Ranganayaki vs State By Inspector Of Police on 13 October, 2004

Equivalent citations: AIR 2005 SUPREME COURT 418, 2004 AIR SCW 6613, 2005 (1) RECCRIR 401, 2004 (6) SLT 417, (2004) 9 JT 464 (SC), 2004 (8) SCALE 734, 2004 CRIAPPR(SC) 857, 2004 (8) ACE 97, 2004 (12) SCC 521, 2005 ALL MR(CRI) 549, (2004) 23 ALLINDCAS 64 (SC), (2004) 4 CRIMES 179, (2004) 29 OCR 804, (2004) 4 CURCRIR 208, (2004) 7 SUPREME 350, (2004) 8 SCALE 734, (2005) 1 ALLCRILR 526, (2004) 50 ALLCRIC 768, (2005) 1 CAL LJ 158, (2005) 1 RECCRIR 40(1), 2004 (2) ALD(CRL) 926

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

```
           CASE NO.:
Appeal (crl.)  1505 of 2003

PETITIONER:
RANGANAYAKI

RESPONDENT:
STATE BY INSPECTOR OF POLICE

DATE OF JUDGMENT: 13/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
```

JUDGMENT 2004 Supp(5) SCR 452 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. Appellant who faced trial along with one Selvam was convicted for the offence punishable under Section 302 read with Section 109 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to imprisonment for life. The first accused Selvam was convicted under Section 302 IPC. The trial Court convicted first accused for having committed murder of Natarajan (hereinafter referred to as the 'deceased') on the instigation of A-2 the present appellant.

The prosecution version as unfolded during trial is as follows:

> On 12.10.1989, at about 5.00 p.m., when the first accused came to the house of the deceased and called the deceased. Gopi (PW-4) replied that the deceased had not returned from the day's work. Therefore, the first accused went away. The deceased returned home at about 6.00 p.m. At about 7.30 p.m. after taking food, the deceased

was talking with his third wife, Neela and PW-4. At about 8.00 p.m. the first accused came again and requested the deceased to come out and when the deceased came out of the house, the first accused told him that he was having brandy and invited him for drinking brandy. He also showed a brandy bottle. Therefore, the deceased and the first accused went towards the backyard. While the deceased collected haystick and dropped them in the cattle shed, the first accused poured brandy in a glass of water and also mixed some white material which looked like camphor. After the deceased returned from the cattle shed, at the request of the first accused, the deceased consumed the brandy. The first accused also gave the deceased a plantain, which was taken by the deceased. Immediately thereafter, telling that the was feeling giddy, deceased fell down and fainted. PW-4 and Neela poured water on the face of the deceased. Since he did not get up, they cried. On hearing their cries, Padavattan and Ravi (PWs 2 and 3) went there. PW-4 and Neela informed PWs 2 and 3 that the first accused gave brandy to the deceased and immediately the deceased swooned. PW-2 advised them to take the deceased to the doctor. A country medical practitioner was brought, who after examining the pulse directed them to shift the deceased to the hospital. When the deceased was taken to the hospital, he was declared dead and the body was taken back home.

It is to be noted that appellant (A-2) was the first wife of the deceased. After some years she left him and stayed with somebody else. The deceased married for the second time. But Shanti to whom he was married died. Deceased married again and the wife's name was Neela. After this marriage, the accused came back with Gopi (PW 4) and stayed with the deceased. But she went away many times and was living with other men. It is prosecution version that at the relevant time she was staying with Selvam (A-1).

PW-1, the Village Administrative Officer of Kumaravadi Village was informed. He rushed to the place at about 7.30 a.m. on 13.10.1989, enquired from PW-4 and the third wife of the deceased and ascertained that the first accused and the second accused (the appellant) have mixed poison in the brandy and gave it to the deceased. Therefore, he went to Salavakkam Police Station and gave report (Ex. P-l) which was registered by PW-13 in Crime No.222/89 under Section 302 IPC Ex. P-13 is the first information report. The inspector of police, PW-16 took up investigation.

On taking up the investigation, Kahniyappan (PW-16) went to the place of occurrence, inspected the same, prepared Ex.P-2, Observation Mahazar and also drew sketch Ex.P-20. He seized M.Os. 1 to 5 viz., Brandy Bottle. Tumbler, Brass Tumbler, Polythene Paper and a piece of white cloth, respectively. He held inquest over the body of the deceased between 12.30 p.m. and 3.30 p.m. and prepared Ex.P-21, inquest report. During inquest, he examined PWs 1 to 3. After inquest he forwarded the body for autopsy. On completion of investigation charge sheet was filed. During trial accused persons pleaded innocence.

Placing reliance mainly on the evidence of PW-4 the son of the deceased and the appellant, and the medical evidence and forensic evidence the first accused was found guilty for the offence punishable under Section 302 IPC as noted above and the appellant was found guilty under Section 302 read with Section 109 IPC.

High Court by the impugned judgment maintained the conviction of both the accused persons.

So far as the present appellant is concerned, the evidence was alleged motive, recovery purported to have been made pursuant to the confessional statement on 9.10.1989 and the evidence of PW-4 that earlier the deceased has instigated the present appellant to beat the deceased.

In support of the appeal learned counsel for the appellant submitted that there is no evidence brought on record by the prosecution to bring in application Section 109 IPC. Recoveries in no way relate to articles purported to have been used for poisoning deceased. Learned counsel for the respondent-State, however, submitted that evidence of PW-4 son of the accused-appellant clearly shows that the accused had a motive to kill the deceased. In the past also there are several instances when the deceased was assaulted by the appellant or by persons engaged by her. There is no reason as to why Gopi (PW 4), son of the accused would falsely depose against her. His testimony amply establishes the motive for the murder.

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in Red v. Palmer (Shorthand Report at page 308 May, 1856) thus: "But if there be any motive which can be assigned. I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocitious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties". Though, it is a sound presumption that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailants. In Alley v. State of U.P., AIR (1955) SC 807, it was held "that is true, and where there is clear proof of motive for the crime, that lands additional support to the finding of the Court that the accused was guilty, but absence of clear proof of motive does not necessarily lead to the contrary conclusion". In some cases it may be difficult to establish motive through direct

evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead to an inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to aid of the accused. These principles have to be tested on the background of factual scenario.

Under Section 109 the abettor is liable to the same punishment which may be inflicted on the principal offender; (1) if the act of the latter is committed in consequence of the abetment and (2) no express provision is made in the IPC for punishment for such an abetment. This section lays down nothing more than that if the IPC has not separately provided for the punishment of abetment as such then it is punishable with the punishment provided for the original offence. Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not is a question to be decided on the facts of each case. It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Further the act abetted should be committed in consequence of the abetment or in pursuance of the conspiracy as provided in the Explanation to Section 109. Under the Explanation an act or offence is said to be committed in pursuance of abetment if it is done in consequence of (1) instigation (b) conspiracy or

(c) with the aid constituting abetment. Instigation may be in any form and the extent of the influence which the instigation produced in the mind of the accused would vary and depend upon facts of each case. The offence of conspiracy created under Section 120A is bare agreement to commit an offence. It has been made punishable under Section 120B. The offence of abetment created under the second clause of Section 107 requires that there must be something more than mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by Section 107 (secondly), "engages in any conspiracy.....for the doing of (hat thing, if an act or omission took place in pursuance of that conspiracy". The punishment for these two categories of crimes is also quite different. Section 109 IPC is concerned only with the punishment of abetment for which no express provision has been made in the IPC. The charge under Section 109 should, therefore, be along with charge for murder which is the offence committed in consequence of abetment. An offence of

> criminal conspiracy is, on the other hand, an independent offence. It is made punishable under Section 120B for which a charge under Section 109 is unnecessary and inappropriate. [See Kehar Singh and Ors. v. The State (Delhi Admn,), AIR (1988) SC 1883]. Intentional aiding and active complicity is the gist of offence of abetment.

When the factual background is analysed it is seen that there is practically no evidence of any abetment to the actual act committed i.e. the murder of the deceased. The alleged motive is also not substantive. Some reference to past incidents have been referred to prove motive. They do not prove any intention to murder the deceased much less than any instigation therefor. The purported recovery of articles pursuant to disclosure made under Section 27 of the Indian Evidence Act, 1872 (in short 'Evidence Act') is also of no consequence because nowhere did the accused- appellant said that the said article was used for the purpose of poisoning the deceased.

In the aforesaid circumstances the inevitable conclusion is that the prosecution has not been able to bring home the accusations so far as accused-appellant is concerned. Conviction and sentence as imposed by trial court and confirmed by High Court are set aside. The accused shall be set at liberty forthwith, if not required in any other case.

The appeal is allowed.