

(2016) 05 MP CK 0009
MADHYA PRADESH HIGH COURT
Case No: Cr. R. No. 2143 of 2015.

Ramswaroop and Others -
Applicants @HASH State of M.P.
and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: May 5, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304A, Section 306, Section 498A

Citation: (2016) 2 JabLJ 334

Hon'ble Judges: Shri Atul Sreedharan, J.

Bench: Single Bench

Advocate: Shri Sankalp Kochar, Learned Counsel, for the Applicants; Shri R.S. Shukla, Learned Panel Lawyer, for the Respondent No. 1/State

Final Decision: Allowed

Judgement

Shri Atul Sreedharan, J. - The Petitioners have filed the instant Criminal Revision impugning thereby the validity of order dated 09/07/15 passed by the Court of the Ld. Additional Sessions Judge, Begumganj, District Raisen, by which the Trial Court, upon examining the charge-sheet along with the material on record, arrived at the opinion that there was adequate material to frame charges against the Petitioners herein, who are the husband, mother in law and father in law of the deceased, for offences punishable u/ss. 306 and 498-A of the IPC.

2. An FIR, being Crime No. 359/14 dated 28/08/14 was registered at P.S. Gairatganj against the Petitioners herein u/ss. 306 and 498-A IPC. The same was registered on the suicide by one Mulayam Bai, the wife of the Petitioner No. 1 and the daughter in law of the Petitioners 2 and 3, wherein it was alleged that the Petitioners had troubled the deceased and had treated her with physical and mental cruelty on account of which she committed suicide on 18/08/14.

3. Mr. Sankalp Kochar, Ld. Counsel on behalf of the Petitioners has stridently argued that even a bare perusal of the charge-sheet and particularly, the statement of Golu @ Gajraj, who is the brother of the deceased, it is clear beyond doubt that the deceased had consumed poison on a minor incident of not being allowed to go along with her brother on 18/08/14. Thus, the Trial Court gravely erred in framing charges against the Petitioners in the absence of material to substantiate such charges. The Ld. Counsel for the Petitioners has cited several judgments of the Supreme Court and this Court in his endeavour to establish that the ingredients of abetment, as laid out in section 107 IPC, were not fulfilled by the allegations levelled against the Petitioners herein by the Complainant and the Witnesses and therefore, the offence under section 306 IPC could not have been pinned on the Petitioners without their action fulfilling the requirements of section 107 IPC.

4. The first judgment cited by the Ld. Counsel for the Petitioners is **S.S. Chheena v. Vijay Kumar Mahajan and Others - (2010) 12 SCC 190**. In this case, the appellant before the Supreme Court was a security officer at the Guru Nanak Dev University at Amritsar. Charges were framed against him under section 306 IPC by the Court of the Additional Sessions Judge, Amritsar. The Appellant was an enquiry officer in a case related to the theft of a mobile in which the suspect committed suicide by jumping in front of a running train. The deceased had left behind a suicide note in which had indicted another person by the name of Harminder Singh for having framed the deceased. The suicide note only refers to the Petitioner S.S. Chhenna as the person conducting the enquiry. It is relevant to mention that S.S Chhenna was not named in the FIR and was ultimately roped in as an accused on the basis of a complaint case filed by the father of the deceased and in due course, charges were framed against him under section 306 IPC. The criminal revision preferred by the Petitioner before the High Court was also dismissed. The Supreme Court, after discussing the ambit and scope of "Abetment" under section 107 IPC arrives at the finding that the deceased in that case was hypersensitive and that no conviction of the Petitioner could be affected on the basis of material on record and thereby quashed the proceedings against the Petitioner.

5. Thereafter, the Ld. Counsel for the Petitioner has cited the judgment of the Supreme Court in **Vedprakash Tarachand Bhaiji v. State of Madhya Pradesh** ♦ **1995 MPLJ 458**, this was a case where the Petitioner was being prosecuted for an offence under section 306 IPC for having abetted the suicide of one Ramesh Kumar Sadholia to whom the Petitioner Vedprakash had loaned money and was now demanding the repayment of the same which is said to have bordered on harassment and undue pressure on the deceased who is said to have committed suicide by consuming poison and left behind a suicide note holding the Petitioner and others responsible for his death and so the Trial Court framed charges against the Petitioner Vedprakash who then filed a criminal revision before this Court in which the above said order was passed. This Court, after referring to various cases arrived at the finding in paragraph 15 that no case was made out for the alleged

commission of an offence punishable under section 306 IPC. In the process, this Court also held that the victim had an "escapist attitude" and he committed suicide in order to put the Petitioner Vedprakash in legal difficulties.

6. In **Madan Mohan Singh v. State of Gujarat** ♦ (2010) 8 SCC 628, the Petitioner was being prosecuted for offences punishable under section 306 and 294(b) IPC and upon the dismissal of his petition under section 482 Cr.P.C, approached the Supreme Court in which the above said order was passed. The Petitioner Madan Mohan Singh is alleged to have made life miserable for his driver, Deepakbhai Krishanlal Joshi, who is said to have committed suicide and left behind a suicide note in which he has blamed his act of committing suicide on the highhandedness of the Petitioner Madan Mohan Singh. While quashing the case against Madan Mohan Singh, the Supreme Court in paragraph 11 arrived at the finding that it cannot be said that the Petitioner had ever intended that the deceased should commit suicide.

7. The Supreme Court in **Gangula Mohan Reddy v. State of Andhra Pradesh** ♦ (2010) 1 SCC 750, yet again examined the ambit and scope of "Instigation" as enshrined in section 107 IPC in the backdrop of suicide by a labourer working for the appellant. The labourer had consumed pesticide and ended his life as he could not bear the allegation of theft levelled upon him by his employer, Gangula Mohan Reddy. The appellant was convicted by the Trial Court and the same was upheld by the High Court on appeal. In paragraph 20 of the said judgment, the Supreme Court relied upon the case of **Ramesh Kumar v. State of Chhattisgarh** (2001) 9 SCC 618, where the Supreme Court laid down the meaning of instigation to mean "goad, urge forward, provoke, incite or encourage to do an act" and thereafter came to the conclusion that the conviction of the appellant was misplaced as the evidence on record did not reveal that the actions of the appellant were of such nature so as to fit within the meaning of abetment by instigation and so acquitted the appellant.

8. The last case relied upon by the Ld. Counsel for the Petitioners is **M. Mohan v. State represented by the Deputy Superintendent of Police** ♦ (2011) 3 SCC 626, which was a case of a housewife committing suicide on account of feeling slighted by an instance where the deceased and her husband were asked to travel by public transport and were not allowed to travel by the Qualis car of her brother in law, the appellant Mohan, on a trip to the theme park at Madurai from Karaikudi in Tamil Nadu. It was alleged that the wife of Mohan had told the deceased Kamatchi that if she wanted to travel by car she should have got one from her father. This taunt is said to have propelled the deceased to take the extreme step. The parents of the deceased had informed the police that it was on account of the taunts of Easwari (wife of the deceased's brother in law) that their daughter committed suicide. The police however roped in the appellant and his parents also, notwithstanding the fact that nothing overt was attributed to them. In a petition under section 482 Cr.P.C before the High Court, proceedings under section 304-B and 498-A were quashed but the charge under section 306 IPC was retained and so the appeal to the

Supreme Court. The Supreme Court, in paragraph 48, arrived at the finding that the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life" and in paragraph 49 the Supreme Court finds that the appellants were not even remotely connected with the offence under section 306 IPC and quashed the charges under Section 306 IPC against the appellants.

9. Ld. Counsel for the State Mr. R.S. Shukla has on the other hand supported the impugned order on the grounds that there is adequate material on record to frame charges and that the contentions of the Petitioners have to be tested during trial.

10. The Ld. Counsel for the Petitioners has relied upon the statement of Golu @ Gajraj under Section 161 Cr.P.C, who is the brother of the deceased to show that the deceased had done the unthinkable on a very trivial issue as she was not allowed to go with her brother on 18/08/14 by the Petitioner No. 1 who told the deceased that she was free to go if she wanted to but he will not let the children go along with her. On account of this, the deceased was said to have committed suicide the same evening. The witness also states that there were marks of beatings on the back of the deceased. The Counsel for the Petitioners has stated that this observation is negated by the inquest report and the postmortem report which record that there were no external injuries on the deceased. This witness states that the Petitioners herein used to beat the deceased and used to heap mental and physical torture on the deceased. The allegations by this witness relating to mental and physical torture of the deceased by the Petitioners herein are omnibus in nature and are not in relation to time. The Section 161 statement of the maternal grandfather of the deceased categorically states that the Petitioners herein did not let the deceased go with her brother to her parental home and it is on account of this that the deceased committed suicide by consuming a poisonous substance.

11. The 161 statement of Bhagwati Bai, the sister of the deceased also gives omnibus allegations of mental and physical torture and mentions that whenever the deceased used to go to her parental home, she used to tell this witness about the beatings inflicted upon her by the Petitioner No. 1 and the verbal abuses and criticisms heaped upon her by the Petitioners 2 and 3. However, this witness states specifically to an instance to which she was an eyewitness four months before the incident, when she had gone with others to the matrimonial house of the deceased, there she saw the Petitioner No. 1 beating the deceased in front of her, upon this witness asking the deceased, the deceased is said to have told this witness that the Petitioners regularly beat the deceased and hurled abuses at her and tortured her mentally and physically. Identical allegation is also found in the statement under section 161 Cr.P.C of witnesses Shanti Bai, the sister in law of the deceased (brother's wife), of witness Sonu, another sister in law of the deceased (brother's wife) and witness Chunnilal, the father of the deceased, though he states that the incident happened twenty five days before the suicide as opposed to the four

months prior date given by the other two witnesses.

12. It is trite law that a judgment, be it of the Supreme Court or of the High Courts, ought not to be understood or interpreted like a statute. A judgment has to be appreciated in the fact circumstances in which it was passed. The adage "one shoe fits all sizes" is never applicable to the law of precedents. The ratio has to be culled from the attendant circumstances in which the judgment was delivered. The Supreme Court in **Union of India and another v. Major Bahadur Singh, (2006) 1 SCC 368**, held at paragraph 7 that "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes".

The said judgment was followed by this Court in **Dheer Singh Yadav v. State of Madhya Pradesh and Another - 2013 (3) MPLJ 126**, wherein at paragraph 5 it was succinctly held "♦..it is noteworthy that the basic principle to consider the judgment/precedent is that a judgment has to be examined in the facts and circumstances in which it is passed. This is settled in law that a judgment is an authority on a question which has been decided by it and is not a precedent on something which is logically flowing from it".

13. The judgments cited on behalf of the Petitioners, though relating to offences under Section 306 and 107 IPC were in cases of "one off instances" viz., that the impugned acts of abetment were singular instances of alleged abetment on account of which the deceased had committed suicide. The judgment discussed in paragraph 4 supra, related to the deceased committing suicide on account of the humiliation he felt on being charged with the theft of the mobile and the Petitioner before the Supreme Court was charged under section 306 IPC being the enquiry officer looking into the charges against the deceased. In the judgment in paragraph 5 supra, the deceased was being pursued allegedly by "loan sharks" for a loan that he had taken and unable to bear the harassment, he committed suicide and the Petitioner in that case before this Court was one of those who had lent money to the deceased. The judgment discussed in paragraph 6 supra related to a driver committing suicide allegedly on account of the conduct of his employer and where the employer was being tried for an offence under section 306 IPC. Quite similar are the instances in the judgment referred to in paragraph 7 supra wherein a labourer is said to have committed suicide on account of the conduct of his employer who suspected him of theft and was allegedly pressuring the deceased to return the

stolen property. However, the case referred to in paragraph 8 does bear some semblance to the case at hand. There a housewife committed suicide in her matrimonial home but the act was allegedly caused by a singular instance of taunt by the sister in law of the deceased and further, there was no allegation about the involvement of the Petitioner and yet he was being proceeded against.

14. Abetment can be by instigation, conspiracy or by participation/aiding the act so proscribed. In **Ramesh Kumar v. State of Chhattisgarh** ♦ (2001) 9 SCC 618, the Supreme Court held in paragraph 20 "Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". 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....".

15. Instigation, I feel is also the creation of an environment, apparent or subtle, where the person so instigated is compelled to act in a particular manner on account of such instigation. Instances of instigation or what constitutes instigation can never be straight jacketed and the same will have to be construed in every case from the attending facts and circumstances that are specific to that case.

16. Cruelty in the matrimonial home, to the extent that it compels a wife to commit suicide, is unique and distinguishable from other instances of abetment to suicide as the same always happens behind closed doors of the matrimonial home. The most credible witnesses of the offence are invariably the perpetrators of the offence. It is practically inconceivable that a newly married bride would maintain a diary noting therein the date and time of instances of cruelty being committed on her and the instances of demand for dowry by the husband and his family members. Likewise, it is equally improbable that the parents and relations of the girl so exposed to cruelty would also meticulously maintain the dates and narratives of the actions by the husband and in laws, amounting to cruelty. No parent would think that their daughter would one day commit suicide on account of cruelty inflicted upon her by the in laws. Therefore, if a case arising from matrimonial cruelty or dowry demand, be it one under Sections 498-A, 306 or 304-B, is to be quashed or the accused discharged, only because it lacks in specificity with relations to date, time and nature of act then a substantial number of the cases relating to 498-A and 306 must be terminated at the very inception. Such cannot be the intent of the various judgments of the Supreme Court.

17. This is not to suggest that the power of discharge cannot be exercised by the Trial Court or the plenary powers vested in this Court under Section 482 can never be exercised in relations to cases under Section 498-A and 306 IPC, but only to caution, that such powers may be exercised only in those exceptional cases where there is no evidence at all against the accused or where the evidence available is no evidence at all in the eyes of the law. At the stage of discharge, the Trial Court only

has to see if the evidence on record, uncontroverted, raises a strong suspicion that the accused may have committed the offence. In this regard, the judgment of the Hon"ble Supreme Court in **Union off India v. Prafulla Kumar Samal & Anr** ♦ **AIR 1979 SC 366 & 1979 Cri.L.J 154** lays down the law with great clarity wherein it held in paragraph 7 that "The words "not sufficient ground for proceeding against the accused" clearly shows that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. A the stage of section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of evidence recorded by the police or the documents produced before the Court which ex facie discloses that there are suspicious circumstances against the accused so as to frame a charge against him". Thereafter in paragraph 10 of the same judgment, the Supreme Court lays down: "10. Thus, on a consideration of the authorities mentioned above, the following principles emerge: (1) That the Judge while considering the question of framing the charges under Section 227 of the Code, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. (2) Where the materials placed before the Court discloses a grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under section 227 of the code the Judge which under the present code is a senior and experienced Court cannot act merely as a post office or mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial".

18. In the specific facts and circumstances of the present case, it must be fairly stated that the evidence on record does not disclose the demand for dowry. The Ld. Counsel for the Petitioners has stated that the deceased committed suicide only over the trivial incident of not being allowed to go with her brother on the date of the incident. Undoubtedly, that does appear to be the causa causans, however, as observed in paragraph 11 supra, there are at least three witnesses who have spoken

of beatings being inflicted on a continuous basis upon the deceased by the Petitioners herein, one instance in which the witnesses themselves have seen the Petitioner No. 1 beating the deceased and the deceased herself having told the witnesses that all the Petitioners herein beat her and abuse her regularly. Now whether the said allegation is true or false and if true whether the said environment at her matrimonial home was such that the last incident where she was not allowed to go with her brother on account of which the deceased is alleged to have committed suicide, was the last straw that broke the camel's back or whether the same was an instance of the deceased being hypersensitive, as suggested by the Ld. Counsel for the Petitioners, can only be deduced in trial.

19. Under the circumstances, I do not find any illegality or perversity in the impugned order and dismiss this petition. The Trial Court shall proceed with the trial completely uninfluenced by this order, bearing in mind that the observations of this Court on the evidence on record is based on a prima facie appreciation of the same and the same shall not be considered by the Ld. Trial Court while conducting the trial.