

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (SJ) No.1 of 2016

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The State of Bihar through the District Magistrate, Sitamarhi,
having his office at Collectorate Compound, District-Sitamarhi.

.... Appellant/s

Versus

1. Lovely Kumari, aged about 26 years, D/o Birendra Prasad,
Resident of Ward No. 4, Nagar Parishad Dumra, District-
Sitamarhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukeshwar Dayal

For the Respondent/s : Mr. Vikramdeo Singh

Mr. Pushpendra Kr. Singh

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 28-11-2016

The State of Bihar has preferred the present
Government Appeal, under Section 378(1) and (3) of the Code
of Criminal Procedure, aggrieved by the judgment and order,
dated 11/12/2014, passed by the learned Ad-hoc Additional
District and Sessions Judge-Ist, Sitamarhi, in Sessions Trial
Nos. 435 of 2012 / 50 of 2012, arising out of Dumra P.S. Case
No. 229 of 2012.

2. At the trial, six (6) persons, including the sole



opposite party, were put on trial on the charge of commission of the offences punishable under Sections 306, 120B, 354 and 323 of the Indian Penal Code (*hereinafter referred to as the IPC*) and Sections 67/67A and 84B of the Information Technology Act, 2000 (*hereinafter referred to as the I.T. Act*). By the impugned judgment and order, dated 11/12/2014, learned trial Court has recorded conviction of Birendra Sah and Puja Kumari of the offences punishable under Section 306 read with Section 120B of the IPC. So far as other accused persons are concerned, including the sole opposite party, they have been acquitted of the charge by giving them benefit of doubt.

3. This is the background in which, the present Government Appeal has been preferred against the judgment and order, whereby, the learned court below has recorded acquittal of the opposite party.

4. The appeal is barred by limitation. Interlocutory Application No. 327 of 2016 has been filed, seeking condonation of delay in filing the present appeal.

5. On perusal of the said interlocutory application, seeking condonation of delay, I am of the view that the appellant-the State of Bihar has been able to make out a case that there existed sufficient reason facts of which the appeal could not be filed within time. The delay in filing the appeal is, hereby, condoned.



6. Interlocutory Application No. 326 of 2016 is, accordingly, allowed.

7. The brother of the deceased is the informant, who in his *Fardbeyan*, which is the basis for registration of the First Information Report, has narrated that the deceased, the sole opposite party and another girl (L) used to go to a computer training institute for learning computer, where the accused, namely, Birendra Sah, also would to come. It has been alleged that said accused, Birendra Sah, had illicit relationship with the opposite party and the said 'L'. The informant's sister also became friendly with the said two girls. It is alleged that the accused, Birendra Sah, with the help of the other two girls, took obscene photographs and recorded video films of the deceased, whereafter he started black-mailing the deceased. It has also been alleged that the said accused, Birendra Sah, was pressurizing the deceased and her family members to marry him and, at some point of time, he had kidnapped the informant and had demanded ransom of Rs. 1,00,000/-. It was alleged in the *Fardbeyan* that said accused, Birendra Sah, threatened and tortured the deceased so much in order to compel her to marry, which drove her to commit suicide by hanging herself with the help of her *Dupatta*, after she had gone to sleep at the night. She was found hanging from a fan in her room with her *Dupatta*.



8. On the basis of said *Fardbeyan*, Dumra P.S. Case No. 229 of 2012 came to be registered for the offences punishable under Sections 306, 120B, 354 and 323 of the IPC and Sections 67/67A and 84B of the I.T. Act. The police, upon completion of investigation, submitted charge-sheet, whereafter the case was committed to the Court of *Sessions* and was finally transferred to the Court of learned Ad-hoc Additional District and Sessions Judge-Ist, Sitamarhi, for trial. Charge came to be framed, thereafter, for the offences punishable under Sections 306, 120B, 354 and 323 of the IPC and Sections 67/67A and 84B of the I.T. Act.

9. At the trial, altogether fourteen (14) witnesses were examined including P.W.1, the brother of the deceased, P.W.2, the mother of the deceased, P.W.3, the father of the deceased, and P.W.4, the informant himself. They were consistent in their deposition as to why the victim was taken to the residence of opposite party, whereafter the main accused, namely, Birendra Sah, had taken photographs and video clips. They also deposed that said Birendra Sah and the two girls forced her (deceased) to write love letters. The matter had travelled to the police also. The said witnesses fully supported the case of the prosecution to the effect that accused, Birendra Sah, was continuously black-mailing the deceased and pressurizing her to marry.



10. Since this appeal is confined against an order of acquittal of sole opposite party, I need not go into the details of evidence, adduced at the trial, except those which relate to the opposite party. Upon perusal of the materials available on the record, I notice that the only evidence which has come against the sole opposite party is that on a particular day, the deceased had gone to the house of the Opposite party where the main accused, namely, Birendra Sah, was present and had taken her photographs and video clips. Over and above the same, there is no evidence adduced at the trial against the opposite party.

11. A question would arise, therefore, as to whether the opposite party could have been held guilty of the charge of offences punishable under Section 306 of the IPC, on the basis of said evidence. Section 306 of the IPC provides for punishment against a person, who 'abets' commission of suicide. Section 107 of the IPC, defines abetment of a thing 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.”*

Evidently, thus, a person abets doing of a thing only when he (a) instigates any person to do that thing; or (b) engages with one or more other persons in any conspiracy for to doing that thing; or (c) Intentionally aids by act or illegal omission to doing that thing.

12. In order to establish abetment as a crime, above are the three essential ingredients, which must be established by cogent evidence at the trial. In case of ***Netai Dutta Vs. State of West Bengal***, reported in ***(2005) 2 SCC 659***, the Supreme Court dealt as to what would be the essential ingredients of abetment under Section 107 of the IPC and held in paragraphs 6 and 7 as follows:-

"6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted



in the commission of suicide by deceased Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the First Information Report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal."

13. In case of **Kishori Lal Vs. State of M.P.,**



reported in **(2007) 10 SCC 797**, the Supreme Court had again occasion to deal with the concept of abetment by interpreting the word "instigate" and held in paragraph 6 as follows:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the



abetment of which a person is charged with the abetment is normally linked with the proved offence."

14. In case of ***Amalendu Pal @ Jhantu Vs. State of West Bengal***, reported in **(2010) 1 SCC 707**, the Supreme Court, while dealing with the expression of abetment, observed in paragraph 14 as thus:-

"14. The expression "abatement" has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be case where clause. Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC."

15. In case of ***M. Mohan Vs. State represented***



by the Deputy Superintendent of Police, reported in **(2011) 3 SCC 626**, the Supreme Court, in paragraphs 44 and 45, again dealt with the expression abetment with particular reference of Section 306 of the IPC, relevant portion of which reads thus:-

"44. 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.

45. The intention of the Legislature and the ratio of the cases decided by this court are clear that 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 opinion and this act must have been intended to push the deceased into such a position that he/she committed suicide."

(Emphasis supplied)

16. What emerges from the decisions of the Supreme Court, as noted above, that in order to constitute an offence under Section 306 of the IPC, the essential ingredients of Section 107 of the IPC must be established beyond all



reasonable doubt. Meaning thereby, it should be essentially proved that the person who committed suicide was instigated by the accused or intentionally aided by any act or by illegal omission, intentionally and commission of suicide or someone engages with one or more than persons in any conspiracy aimed at forcing the victim to commit suicide.

17. Learned Additional Public Prosecutor, appearing on behalf of the appellant-the State of Bihar, has not been able to point out any material on record to demonstrate that opposite party had either instigated the deceased by provoking, instigating or urging on by persuasion to commit suicide. There is absolutely no evidence to show that there was any conspiracy of which the sole opposite party was a party for making the deceased commit suicide.

18. In the background, as discussed above, I do not find any infirmity, factual or legal, in the judgment and order, whereby, opposite party has been acquitted of the charge Sections 306, 120B, 354 and 323 of the IPC and Sections 67/67A and 84B of the I.T. Act.

19. I do not find any merit in this appeal, which is, accordingly, dismissed.

Praveen-II/-

(Chakradhari Sharan Singh, J.)

AFR/NAFR	NAFR
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