(2010) 08 SC CK 0111

Supreme Court of India

Case No: Criminal Appeal No. 1503 of 2010 (Arising out of SLP (Criminal) No. 6811 of 2009)

S.S. Chheena		APPELLANT
	Vs	
Vijay Kumar Mahajan and Another		RESPONDENT

Date of Decision: Aug. 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 173, 319
- Penal Code, 1860 (IPC) - Section 306, 309

Citation: (2010) 4 Crimes 101 : (2011) 1 GLH 542 : (2010) 8 JT 331 : (2010) 12 SCC 190 : (2011) 2 SCC(Cri) 465 : (2010) 9 SCR 1111

Hon'ble Judges: K. S. Panicker Radhakrishnan, J; Dalveer Bhandari, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Dalveer Bhandari, J.
Leave granted.

2. This appeal is directed against the judgment of the High Court of Punjab & Haryana at Chandigarh in Criminal Revision No. 1800 of 2008 dated 17.2.2009.

3. The appellant S.S. Chheena was a Security Officer at Guru Nanak Dev University, Amritsar. This job was accepted by him after his retirement from the Indian Police Service (IPS). He is seriously aggrieved by the order of the Additional Sessions Judge, Amritsar by which he had framed a charge against the appellant u/s 306 of the Indian Penal Code (for short, IPC).

4. Brief facts necessary to dispose of this appeal are as under:

On 13.10.2003, a dispute arose between the son of the complainant, namely, Saurav Mahajan, deceased who was a final year student of the Law Department and Harminder

Singh, a fellow student of the same class. The dispute was with regard to the theft of a mobile phone which came to the notice of M.D. Singh, the then Head of the Law Department on 13.10.2003, pursuant to which M.D. Singh asked both the students, i.e., Saurav Mahajan, deceased and Harminder Singh alias Montu to submit their versions of the incident in writing.

5. The deceased and Harminder Singh gave their written versions of the incident and thereafter M.D. Singh forwarded their versions to the University authorities for taking necessary action. Consequently, the enquiry was conducted on 13.10.2003 by the Security Officer of the University - the appellant herein. During the course of the enquiry, on 17.10.2003, the son of the complainant committed suicide by jumping in front of a train. Subsequently, during the search, a suicide note was recovered from the pocket of the deceased dated 16.10.2003. The suicide note is important for adjudicating and deciding this appeal. The said suicide note is reproduced as under:

SUICIDE NOTE

I am Saurav Mahajan a final year student of Department of Law of GNDU. Montu had levelled a false allegation upon me. I am very annoyed because a false allegation has been levelled upon me. I have a faith that this allegation is false, accused Montu and his accomplices will be arrested and I will be declared as innocent. The reason of my annoyance is that I am falsely involved as I did not commit any theft. A dying person will not speak falsely. I have not committed this theft.

According to me, the theft has been committed by Harminder Singh in connivance with his accomplices. Harminder Singh says that on the day when the Mobile was stolen, he was taking the test. I made request to Mr. Chhina to see as to whether he was engaged in the test or not? Or he had not completed the whole test, came out a little before the fixed time, and committed theft. Examination sheet of the said day of Harminder Singh be seen. Harminder Singh had admitted two things in the presence of M.D. Singh, HOD of the Law Department, i.e. (1) he had played a joke with me (2) Harminder Singh admitted that he had demanded money from me.

Chhina Sahib, M.D. Singh, while dying, I will not speak untrue. I have not committed any theft. Real thief is Montu. He has falsely involved my name. Harminder Singh cannot prove this at any cost because he is totally wrong. On the other hand, he has admitted that he had sold this Reliance set to his friends and has falsely leveled this allegation against me.

I request my uncle/aunt, mother/father to forgive me that I tried my best to fulfill their expected wishes but could not do the same because Harminder Singh has leveled false allegation against me. I want to say this thing again that I am innocent and request my mother/father that they may not make any complaint regarding my suicide. I will also say to Chhina Sahib even if they give justice and leave me but the people will have a

suspicion about me. I am taking this step on account of my insult. Harminder Singh and his accomplices are responsible for my suicide or MD Singh who did not take into account my faith and without consulting me, has forwarded this case.

Dated: 16.10.2003

I have not committed any theft and I am not involved with Montu and his accomplices are responsible of my this step. Till today, I have not spoken badly to any one but, however, if any mistake had been done by me to anybody, please forgive me.

Sd/-
Saurav Mahajan

6. In the suicide note it is stated that he (Saurav Mahajan) did not commit the theft and he had committed suicide because he was falsely implicated in the theft case of a mobile phone. He further mentioned in the suicide note that Harminder Singh and his accomplices were responsible for this act. On the basis of the suicide note a FIR No. 81 dated 17.10.2003 u/s 306 of the IPC was registered at the Police Station, GRPS, Amritsar. In the said FIR, the suicide note of the deceased has been reproduced and on the basis of the same, Harminder Singh was implicated u/s 306 IPC along with M.D. Singh. It is pertinent to mention that in the said FIR, the appellant, namely, S.S. Chheena, the Security Officer was not even named as an accused.

7. The complainant had approached the Punjab State Human Rights Commission, Chandigarh, but, the Commission had also refused to interfere in the investigation conducted in FIR No. 81 dated 17.10.2003.

8. A report u/s 173 of the Code of Criminal Procedure was submitted only against Harminder Singh. Pursuant to the presentation of the Challan, charges were framed against Harminder Singh @ Montu.

9. The complainant, being father of the deceased filed a private complaint in the court of learned Additional Chief Judicial Magistrate, Amritsar, in which it was alleged that the appellant S.S. Chheena and M.D. Singh were responsible for abetting the suicide of his son and sought for their trial u/s 306 IPC.

10. During the course of the trial, an application was moved by the Public Prosecutor for summoning of the appellant and M.D. Singh, the then Head of the Department of Law of Guru Nanak Dev University, Amritsar u/s 319 Cr.P.C. The learned Additional Chief Judicial Magistrate, Amritsar, on the basis of the said complaint, summoned the appellant as well as M.D. Singh to face trial u/s 306 IPC. The trial court dismissed the application u/s 319 Cr.P.C. being not pressed as the appellant and his co-accused stood summoned in the complaint case. The trial court clubbed the complaint case with the State case and ordered for framing of the charge u/s 306 IPC. Accordingly, a charge-sheet was filed

against the appellant along with Harminder Singh @ Montu.

11. The appellant, aggrieved by the framing of the charge moved the High Court in the Revision Petition which was dismissed on 17.2.2009. Against that order, the appellant has approached this Court.

12. The High Court observed that the material against the appellant was not just the suicide note but also includes threats, humiliating phrases etc. addressed to the deceased and his father over a period of few days.

13. According to the appellant, it may be significant to mention that if the threat or the humiliating phrases etc. by the appellant had any impact on the deceased"s mind or had led to the abetment to commit suicide then all these facts ought to have been mentioned in the suicide note. In the suicide note nothing had been mentioned against the appellant. According to the appellant in absence of any material against him, no charge could be framed against him u/s 306 of IPC.

14. The appellant submitted that the main question which arises for adjudication is whether it would be just and fair to compel the appellant to face the rigmarole of a criminal trial in absence of any credible material against him? According to the appellant, a careful reading of the suicide note clearly leads to the conclusion that the appellant was not even remotely connected with the offence of abetment. When the appellant was in no manner connected with this case and there was no credible material to connect the appellant with the crime, in this view of the matter, according to the appellant, it would be a futile exercise to compel him to undergo the rigmarole of a criminal trial.

15. Learned Counsel for the appellant has placed reliance on the judgment of this Court in 303256 (in which one of us, Bhandari, J., was the author of the said judgment). The ratio of the said judgment is fully applicable to this case and we deem it proper to rely and reproduce some parts of the said judgment.

16. In order to properly comprehend the scope and ambit of Section 306 IPC, it is important to carefully examine the basic ingredients of Section 306 IPC. The said section is reproduced as under:

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.

17. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

18. Suicide by itself is not an offence under either English or Indian criminal law, though at one time it was a felony in England. In England, the former law was of the nature of being a deterrent to people as it provided penalties of two types:

ï¿½ Degradation of corpse of the deceased by burying it on the highway with a stake through its chest.

ï¿½ Forfeiture of property of the deceased by the State.

19. This penalty was later distilled down to merely not providing a full Christian burial, unless the deceased could be proved to be of unsound mind. However, currently there is no punishment for suicide after the enactment of the Suicide Act, 1961 which proclaims that the rule of law whereby it was a crime for a person to commit suicide has been abrogated.

20. In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to suicide is an offence u/s 309 IPC.

21. "Abetment" has been defined u/s 107 of the Code. We deem it appropriate to reproduce Section 107, which reads as under:

107. Abetment of a thing.--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 2 which has been inserted along with Section 107 reads as under:

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

22. The learned Counsel for the appellant has placed reliance on a judgment of this Court in 262329 . In Mahendra Singh, the allegations levelled were as under: (SCC p. 731, para 1)

1. ... My mother-in-law and husband and sister-in- law (husband''s elder brother''s wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.

23. The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant u/s 306 IPC merely on the

basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

24. The learned Counsel also placed reliance on another judgment of this Court in 294995 . In this case, a three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

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. 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.

25. In this case, the court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema may necessarily be drawn.

26. In 274106 , this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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 of abetting the offence of suicide should be found guilty.

27. This Court in 300066 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person"s suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person u/s 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge u/s 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge u/s 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside.

31. As a result, the appeal is allowed and the impugned judgment of the High Court is set aside.