

High Court of Madhya Pradesh: Bench at Indore**Single Bench: Hon'ble Shri Justice S.K. Awasthi****Cr.A. No.4509/2018**

Satendra Jha

vs.

State of Madhya Pradesh & Ors.

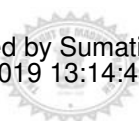
Shri Ajay Bagadiya, learned counsel for the appellant.

Shri Lokesh Bhargav, learned Public Prosecutor for the
respondent/State.

J U D G E M E N T**(Passed on 06/03/2019)**

Appellant has preferred this appeal under Section 14-A(1) of the SC/ST (PA) Act, 1989, read with Section 397 of Cr.P.C assailing the order dated 10/05/2018 passed by Special Judge (SC/ST Act) Dhar in Special case No.44/2018, whereby the charges have been framed against the appellant for commission of offence under Section 306 read with Section 34 of IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for brevity 'the Act').

02. Brief facts leading to filing of the present appeal are that the present appellant was posted as Branch Manager of ICICI Bank, Badnawar, District Dhar (M.P) at the time of the incident and the deceased Bhopal Singh was working as sub-ordinate to him. On 10/10/2018, Bhopal Singh poured petrol on his body and set himself to fire, due to which he sustained burn injuries. He was sent to Community Health Centre, Badnawar for treatment where his dying declaration was recorded in which he has

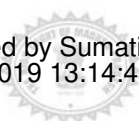


disclosed that he was harassed by the present appellant, who forced him to work after office hours because of that he poured petrol on his body and lit fire. Looking to the serious condition he was referred to Choitram Hospital, Indore for further treatment, where he died on 11/10/2017.

03. On receiving the information regarding the death of Bhopal Singh, police registered marg intimation under Section 174 of Cr.P.C and his dead body was sent for postmortem. On the basis of marg enquiry police registered case for offence under Section 306 of IPC. Bhopal Singh was belonging to Scheduled Caste community, therefore, police also registered offence under Section 3(2)(v) of 'the Act' against the appellant. After completion of investigation, charge-sheet has been filed before the competent Court.

04. Trial Court vide the impugned order framed charges against the appellant for offence punishable under Section 306/34 of IPC read with Section 3(2)(v) of 'the Act', which is the subject matter of challenge in the instant appeal.

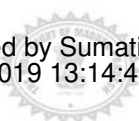
05. Learned counsel for the appellant has submitted that the trial Court has committed error in framing charges against the appellant, there is no evidence on record to show that the present appellant had assigned excessive work to the deceased. Several employees were working under the appellant and none of them made any complaint against the appellant regarding delegation of excessive work. Deceased Bhopal Singh has worked only for seven months under the appellant and during this period he has never complained against the appellant that he misbehaved or compelled him to work beyond the office hours. Even if the dying declaration of the deceased is taken on its face value, no



offence is made out against the appellant that he has abetted the deceased for committing suicide. There was no personal animosity between the appellant and the deceased and the dying declaration discloses that the harassment was regarding to the bank related work only.

06. Learned counsel for the appellant has further submitted it is settled principle of law that for abetment of suicide there should be some proximate link between the appellant and the factum of suicide. In the present case, there is absolutely no link between the appellant and the factum of suicide committed by the deceased. The alleged act of abusing and taking extra work from the deceased cannot be equated into abetting the deceased to commit suicide. Even if the appellant has compelled the deceased to do extra work which was unbearable, then he had several other options for getting relieved from the same and it cannot be said that he had no other option except to commit suicide. Therefore, the appellant has no mens rea to abet the deceased for commission of suicide. The deceased in a fit of depression committed suicide, therefore, the appellant cannot be charged for commission of offence punishable under Section 306 of IPC read with Section 3(2)(5) of 'the Act'. Under these circumstances, the charges framed against the appellant is completely illegal and improper, hence the impugned order be set aside and the appellant be discharged from the aforesaid charges.

07. On the other hand learned Public Prosecutor for the respondent/State opposes the prayer contending that from the evidence produced by the prosecution, it is *prima facie* established that the deceased has committed suicide on account of mis-behaviour and harassment of the appellant, therefore, the trial



Court has not committed any error in framing of charges against the appellant, hence the appeal is liable to be dismissed.

08. Having considered the contentions of the learned counsel for the parties and on perusal of record, it reveals that the trial court has framed the charge against the appellant for offence punishable under Section 306/34 of IPC, however, except the appellant, there is no other accused person in the case, hence there was no need for the trial Court to frame the charge against the appellant with the aid of Section 34 of IPC.

09. In the present case, prosecution of the appellant is based on the dying declaration of the deceased recorded by the Executive Magistrate, which is as under:-

“ने अपने कथन पर बताया कि मैं ग्राम पेटा गांव थाना अष्टा जिला सिहोर में रहता हूँ वर्तमान मैं प्रताप स्कूल के पास परिहार जी के मकान परिवार के साथ रहता हूँ तथा आई.सी.आई बैंक में बदनावर में डिप्टी ब्रांच मैनेजर के पद पर पदस्थ हूँ । आज मैं 5:45 बजे अपनी शाखा के बैंक मैनेजर सत्येन्द्र झा की बैंक सम्बन्धी कार्य की प्रताड़ना से तंग आकर मैंने अपने उपर पेट्रोल डालकर कोटेश्वर से थोड़ा आगे कोद रोड पर तालाब के पास आग लगा लिया है जिससे पूरे शरीर में आग लग गई है । राहगीरों ने एम्बुलेंस को सूचना दिया तो मुझे सरदार अस्पताल बदनावर में भर्ती कराया है । मेरी मोटर सायकल एम.पी. 05/एम.बी./9723 से आ रहा था।”

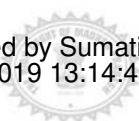
10. Prosecution has also recorded the statement of Anita, the wife of the deceased, Kuldeep the son and Gappulal the father of the deceased, who have deposed that deceased has consistently made complaints to them regarding the mis-behaviour of the appellant and compelling him to do extra work after the office hours. The appellant has not sanctioned leave to the deceased and on account of pressure of work and derogatory behaviour of the appellant, Bhopal Singh committed suicide.

11. Parameters of the abetment have been stated under Section 107 of IPC which defines abetment as follows:

"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 willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. 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 facilitates the commission thereof, is said to aid the doing of that act"

12. In the case of *State Of West Bengal vs Orilal Jaiswal And Another, (1994) 1 SCC 73* the Hon'ble Apex Court has held as under:-

“ This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”



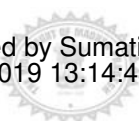
13. Reference can be made to the decision of the apex Court in the case of ***Gangula Mohan Reddy vs State Of Andra Pradesh (2010) 1 SCC 750***, wherein it has been held that:

“ Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. - In order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide. - If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. - Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out - Hence, appellant's conviction, held unsustainable”

14. In the case of ***M. Mohan vs. State represented by Dy. Superintendent of Police*** reported as ***AIR(2011) SC 1238*** the Hon'ble Supreme Court has held as under:

“ Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide.”

15. Further reference can also be made on the judgment of the Apex Court in ***Ramesh Kumar vs. State of Chhattisgarh*** reported in ***(2001) 9 SCC 618*** where in the three Judges Bench,



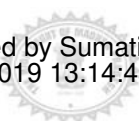
while explaining the meaning and contention of word “instigation” has held as under:

“ Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

16. Hon'ble Apex Court in the case of *Amalendu Pal @ Jhantu vs State Of West Bengal* reported as *AIR 2010 SC 512* after considering the various earlier judgment in para – 15 has observed that:

“Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

17. In the context of aforesaid legal positions, this court is of



the view that alleged act of mis-behaviour and taking extra work after the office hours from the deceased cannot be equated into abetting the deceased to commit suicide. If any higher officer compels his sub-ordinate to do extra work which is unbearable, then he has other options and it cannot be said that he had no other option except to commit suicide. Under these circumstances, the appellant cannot be held responsible for abetting the deceased to commit suicide.

18. Taking this view of the matter, no *prima facie* evidence is available against the appellant for framing of charges for offence under Section 306 of IPC and Section 3(2)(v) of 'the Act' and the trial Court has wrongly ordered for framing of aforesaid charges against the appellant and the impugned order is liable to be set aside.

19. Resultantly, the appeal stands succeed, the impugned order is set aside and the appellant is hereby discharged from the charges under Section 306 of IPC and Section 3(2)(v) of 'the Act'.

20. A copy of the judgment be sent to the Court concerned for information and compliance.

Certified copy as per Rules.

(S. K. Awasthi)
Judge

sumathi

