



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL No. 54 OF 2013

BETWEEN:

1. SMT. PREMA
W/O SHIVAMADASHETTY
AGED 28 YEARS.
2. BASAVALINGE GOWDA @
SHIVALINGE GOWDA @ KUNTA
S/O BASAVEGOWDA
AGED 34 YEARS.

APPELLANTS 1 AND 2 ARE
RESIDENTS OF HONNALAGERE VILLAGE
MADDUR TALUK
MANDYA DISTRICT.

...APPELLANTS

(BY SRI A N RADHA KRISHNA, ADVOCATE)

AND:

STATE OF KARNATAKA
BY K.M. DODDI POLICE
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR
HIGH COURT BUIDLINGS
BANGALORE – 560 001.

...RESPONDENT

(BY SRI B LAKSHMAN, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374(2) Cr.P.C
PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND





SENTENCE DATED 01.01.2013 PASSED BY THE ADDITIONAL S.J., MANDYA IN S.C.No.57/2011 ACQUITTING THE APPELLANTS/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 306 R/W 34 OF IPC AND ETC.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL JUDGMENT

1. This appeal is filed by appellants – accused Nos.1 and 2 against the judgment of conviction and order on sentence dated 01.01.2013 passed in S.C. No. 57/2011 by the Additional District and Sessions Judge, Mandya, convicting appellants – accused Nos.1 and 2 for offence punishable under Section 306 of IPC and sentencing accused No.1 to undergo rigorous imprisonment for a period of 3 years and accused No. 2 to undergo rigorous imprisonment for a period of 4 years and to pay fine of Rs.5,000/- each and in default to undergo imprisonment for a period of 8 months for accused No. 1 and 10 months for accused No. 2.

2. Factual matrix of the case is that appellants – accused Nos.1 and 2 were having illicit relationship and for



that the deceased – Shivamadashetty – husband of accused No. 1 used to object. There used to be quarrels between accused No. 1 and her husband. In spite of that, accused No.1 continued illicit relation with accused No. 2. On 10.07.2010, at about 04.00 pm, accused No. 2, in front of house of the deceased, called the deceased and asked him to die so that they both will live happily and insulted the deceased. Therefore, the deceased committed suicide in the night of 15.07.2010 by hanging to a tree by using plastic rope and towel and committed suicide. Charge has been framed against the appellants – accused Nos.1 and 2 for offence under Section 306 read with Section 34 of IPC. In order to prove the charge the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and got marked Ex.P.1 to Ex.P.10 and material objections as M.O.1 to M.O.10. Statement of the accused persons came to be recorded under Section 313 of Cr.P.C. The trial Court after hearing arguments formulated points for consideration and passed the judgment of conviction and order on sentence.



3. Heard arguments of learned counsel for appellants – accused Nos.1 and 2 and learned HCGP for respondent – State.

4. Learned counsel for appellants – accused Nos.1 and 2 would contend that P.W.1, P.W.4 to P.W.7 are related to each other and they are interested witnesses. There is political rivalry between P.W.1 and accused No. 2 as accused No.2 did not support him in the election. Merely having illicit relationship and quarrelling with the deceased does not amount to abetment as defined under Section 107 of IPC. Persons who are residing in the neighborhood of the house of the deceased and accused No.1 have not been examined. As there was enmity between P.W.1 and accused No. 1 with regard to a quarrel and accused No. 1 had consumed poison, a false case came to foisted by P.W.1 against the accused persons. Date and time of panchayat alleged to have been held with regard to the illicit relationship between appellants – accused Nos.1 and 2 has not been stated by any of the



witnesses and panchayatdaars are not examined. He further submits that entire evidence on record will not establish that the appellants – accused Nos.1 and 2 abetted the deceased to commit suicide. Merely because the accused persons asked the deceased to go and die does not amount to abetment. Without considering all these aspects learned Sessions Judge has erred in convicting the appellants. With this he prayed to allow the appeal and acquit the appellants.

5. Learned HCGP appearing for the respondent – State argued that the trial Court on proper appreciation of the evidence on record has rightly convicted the appellants. He has supported the reasons assigned by the trial Court. He has further argued that evidence of P.W.1, P.W.2, P.W.4 to P.W.7 is sufficient to convict the appellants for the offence alleged against them. On these grounds he sought for dismissal of the appeal.



6. On the grounds made out and considering the arguments advanced, the following point arises for my consideration.

"Whether the trial Court erred in convicting the appellants – accused Nos.1 and 2 for offence under Section 306 of IPC?"

7. My answer to the above point is in the Affirmative for the following reasons:

The deceased Shivamadashetty is the husband of accused No. 1. There is an accusation that accused No. 1 had illicit relationship with accused No. 2. With regard to the said illicit relationship there used to be quarrels between accused No.1 and her husband – deceased Shivamadashetty. It is stated by the witnesses that panchayat was held with regard to the said illicit relationship between accused Nos.1 and 2. None of the panchayatdars have been examined with regard to the panchayat held. Date of the said panchayat is also not stated by the prosecution witnesses.



8. It is alleged that accused persons asked the deceased to go and die and they will live happily. Whether the said aspect amounts to abetment is required to be considered.

9. Abetment is defined under Section 107 of the Indian Penal Code which reads as under:

"107. Abetment of a thing.- A person is said abet 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."

10. As per the aforesaid definition there should be instigation to do that thing and then it amounts to abetment. A person is said to have instigated another to



an act when he actively suggests or stimulates him to act by means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.

11. The Hon'ble Apex Court in the case of **Sanju alias Sanjay Singh Sengar Vs State of M.P** reported in **2002 (5) SCC 371** has held as under:

".....Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion....."

12. The Hon'ble Apex Court in the case of **Chitresh Kumar Chopra Vs State (Government of NCT of**



Delhi) reported in **2009 (16) SCC 605** has observed as under:

"17. Thus to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar, 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, and "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.



20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on is inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

13. How a human mind reacts has been observed by the Hon'ble Apex Court in the case of ***Ude Singh and Other Vs State of Haryana*** reported in **2019 (17) SCC 301** wherein it is observed as under:



"16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set-ups, education, etc. Even the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstance."

14. A person may attempt to commit suicide due to various reasons such as depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to



abetment. The same has been observed by the Hon'ble Apex Court in the case of **Mangat Ram Vs State of Haryana** reported in **AIR 2014 SC 178**.

15. The Hon'ble Apex Court in the case of the **M. Mohan Vs State** reported in **2011 (3) SCC 626** has observed as under:

"44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 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 this act must have been intended to push the deceased into such a position that he/she committed suicide."



16. The Hon'ble Apex Court in the said decision also observed that *"Human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation"*.

17. The Hon'ble Apex Court in the case of **M. Arjuna Vs. State**, reported in **2019 (3) SCC 315** has observed as under:

""8. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are



satisfied, accused cannot be convicted under section 306 I.P.C."

18. P.W.1 – brother of the deceased, P.W.4 – younger brother of the deceased, P.W.5 – wife of P.W.1, P.W.7 – son of P.W.1 have deposed that the deceased was upset with the illicit relationship of accused No.1 with accused No. 2. The act of accused persons having illicit relationship does not amount to abetment to commit suicide. There should be evidence capable of suggesting that accused persons intended, by specific acts, to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, the accused cannot be convicted for offence punishable under Section 306 of IPC.

19. P.W.8 has stated that she came to know that accused No. 2 assaulted the deceased 15 days prior to the deceased committing suicide and the deceased told her about the same. If accused No. 2 had assaulted the deceased, the option open for the deceased was to file a



complaint and not to commit suicide. Accused Nos. 1 and 2 had not intended that the deceased should commit suicide. Merely because the accused persons asked the deceased to go and die so that they can life happily will not amount to abetment. It appears, that the deceased was sensitive as his wife - accused No. 1 had illicit relationship with accused No. 2 and upset by that, he might have committed suicide. The evidence on record will not establish that the accused persons, by their acts, abetted the deceased to commit suicide. Without considering all these aspects the learned Sessions Judge has erred in convicting the accused persons for offence punishable under Section 306 of IPC.

20. In view of the above, the following;

ORDER

- i. The appeal is allowed.
- ii. The judgment of conviction and order on sentence dated 01.01.2013 passed in S.C. No. 57/2011 by the



Additional District and Sessions Judge, Mandya, is set aside.

- iii. The appellants – accused Nos.1 and 2 are acquitted for offence under Section 306 read with Section 34 of IPC.
- iv. The appellants – accused Nos.1 and 2 are entitled for refund of the fine amount, if any, paid by them.

**Sd/-
(SHIVASHANKAR AMARANAVAR)
JUDGE**

LRS
List No.: 1 Sl No.: 30