

HIGH COURT OF ORISSA: CUTTACK
BLAPL NO. 915 of 2020

(In the matter of an application under Section 439, Criminal Procedure Code, 1973)

SHIBANI BARIK

Petitioner

Versus

STATE OF ODISHA

Opp. Party

For Petitioner:

M/s. B. K. Ragada, L. N. Patel,
H. K. Muduli and Sahoo, Advocates

For Opp. Party:

Mr. A. K. Beura, Addl. Standing Counsel

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing: 21.05.2020 Date of judgment: 28.05.2020

1. "People from the past, have a tendency to walk back into the present, and run over the future." Anthony Liccione's statement is epitomized in the present case, where a ghost of the petitioner's past has revived to haunt her present and wreck her future. The petitioner has filed the instant application under Section 439 of CrPC seeking bail. She is an accused in GR Case No. 4342 of 2019 arising out of Dhanupali PS Case No. 496 of

2019, pending in the court of the learned SDJM, Sambalpur involving the offence under Section 306/34 of IPC.

2.The storyline is brutal in its simplicity as summarized in the FIR. The allegation against the accused/petitioner is that she along with the co-accused have inflicted direct and indirect mental torture on the deceased (Padmalochan Barik) which resulted in the commission of suicide by the deceased. The statement of the witnesses recorded under Section 161 of Cr. PC reveals that the petitioner had tied her nuptial knot with the deceased (Padma lochan) on 21.02.2019. However, prior to her marriage, she was alleged to have been in love relationship with the co-accused Upendra and it was alleged to have continued even after her marriage. The co-accused (Upendra) had sent some of the intimate and private *Tik Tok* videos with the petitioner to the deceased which were also alleged to have been streamed in social media. The said *Tik Tok* videos depicting such fornication got deep seated in the frail mind of the deceased and the addictive power of instantaneity made him loose perspective and balance. Of course, the underpinnings of familial shame made him suffer a lot internally in the form of tremendous mental pressure which invited a dangerous haste in

ending his life on the fateful day of 13.07.2019 by hanging himself in the ceiling fan of his bed-room.

3.From the investigation and statements extracted under Section 161 of Cr. PC, it is evident that Upendra Mahananda is responsible for the abetment of suicide. The investigation does point finger at the role of the petitioner herein but not in a clear term. However, at this stage, the investigation of the case is at its infancy and more information needs to be gathered.

4.Learned counsel for the petitioner Mr. L.N Patel, strenuously contended that the petitioner has no role in the alleged commission of offence. It is her past life that has haunted her. The cause and circumstances surrounding the death of petitioner's husband which is apparently suicide but not yet appositely established. Though the statements, recorded under Section 161 of Cr. PC, of some of the family members, neighbours and friends' prima-facie disclose the tragic end of the deceased but none has attributed any motive of the petitioner or her role in the suicide of her husband. The petitioner was arrested on 14.01.2020 and since then she is in jail. Hence, she may be granted bail.

5.Per contra, Mr. A.K. Beura, Ld. Addl. Standing Counsel vehemently opposed the bail application of the petitioner stating that the petitioner is involved in the instant crime insofar as her role in abetting the suicide is concerned. The Investigation is in progress and considering the gravity of the offence she should not be granted bail. This is a non-bailable offence and the trial is yet to kick off. Therefore, releasing her on bail may skid the trial process.

6.Having heard the rival contentions of the parties and after perusal of updated case Diary, it is a prima facie view that the incident might have been perceived to be just a streaming of *Tik Tok* videos of deceased's wife and her former beau but it was morally and legally heinous which led to an ugly consequence. The petitioner being wife should have the deceased's emotional safety, instead she became the cause of his emotional insecurity and severe mental upheaval leading to cessation of a life. But the role of the petitioner or her commission of any positive act attracting Section 306 of IPC, does not properly resonate at this stage. A different story may be pan out via a proper trial. At this stage, it is trite to retrace and discuss the info graph which may be proffered qua the role of the petitioner, especially, considering her previous romantic relationship.

7.The offence of abetment to suicide under Section 306 of IPC is endowed with twin essential ingredients:(i)a person commits suicide (ii) such suicide was abetted by the accused. The offence involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. To hold a person liable for abetting suicide active role is required which can be described as instigating or aiding in doing thing[**K.D. Gaur, Criminal Law: Cases and Material, LexisNexis 8th Edn. 2015**].This has been reiterated in plethora of judgments decided by various High Courts and the Supreme Court.

8.The Kerala High Court in **Cyriac and Ors. vs. The S.I. of Police and Ors**¹has put the issue very succinctly:

“a fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot unfortunately, touch the issue. Those cannot fray the fabric of the provision contained in section 306 of IPC, in short, it is not what the deceased ‘felt’, but what the accused ‘intended’ by his act which is more important in this context. Of course, the deceased’s frail psychology which forced him to suicide also may become relevant, but it’s only after establishing requisite intention of accused.”

¹ILR 2005 (3) Kerala 646.

The Madras High Court in ***Manikandan vs. State***,²relying on the previous judgment of the same High Court in ***Rajamannar vs. State Rep. by the Inspector of Police Sewapet Police Station, Thirruwallur District***³observed that:

“If the lover commits suicide due to love failures, if a student commit suicide because of his poor performance in the examination, a client commits suicide because of his case is dismissed, the lady, examiner, lawyer respectively cannot be held to have abetted the commission of suicide. For the wrong decision taken by a coward, fool, idiot, a man of weak mentality, a man of frail mentality, another person cannot be blamed as having abetted his committing suicide.”

“Sometimes, the decision to commit suicide might be taken by the victim himself/herself, unaccompanied by any act or instigation etc. on the part of the accused. A person may die like a coward. On his failure in the examination, a student may commit suicide. They are weak minded. They are persons of frail mentality. For their foolish mentality/ decision, another person cannot be blamed.”

It is not the wish and willingness nor the desire of the victim to die, it must be the wish of the accused, it is the intention on the part of the accused that the victim should die that matters much. There must be a positive act on the

24 MLJ CRL 240 Madras High Court (2016).
3CrI. O.P. No. 8230/2014dated 3.4.2014

part of the accused. It need not be by words. It may be by the deeds. It may be by letters. But, at the same time, the decision of a weak minded or a woman of frail mentality cannot be misunderstood as abetment. For one's foolish act another person cannot be made liable."

9. The Supreme Court in **GurcharanSingh vs. State of Punjab**,⁴ held that the basic ingredients of Section 306 of IPC are that a suicide death and abetment thereof, and absence of any of these conditions could vitiate the indictment. The judgment derived its strength from **State of West Bengal vs. Orilal Jaiswal And Another**,⁵ wherein it was observed by the Hon'ble Supreme Court that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial of the parties. The apex court in **Chitresh Kumar Chopra vs. State** (Govt. of NCT),⁶ **Gangula Mohan Reddy vs. State of Andhra Pradesh**,⁷ **S. Mohan vs. State**⁸ etc. once again reiterated that the abetment involves a mental process of instigating a person intentionally hence in such cases conviction cannot be sustained.

10. At this stage, it seems that the role of *Tik Tok* videos in the suicide has escaped the attention of the Investigating officer. This angle does offer a

4(2017) 1 SCC 433.

5(1994) 1 SCC 73.

6(2009)16 SCC 605

7(2010) 1 SCC 750.

8 (2011) 3 SCC 626

buffer for discussion, because it was the transmission and use of Tik Tok videos in the entire episode which disturbed the brain biology and calmly fragiled the core mental strength of the deceased. The prosecution in the instant case ought to have gone for scrupulous intendance to explore the investigation in this direction.

11.It appears that the *Tik Tok* videos in the instant case has become the cause for tragic end of an innocent life, though the content of the *Tik Tok* video could not have been touched by the updated case diary. This kind of transmitting *Tik Tok* videos with offensive content to harass victims are on prowl and are gradually on the rise. Large number of people, especially the youth, both in rural and urban areas, are vulnerable to such troubling trend. Such act is executed smartly through digital platforms and get integrated with the social media. Seeing such *Tik Tok* videos getting viral might have become humiliating and embarrassing to the deceased which is quite apparent in the instant case though the content of the videos is yet to be brought into the preview of the investigation. Of late, Cyber bullying activity like the instant case, has reared its ugly head and swept away so many innocent lives through many of its ugly manifestations. Tik Tok Mobile App which often demonstrates a degrading culture and encourage

pornography besides causing pedophiles and explicit disturbing content, is required to be properly regulated so as to save the teens from its negative impact. The appropriate Government has got the social responsibility to put some fair regulatory burden on those companies which are proliferating such applications. Though certain sections of the Information Technology Act in conjunction with other Acts in force, do have the teeth to bite such offenders especially Sections 66E, 67 and 67A, which stipulates punishment for violation of privacy, publication and circulation of what the Act calls “*obscene*” or “*lascivious*” content, but grossly insufficient. The Information Technology Act, 2000 does impose an obligation upon such companies to take down content and exercise due diligence before uploading any content, but India lacks a specialized law to address the crime like cyber bullying.

12. Another grim scenario often comes the fore is the traditional approach of the investigative machinery while dealing with such type of offences. Most of our investigating officers are neither well trained nor do they understand the nuances of cybercrime. It is imperative that the personnel engaged in investigation need to be imparted periodical training so as to upgrade their skill to investigate this kind of techno-legal issues. Further, improvement in the cyber intelligence, cyber forensics and cyber

prosecution training are long overdue to boost the hitherto rickety cyber policing.

13. Further digging up, the instant case might bring some surprises, but at the moment the role of the co-accused seems to be quite apparent in terms of preparing the Tik Tok videos having some inappropriate content and sending the same to the deceased. This aspect of the taint cannot be properly established sans a befitting trial process. At this stage, this court cannot lose sight of the fact that she has already been in custody for a substantial period only on the belief that she will temper with the witnesses, if left at liberty. Even a positive role of the petitioner in the entire episode cannot be ruled out, however, at the moment, invoking Section 306 would be preposterous. Hence, without more ado, she deserves the benefit of bail.

14. In the instant case, the judicial discretion cannot be in precise exactitude but it is expected that the accused person will stand her trial when called upon. Having considered the matter in the aforesaid perspective and guided by the precedents cited hereinabove, this Court comes to an irresistible conclusion that the petitioner shall be released on

bail with imposition of certain terms and conditions as the Court in seisin over the matter deems fit and proper with further condition that she shall not misuse the liberty granted. It is clarified that the trial court shall proceed with a fair trial uninfluenced by any of the observations made hereinabove.

For the aforesaid reasons, the present bail application is allowed.

[S.K.PANIGRAHI,J.]

Orissa High Court, Cuttack.
The 28th day of May, 2020/*AKP*