

(2010) 10 MP CK 0033

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Revision No. 459 of 2010

Malkhan Singh and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Oct. 11, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 161, 228(1), 397, 401
- Penal Code, 1860 (IPC) - Section 107, 109, 306, 498(A)

Citation: (2011) 1 MPHT 277 : (2011) 2 MPJR 208

Hon'ble Judges: Indrani Datta, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Indrani Datta, J.

Heard on admission.

Admit.

With the consent of the parties, the matter is heard finally at motion stage.

This revision has been preferred by the Appellants u/s 397/401 of Code of Criminal Procedure, 1973, against the order dated 6-5-2010 passed by v. Ith Additional Sessions Judge (Fast Track) Lahar, District Bhind in Sessions Trial No. 280 of 2009 whereby, charge u/s 306, IPC has been framed against the applicants.

The facts in nut-shell giving rise to this revision petition are that applicants and co-accused are facing Sessions Trial No. 280 of 2009 before v. Ith ASJ (Fast Tract), Lahar whereby, the charge has been framed against applicants for the offence alleged to have been committed u/s 306, IPC giving rise to this revision.

It is contended on behalf of the applicants that applicant No. 1 is husband and applicant No. 2 is Jethani of deceased Lata who sustained burn injuries on 9-2-2009 and expired on 19-2-2009. It is submitted that dying declaration of deceased was recorded twice first on 9-2-2009 and second on 12-2-2009 and in both the dying declarations, she has deposed that she was cooking food and at that time, her saree caught fire and she sustained burn injuries. It is further submitted that statement of her mother Urmila was recorded by Executive Magistrate on 19-2-2009 in which, she has stated that when she met deceased in hospital, deceased has not told her anything and she was frightened. She has further stated that there was no specific dispute between deceased and her in laws except small household matter and she suspects hand of applicants in the incident. It is further submitted that this statement of mother of deceased is only suspicion and thereafter her statement and statement of the witnesses u/s 161, Code of Criminal Procedure is recorded after five months on 4-7-2009, wherein, it is alleged that deceased told them that applicants used to beat her and harass her concerning household matters. It is urged that the applicants are falsely implicated in the case. Prima facie no case u/s 306, IPC is not made out as necessary ingredients of abatement are lacking. It is also specific from her dying declaration that she caught fire accidentally, hence, order of Trial Court framing charge u/s 306, IPC deserves to be set aside.

Learned Counsel for the applicants placed reliance on the citation Surendra Jain v. State of M.P. 2007 (I) MPWN 85, in that case, it was observed that act of accused was not fully falling in any of the three categories enumerated u/s 107, Code of Criminal Procedure, hence, charge cannot be framed. Further reliance is placed on the citation Radha (Smt.) v. State of M.P. ILR (2008) MP 3333, in which, it is held that abatement of suicide u/s 306, IPC involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. More active role which can be described as instigating or aiding doing of a thing is thus required before a person can be said to be abetting suicide. Cruel or insulting behaviour cannot be taken an act of abetting suicide.

Relying on these citations, it is submitted that the prima facie no case is made out u/s 306, IPC against applicants as there is no evidence that the applicants instigated deceased to commit suicide.

Combating claim of the applicants, learned Panel Lawyer for urged that in the statements of witness Urmila mother of deceased recorded u/s 161, Code of Criminal Procedure on 4-7-2009, it has been specifically stated that applicants used to harass and torture her due to which, she set herself on fire and committed suicide. Further in the statement of Ramavtar recorded u/s 161, Code of Criminal Procedure on 4-7-2009, it is specifically stated that the deceased intimated him that the applicants set her on fire and therefore, the charge u/s 306, IPC has rightly been framed against the applicants. It is further submitted that at least case will come in purview of Section 498A, IPC and order of Trial Court, requires no interference and

therefore, prayed for rejection of this revision.

Heard rival contention of parties and perused the documents available on record.

For framing charge u/s 306, IPC, it is necessary that there should be material to indicate that accused has abetted the deceased to commit suicide. Section 306, IPC reads as under:

Section 306. 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.

Abetment has been defined in Sections 107 and 109, IPC which reads as under:

Section 107. A person abets the doing of thing, who-

First.- Instigates any person to do that thing; or

Secondly.- Engages with one more other person or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by act or illegal omission, the doing of that thing.

Whoever, either prior to or at the time of commission of an act does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof is said to aid the doing of that act.

Section 109 of the Indian Penal Code provides for punishment of abetment which reads as under:

Section 109. Whoever abets any offence shall, 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 offence.

Section 306, IPC makes abetment of the commission of suicide punishable, therefore, for making liable for an offence punishable u/s 306, IPC, it is a duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of accused, it is necessary to see that his act must fall in any of the three categories as enumerated u/s 107, IPC. It is necessary to prove that the said accused instigated the person to commit suicide or engaged himself with one or more other persons in any conspiracy for seeing that the deceased commits suicide.

Thus, on the basis of the material collected during investigation, it can safely be said that there is no prima facie case to indicate that applicants incited, prompted or pressurized the deceased with the intention that she should commit suicide. The ingredients of Section 107, IPC are totally lacking. However, whether applicants

subjected her to cruelty or not is to be decided after evidence.

Considering the above legal position and the material collected during investigation in this case, this revision is allowed and the order dated 6-5-2010 passed by v. Ith ASJ (Fast Track) Lahar Distt. Bhind in S.T. No. 280 of 2009 framing charge u/s 306, IPC against the applicants is hereby set aside. The charge can be altered at any time. Learned Trial Court should proceed with the trial considering the above observations keeping in view the provisions of Section 228(1)(a), Code of Criminal Procedure.

Copy to concerned Court as per rules.