

(1987) 02 MP CK 0010

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 150 of 1986

Mahaveer Singh and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-02-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 306

Citation : (1987) JLJ 645 : (1987) MPLJ 403

Hon'ble Judges : N.K. Singh, J

Bench : Single Bench

Advocate : B.L. Bhargava, for the Appellant; Arvind Dudawat, Addl Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.K. Singh, J.

The appellants have come up in the present appeal against their convictions, by the trial Court, u/s 306, Indian Penal Code, and the various sentences imposed upon them, thereunder.

Appellant Mahavir Singh is the husband of late Laxmi, who is alleged to have committed suicide by burning herself. Roop Singh is Mahavir's elder brother, Krishna Devi is Iatter's wife and Keshar Bai is the mother. The fact of death of Laxmi on the intervening night of 1 I/12th November, 1983, at about 4.30 a.m. in the residential house in I.T.I. Colony, Morar, is not in dispute. The fact of her death by suicide was reported by appellant Roop Singh at P.S. Morar immediately after at about 6.15 a.m. and recorded by H. C. Police Rambaran Singh (P.W. 12) vide Ex. P. 11 u/s 174, Criminal Procedure Code. F.I.R. Ex. P. 9, on the printed form, was also prepared on its basis. But, on the same day, i.e., on 12.11.1983, Bramha Singh (P.W. 1), brother of the deceased, submitted a typed report Ex. P. 1 to the Town-Inspector in respect of the alleged offence. The sum and substance of Ex. P. 1 was that the husband of Laxmi and other members of his

house-hold were making repeated demands for a two-wheeler in addition to money. They also used to beat, starve and torture her. The offence u/s 306, Indian Penal Code, (abetment of suicide) was investigated into on the basis of Ex. P. I by the police. On completion of the investigation, S. O. P. S. Morar, put up the chargesheet in respect of the alleged offence u/s 306, Indian Penal Code, against the four appellants-accused persons.

In the trial Court, the four appellants-accused persons abjured the guilt and stated that they had been falsely implicated due to ill-relations, that developed between the parties. The learned trial Judge, upon an assessment of the evidence adduced before him, has convicted and sentenced the appellants, as recorded in paras 41 to 43 of his impugned Judgment dated 28-7-1986.

While in course of the arguments, the learned counsel for the parties took me through the record and the impugned Judgment of the trial Court. It is clearly brought out thereby that after the occurrence, H. C. Police Morar Rambaran Singh (P.W. 12) was the first police-man to reach the spot after recording the Marg report Ex. P. 11. He found the burnt dead body of Laxmi inside the small bath-room of the house, as also noted in his spot map Ex. P. 12. A small tin of kerosene-oil was also placed near the dead body which was seized under the seizure memo Ex. P. 13, alongwith some other articles. The inquest report was prepared in presence of the witnesses vide Ex. P. 2. Apparently it was a case of commission of suicide by Laxmi by burning herself with kerosene-oil in the bath-room, as recorded in the inquest report Ex. P. 2. That is also the case of the police. The fact of suicide by Laxmi being not in dispute, the sole point for determination in the present appeal is whether the appellants abetted the commission of suicide, so as to be punishable u/s 306 Indian Penal Code ?

As many as 12 witnesses have been examined on behalf of the prosecution. The appellants have examined one Madan Singh D.W. 1 in their defence. In paras 23 to 40 of his Judgment, the learned trial Judge has dealt with the question as to whether the appellants were guilty of the offence of abetment suicide punishable u/s 306, Indian Penal Code. I have gone through the impugned judgment and record of the trial Court very carefully and have also given my anxious considerations to the arguments advanced in the case. Having done so, I am afraid that some of the inferences of the learned trial Judge appear to be based more on conjectures and imagination, rather than the reasoning, which could stand the test of legal scrutiny.

In order to bring out the allegations of dowry demands made on Laxmi and her parents, the cruel treatment meted to her by the appellants on the non-fulfilment of the demands, the material witnesses examined by the prosecution are Laxmi's brother Bramha Singh (P.W. 1), her father Saligram Singh (P.W. 3), a retired Police constable, his other son Narayan Singh (P.W. 5) Railway-Station Master, Gohad, latter's wife Rani (P.W. 6) and mother of the deceased Baijanti Bai (P.W. 9). These witnesses reside at different places and certainly not near or around the house, where the deceased was residing prior to her death. They are

not and could not possibly be the eye-witnesses to the incidents of beating and torture of the deceased, when they took place. The investigating agency could not get hold of a single witness of the locality to the alleged, beating and torture.

At the same time, from the oral evidence of the prosecution witnesses, named above, although they are to a certain extent interested, coupled with the other and circumstantial evidence in the case, I have no hesitation in affirming the finding of the learned trial Judge to the extent that the husband of the deceased and his family members are greedy people and they did torture and beat the deceased on non-fulfilment or unsatisfactory fulfilment of the demands for two-wheeler, either a moped or a Scooter, as also money. It is even brought out that during the period preceding the death, late Laxmi was beaten so much so as to cause some ordinary bleeding injuries on her person. But, did the appellants cut one of her legs as stated in paras 34 and 35 of the impugned judgment ? I am of the clear opinion that in this regard the positive finding of the learned trial Judge is based on pure conjecture and imagination. The trial Court has largely relied on the statements of Narayan Singh (P.W. 4) and his wife Rani (P.W. 6), who reached the spot and saw the burnt dead body soon after the occurrence. They do not testify to have seen Laxmi while she was alive. As such, from their statements, the inference drawn by the learned trial Judge relating to the chopping of one leg is a pure conjecture.

As a matter of fact, failing any eye witnessed account, the best evidence on the point would have been the autopsy report (Ex. P. 7) recorded by Dr. P. S. Badkur (P.W. 8) and the oral evidence given by him on the count. However, this doctor has referred to ten burns of different degrees suffered by the deceased and has opined that "(her) death was due to asphyxia as a result of burns." This medical witness, who is a Medico-legal Officer in J.A. Hospital, Gwaliori has referred to only two antsmortam injuries on the person of the deceased, which have been described by him as follows :

- (1) Ecchymosis 4" x 3" on mamebrium stern horizontally
- (2) Ecchymosis 3" x 3" on anterior aspect of left shoulder joint.

The doctor has also opined that these injuries could have been caused by a blunt object and were simple in nature. As such, the medical witness, who has conducted the autopsy, has not referred to any ante-mortem injury of the leg. In case, as is also alleged by the prosecution, the deceased committed the suicide in the bath-room of 4" x 4" by pouring kerosene over her body in the early morning at about 4.30 a.m., it could not be ruled out that the severance of leg was caused in course of or after burning, or while extracting the dead body from there.

Even assuming otherwise, if two views are possible on a matter, one pointing to the guilt of the accused, and the other to the case of suicide by the deceased, the benefit has to go to the accused, as stated in the case of Sharad Birdhichand Sarda vs. State of Maharashtra (1984 CAR 263 (SC), which was also cited before

the learned trial Judge. The case has been brushed aside by the learned Judge on account of difference in facts. Here, it may be pointed out that, all the same, principle of law involved is the same.

In this connection, it may also be pointed out, as argued by the learned counsel for the appellants that certain circumstances of the case favouring the appellants could not also be lost sight of, namely that (I) a report in respect of the death was lodged soon after the occurrence at about 6.15 a.m. at P. S. Morar, and (II) an immediate message was also sent to the relatives of the deceased, who rushed to the spot and saw the dead body, in the state it was after suicide. As such, there was no attempt to suppress the body, or the ante-mortem injuries thereon, which pointed to the innocence of the accused in respect of the allegations regarding the offence u/s 306 Indian Penal Code.

The technical question is whether the offence u/s 306 of the Indian Penal Code was made out against the appellants. This offence is described in the Penal Code as follows :

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.

In Chambers 20th Century Dictionary, the word "abet" has been defined to mean "to incite by encouragement or aid (used chiefly in a bad sense), to back up." A Division Bench of the Punjab and Haryana High Court in Raj Kumar vs. State of Punjab (1983 (I) CLR 660) has very elaborately interpreted the definition of "abetment" of an offence. Their Lordships were pleased to hold that expression "instigate" in the Concise Oxford Dictionary is defined as to "urge or incite, bring about the persuasion, in Webster, it has been defined as "urge forward, provoke with synonyms of stimulate, urge, spur, provide, tempt, incite, impel, encourage, animate. The word "instigate" in common parlance would mean to go, to urge forward or provoke, incite, or encourage to do an act." This case has been followed by the said High Court in the cases of Rajkumar and another vs. State of Punjab (1985 (1) Crimes 398), and Malkiat Singh vs. The State of Punjab / Crimes 1985 (1) Crimes 249). I have no reason to differ from the interpretation given by the Punjab and Haryana High Court to the word "abetment" in the present context. While in course of the arguments, the learned counsel for the appellants also referred to the case of Chanchal Kumari and Others Vs. Union Territory, Chandigarh, , wherein their Lordships of the Supreme Court have mainly dealt with the factual aspect relating to the non-dependability of the evidence adduced in that particular case in order to prove the offence punishable u/s 306, Indian Penal Code. In the present case also, so far as it relates to the factual aspect, the evidence as adduced by the prosecution could not, as a whole, be termed so "dependable", as to warrant conviction thereon.

From the discussion above, it is obvious that the conviction by the trial Court of

the appellants in respect of the alleged offence u/s 306 Indian Penal Code, cannot be upheld. However, before parting with the case, I would like to observe that, generally speaking, in the cases of present nature, which have of late increased menacingly and have assumed importance, the investigating agency, if it has genuinely investigated into the occurrence, should not rest content with the sole allegation of the offence u/s 306 Indian Penal Code, in the chargesheet; instead, evidence permitting, it should also incorporate relatively minor offences relating to the alleged earlier beating and causing injuries to the deceased, so that even if the major offence was not proved, the minor ones could be brought home to the accused. Material collected in investigation permitting, it should also incorporate the offences defined in recently added Chapter XXA of the Penal Code, relating to "Cruelities by Husband or Relatives of Husband"- Criminal Law (Second Amendment) Act, 1983 (Act No. 46 of 1983). Even if the prosecution neglects or deliberately omits to incorporate these offences in the chargesheet, the trial Court, while framing the charge, should go deeply into the papers relied on by the prosecution to find out whether any minor offences of the nature, given above, were also made out against the accused. The relevant charges should be framed against the accused, only after such perusal of the papers, so that failing the major charge, some punishment under the minor heads could be awarded to the accused, so as to get rid of the menacing social evil in due course.

In conclusion, the result is, that this appeal is allowed. The convictions by the trial Court of the four appellants u/s 306 Indian Penal Code, are, hereby set aside and they are acquitted of the same. The bail bonds of the appellants, who are on bail shall stand discharged, and release warrants shall be issued forthwith for the release of those confined in jail, unless they are wanted in any other offence.

Order accordingly.