

(2016) 11 MP CK 0028
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 9928 of 2016

State of Madhya Pradesh

APPELLANT

Vs

Murlidas Bairagi

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 306

Citation : (2017) 1 JabLJ 344

Hon'ble Judges : Shri Atul Sreedharan, J.

Bench : Single Bench

Advocate : Mr. Vijay Soni, Advocate, for the Applicant/State; Shri Manoj Kumar Rajak, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shri Atul Sreedharan, J.—The present petition has been filed for leave to appeal under the provisions of Section 378(III) of the Code of Criminal Procedure against the judgment dated 29.02.2016 passed by the learned IV Additional Sessions Judge, Bhopal, in Sessions Trial No.384/2015, whereby the respondents were acquitted for an offence punishable under Section 306 of the Indian Penal Code.

2. The prosecution story is that the respondents, being the father-in-law, brother-in-law and wife of the deceased ? Raju Bairagi, treated the deceased with cruelty by having taken away the respondent No.3, who is the wife of the deceased from his society along with his children and making her live at her parental home and not allowing the deceased to meet his children. On account of the above said act on the part of the respondents, the deceased is stated to have poured petrol all over his body on 18.02.2015 and set himself on fire on account of which he received severe burn injuries of which he died on 06.03.2015. Thereafter, Crime No.239/2015 under Section 306 read with Section 34 of I.P.C. was registered against the respondents and they were prosecuted for the same. There is a dying

declaration which has been recorded by the Executive Magistrate on 20.02.2015.

3. Learned counsel for the State Mr. Vijay Soni restricted his reliance to the evidence of the deceased in the form of the dying declaration and the statement of the Tahsildar who recorded the dying declaration. Fleetinglly, he has also referred to the statement of Dinesh Kumar (PW-4) who is an independent witness. With regard to the statement of PW-3, who is the Tahsildar, learned counsel for the State has drawn the attention of this Court to paragraph 3 in which the Tahsildar has reproduced the contents of the dying declaration in which the deceased has stated that he feels himself extremely harassed by his in-laws and that his wife has been taken to her matrimonial home by them and that both his children have also been taken away by his in-laws and they are torturing him by demanding that the deceased also stay with them at the parental home of the respondent No.3. He further tells the Tahsildar that he has no desire to go and live with his in-laws and that he was being harassed by his in-laws on account of which he took out petrol from the vehicle of his friend Ajeet, poured the same on himself and set himself on fire. Thereafter, the deceased once again reiterates that he was being harassed by his in-laws and that his in-laws would not let him talk to his wife, the respondent No.3 herein and his children, on account of which, he was depressed. Thereafter, the Tahsildar states that he had recorded the dying declaration of the deceased as it was stated before him. The Tahsildar also states that he had got the left toe imprint of the deceased as his hands were badly burnt on account of which the thumb impressions could not be taken. In paragraph 7 of the cross examination of this witness, the Tahsildar states that it is correct to suggest, that the deceased did not tell him precisely as to who amongst his in-laws was harassing and torturing him. He also states that it is correct to suggest that the deceased never told him as to how many members are there in the family of his in-laws. Ex.P-10 is the dying declaration recorded by the Tahsildar which reveals the same as stated herein above in the deposition of PW-3.

4. Thereafter, learned counsel for the State has referred to the statement of PW-1 Pushpa Devi who is the mother of the deceased. From her statement, it is revealed that the marriage between the deceased and respondent No.3 had taken place about 14-15 years ago. In para 3 of her statement she states that her daughter-in-law the respondent No.3 used to tell the deceased that they should take a house separately, close to her parental home and stay there. She has also stated that whenever her son used to go to her house, he used to mention that the respondent No.3, 2 and 1 used to trouble him. She has also stated that the deceased has never told her that as to on what issues the respondents used to trouble him. In para 4 this witness states that about six months before this incident, the respondent No.3 had once again told the deceased that they would now stay at her parental home only. In para 10 this witness has stated that there was an earlier altercation between the deceased and respondent No.3 on account of which the respondent No.3 had gone to Mahila Thana where there was a compromise between the two. She has also

admitted in para 11 that the deceased had given a letter of compromise in which he had written that he would take a house separately on rent and stay there with his wife and children. She also admits that he had in the said compromise letter also written that he would not threaten to commit suicide. The statement of the father PW-2 Ramdas Bairagi is also quite similar to what has been stated by the mother of the deceased.

5. In short, the case of the prosecution before the trial Court was that the respondent No.3 was staying separately with her father and brother at her parental home along with her children and that the respondent Nos.1 and 2 did not let the deceased maintain any kind of contact with respondent No.3 and his children and that there was an instance where the respondent Nos.1 and 2 had beaten the deceased on account of which the deceased felt humiliated.

6. Upon going through the impugned judgment, I find in paragraph 22, where submissions have been placed by the counsel for the defence, that to prove the offence under Section 306 of the I.P.C., the ingredients of abetment under Section 107 of I.P.C. must be fulfilled. Several judgments were cited to support this view before the trial Court which have been noted by the learned trial Court in para 22. Main amongst them is Sanju @ Sanjay Singh Sengar v. State of M.P., reported in 2002 (2) J.L.J. 275.

7. In para 23 of the impugned judgment, the learned trial Court has succinctly arrived at the cause of suicide being the demand of the respondent No.3 upon the deceased to go along with her and stay with her at her parental home which the deceased did not want to and this appears to be the main reason for the torture/harassment felt by the deceased.

8. Referring to the evidence of mother and father PW-1 and PW-2, the trial Court has held that there are contradictions in the statements between their statement in chief and cross examination. Learned trial Court has also taken into the cognizance the statement of the parents that the deceased used to consume alcohol and that there was an earlier incident in which the respondent No.3 had approached the police where there was a compromise in which the deceased had given in writing inter alia that he would not threaten to commit suicide any more. The trial Court has also taken into account the evidence given by the independent witness Dinesh Kumar in which the said witness has stated in his cross examination that the deceased had told this witness that he used to feel harassed by his own parents. Thereafter, in para 25 the learned trial Court has relied upon the ratio laid down in the case of Sanjay @ Sanjay Singh Sengar v. State of M.P. in order to arrive at the finding that the ingredients of Section 107 of I.P.C. have not been established by the prosecution in order to convict the respondents under Section 306 of the Indian Penal Code.

9. Learned counsel for the objector has also adopted the submissions made by the learned counsel for the State.

10. For punishment to be given under Section 306 of the Indian Penal Code, first

of all, the offence of abetment, as laid down under Section 107 of I.P.C., must be established. Under section 107 of the I.P.C. abetment can be by instigating a person or by conspiring with that person or the intentionally aiding that person to commit an offence. It is not being the case of the prosecution that at any point of time the respondents herein had ever instigated the deceased to commit suicide and neither that they had assisted by giving him petrol to commit suicide. The instances given in the dying declaration even if taken to be as a gospel truth, even then, the deceased states that the cause of death is the harassment by the respondent No.3 caused by staying with her parents and also asking the deceased to stay along with her at her parental home. Besides this, the instances of the respondent Nos.1 and 2 not allowing the deceased to meet or talk to his wife and children are also given as attributing factors for the deceased committing suicide. Wherever they are legal options that can be exercised by an individual and where such an individual does not resort to the availability of such legal options and commits suicide, in such cases, no case of abetment can be made out and it would appear prima facie and even otherwise, that the person who committed suicide was oversensitive to the mundane vagaries of life and had taken the easier way out of it. As regards the isolation of his wife by his in-laws, if the same was considered to be illegal then the deceased had option of approaching the High Court under Article 226 of the Constitution of India by filing a habeas corpus petition and as regards the staying of his wife at her parental house and keeping her children with her, the deceased had option to approach the Family Court under Section 9 of the Hindu Marriage Act.

11. Without having taken recourse to the remedies available to him under law, the deceased had chosen to commit suicide. Unfortunate, as it is, but the same cannot be construed as adequate to establish the charges against the respondents under Section 306 of I.P.C.

12. Under the circumstances, this Court is of the opinion that the order passed by the trial Court is well considered order and far from being perverse, is most appropriate in the facts and circumstances of the case and in consonance with the law of land.

13. Under the circumstances, the M.Cr.C. is dismissed.