

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

Cr. Appeal No. 8469/2019

Shivcharan

Vs.

State of Madhya Pradesh

.....

For the appellant :- Mr. Pramendra Singh Thakur Ld. Adv,

For the respondent :- Mr. Utkarsh Agarwal, Ld. Panel Lawyer

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Coram: Atul Sreedharan J.

Whether approved for reporting: Yes

Law Laid down: Abetment of an offence, falls under the category of “Inchoate Offences” – Characteristics of an Inchoate Offence – When can an accused be held guilty of having abetted an offence – assessing the guilt of an accused in abetment of suicide by wife from domestic violence/matrimonial cruelty.

Significant paragraphs: 16 to 20

Heard through video conferencing

**(Atul Sreedharan)
Judge**

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J U D G E M E N T
20/01/2021

The present appeal has been filed by the appellant, aggrieved by the judgment and order dated 10-07-2019 passed by the II Additional Sessions Judge, Multai, District Betul, in Sessions Trial No. 101/2018. The appellant has been found guilty and convicted to suffer seven years RI for the offence under Section 306 IPC and a fine of Rs. 1,000/- with an additional RI of three months in default thereof. He has also been convicted for an offence under Section 498-A of IPC and sentenced to rigorous imprisonment for two years and fine of Rs. 1,000/- in default of the same, to undergo RI of an additional three months. With the consent of parties, this appeal is finally heard.

2. Briefly stated, the case of the prosecution is that the appellant herein who is a labourer, is the husband of the deceased Bhimibai. The marriage was solemnised with the

consent of both the parties and their families on 16-05-2017. The deceased consumed poison and died on 04-07-2018, just about a year after she got married.

- 3.** Vide order dated 10-12-2018, charges were framed against the appellant u/ss. 304-B and 498-A of IPC. However, as the prosecution was unable to prove the demand of dowry, the learned court below acquitted him of the charge under Section 304-B but convicted him for an offence under Section 498-A and 306 of IPC. It would be relevant to mention here that the appellant was never charged under Section 306 of IPC.
- 4.** PW 1 and 2, are the father and the mother of the deceased, who have stated in their evidence that the deceased, after marriage was a victim of physical violence by the appellant. This violence, according to the prosecution was inflicted upon the deceased by the appellant under the influence of alcohol or, upon the refusal of the deceased to give money to the appellant to consume alcohol. These witnesses have also stated that the appellant had pawned the manga sutra and silver anklets of the deceased for the purpose of consuming alcohol. They have stated that whenever the deceased used to come to her parental home, she used to inform them about the violence being inflicted upon her by the appellant for extracting money from her for the purpose of consuming alcohol.

5. PW 3 and 4, are the aunt and uncle of the deceased whose testimonies reveals that their evidence is hearsay, as none of them state that they have ever heard the deceased inform PW 1 and 2, in their presence, about the violence being inflicted upon the deceased by the appellant and neither do they state that the deceased herself had ever informed them directly.

6. PW 7 is the Doctor who performed the post-mortem examination. He says that there was a lacerated injury on the neck of the deceased measuring 2x1x1.5 cms and the same was caused by hard and blunt instrument within 24 hours of the post-mortem examination and that it was simple in nature. As regards the opinion pertaining to cause of death, he says that it is inconclusive and left it open to be inferred on appreciating the report of the chemical analyst, pertaining to the viscera. The post-mortem report proved by the witness is Exhibit P/6. The viscera report dated 24-09-2018 is Exhibit P/13. It reveals that Phorate, an organophosphorus insecticide was found in the visceral organs (parts of liver, kidney, spleen, lungs, heart, stomach and stomach contents, large intestine and small intestine) thus, it could be inferred that the deceased died on account of ingesting the aforementioned toxic substance.

7. Learned counsel for the appellant has submitted that PW 1 and 2 have been declared hostile and therefore, their

statements are unworthy of reliance and that the rest of the witnesses are hearsay witnesses. In fact, he has submitted that there is no legal evidence on which the learned trial Court could have based the conviction of the appellant.

8. Having gone through the statement of PW 1, this Court finds that in paragraph-1 and 2 (Examination-in-Chief), the witness has clearly indicted the appellant herein of having physically assaulted the deceased as recently as one week before her death. The reason for the physical violence given by PW 1, is non-fulfilment of the appellant's demand for money to consume alcohol. He further states that he did not make any report to the police as the appellant was his son-in-law. The reason why this witness has been declared hostile and cross-examined by the prosecution is that he has forgotten to reproduce in totality his statement u/s. 161 Cr.P.C and not because he wanted to aid the appellant/accused. To leading questions put by the Public Prosecutor after having been declared hostile, this witness has reiterated as correct what he has given in his police statement, of the various instances of physical violence meted out to the deceased by the appellant. In the cross-examination by the defence, no material contradiction has been brought out with regard to the physical assaults on the deceased by the appellant and neither has there being any substantial

confrontation with the 161 statement of this witness to shake the substratum of the prosecution's case with regard to physical violence inflicted upon the deceased by the appellant.

- 9.** Similar is the statement of PW 2, the stepmother of the deceased. She says that the deceased is the daughter of PW 1 from his first wife. In her examination-in-Chief this witness states that the deceased had come to her parental home two to three times before her death and informed her that her husband (the appellant) used to fight with her and beat her. She was also declared hostile and then subjected to cross-examination by the Public Prosecutor and in her cross-examination, she has reiterated her 161 statement and has stated the instances when the deceased was beaten by the appellant. She further states that the appellant may have murdered the deceased or the deceased may have committed suicide on account of the beatings received by her from the appellant. Therefore, this Court finds that as regards the fact of violence being perpetrated upon the deceased by the appellant, the same stands proved by the deposition of PW 1 and 2 in their examination in chief itself which remains uncontroverted in cross examination.
- 10.** Learned counsel for the appellant has also stated that as regards the injury on her neck, there is no evidence to show that it was the appellant, who had caused the said

injury immediately preceding the death of the deceased. In this regard, he has referred to the statement of PW 7, the doctor who performed the post-mortem. In paragraph 7, a suggestion was put to the doctor by the defence that besides the external injury on the neck, there were no other injuries on the body of the deceased. The doctor has answered in the affirmative. It was also suggested that the injury on the neck could have happened on account of falling on an iron box, which was kept in the same room where the body was found. The doctor has answered the same as a probability which could have taken place.

- 11.** Learned counsel for the appellant has drawn the attention of this Court to Exhibit P/3, which is the site map prepared by the police at the scene of occurrence. Where the body of the deceased was found, on the right-hand side of the body, there is an iron box which is marked as number 3 in the map. Learned counsel for the appellant has submitted that the probability of the deceased having fallen over the iron box injuring herself on the neck, cannot be discounted and that it does not go to reflect that the said injury was caused by the appellant immediately before the death of the deceased. He further states that none of the witnesses have stated that the appellant was responsible for the injury on the neck of the deceased. He also states that no question to that effect was put to the appellant in his 313 statement. This Court has gone

through the statement u/s. 313 Cr.P.C of the appellant in detail. Questions at serial No. 68, 69, 72, 73, 87, 99 and 100 are questions disclosing to the appellant of the injury on the neck of the deceased. However, there is no question in the 313 statement to the effect that the appellant was responsible for that injury on the neck by assaulting the deceased with a hard and blunt object. Understandably so, as no witness has spoken to that effect. Under the circumstances, the contention of the learned counsel for the appellant is accepted that the injury on the neck of the deceased cannot be considered as having been caused by the appellant.

- 12.** Learned counsel for the State has submitted that the appeal deserves to be dismissed and that the order passed by the learned court below is just and proper and there is no deficiency in the impugned order requiring interference by this Court. As the learned counsel for the appellant has not argued on the point that conviction under Section 306 IPC is bad on account of the appellant not having been charged with the same, and in view of the observations of the learned trial court in paragraph-47 of the judgment, this Court does not find fault with the findings of the learned trial Court that a conviction under a lesser offence could be imposed even though the accused was not specifically charged with. However, this court has to

examine whether the conviction under Section 306 of IPC of the appellant was proper or not?

- 13.** Heard the learned counsel for the parties and perused the Trial Court record. As regards the offence of abetment of suicide punishable u/s. 306 IPC, it is imperative that it must satisfy the ingredients of s. 107 of IPC. The ingredients of abetment are given in Section 107 IPC. Abetment can be effected by three means:
- a] By instigation
 - b] By illegal act or omission pursuant to a conspiracy, and
 - c] By participation.
- 14.** In **State of Maharashtra Vs. Rajendra and Ors.**,¹ the Supreme Court held that there must be specific evidence which reveals abetment on the part of the accused which resulted in the deceased committing suicide (paragraph 33 at page 506). In that case, the deceased wife had committed suicide by setting herself on fire. Allegations were levelled against the entire family of harassing the deceased for dowry and subjecting her to mental and physical cruelty. The Supreme Court held that the harassment of the deceased was with the view of coercing her to convince her parents to meet the demand for dowry. However, as regards the question whether the harassment would result in the

¹ (2014) 12 SCC 496

deceased committing suicide, the Supreme Court held that the same was a matter of doubt. The Supreme Court acquitted the appellants for the charge u/s. 306 IPC.

15. In **Gurjit Singh Vs. State of Punjab**², the Supreme Court was dealing with a case where the appellant was convicted for an offence u/s. 498-A and 306 IPC. As the sections suggest, the case was one where the deceased committed suicide, allegedly on account of matrimonial cruelty. The Supreme Court held that there was sufficient evidence to sustain conviction u/s. 498-A but acquitted the appellant for the charge u/s. 306 IPC in the following words **“There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit the suicide. We are of the view, that there is no material placed on record to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising presumption” (paragraph 33).**
16. The offence of abetment falls in the category of **“Inchoate Offences”**. In criminal jurisprudence, inchoate offences are a species which are also known as “incomplete” or “incipient offences”. Those guilty of the same fall under Principals in the Second degree (present at the scene of occurrence and

² 2019 SCC OnLine Supreme Court 1516

“assisting” or “instigating” the principal offender) or Third degree (as in a conspirator or instigator - not present at the scene of occurrence) and may be guilty even where the principal offence intended has not attained fruition. In such offences, what remains inchoate or incomplete is the principal offence intended. However, the abettor may still be liable for punishment as the offence of abetment is complete against the abettor. Besides the offence of abetment, the other offence is “attempt” which also falls under this category of offences.

- 17.** Instigation is the *actus reus* by the abettor on the abetted, where the abettor intends/desires or has sufficient knowledge, that the abetted would follow a particular course of action, in the manner desired or intended by the abettor. It is only in such a circumstance, proved beyond reasonable doubt by evidence, that the accused can be held guilty of having abetted the offence.
- 18.** Section 113-A of the Evidence Act requires that the abetted is a married woman who committed suicide on account of the cruelty inflicted by the abettors. The difficulty is in assessing the intensity and extent of cruelty inflicted upon the deceased woman. The normal rigours of two human beings living under the same roof, can see strife between them. More so in a matrimonial home, where the existence of the normal stress of matrimony sees some extent of strife taking place regularly amongst married people. Where a

slap or humiliation may constitute cruelty for the purpose of s. 498-A, the same would be grossly inadequate to hold the husband guilty for an offence u/s. 306 IPC. An extramarital relationship of a wife may be grounds for divorce for the husband, but the wife cannot be held guilty u/s. 306 IPC only because the husband committed suicide on account of it. A hypersensitive individual may have a low breaking point and may commit suicide on account of even trivial matters.

- 19.** In such cases, it would be essential for the Courts to examine whether the victim in a matrimonial relationship had access to legal redress. Today, with the availability of effective legal aid assistance available to even the most indigent of women suffering in matrimonial relationships gone sour and also the availability of police stations, specially established to cater to women of domestic violence arising from matrimonial strife, manned by women police personnel trained and sensitised in the handling of matrimonial cases, not every case of suicide by a wife can disclose a case against the husband and other members of his family for the offence u/s. 306 IPC.
- 20.** In cases where the suicide takes place in the matrimonial home, abetment by incitement, which is sublime and indirect, may be inferred by proved circumstances. Where the deceased had no option but, to commit suicide on account of the circumstances, created by the abettor, which

prevented her, either from seeking recourse to legal remedy or, the absence of any avenue by which she could escape the overbearing cruelty of the abettor, abetment of suicide may be inferred. it is only in a situation where the deceased was faced with a “Hobson’s Choice”, can abetment be inferred in a matrimonial home. However, before that inference is drawn, evidence must be brought to that effect.

- 21.** In the present case, the evidence on record, goes to reveal that the deceased had recourse to legal remedy as the parents of the deceased themselves have stated before the learned trial court that the deceased used to come to her parental home several times and therefore, could have sought legal redress if she wanted to. The evidence also goes to show that the appellant never restrained the deceased from leaving the matrimonial home and going to her parental home as and when she wanted and therefore, the circumstances in this case do not go to show that the deceased did not have any option before her but, to commit suicide.
- 22.** The record of the learned trial Court does not indicate or reveal that it was the appellant, who purchased and gave her poison which she consumed on account of which she died. The record also does not bear evidence that the appellant directly or indirectly instigated the deceased by action or omission, to commit suicide.

- 23.** Under the circumstances, this Court is of the opinion that the conviction under Section 306 of IPC cannot be sustained as, evidence with regard to abetment by the appellant resulting in suicide by the deceased, is unavailable.
- 24.** Therefore, this **appeal is partly allowed** and the conviction of the appellant under Section 306 IPC is set aside. As regards the conviction of the appellant under Section 498-A of IPC is concerned, the conviction and sentence is sustained in view of the evidence that has come on record. The appellant shall be released by the jail authorities if he has completed the two years sentence that was imposed upon him by the learned trial Court and if his continued incarceration is not wanted in any other case.
- 25.** With the above, the appeal is **finally disposed of.**

**(Atul Sreedharan)
Judge**

PG/