

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Acquittal Appeal No. 21 of 2015**

Smt. Mati Bai Yadav W/o Shri Budharu Yadav Aged About 48 Years R/o Near Saraswati Shishu Mandir, Nayaganj, Ward, Bhathapara, Distt. - Baloda Bazar C.G.

---- Appellant**Versus**

1. Smt. Sangita Sharma @ Rinki W/o Shiv Sharma Aged About 30 Years R/o Jaistambh Chowk, Dongargarh, Rajnandgaon C.G. Present Address : Nehru Ward Bhathapara, Police Station Bhathapara Shahar, Distt. Baloda Bazar C.G.
2. State of C.G. Through - The Station House Officer, Police Station - Bhathapara Shahar, District Baloda Bazar C.G.

---- Respondents

For Appellant	:	Shri Sameer Singh, Advocate.
For Respondent No.1	:	Shri Ashok Soni, Advocate.
For Respondent No.2/ State	:	Smt. Sobha Kashyap, Dy. G.A.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****07/09/2015**

(1) Heard on admission.

(2) The instant acquittal appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 (for short 'the Code').

(3) Learned counsel for the Appellant submits that the Additional Sessions Judge, Bhatapara, District Baloda Bazar, Chhattisgarh has committed an error by acquitting Respondent No.1/accused – Smt. Sangita Sharma @ Rinki in Sessions Case No. H-04/2014 of the offence under Section 306 of the Indian Penal Code, 1860 (for short 'the IPC') on the ground that the prosecution has failed to prove that deceased Shital

Yadav @ Jaiki committed suicide on account of abetment by the accused as the prosecution has not been able to prove the ingredients of Section 107 of the IPC showing abetment.

(4) As per the prosecution case, the brief facts are that on 26.4.2013, Gopichand Agrawal (PW-4) informed the police of Bhatapara City that inside his house an unknown person aged about 30 years has committed suicide. The police registered merg and thereafter the unknown person was identified as Shital Yadav @ Jaiki. After the inquest and the autopsy, it was revealed that the death was as a result of asphyxia due to hanging. After the inquest enquiry, the police registered First Information Report, marked as Ex. P/16. A suicidal note was recovered from the pocket of the deceased vide Ex. P/1 and the same was sent for opinion of the handwriting expert. As per report of the handwriting expert (Ex. P/10), a definite opinion could not be expressed regarding comparison.

(5) Statements of the witnesses were recorded under Section 161 of the Code. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Bhatapara, Chhattisgarh, who, in turn, committed the case to the Court of Learned Additional Sessions Judge, Bhatapara, District Baloda Bazar, Chhattisgarh who received the case on transfer and conducted the trial.

(6) During trial, the Court below framed charge against the accused under Section 306 of the IPC. The Prosecution examined 13 witnesses to prove the guilt of the accused/Respondent No.1. Statement of Respondent No.1 was recorded under Section 313 of the Code wherein

she denied the circumstances appearing against her and pleaded innocence and false implication in the crime in question and demanded trial.

(7) After affording opportunity of hearing to both the parties, learned trial Judge concluded the trial and acquitted Respondent No.1/accused of the charge framed against her under Section 306 of the IPC as the prosecution failed to prove its case beyond all probable doubts.

(8) The Appellant, the mother of the deceased, a victim under Section 2(wa) of the Code, as she lost her son and suffered on account of his suicide, has filed the instant appeal against the judgment and order of acquittal of Respondent No.1, passed by the trial Court.

(9) The instant acquittal appeal has been filed on the grounds that Respondent No.1 is responsible for committing suicide by the deceased and the impugned judgment has been passed without considering the material evidence available on record. The trial Court has erred in reaching the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The case of the prosecution has been supported by the prosecution witnesses and it has come in evidence that on 22.4.2013 the deceased was arrested at the instance of the husband of the accused. The trial Court has also erred in not appreciating the words written in the suicidal note and other oral evidence. It is prayed that the appeal be allowed and the impugned judgment dated 14.1.2015 be set aside and Respondent No.1 be convicted for abetting the deceased to commit suicide and appropriate sentence may also be imposed upon Respondent No.1.

(10) After hearing the arguments, the instant acquittal appeal is taken up for final disposal at the motion stage itself.

(11) It is submitted on behalf of the Appellant that the death on account of suicide by hanging is not in dispute. As per Ex. P/1, a suicidal note has been recovered from the pocket of the deceased in which the words 'Ja Marja' have been mentioned for Respondent No.1. As per statement of PW-2, Mati Bai, the Appellant made at paragraphs 1 and 2, on 22nd April, 2013 her son was taken into custody by the police and she had got her son free on 23rd April, 2013. Her son was taken into custody as per wishes of Atish Sharma (Atish Sharma is the brother of Respondent No.1) and people of the ward. The witness PW-2 also stated in paragraph 2 of her statement that Respondent No.1 had also come to the police station where her son (the deceased) was under custody and she had told about her son that 'is kutte ko nahi chodna'. The submission of Learned Counsel for the Appellant is that by the above evidence, the abetment for suicide is proved. Hence, the matter be admitted for hearing.

(12) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(13) On a close scrutiny, it appears that the death of deceased Shital Yadav @ Jaiki in the constructed house of PW-4 Gopichand Agrawal by hanging himself is not disputed.

(14) So far as abetment for suicide is concerned, ingredients of Section 107 of the IPC are essential to prove abetment. A suicidal note was seized from the pocket of the deceased vide seizure memo Ex. P/1 and

by the report of the handwriting expert Ex.P/10 it is opined that definite opinion could not be expressed for q-1 suicidal note, therefore, it is clear that the prosecution failed to prove that q-1 was the note written by the deceased himself. This report creates a shadow regarding the genuineness of the handwriting on q-1. Even if the note recovered from the pocket of the deceased is held that the same was written by the deceased himself, the words 'ja marja' written in the note cannot be deemed as abetment because the said words were spoken by Respondent No.1 on 22nd April, 2013 and the deceased committed suicide on 26th April, 2013. Therefore, it does not constitute abetment for suicide. While looking to the entire q-1 (suicide note), it reveals that the alleged act of Respondent No.1 cannot be considered as the ingredients under Section 107 of the IPC.

(15) It is also clear from the evidence that the deceased was detained in police station in connection with some report on the efforts made by Atish Sharma and members of the ward. As per para 1 of the statement of PW-2 Matibai, Respondent No.1 reached to the police station and she told to the police that "is Kutte Ko Nahi Chodna", however, this sentence even does not constitute any of the ingredients for abetment. Beside this, no evidence regarding abetment has been adduced by the prosecution during the trial.

(16) After detailed appreciation, the trial Court held that on the basis of the evidence adduced by the prosecution, it failed to prove the charge against Respondent No.1 beyond all probable doubts thereby Respondent No.1 was acquitted by the trial Court.

(17) While considering the entire facts and circumstances, I do not find any reason for admission of this instant acquittal appeal for hearing as the Appellant failed to demonstrate any facts and evidence *prima facie* proved for abetment of suicide.

(18) In view of the above discussion, I do not find the present acquittal appeal to be a fit case for admission as the prosecution has failed to prove the ingredients of Section 107 of IPC and as such, Respondent No.1 has rightly been acquitted of the charge by giving the benefit of doubt. In the considered view of this Court, there is no material available to admit the instant acquittal appeal for final hearing.

(19) Consequently, the appeal is liable to be and is hereby dismissed at the motion stage itself.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE