased's failure to return the amount, they insulted and assaulted him publicly.

21. But, it is difficult on the basis of the records in this case even to infer prima facie that the accused had intended the deceased to commit suicide. Because, by such suicide, accused would be losing even the source of the amount which they wanted to get back from him. There is also nothing to show that by such suicide they would gain anything in this case. Therefore, while acting in the manner alleged by prosecution, accused would not have intended that the deceased must commit suicide. In such circumstances, allegations revealed from records do not constitute offence u/s 306 IPC.

22. Therefore, if proceedings against petitioners initiated on the basis of offence u/s 306 IPC are allowed to continue, it will only amount to abuse of process of court. Proceedings pending against petitioners in so far as the charge u/s 306 IPC alone is concerned are therefore to be set aside and I do so. But, this order will not be a bar for the lower court to proceed against the accused for other offences which are alleged against them.

Petition is allowed.