

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 72 of 2012**

State of Chhattisgarh through PS. Champa, Distt. Janjgir-Champa

---- Appellant**Versus**

Sayyad Khurshid Ali, S/o Sayyad Taig Ali, aged about 28 years,
 Constable No.340, P.S Champa, Distt. Janjgir-Champa, R/o
 Yadunandan Nagar, Tifram Bilaspur, Distt. Bilaspur

-----Respondent

For Appellant/State:

Shri B. Gopa Kumar, Dy. Advocate General.

For Respondent:

Shri GD VC Ottalwar along with Shri AH.
Syed, Advocates.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

12.7.2016

1. The present Acquittal Appeal has been preferred challenging the judgment dated 4.4.2011 passed by the Sessions Judge, Janjgir-Champa in Sessions Trial No.108/2010.

2. The case of the prosecution in brief is that on 11.2.2010, a police constable namely Ms. Sarita Singh committed suicide at her residence. Subsequently, the landlord of the house where the deceased was staying, gave a merged intimation to the police authorities and in the course of investigation, two suicide notes were recovered vide Exhibits P-12 & 17 both of which reflected that the cause of death was because of the act on the part of the Respondent/accused in the Acquittal Appeal.

3. According to the prosecution, it is a case where the deceased Sarita Singh as well as the Respondent/accused Sayyad Khurshid Ali both were working as police constables in the State of Chhattisgarh. That both of them

were having a love affair with each other for quite some time and in the process, the Respondent/accused is said to have promised the deceased to marry her and subsequently, it is said that the Respondent/accused informed her that he was going on leave in connection with his sister's marriage. Later on, the deceased came to know that the statement so made by the Respondent/accused was a false one and in fact the Respondent/accused had gone for his own marriage. This brought frustration and depression to the deceased and when she tried to talk to Respondent/accused, he flatly refused saying that he is not in a position to marry her which further aggravated the mental condition of the deceased which led to her take the extreme step of ending her life by committing suicide on 11.2.2010 by hanging herself in her residence. Based on the suicide notes and the statements recorded in the course of the investigation, the prosecution filed a charge sheet before the Court below against the present Respondent/accused making him an accused for the offence under Section 306 IPC.

4. The matter was put to trial vide Sessions Trial No.108/2010 and the Court below, vide the impugned order dated 4.4.2011, held that from the entire facts brought before the Court below, the ingredients necessary for making a case of abetment on the part of the Respondent/accused was missing and therefore, had acquitted the Respondent/accused from the charge under Section 306 IPC.

5. It is this judgment which has been assailed in the present Acquittal Appeal.

6. Assailing the judgment, Learned Counsel for the State took the Court through the two suicidal notes i.e. Exhibits P-12 & 17 and also the statements of some of the relevant prosecution witnesses i.e. Navin Singh, PW-14 -

brother of the deceased and Rajesh Joshi, PW-18 – the Investigating Officer. Relying on the statement of the witnesses and also the perusal of the suicide notes, it would clearly give an indication that it was the act on the part of the Respondent/accused which forced the deceased to take the extreme step of committing suicide.

7. Learned State Counsel stressed hard on the fact that the Respondent/accused maintained a love affair with the deceased for quite some time giving a false hope of marrying her and subsequently, backed out from his promise and went in for marriage with someone else. Accordingly to him, if the Respondent/accused had no intentions of marrying the deceased, he should not have given a false hope and promise to her and but for the said act of cheating on the part of the Respondent, the deceased would not have taken this strong step. Therefore, it is a clear case of instigation on the part of the Respondent/accused forcing the deceased to commit suicide.

8. The Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh Sengar vs. State of M.P) has categorically held that “ingredients of Section 107 are that instigating a person to do a thing and “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act which in the instant case is not reflected from the records. The Supreme Court in para-12 of its judgment has held as under:-

“The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation”.

9. Similarly, this Court while deciding Cr. Rev. No.511/2004 in the case of Nihalluddin vs. State of Chhattisgarh dated 3.11.2010 has also relied upon the above referred judgment of Supreme Court and also the earlier judgments

referred by the Supreme Court, considering the ingredients required for an offence under Section 306/107 IPC and held that there should be a clear *mens rea* to commit an offence under this Section and there should be a direct or active act by the accused which led the deceased to commit suicide. This Court while deciding the case of Nihalluddin vs. State of Chhattisgarh (supra) further held that there must be some evidence of instigation or cooperation or initial assistance by the accused persons forcing the victim/deceased to commit suicide to attract the offence under Section 306 IPC.

10. It is also trite at this juncture to mention that for making out a case under Section 306 IPC, the basic ingredient as defined in Section 107 IPC has to be established, but in the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased Smt Champa Bai is not established by the prosecution by any element of evidence.

11. Hon'ble Supreme Court more recently in a decision made in the case of [2011 (3) SCC 626] (M. Mohan vs. State) held that abetment involves a mental process of instigation or intentionally aiding a person to do a thing. It required commission of direct or active act by the accused which led the victim to commit suicide. Seeing no other option and such act must be intended to push the victim into a position that he or she commits suicide. That is to say, there must be some evidence of instigation, cooperation or initial assistance by the accused to commit suicide by the victim.

These ingredients are not available in the given facts and circumstances of the instant case. Therefore, clearly an offence punishable under Section 306 IPC is not made out.

12. More recently, in (2014) 12 SCC, 595 (Mangat Ram vs. State of Haryana), the Supreme Court, dealing with the provisions of Section 306 IPC,

held as under:-

“The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. Section 306 IPC reads as under:-

“306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 107 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.”

13. Considering the above legal position, if we take into consideration the facts of the present case, the only allegation against the present Respondent/accused is that he and the deceased had a love affair for quite some time and subsequently, the Respondent/accused, is said to have refused to marry the deceased and which forced her to take the extreme step. Nowhere in the entire case diary or in the evidence which has been adduced by the prosecution before the Court below has it been established that the Respondent/accused, except for his alleged refusal to marry the deceased, had instigated her or had abetted in a manner compelling the deceased to commit suicide. This would by itself go to prove the case that the prosecution has not been able to bring in the ingredients required under Section 107 IPC

so as to constitute an offence under Section 306 IPC.

14. In the opinion of this Court, there is no legality or infirmity on the part of the Court below in acquitting the Respondent/accused for the offence punishable under Section 306 IPC

15. The Acquittal Appeal, being devoid of merits, the same is accordingly dismissed.

Sd/-

(P. Sam Koshy)

JUDGE

Priya