

Madras High Court

Rukumani vs State Represented By on 25 March, 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.03.2008

CORAM

THE HONOURABLE MR.JUSTICE T. SUDANTHIRAM

Criminal Appeal No.1370 of 2002

Rukumani

..Appellant/Accused

Versus

State represented by
The Sub Inspector of Police
B-4, Police Station
Coimbatore.

..Respondent/Complainant

Criminal Appeal filed against the conviction and sentence imposed on the appellant

For Appellant : Mr.C.Prakasam

For Respondent : Mr.J.C.Durai Raj
Government Advocate (Crl. Side)

JUDGMENT

This appellant stands convicted for an offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for three years by the learned Additional Sessions Judge, FTC-III, Coimbatore in S.C.No.224 of 2002 dated 19.08.2002. Aggrieved by the said conviction and sentence, this appeal has been preferred by the appellant.

2. The brief facts of the prosecution case is that the deceased Kaliasammal aged 14 years was living with the parents at Door No.358, VKK Menon Road, Puduchittapudhur. The accused was residing in the next house. There was some enmity between the accused and the deceased family members. On 18.12.2000 at 1.00p.m., after the parents of the deceased left the house for the work, the accused came in front of the house of the deceased and said that the deceased was roaming near the bus stand and though she is a small girl, she would bring the boys and also abused. Again on the next day at 8.30a.m., after the parents of the deceased left home, the accused came and abused her and as witness P.W.5 came there, the accused told her that if she tells lie, she would be ruined. At about 9.00a.m., the deceased poured kerosene and set fire on herself. P.W.4 and P.W.7 took the deceased to the hospital in an auto and she was admitted. P.W.14, is the Doctor who examined her. Ex.P.16 is the Accident Register. P.W.13, the Sub Inspector of Police, Coimbatore Police Station received information from the hospital at 10.00a.m., and went to the hospital and recorded her statement Ex.P.8. It was attested by the Doctor and he came back to the Police Station and registered the case in Crime No.991 of 2000 for an offence under Section 309 IPC and Ex.P.10 is the FIR. On 19.12.2000 at 3.25 p.m., P.W.10, learned Judicial Magistrate on receiving information went to the hospital for recording the dying declaration. He reached the hospital at 3.45p.m., P.W.11 Ravindran certified that the deceased is in a fit state of mind to give confession. To confirm that whether she was in a fit state of mind, P.W.10 put questions and then recorded the dying declaration given by the deceased. Ex.P.4 is the dying declaration. P.W.13 went to the scene of occurrence and prepared Ex.P.11 observation mahazar. On 29.12.2000, the deceased who was under treatment died in the hospital. P.W.12 sent the death intimation to the Inspector of Police. P.W.15, Inspector of Police who received the death intimation altered Section 309 IPC to Section 306 IPC and examined the witnesses. P.W.3 Doctor conducted post mortem examination on 30.12.2000 and issued post mortem certificate Ex.P.1. P.W.15 on completing the investigation laid final report.

3. In order to establish the case, the prosecution has examined 15 witnesses and marked 16 exhibits and produced 2 material objects. When the accused was questioned under Section 313 Cr.P.C with regard to the incriminating circumstances, the accused had denied the complicity.

4. The learned counsel for the appellant submitted that there was only a wordy quarrel in the normal course with regard to the sewerage of water dispute and the accused did not induce the deceased to commit her suicide. The accused had neither intention nor induced the deceased to commit suicide. Even according to the evidence of the prosecution witnesses, the ingredients of the offence under Section 306 IPC are not made out. Even in the dying declaration said to have been given by the deceased, she has not stated about the unparliamentary word said to have been used by the accused. There is no material to conclude that it was only because of the accused, the deceased had committed suicide.

5. The learned Government Advocate submitted that the deceased herself had given a statement to the Police which was also recorded from her under Ex.P.12 and the learned Judicial Magistrate also recorded the dying declaration Ex.P.4. The learned Government Advocate further submitted that Ex.P.8, P.12 and P.14 are the dying declaration of the deceased in which it is stated that the deceased had committed suicide only because the accused had abused her.

6. This Court considered the submission made by both sides and also gone through all the materials. Ex.P.8 is the statement given by the deceased on 19.12.2000 at 11.45 hours which was recorded by P.W.13, Sub Inspector of Police based on which the First Information Report was registered. Ex.P.12 is the statement recorded by P.W.13 under Section 161 Cr.P.C. Ex.P.4 is the dying declaration recorded by the learned Judicial Magistrate P.W.10 at 19.12.2000 at 3.40p.m. As per Ex.P.8 and Ex.P.12 recorded by P.W.13, Sub Inspector of Police, there had been some dispute between the accused and the deceased family and they were not in talking terms. On the date of occurrence, while the deceased was cleaning the vessels in front of her house, the accused lady came and shouted and said that the deceased was always roaming near the bus stand and she would arrange for some boys to be brought to her place. On the next day, on 19.12.2000 at about 8.30p.m., the accused was questioned by one Anandan. At that time, the accused told him that the deceased was telling only lie and if she tells such lie, she would be ruined. Therefore, from Ex.P.8 and P.12, it is evident that on the date of occurrence, the accused had not scolded the deceased and she had not abused her. Only the accused being questioned by Anandan, the accused had told that the deceased was telling lie and if she tells lie, she may be ruined. As per Ex.P.8 and P.12, on the date of occurrence, there is no material to show that the accused had done anything by way of instigating the deceased to commit suicide.

7. As per Ex.P.4, the dying declaration recorded by the Judicial Magistrate, it is stated by the deceased that on 18.12.2000 at 1.00p.m., the accused scolded the deceased. The deceased informed about that to the neighbour Anandan, and when the said Anandan questioned the accused about it, again the accused scolded the deceased for this. The next day, the deceased had set fire to herself. Even in Ex.P.4, the deceased had not stated about the exact words used by the accused. It is only stated that the accused had abused her and nothing more.

8. Section 306 of IPC reads as follows:

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. thereby showing the commission of suicide must be pursuant to the abetment committed by any person.

9. Section 107 IPC reads thus:

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 1:- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. As far as the second category is

concerned, no discussion is necessary and it does not come in this case. With regard to the first and third categories, it must be established that either the accused instigated or intentionally aided the deceased. From the facts available in this case, as per Exs.P.4, P.8 and P.12, it was only the accused abused her, but it cannot be said by abusing she had knowledge that the deceased would commit suicide or the accused intended by abusing that the deceased should commit suicide. From the facts available, it is clear that the accused was not come under the third category of intentionally aiding.

In *Swami Prahaladdas v. State of MP - 1995 SCC (Crl.) 943* the Apex Court has held when the offence under Section 306 IPC was challenged, for quashing, when the suicide is not the direct result of the words uttered by the accused, no person could be called to face the trial under Section 306 IPC. In the case involved in the above decision, it seems the accused therein scolded the deceased or remarked 'to go and die'. Thereafter the deceased went home in a dejected mood committed suicide, which was sought to be brought under Section 306 IPC. Considering the above facts and circumstances of the case, the Apex Court held mere uttering the words 'go and die' is not sufficient to bring the offence under Section 306 IPC.

In *State of Gujarat v. Sunilkumar Kanaiyalal Jain (1997 Crl.L.J 2014)* a Division Bench of the Gujarat High Court considering elaborately dealt with abetment, realising the responsibility of the Court also has observed, 'better die today than tomorrow' if had been uttered cannot be said to be the abetment in the eye of law since the words might have been uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge or might be the rude or insulting, not with desire to instigate the person to commit suicide, which principle also could be extended to the above case on hand.

10. Therefore, on analysing the materials available on record in this case, by applying the law settled by the Honourable Supreme Court, it cannot be definitely said that accused scolded the deceased with mensrea surfacing to attract abetment of suicide. This Court is of the considered view that no offence had been made out under Section 306 IPC, but the trial Court had convicted the accused against law.

11. In the result, the appeal is allowed setting aside the conviction and sentence passed by the Judgment in S.C.No.224 of 2002, passed by the learned Additional Sessions Judge (FTC III), Coimbatore. The fine amount if any paid, shall be refunded to the appellant.

25.03.2008 Index:yes/no Internet:yes/no ksr To

1. Additional Sessions Judge, Fast Track Court -III, Coimbatore
2. The Sub Inspector of Police B-4, Police Station, Coimbatore.
3. The Public Prosecutor High Court, Madras.