

**THE HON'BLE SRI JUSTICE K.LAKSHMAN
AND
THE HON'BLE SMT. JUSTICE K.SUJANA**

CRIMINAL APPEAL No.975 OF 2013

JUDGMENT: (PER HON'BLE SMT JUSTICE K.SUJANA)

This appeal is preferred by the appellant being aggrieved by the judgment dated 28.10.2013 passed by the learned Special Sessions Judge for SC/ST (POA) Cases-Cum-VII-Additional District Judge, at Warangal, in S.S.C.No.48 of 2009 wherein, the appellant was convicted for offences punishable under Sections 417, 306 IPC and Section 3 (2) (v) of the SC/ST (POA) Act, 1989. For the offence under Section 306 IPC, he was sentenced to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default of which to undergo Simple Imprisonment for a period of three months. Further, for the offence under Section 417 IPC, he was sentenced to undergo Simple Imprisonment for a period of six months and for the offence under Section 3(2)(v) of SCs and STs (POA) Act, 1989, he was sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- and in default of which to undergo Simple Imprisonment for two months. All the sentences were directed to run concurrently.

2. The facts of the case are that the deceased – daughter of PW.1, belongs to Nayakapu caste which comes under the ST category. The

accused was a toddy tapper. Since three years he used to climb toddy trees situated adjacent to the house of *de facto* complainant and he also used to talk with the deceased. In the year 2007, while the deceased went to attend nature calls, the accused caught hold her and dragged her to commit rape. When she made hues and cries, the neighbors gathered and the accused escaped from the place and a criminal case was registered against the accused. During the pendency of the trial, the accused requested the deceased to compromise the case as he was ready to marry her. Thereafter, the deceased agreed to settle the matter and compromised the case. Since then the accused developed illegal contacts with the deceased and deceived her saying that he will marry her after the marriage of his sister. Later, he fixed his marriage with a woman of Palampet Village. On coming to know the same, on 10.02.2009 at 11:00 hours, the deceased, *de facto* complainant, her younger brother Goskula Thirupathy and Mogilli, went to the house of accused and asked him about the marriage to which the accused replied that he would not marry her and abused them. On the same day evening at about 06:00 P.M., the accused came to her house and told that his marriage was fixed with another women and he could not marry the deceased as she belongs to Nayakapu caste and asked her to consume poison and die. On hearing the same, the deceased immediately went inside the house and consumed pesticide poison. Subsequently, while she was being shifted to the community

health centre, she died. The Police investigated the case and a charge sheet was filed for the offences punishable under Sections 417, 306 IPC and Sections 3(1)(x), 3(1)(xii), 3(2)(v) of the SC/ST Act, and convicted the accused as stated supra.

3. This appeal is filed stating that though the prosecution failed to prove the alleged offences committed by the accused, the trial Court erroneously convicted the appellant/accused. The trial Court ought to have seen that the punishment for offence under Section 306 IPC can be extended up to 10 years and it is not minimum 10 years. Therefore, the offence under Section 306 would not be applicable for punishing the accused for the offence under Section 3(2)(v) of the SC/ST Act and as per Section 3(2)(v) of the Act, the punishment for the offence should be 10 years or more than 10 years. Therefore, the Court below ought not to have convicted the accused for the said offence as the evidence on record do not disclose that the accused abated the victim on the ground that she belongs to scheduled tribe community. The trial Court ought to have seen the contradictions in the evidence of the prosecution which disproves the case of the prosecution and creates doubt for abating the victim by the accused in committing suicide.

4. While the prosecution failed to prove the ingredients under Section 415 IPC for punishing the accused, the alleged act of abating the victim does not satisfy the ingredients under Section 306 Cr.P.C.,

therefore, the Court below ought not to have convicted the accused for the offences under Sections 417 and 306 IPC. As such, prayed this Court to acquit the appellant/accused.

5. Heard Sri P.Prabhakar Reddy, learned counsel for appellant, and Sri T.V.Ramana Rao, learned Additional Public Prosecutor.

6. Learned counsel for appellant/accused, submitted that the allegation that accused denied to marry the deceased was not established before the trial Court. The marriage of the accused was fixed with another girl. Further, as admitted by PW.1, the marriage of the deceased was also fixed with another person. Therefore, when the deceased and accused were differently engaged with another persons, the question of accused denying to marry the deceased does not arise. He further submitted that the evidence on record was also not sufficient to convict the accused for the offences under Sections 417 and 306 IPC, and nowhere was it illustrated that the accused denied the marriage with the deceased. As such, prayed this Court to allow the appeal by acquitting the accused.

7. On the other hand, learned Additional Public Prosecutor, submitted that the evidence of PWs.1 to 4 was sufficient to prove the guilt of the accused. He further submitted that the evidence of PWs.1 to 4 was consistent and it remained intact. As such, prayed this Court to

dismiss the appeal as there were no infirmities in the judgment of the Court below.

8. On going through the rival contentions and the evidence on record, the following facts are noted:

- The *de facto* complainant is the mother of the deceased. She was examined as PW.1. The maternal uncle of the deceased was examined as PW.2. The neighbours to the house of PW.1 were examined as PWs.3 and 4. PWs.1 to 4 were alleged direct witnesses to the incidence dated 10.02.2009.
- PW.5 is the panch witness for examination of scene of offence. PW.6 was one of the elders before whom the panchayath relating to the incident was raised. PW.7 is the eye witness to the incident of outraging modesty of the deceased. PW.8 the Tahsildar who issued caste certificate of PW.1. PW.9 the investigating Officer. PW.10 the photographer and PW.11 was the Civil Assistant Surgeon at Community Health Centre, Mulug, who conducted the autopsy over the dead body of the deceased. Out of the 11 witnesses, PW.7 has not supported the prosecution case.
- The evidence of PW.1 – mother of deceased, shows that her daughter consumed poison and died in the month of February and at that point of time, the deceased was aged about 25 years

and she was unmarried. Primarily, her evidence was with regard to the relation between the deceased and the accused. She deposed about the previous criminal case filed against the accused by the deceased. She also deposed about the sexual intimacy of the deceased with the accused which continued for a period of two months prior to her death. It was also stated in the deposition that the accused supplied the pesticide poison to the deceased.

- PW.2 – brother of PW.1, deposed on the similar lines as that of PW.1. He deposed that he accompanied PW.1 to the house of accused on 10.02.2009 at about 11:00 hours and questioned the accused regarding his marriage being fixed with another lady, to which accused refused to marry the deceased stating that she belongs to Nayakapu caste and asked her to report anywhere. Then PWs.1 and 2 returned to their house with an intention to lodge complaint against the accused. On the same day at about 06:00 P.M., the accused came to the house of PW.1 and by that time, PW.1, PW.2, deceased and one T.Ranadheer Reddy were present. The accused abused the deceased by saying that his marriage was fixed elsewhere with another lady and when PW.1 questioned the accused about the fate of the deceased, the accused asked the deceased to die by consuming pesticide

- poison. On that, the deceased consumed the pesticide poison and died.
- PW.3 – alleged eye witness, deposed about the previous incidents and the sexual intimacy of the accused with the deceased. He deposed that on the date of incident in the evening at about 05:30 to 06:30 P.M., he heard a galata and when he went to the house of PW.1, he noticed that PWs.1 and 2, and Mogilli, were there and later, the accused came to them and stated that he would not marry deceased as his marriage got fixed with another lady and when PW.1 questioned about the fate of deceased, he asked the deceased to die by consuming pesticide poison.
 - PW.4 – alleged eye witness, also deposed about the previous incidents and stated that on the date of incident at about 06:00 P.M., PW.3 and himself went to the house of PW.1 and when they enquired as to what happened to them, the accused arrived. When PW.1 questioned the accused about the fate of the deceased, he replied that he would not marry the deceased as she belongs to Nayakapu caste and asked her to die by consuming pesticide poison.
 - PW.5 is the panch witness for examination of scene of offence.

- PW.6 deposed that there was an affair between the accused and the deceased and about two years back, the deceased informed him that accused harassed her, both mentally and physically, saying that he wants to marry her and he informed the same to her brother – Chinna Rajaiah. Then they called the accused to their house and advised him not to interfere with the deceased. Later, the deceased informed him that the accused committed rape on her and a criminal case was filed against the accused which ended in acquittal as both the parties compromised and the accused promised to marry the deceased. Thereafter, he came to know that the deceased committed suicide as the accused denied to marry her.
- Though PW.7 was examined by the prosecution as an eye witness, he has not supported the prosecution case.
- PW.8 the Tahsildar who issued caste certificate of PW.1.
- PW.9 the Investigating Officer.
- PW.10 the photographer.
- PW.11 the Civil Assistant Surgeon who conducted the autopsy of the dead body of the deceased. According to him, the cause of death was consumption of organo floro poison.

9. The prosecution tried to establish the case basing on the evidence of PWs.1 to 4. The case of the prosecution was that there was an affair between the deceased and the accused and the accused outraged her modesty for which the criminal case was filed and the same ended in acquittal as the deceased and accused compromised and the accused promised to marry the deceased.

10. As can be seen from the record, the said criminal case was filed in the year 2007 and the alleged incident occurred in the year 2009. There is a gap of two years between both the incidents. The prosecution case is that after the acquittal in criminal case, the accused and the deceased continued their relationship, whereas, the evidence of PW.6 was that two years prior to the incident, the deceased complained him that the accused was harassing her and they called the accused and the matter was pacified. PW.1 in her cross examination admitted that there was a marriage proposal for her daughter with a person of Gunturupally Village and that the wedding cards were also printed but the said proposal was cancelled.

11. According to PW.1, the marriage of the accused with another girl was settled three months prior to the death of the deceased. Though PW.1 deposed that the accused supplied pesticide poison to the deceased, the same was not stated in the complaint that she filed or in her statement before the Police. PW.1's evidence shows that three

months prior to the incident, the marriage of the accused was fixed with another girl, whereas, PW.2 deposed that ten days prior to the incident, the marriage of the accused was fixed with another girl. Further, to discredit the evidence of PW.3, the defense counsel submitted that there was a previous dispute between the accused and PW.3. PW.6 in his cross examination deposed that as PW.1 failed to look for any alliances to the deceased, she committed suicide, but during the cross examination by the Public Prosecutor he denied his previous deposition that as the accused refused to marry the deceased, she committed suicide. Therefore, the evidence of PW.6 was not useful to the prosecution.

12. Section 306 of the IPC reads 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”.

13. To prove the offence under Section 306 IPC, the prosecution has to prove that the deceased committed suicide due to the abetment of the accused. Section 107 IPC defines abetment to mean that a person abets the doing of a thing, if he, firstly, instigates any person to do that thing ; secondly, engages with one or more other persons in any conspiracy for the doing of that thing ; thirdly, by an act or illegal omission, the doing of that thing. In the present case, there were

several proved disputes between the accused and the deceased. Admittedly, the evidence of PW.1 shows that the marriage of the deceased was fixed with some other person and the same was cancelled after the wedding cards were printed which shows that the compromise arrived at between the accused and the deceased which was only on the basis of assurance given by the accused that he would marry the deceased, gets fructified.

14. Whether mere uttering words “go and die” are suffice to prove instigation under Section 107 of IPC. In this regard, the Hon’ble Apex Court in **Sanju Alias Sanjay Singh Sengar Vs. State of Madhya Pradesh**¹ observed as under:

7. Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

8. In *Swamy Prahaladdas v. State of M.P.* [1995 Supp (3) SCC 438 : 1995 SCC (Cri) 943] the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked to the deceased “to go and die”. This Court was of the view that mere words uttered by the accused to the deceased “to go and die” were not even prima facie enough to instigate the deceased to commit suicide.

9. In *Mahendra Singh v. State of M.P.* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the appellant was charged for an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under:(SCC p.731, para 1)

¹ (2002) 5 SCC 371

“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.”

10. This Court, considering the definition of “abetment” under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620)

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires 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 for abetting the offence of suicide should be found guilty.”

15. In the case on hand also though there were disputes between the accused and the deceased, the prosecution has to prove that only at the instigation of accused, the deceased committed suicide. Prosecution story shows that there is sexual intimacy between the accused and the deceased and they continued the same till two months prior to her death. Further, PW.1 – mother of the deceased, admitted in her cross examination that they settled the marriage of deceased with other person and the same was cancelled after printing of wedding cards which shows that she agreed to marry other person than the accused in which case, refusal of the accused to marry could not be the reason for suicide.

16. Prosecution mainly relied on the evidence of PW.2 to PW.4 other than PW.1. PW.2 maternal uncle of the deceased, and PW.4 also deposed on the same lines of PW.1. The evidence of PW.3 can be discarded as there were previous disputes between the accused and PW.3. PW.6 was an independent witness and he himself admitted in the cross examination that as PW.1 failed to look alliances for the deceased, she died, but later he denied to depose that the deceased died due to the abetment of the accused. Therefore, the evidence of PW.6 also cannot be relied on totally.

17. In **State of West Bengal Vs. Orilal Jaiaswal and Another**², the Hon'ble Apex Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence in the trial Court 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 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.

18. Mere uttering the words "go and die" will not constitute the offence under Section 306 of IPC. Even if we accept the prosecution story that the appellant did tell the deceased to "go and die" that itself does not constitute the ingredients 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*. In the present case also, the prosecution has

² (1994) 1 SCC 73

failed to prove the *mens rea*, the evidence on record is not sufficient to prove the offences under Sections 306 and 417 of IPC.

19. The trial Court came to conclusion that accused instigated the deceased by stating that “go and die” on that deceased committed suicide without discussing the evidence on record in proper perspective. Further wrongly, convicted the accused for the offences under Section 417 and 306 of IPC and Section 3 (2) (v) of the SC/ST (POA) Act, 1989. In view thereof, this Court is of the opinion that the impugned judgment dated 28.10.2013 is not legally sustainable and it suffers with irregularity, as such, it is liable to be interfered with to the extent of convicting the accused for the offence punishable under Section 417, 306 of IPC and Section 3 (2) (v) of the SC/ST (POA) Act 1989.

20. In view thereof, this Court is of the opinion that the evidence on record is not sufficient to convict the appellant/accused as the prosecution has failed to prove its case beyond the reasonable doubt. Therefore, the benefit of doubt can be given to the appellant/accused. As such, the appeal is liable to be allowed. Accordingly, the appeal is allowed. The impugned judgment dated 28.10.2013 in S.C.No.48 of 2009 passed by the learned Special Sessions Judge for SC/ST (POA) Cases-cum-VII Additional District Judge at Warangal is set aside. The

bail bonds of the accused shall stand cancelled. He is set at liberty, forthwith, if he is not required in any other crime or case.

As a sequel, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

K. LAKSHMAN, J

K.SUJANA, J

Date :23.09.2023
PT

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT JUSTICE K. SUJANA

P.D. JUDGMENT
IN
CRIMINAL APPEAL No.975 OF 2013

(Pre-delivery judgment of the Division Bench prepared by the
Hon'ble Smt Justice K. Sujana)

Date: 23.09.2023
PT