

STATE OF WEST BENGAL

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v.

INDRAJIT KUNDU & ORS.

(Criminal Appeal No. 2181 of 2009)

OCTOBER 18, 2019

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**[INDU MALHOTRA AND R. SUBHASH REDDY, JJ.]**

*Penal Code, 1860 – s.306 r/w s.34 – Abetment of suicide – When not – Victim, daughter of the de-facto complainant was painter and artist – To improve her proficiency in English, first respondent was appointed as her English teacher – Respondent nos.2 & 3 are parents of the first respondent – Intimacy developed between the victim and the first respondent – Allegation of the complainant that as the victim and first respondent had decided to marry, the victim had gone to the house of first respondent on 05.03.04 to finalise the proposal of marriage – Allegedly when she went to his house, respondent nos.2 & 3 came out and shouted, addressing the victim as call-girl – On 06.03.04, the victim committed suicide – Charge-sheet filed against respondent nos.1-3 – Respondents filed application for discharge – Rejected – Thereafter, respondents filed application u/s.482, Cr.P.C. – High Court directed the respondents to raise all the points before the Trial Court – At the stage of framing of charges respondents raised objections claiming no case is made out against them to frame any charges – Additional District & Sessions Judge overruled the objections observing that as there is probability of accused being convicted, charges can be framed – High Court allowed the application filed by the respondents – On appeal, held: Respondents are sought to be proceeded for charges u/ss.306/34, mainly relying on the suicide letters written by the deceased girl and the statements recorded during the investigation – Even according to the case of the de-facto complainant, respondent nos.2 & 3, parents of the first respondent shouted at the deceased girl calling her a call-girl – Such material is not sufficient to proceed with the trial by framing charge of offence u/ss.306/34 – Instant case does not present any picture of abetment allegedly committed by respondents – Suicide committed by the victim cannot be said to be the result of any action on part of the respondents nor can it be*

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- A *said that commission of suicide by the victim was the only course open to her due to action of the respondents – There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide – No merit in the appeal warranting interference with the well reasoned judgment of the High Court – Code of Criminal Procedure, 1973 – ss.401, 482.*

B **Dismissing the appeal, the Court**

- HELD:** 1. Respondents are sought to be proceeded for charge under Section 306/34, IPC mainly relying on the suicide letters written by the deceased girl and the statements recorded during the investigation. Even according to the case of de facto complainant, respondent Nos. 2 and 3 who are parents of first respondent shouted at the deceased girl calling her a call-girl. This happened on 05.03.2004 and the deceased girl committed suicide on 06.03.2004. By considering the material placed on record, the present case does not present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. On 05.03.2004 when the deceased went to the premises of first respondent, his parents who are respondent Nos. 2 and 3 addressed her as a call-girl. Such material is not sufficient to proceed with the trial by framing charge of offence under Section 306/34 IPC. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. To draw the inference of instigation it all depends on facts and circumstances of the case, whether the acts committed by the accused will constitute direct or indirect act of incitement to the commission of suicide is a matter which is required to be considered in facts and circumstances of each case. No merit is found in this appeal so as to interfere with the well reasoned judgment of the High Court. [Paras 11, 13, 16 and 17] [494-E-G; 495-G; 496-A; E-G]

*Soma Chakravarty v. State (2007) 5 SCC 403 : [2007] 6 SCR 324 ; Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4 : [1979] 2 SCR 229 ; Chitresh Kumar Chopra v. State (NCT) of Delhi (2009) 16 SCC 605 : [2009] 13 SCR 230 – held inapplicable.* A

*Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618 : [2001] 4 Suppl. SCR 247 ; Sanju Alias Sanjay Singh Sengar v. State of M.P. (2002) 5 SCC 371 : [2002] 3 SCR 668 ; Swamy Prahaladdas v. State of M.P. and Anr. 1995 Supp (3) SCC 438 – relied on.* B

<u>Case Law Reference</u>			C
[2007] 6 SCR 324	held inapplicable	Para 8	
[1979] 2 SCR 229	held inapplicable	Para 8	
(1995) Supp. (3) SCC 438	relied on	Para 10	
[2001] 4 Suppl. SCR 247	relied on	Para 12	D
[2002] 3 SCR 668	relied on	Para 13	
[2009] 13 SCR 230	held inapplicable	Para 16	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2181 of 2009. E

From the Judgment and Order dated 30.07.2009 of the High Court at Calcutta in C.R.R. No. 3473 of 2008.

Suhaan Mukerji, Ms. Astha Sharma, Prastut M. Dalvi, Amit Verma, Abhishek Manchanda, Ms. Kajal Dalal, Naveen Kumar (for M/S. Plr Chambers And Co.), Advs. for the Appellant. F

Pijush Roy, Mrs. Kakali Roy, Bishnu Prasad Tiwary, Mithilesh Kumar Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

**R. SUBHASH REDDY, J.** G

1. This appeal is preferred by the State of West Bengal through Principal Secretary, Home Department, aggrieved by the judgment and order dated 30.07.2019 passed by the High Court at Calcutta in C.R.R.No.3473 of 2008.

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- A 2. By the impugned order, the respondents-accused were discharged of the charge framed against them under Section 306 read with Section 34 of Indian Penal Code. The victim, daughter of the de facto complainant was a painter and artist. To improve her proficiency in English, first respondent was appointed as her English teacher.
- B Respondent Nos. 2 and 3 are his parents. There developed intimacy between the victim and first respondent – Indrajit in course of coaching. It is the allegation of the complainant that as the deceased victim and first respondent had decided to marry, to finalise the proposal of marriage the victim had gone to the house of first respondent on 05.03.2004. It is alleged that when the victim went to the house of first respondent,
- C respondent Nos. 2 and 3 who are the parents of the first respondent came out to raise shouts and addressed the victim as a call-girl. The words uttered by respondent Nos. 2 and 3, as per the de facto complainant are “you are a call-girl, why my son would marry you, we would give our son in marriage elsewhere”. It is alleged in the complaint that at that time, first respondent did not protest against the version of his parents and his daughter returned home and became mentally perturbed. On 06.03.2004 at about 1.00 p.m. the victim had committed suicide.
3. On the complaint of the de facto complainant, a case was registered in Jorabagan Police Station against respondents under Section 306 IPC and thereafter charge-sheet was filed.
- E 4. There were two suicide notes. In one suicide note, the deceased has stated that parents of first respondent abused her in silly words by calling her a call-girl. In another note, which was addressed to the first respondent, has stated that the father of first respondent stigmatized her as a call-girl and first respondent has not responded to such utterances.
- F Further it is stated that first respondent is a coward. After conducting investigation, charge-sheet was filed under Section 306/34 IPC against all the three accused. Case was committed to the 7<sup>th</sup> Fast Track Court, Sessions Court, Calcutta, numbered as Sessions Case No.11 of 2006.
- G 5. Accused-respondents earlier filed application for discharge, the same was rejected by the Trial Court by order dated 19.04.2007. Thereafter, respondents have filed an application under Section 482 Cr.P.C. before the High Court in C.R.R.No.1817 of 2007 which was disposed of with the direction to respondents-accused to raise all the points before the learned Trial Court. At the stage of framing of charges
- H respondents have raised objections claiming that no case is made out

against them to frame charge for the alleged offence under Section 306/34 IPC. The learned Additional District and Sessions Judge by order dated 04.09.2008 overruled the objections of the respondents observing that as there is a probability of accused being convicted, charge can be framed. It is observed in the order that there is a reasonable likelihood for accused persons to be convicted under Section 306 IPC. Against the said order, respondents have approached the High Court again under Section 401/482 Cr.P.C. in C.R.R.No.3473 of 2008.

6. By the impugned order, the High Court by recording a finding that terming the deceased as a call-girl, there was no utterance which can be interpreted to be an act of instigating, goading or solicitation or insinuation, the deceased to commit suicide. By referring to the case law decided by this Court wherein similar utterances like, "to go and die" does not constitute an offence for abetment, allowed the application filed by the respondents. It is observed in the order that the act or conduct of the accused, however insulting and abusive, 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, the consequence of suicide. By discussing the case law on the subject, the High Court allowed the application by setting aside the order of the Trial Court and discharged the respondents-accused from the charge.

7. We have heard Sri Suhaan Mukerji, learned counsel appearing for the State of West Bengal and Sri Pijush Roy, learned counsel appearing for respondents.

8. In this appeal mainly it is contended by the learned counsel for the appellant-State that the de facto complainant has appointed first respondent as an English teacher to improve the English of the deceased victim. The victim used to visit the house of accused No.1 and developed intimacy and relationship. It is submitted that on 05.03.2004, when the victim visited the accused for finalizing the date of marriage, respondent Nos. 2 and 3 who are parents of accused No.1 have shouted and called the victim a call-girl. The victim was disturbed and she returned home and her sister tried to console her by telling her that they will speak to the accused so that their marriage would take place. It is submitted that on next day i.e. 06.03.2004, she committed suicide by hanging. It is submitted that from suicide notes, it is clear that respondents who are the accused are responsible for suicide of the victim girl. It is submitted

- A that by their conduct and utterances they have abetted the crime, as such they were rightly charged for the offence under Section 306/34 IPC. It is submitted that there is sufficient material to frame charge against the respondents. In spite of the same, without considering the material on record, the High Court has allowed the application filed by the respondents. The learned counsel for the State in support of his arguments placed reliance on the judgment in the cases of *Soma Chakravarty vs. State*<sup>1</sup> and *Union of India vs. Prafulla Kumar Samal*<sup>2</sup>.

- C 9. On the other hand, in response, learned counsel appearing for the accused-respondents submitted that during the pendency of this appeal, the second respondent passed away, as such appeal stands abated so far as he is concerned. Further, it is stated that as there is no material to frame charge against the respondents for offence under Section 306/34 IPC, the High Court by well-reasoned order has allowed their application and no grounds to interfere with the same.
- D 10. Having heard learned counsel on both the sides, we have perused the impugned order passed by the High Court and other material placed on record.

- E 11. From the material placed on record, it is clear that respondents are sought to be proceeded for charge under Section 306/34 mainly relying on the suicide letters written by the deceased girl and the statements recorded during the investigation. Even according to the case of de facto complainant, respondent Nos. 2 and 3 who are parents of first respondent shouted at the deceased girl calling her a call-girl. This happened on 05.03.2004 and the deceased girl committed suicide on 06.03.2004. By considering the material placed on record, we are also of the view that the present case does not present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. In the case of *Swamy Prahaladdas vs. State of M.P. and Anr.*<sup>3</sup> this Court while considering utterances like “to
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<sup>1</sup> (2007) 5 SCC 403

<sup>2</sup> (1979) 3 SCC 4.

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go and die" during the quarrel between husband and wife, uttered by husband held that utterances of such words are not direct cause for committing suicide. In such circumstances, in the aforesaid judgment this Court held that Sessions Judge erred in summoning the appellant to face the trial and quashed the proceedings.

12. In the judgment in the case of *Ramesh Kumar* vs. *State of Chhattisgarh*<sup>4</sup> this Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word "instigation", it is held in paragraph 20 as under:

"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."

13. Similarly in the judgment in the case of *Sanju Alias Sanjay Singh Sengar* vs. *State of M.P.*<sup>5</sup> when any quarrel which has taken place between husband and wife in which husband has stated to have told the deceased "to go and die", this Court has held that the suicide committed two days thereafter was not proximate to the quarrel though the deceased was named in the suicide note and that the suicide was not the direct result of quarrel when the appellant used abusive language and told the deceased to go and die. Judgments referred above support the case of respondents, except stating that on 05.03.2004 when the deceased went to the premises of first respondent, his parents who are respondent Nos. 2 and 3 addressed her as a call-girl. At the same time by applying the judgments referred above we are of the view that such material is not sufficient to proceed with the trial by framing charge of

<sup>4</sup> (2001) 9 SCC 618

<sup>5</sup> (2002) 5 SCC 371

- A offence under Section 306/34 IPC. It is also clear from the material that there was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide.

14. Learned counsel appearing for the appellant-State has placed reliance on the judgment in the case of *Soma Chakravarty* (supra),

- B wherein this Court has held that when there is material to show that accused might have committed offence it can frame charge and the probative value of the material on record cannot be gone into at the stage, before the Trial Court.

15. Reliance is placed on the judgment in the case of *Union of*

- C *India vs Prafulla Kumar Samal* (supra), where this Court has held that the Judge while considering the question of framing the charges 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.

- D 16. The judgment relied on by learned counsel for the State in the case of *Chitresh Kumar Chopra vs. State (NCT) of Delhi*<sup>6</sup>, this Court has held that where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. To draw the inference of instigation it all depends on facts

- E and circumstances of the case, whether the acts committed by the accused will constitute direct or indirect act of incitement to the commission of suicide is a matter which is required to be considered in facts and circumstances of each case. As such we are of the view that the judgments relied on by the learned counsel for the State would not assist in supporting his arguments.

17. For the aforesaid reasons, we do not find any merit in this appeal so as to interfere with the well reasoned judgment of the High Court. Accordingly, this appeal is dismissed.

Divya Pandey

Appeal dismissed.

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<sup>6</sup> (2009) 16 SCC 605