

CASI

समक्ष- माननीय उच्च न्यायालय न्यायाधिकार, जबलपुर, मध्य प्रदेश

दाण्डिक अपील क्रमांक 1335 /1999

दाण्डिक अपील अन्तर्गत धारा 374(2) दण्ड प्रक्रिया संहिता

अपीलार्थी :-

जियालाल पुत्र टुक्सेवर साहू, आयु
लगभग 55 वर्ष, निवासी ग्राम-शुक्ला-
भाट, सोडागपुर, जिला रायपुर ।

... विरुद्ध ...

प्रत्यर्थी :-

म०प्र० शासन द्वारा आरक्षी केन्द्र-
सरसीवा, जिला रायपुर ।

न्यायालय-

प्रथम अपर स्तर न्यायालय,
बलौदाबाजार, जिला-रायपुर ।

2/38

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HIGH COURT OF CHHATTISGARH, BILASPUR**S.B. : Hon'ble Shri Justice C.B.Bajpai****Criminal Appeal No.1335 of 1999**

Appellant

Jiyalal

Versus

Respondent

State of Madhya Pradesh (now State
of Chhattisgarh){Criminal Appeal under Section 374(2) of the Code of Criminal Procedure,
1973}

Appearance:

Mr. Vinod K. Tekam, Advocate for the appellant.

Ms. Smtia Ghai, Panel Lawyer for the State/respondent.

JUDGMENT
(06-02-2015)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 01-5-1999 passed by the First Additional Sessions Judge, Balodabazar, the then District Raipur (M.P.) (now C.G.) in Sessions Trial No.301/97 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for abetment of suicide of Mantorabai convicted him under Section 306/34 of the Indian Penal Code (in short 'the IPC') and sentenced the appellant rigorous imprisonment for 10 years and fine of Rs.5000/-, in default of payment of fine, additional rigorous imprisonment for 1 year.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial court has convicted the sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 24-6-1997 Shriram (PW-7) reached to Police Station Sarsiwa and he informed regarding death of Mantorabai, wife of Puniram aged about 40 years that she committed suicide by hanging. Police

registered this merge vide Ex.-P/4. After giving summons to the witnesses vide Ex.-P/7, inquest over the dead body was prepared by Investigating Officer S.S.Parihar (PW-12) vide Ex.-P/8A. Thereafter, the dead body was sent for AMO Bilaigarh for autopsy vide Ex.-P/13. Doctor Narayan Singh (PW-16) conducted the autopsy and noticed ligature mark around the neck along with other connected symptoms. As per the autopsy surgeon, the death was due to asphyxia by hanging; mode of death was suicidal in nature. He gave his report vide Ex.-P/13A. During the investigation patwari map was prepared vide Ex.-P/15. One written application given by Puniram to village panchayat Suhagpur was seized vide Ex.-P/14. The rope sealed and sent by the autopsy surgeon through Constable is seized by police vide Ex.-P/3. Spot map was prepared vide Ex.-P/5. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein it is stated by the witnesses that as the appellant and other co-accused had been alleging that deceased Mantora was engaged in witchcraft and on account of the said allegation and abetment Mantora committed suicide.

4. After completion of the investigation, charge sheet was filed before the ACJM, Balodabazar, who, in turn, committed the case to the Court of Sessions, Raipur, the learned Additional Sessions Judge received the case on transfer and conducted the trial. During the trial, the appellant and co-accused were charged for offence punishable under Section 306/34. Both the accused denied the charges and prayed for trial.

5. In order to prove guilt of the appellants, the prosecution examined as many as 16 witnesses. The accused were examined under Section 313 of the Code wherein they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question. During the trial co-accused Chunnilal died hence trial against him stands abated as per para 2 of the judgment of the trial Court.

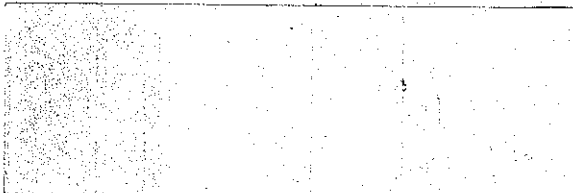
6. After providing opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced appellant Jiyalal as aforementioned.

7. We have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellant vehemently argued that only evidence came against appellant Jiyalal along with other co-accused (dead) that they used to call her Tonahi and Bhutahi. For the same allegation a meeting of villagers was convened. After 8 days of the said meeting, Mantorabai committed suicide. To convict the appellant under Section 306 of the IPC, the ingredients of Section 107 abetment of a thing is required. In the present case, the prosecution utterly failed to prove the ingredients of Section 107 of the IPC in all the 3 limbs. Merely alleging that the deceased was performing witchcraft and after the said allegation if the deceased committed suicide after 8 days, it may not be proved that the appellant instigated the deceased or committed something in order to abet suicide or intentionally aid by any act or illegal omission abetting suicide. Hence, the prosecution failed to prove guilt against the present appellant, therefore, he may be acquitted from the charge as the offence is not proved against him.

9. Per contra, learned counsel appearing for the State opposed the appeal and the argument advanced on behalf of the appellant; and supported the judgment of conviction and order of sentence passed by the trial Court against the appellant and submitted that the judgment of the trial Court is well founded. There is no scope for interference. Hence, the appeal may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution before the trial Court.



11. Undisputedly, in the present case, to prove the ingredients of Section 306 of the IPC, it is required for the prosecution to prove the abetment of suicide. Abetment is defined in Section 107 of the IPC which reads as under:-

107. Abetment of a thing.—A person abets the doing of a thing, who—

First — Instigates any person to do that thing; or

Secondly. —Engages with one or 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 any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, thing to be done, is said to instigate the doing of that thing.

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Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

12. In the present case, as surfaced by the statements of the prosecution witnesses that prior to commission of suicide, about 8 days ago, a meeting of villagers was convened where it was complained that the appellant along with co-accused used to allege that the deceased is committing witchcraft. In the said meeting there were also allegations regarding dispute and threatening for which the deceased and her family members were asked to present evidence regarding the said quarrel and threat for which no evidence is produced in the meeting convened at the village. In the said meeting, the senior persons made both the parties understand and the meeting ended thereby. After 8 days of such meeting, the deceased committed suicide by hanging.

13. In the present case, suicidal death of deceased Mantorabai has not been substantially disputed on behalf of the appellant, on the other hand, from the evidence of Madanlal (PW-6), Shriram (PW-7), Puniram (PW-8), Chheduram (PW-9), Satyabhama (PW-10), Daduram (PW-11), merg (Ex.-P/4),



inquest (Ex.-P/8A), statement of autopsy surgeon Doctor Narayan Singh (PW-16) and the autopsy report (Ex.-P/13A) it is proved that Mantorabai died by hanging and her death was suicidal.

14. As regards complicity of the appellant in crime in question are concerned, it is required to prove any of the facts prescribed in Section 107 of the IPC. In the present case, there is no such evidence that either the appellant instigated for suicide or engaged in conspiracy in order to doing of anything for suicide committed or intentionally aided any act or illegal omission for instigation for commission of suicide. Merely the allegation being made by the appellant that Mantorabai was committing witchcraft and commission of suicide by the deceased is not sufficient for holding the appellant guilty for offence punishable under Section 306 of the IPC; for proving the offence under Section 306 of the IPC, it is required to prove any of the ingredients provided by legislature in Section 107 of the IPC.

15. Upon minute examination of the evidence, this Court is of the view that the prosecution failed to prove that the appellant abetted commission of suicide committed by Mantorabai, as per Section 107 of the IPC. By not considering the aforesaid facts and circumstances the trial Court has committed illegality. Therefore, conviction of the appellant requires interference.

16. Consequently, the appeal filed by the appellant is hereby allowed. Conviction and sentence of appellant awarded by the trial Court is hereby set aside. The appellant is acquitted of the charge framed under Section 306 of the IPC. He is on bail. He be set at liberty at once. Fine amount, if deposited, shall be refunded to the appellant. His bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
Chandra Bhushan Bajpai
Judge