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the holder of a succession certificate any right of transfer he might possess in respect of the *corpus* of the debt itself, or to require that any such transfer should necessarily be followed by a revocation of the succession certificate already granted and the collection of fresh fees upon the grant of a second one in favour of the transferee.

We hold, therefore, that this suit is maintainable as it stands, and we dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

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November, 1.

Before Mr. Justice Tudball and Mr. Justice Ryves.

EMPEROR v. RAM DAYAL AND OTHERS. *

Act No. XLV of 1860 (Indian Penal Code) section 306—Abetment of suicide—Sati.

Held that persons actively assisting a Hindu widow in becoming a *sati* are guilty of the offence of abetment of suicide as defined in section 306 of the Indian Penal Code.

THE facts of the case are fully set out in the judgements. Shortly they were as follows:—

One Ram Lal, Brahman, of village Jarauli, died early in the morning of the 27th of June, 1913. His widow expressed her intention to become *sati*. Her relations and neighbours tried to dissuade her, but she did not listen to them. They, thereupon, sent the chaukidar to the thana, 8 miles off, to warn the police of her intention. They, however, went on making preparations to take the body to the burning ground, which was two furlongs from the village. The police did not arrive in time, and the body was carried to the burning ground, the widow accompanying the bier. The accused prepared the funeral pyre, on which the widow sat with the head of her husband on her lap. She took off her ornaments and handed them over to one of the accused. She demanded *ghi*, which was given her and which she poured on herself and the pyre. She then asked for fire, but as to this the witnesses seem to have agreed to say that it was refused and that the pyre burst into flame of itself in answer to the prayers of the widow.

On these facts the Sessions Judge convicted five of the persons

* Criminal Appeal No. 531 of 1913 from an order of E. O. Allen, Sessions Judge of Mainpuri, dated the 17th of July, 1913.

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most intimately connected with this transaction of abetment of suicide and sentenced them to two and one and a half years' rigorous imprisonment. The accused appealed, and the learned Judge of the High Court before whom the case came on for hearing issued notice to them to show cause why the sentences should not be enhanced.

The Hon'ble Pandit *Moti Lal Nehru* (with him *Babu Satya Chandra Mukerji*), for the accused:—

The accused are charged with abetment of suicide. The essentials of the offence are instigation, engaging in a conspiracy for the doing of that thing or aiding in the act. In the present case the finding is that there was no instigation, but the Judge has held that the accused engaged in a conspiracy for the commission of *sati*. The facts proved by the prosecution witnesses are—

- (1) that the accused tried to dissuade her from immolating herself and sent information to the police,
- (2) that they resolutely refused to burn the funeral pyre, and
- (3) that they carried out certain details under her orders, such as preparing the pyre and supplying her with *ghi* &c., but that they knew these would be infructuous without the final act of setting fire, which they never did.

This was taking all reasonable precautions against the actual act of suicide being committed, and the finding is, therefore, wrong.

The accused had taken effectual measures to prevent the act and could not be held guilty of aiding in the act. It was a gross negligence of the police not to have arrived in time.

The accused stated that the details which they carried out under her orders were carried out on account of fear. But they had done all they could to prevent her from immolating herself and had refused to light the pyre. They were not bound to drag her off the funeral pyre.

Assuming what the accused did was technically an offence, a light sentence would meet the ends of justice.

The Assistant Government Advocate (*Mr. R. Malcomson*), was not heard in reply.

TUDBALL, J.—The five appellants, *Ram Dayal*, *Dodraj Chote*, *Kankuar* and *Adhar Singh* have been convicted of the offence of abetment of suicide under section 306 of the Indian Penal Code.

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The two first were sentenced to two years' rigorous imprisonment each and the other three to one and a half years' rigorous imprisonment each.

On the appeal coming before a Judge of this Court, he directed that notice should issue to the appellants to show cause why their sentences should not be enhanced. Cause is shown on their behalf. The appeal and revision are heard together.

The appellants are all Brahmans. Ram Dayal and Dodraj are residents of the village of Jarauli in the Mainpuri district. The other three are residents of villages in the neighbourhood thereof. The facts of the case are nearly all admitted and are simple.

One Ram Lal, Brahman, cousin to Ram Dayal and nephew of Dodraj and resident of Jarauli, died of his sickness about day break on the 27th of June last, leaving a young widow Musammat Jai Debi. Thereupon the widow announced her intention of committing *sati*. The male members of the family argued with her, but she persisted in her intention. Neighbours were called in to assist, but with no effect. Finally one of the village chaukidars was sent off to the local police station to give word to the officer in charge. This police station is about eight miles from the village, and it is in evidence that the chaukidar arrived there at about 11 a. m. It was a rainy morning. About 9 a. m., the widow ordered the body to be carried to the burning ghat, which is a few hundred yards outside the village. The bier was carried by the four accused Ram Dayal, Dodraj, Kankuar and Adhar Singh, while the fifth, Chote, walked beside it. The widow followed it. A rumour of the impending *sati* had clearly spread to many of the neighbouring villages. A crowd of spectators, roughly estimated at from fifteen hundred to two thousand in number, had assembled. Arriving at the burning ghat, the widow directed the funeral pyre to be built at a certain spot. Wood and cow-dung fuel had been collected. Ram Dayal and Dodraj built the pyre, the other three accused handing the materials to them. The two former then placed the corpse upon it, Jai Debi then, after walking round it seven times, mounted the pyre, sat down and placed the head of the corpse on her lap. She stripped off her ornaments and threw them into a cloth held by Chote and Dodraj.

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She then demanded *ghi*. Dodraj handed her a *lota* full. She poured it over the pyre and her own person. She demanded more and Ram Dayal gave it to her. This also she poured over herself and the pyre. Then Ram Dayal also poured some over her and the pyre. The pyre was then fired, but the witnesses refused to state by whose hand this was done.

In a short time the woman and the corpse were both consumed. When the police arrived at about 3 p. m., they found a heap of smouldering ashes and burnt bones. One of the two village *chaukidars* was present at the scene.

The prosecution witnesses state that Ram Dayal and Dodraj to the very end protested against the action of the widow and tried to dissuade her. The appellants themselves did not deny the parts they respectively took in the matter, except that Ram Dayal did not admit that he poured *ghi* over the woman, though the evidence proves that he did do so.

Both the witnesses and the accused stated that when all was ready and the widow demanded fire; Ram Dayal and Dodraj refused to give it to her, telling her that if there were any virtue in her she could produce it for herself, whereupon she whispered into the ear of the corpse and raising her arms aloft prayed to God, and shortly after the pyre burst into flame. The witnesses and the accused also have told stories of miraculous deeds done by the widow that morning when they were trying to dissuade her from committing *sati*, how she held burning camphor in her two hands clapped together and how she smote an impudent girl into a fit with a glance of her eye and subsequently restored her to health, and how she caused the rain to cease at about 9 a. m. The accused Ram Dayal and Dodraj both further state that she threatened to curse them both and cause them to be burnt up if they did not allow her to be *sati*. It is clear that the sympathies of the witnesses are naturally with the accused and that there is a conspiracy of silence as to who actually fired the funeral pyre. It is equally clear that the miraculous stories have been invented for this purpose. The theory of spontaneous combustion put forward is equally unworthy of belief as the alleged miracles, and I have no doubt in the circumstances that the pyre was fired either by the widow or one or both of the accused Ram Dayal and Dodraj.

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None of the assembled crowd would have dared to interfere. It is urged on behalf of the accused that the acts proved to have been committed by them are insufficient to constitute abetment; that though they built the pyre and placed the corpse upon it and supplied the *ghi* to the widow, still it clearly was not their intention to aid the doing of the *sati*, because they refused to provide the necessary fire and because they had sent word to the police. It is also urged that they must have felt sure that she could not obtain fire elsewhere. The argument in my opinion has no force. It is clear that they actively assisted right up to the last act. It is clear beyond all doubt that they were sure that the widow would commit *sati*. The fact that they sent word to the police is a strong indication of this. If they were overawed by the alleged miracles (which I do not believe) they must have been doubly sure. The whole country side had been aroused.

To plead that they did everything necessary except the very last act without the intention of assisting her to commit suicide is to ignore facts and to put aside all experience of human nature. A man's intentions are indicated not only by his words but also by his deeds. Miracles have been invented to hide a most important fact, and joined to this it is clear that no really effective steps were taken to prevent the suicide. A very little force would have been necessary to prevent the woman ascending the pyre. Moreover, it was not absolutely necessary to burn the corpse at so early an hour. Though information had been sent to the police, no serious attempt was made to await their arrival on the scene. Sixteen miles had to be walked before they could arrive and the accused must have known that no police officer could possibly arrive until after midday.

Fully believing that the woman was determined to be burnt with her husband's body, they did all that was necessary to enable her to commit suicide except the furnishing of fire. They and the witnesses deliberately conceal the truth as to the last act and concoct miracles for the purpose. They do not state that they took any steps to prevent her taking fire or matches. They took no active steps to prevent the suicide, and they hastened a funeral which in the circumstances they ought to have have delayed and would have delayed if they had been sincere in their remonstrances.

Sati may or may not be forbidden by the Hindu religion, but it was once a common practice, and the sympathies of the people, at least of the unenlightened people, are all with *sati* and it is looked upon as a meritorious deed.

I have no hesitation in holding that, though the accused may in the beginning have sincerely remonstrated with the widow, they finally gave way to her determination and intentionally aided the doing of the dead. The circumstances of the case and their acts and omissions leave no room for doubt.

On behalf of Chote Lal and Kankuar and Adhar Singh it is urged that they did very little and cannot be said to have abetted the deed. It is true that they did less than the other two, but they took an active part in the carrying of the body and the preparation of the pyre, and I have no doubt as to their intention, though they are neither relatives nor residents of the village. I would, therefore, maintain the convictions and dismiss the appeals.

In regard to sentences I think those imposed on Ram Dayal and and Dodraj are far too lenient. Any relaxation of the severity of the law in such a matter will result in the recurrence of the evil which took so many years to decrease to a minimum. The feelings and beliefs which prompt a *sati* still exist, and but little encouragement would make many others act upon them. I would, therefore, enhance the sentences in the cases of these two accused to four years' rigorous imprisonment. I would not interfere with the cases of the other three accused.

RYVES, J.—This appeal came before me during the vacation and was very ably argued by Mr. *Satya Chandra Mukerji*. It has again been very ably argued by Pandit *Moti Lal* from a somewhat different point of view. I am now, as I was then, however, of opinion that the conviction of the appellants was right, and I agree with the conclusions of my learned brother. Ram Lal had been ill for some months, and his young widow evidently had made up her mind to become *sati* at his death in spite of the fact that she had an infant child. Her relations tried to dissuade her, but when they found that she was determined, they yielded and helped her to carry out her wish. All persons who actively assisted knowing her intention are guilty. The question of sentence is more difficult.

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Long before 1829, when Regulation XVII declared *sati* to be illegal and criminal, Government had tried to check the practice, by Regulations and by Circular Orders issued by the Nizamut Adawlut with the sanction of Government. The essence of these rules was that *sati* was only legal if it was strictly in accordance with the *shastras*, and if the prescribed procedure was adopted. These rules, however, did little to check the usage, which was very prevalent in these provinces. No less than ten cases of illegal *sati* are reported in a single volume of the reports of the Nizamut Adawlut.

In one of these cases—*Government v. Bhurachee* (1)—one of the learned judges says:—"The *sati* was irregular, inasmuch as police officer was not there, and as the widow (a Brahminee) burnt without the corpse of her husband, but frequent irregularities occur in this detestable practice. Our Government by modifying the thing and issuing orders about it have thrown the ideas of the Hindus on the subject into a complete state of confusion. They know not what is allowed and what interdicted; but upon the whole they have a persuasion that our Government are rather favourable to *sati* than otherwise. They will then believe that we disallow the usage when we prohibit it *in toto* by an absolute and peremptory law."

The Regulation of 1829 seems to have had immediate effect; and the practice was almost completely stamped out. In fact I can only find three reported cases of *sati* in the Law Reports for these provinces and for Bengal since that date. They occurred in 1834, 1854 and 1871.

It is thus obvious that the consensus of public opinion was and is opposed to *sati*. But the sentiment, whether religious or merely superstitious, which of old prompted the widow to burn herself on her husband's pyre, and excited the approval of the multitude, is still alive. Thus it is significant that in many of the old cases, as in this, there was a conspiracy of silence and the firing of the pyre was attributed to supernatural agency.

In my opinion, therefore, a deterrent sentence is called for, and I agree in the order proposed by my learned colleague.

BY THE COURT.—The appeals are dismissed. The sentences imposed on Chote, Kankuar and Adhar Singh are confirmed and the rule issued by the court as to them is discharged. The

sentences on Ram Dayal and Dodraj are hereby enhanced to four years' rigorous imprisonment each with effect from the date of the conviction by the learned Sessions Judge.

Appeal dismissed.

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APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

FATMATUL KUBRA (JUDGEMENT-DEBTOR) v. ACHCHI BEGAM (DECREE-HOLDER) NAZIRUDDIN AND OTHERS (JUDGEMENT-DEBTORS) AND AZHAR HUSAIN (AUCTION PURCHASER).*

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November, 1913

Execution of decree—Sale in execution—Grove or garden with house, being ancestral property and forming part of a mahal—Sale by Civil Court amin—Jurisdiction—General Rules (Civil) of 1911, chapter IV, rules 5 and 8

Held that a grove or garden, part of which was occupied by a house, and which was a part of a mahal and assessed to revenue and had been owned continuously by the family of the proprietors for over fifty years was ancestral land within the meaning of Rule 5 of Chapter IV of the General Rules for the Civil Courts and could not be sold by the court amin in execution of a Civil Court decree, but only through the Collector after the decree had been transferred to him for execution.

THE facts of this case are fully set forth in the judgement. Briefly stated they were as follows:—In execution of a Civil Court decree a grove or garden was sold by auction through the court amin. A house stood on a small portion of this land. It appeared that this land was assessed to revenue and included in a certain mahal, and that it formed a portion of that mahal. The property had been with the family of the judgement-debtor for well over fifty years.

The judgement-debtor applied to have the sale set aside on the ground, *inter alia*, that the land was "ancestral land" and that the decree should, therefore, have been transferred to the Collector for execution. The application was dismissed. The judgement-debtor appealed.

Babu Lalit Mohan Banerji (with him Maulvi Muhammad Rahmat-ul-lah for Maulvi Ghulam Mujtaba), for the appellant.

The property sold forms a portion of a mahal. It also satisfies the other conditions of the definition of "ancestral land" as

* First Appeal No. 871 of 1912 from a decree of Pirithi Nath, Subordinate Judge of Bareilly, dated the 22nd of June, 1912.