

KISHORI LAL

A

v.

STATE OF M.P.

JUNE 19, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

B

Penal Code, 1860:

ss. 306 and 107—Suicide by wife—Conviction of husband for abetment of suicide—Challenge against—Held: There is no proof of direct or indirect acts of incitement to the commission of suicide—Evidence show that deceased was disturbed due to her failure to beget a child—Prosecution has failed to establish its case—Conviction set aside.

C

Words and Phrases:

'Abetment' and 'instigate'—Meaning of—Discussed.

D

Deceased had committed suicide. Trial Court convicted appellant husband for abetment of suicide under s.306 IPC. High Court affirmed the conviction.

E

In appeal to this Court, appellant contended that there was no evidence led to show that he was in any manner responsible for suicide; that the alleged torture done by the appellant as spoken by the mother of the deceased related to the alleged incident about 4-5 years prior to the occurrence and that the post-mortem did not reveal any mark of violence.

F

Allowing the appeal, the Court

HELD: 1. S.107 IPC defines abetment of a thing. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal mission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy

G

A or intentional aid, as provided in the three clauses of s.107. S.109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in s.109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. [Para 6] [1053-G, 1054-A, B, C]

2. In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. Merely on the allegation of harassment, conviction in terms of s.306 IPC is not sustainable. There is ample evidence on record that the deceased was disturbed because she had not given birth to any child. PWs. 8, 10, and 11 have categorically stated that the deceased was disappointed due to her failure to beget a child and she was upset due to this. In the background facts, it is crystal clear that the prosecution has failed to establish its case.

D [Paras 7 and 8] [1054-C, D, E]

Mahinder Singh v. State of M.P., (1995) AIR SCW 4570, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1115 of 1999.

E From the Final Order and Judgment and dated 06.05.1988 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 172 of 1984.

Shankar Divate, (A.C) for the Appellant.

F Merusagar Samantarary, Vairagya Vardhan and C.D. Singh for the Respondent.

The Judgment of the Court was delivered by

G DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by the learned Single Judge of the Madhya Pradesh High Court, dismissing the appeal filed by the appellant questioning his conviction under Section 306 of the Indian Penal Code, 1860 (in short 'IPC') and sentencing him to undergo RI for five years.

H 2. The background facts in a nutshell are as follows:

Appellant was married to Rajkumari (hereinafter referred to as the 'deceased'). On 31.8.1982 she committed suicide. On the basis of information lodged by the accused investigation was undertaken. The accused was arrested for allegedly having abetted deceased to commit suicide on 31.8.1982. According to the prosecution in the evening of 31.8.1982 the accused left for his duty leaving the deceased in the house. In the evening when he reached the house the room was found closed from inside and the deceased did not respond to his call for opening the door. Apprehending that there was something wrong, he went to Police Station and lodged the report. The police went with him and with the help of persons of the locality broke open the door and found that the deceased had committed suicide by hanging from the roof. After completion of investigation charge sheet was placed and the accused pleaded innocence.

3. Primarily relying on the evidence of PWs. 8, 10 and 11 the Trial Court came to hold that the accused had abetted suicide. Accordingly the conviction was recorded and sentence was imposed. Appeal before the High Court did not bring any relief to the appellant.

4. In support of the appeal, learned counsel for the appellant submitted that the witnesses PWs. 8, 10, and 11 who are the brothers and the mother of the deceased clearly stated that after living together for long years some differences cropped up between the deceased and the accused and, therefore, she started living in the house of the parents. On the persuasions of the father-in-law and the brother-in-law she came to the accused's house about a month before the date of occurrence. There was no evidence led to show that the accused was in any manner responsible for suicide. The so-called alleged torture done by the accused as spoken by the mother of the deceased related to the alleged incident about 4-5 years prior to the occurrence. The post-mortem also did not reveal any mark of violence. In fact, the so called marks were stated to be several days old and there was no evidence to conclude that those injuries were inflicted by the accused.

5. On the other hand, learned counsel for the State submitted that the presumption available under Section 113A of the Indian Evidence Act, 1872 (for short 'the Act') can be pressed into service. He, however, fairly conceded that the marriage was more than a decade old when the alleged occurrence took place.

6. Section 107 IPC defines abetment of a thing. The offence of abetment

- A is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence.
- C 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence

7. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. [See *Mahinder Singh v. State of M.P.*, (1995) AIR SCW 4570]. Merely on the allegation of harassment conviction in terms of Section 306 IPC is not sustainable. There is ample evidence on record that the deceased was disturbed because she had not given birth to any child. PWs. 8, 10, and 11 have categorically stated that the deceased was disappointed due to the said fact and her failure to beget a child and she was upset due to this.

8. If the background facts are analysed it is crystal clear that the prosecution has failed to establish its case. That being so, the appeal deserves to be allowed, which we direct.

9. The bail bonds of the accused executed for bail on 6.1.1999 shall stand discharged. We record our appreciation for the able assistance rendered by Shri Shankar Divate, learned *amicus curiae*.

D.G.

Appeal allowed.