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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Miscellaneous Petition No.81 of 2016

State of Chhattisgarh through District Magistrate, District Rajnandgaon,
Chhattisgarh

---- Petitioner

versus

Dashrath Yadav, S/o Deendayal Yadav, aged about 30 years, R/o Village Aari
Konari, P.S. Dongargaon, District Rajnandgaon, Chhattisgarh

---- Respondent

For State/Petitioner : Shri Satish Gupta, Government Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

6.10.2016

1. The present criminal miscellaneous petition has been filed seeking leave to appeal against the judgment of acquittal dated 6.10.2015 passed by the Court of Sessions Judge, Rajnandgaon in Sessions Trial No.84 of 2014.
2. By way of the impugned judgment, the Court below, in a case where the Respondent/accused was prosecuted for the offence under Section 306 IPC, has found that the prosecution has not been able to establish its case beyond reasonable doubt and has granted the order of acquittal in favour of the Respondent/accused.
3. Learned Counsel for the State/Petitioner assailing the said impugned judgment submits that though the prosecution witnesses have not supported the case of the prosecution and all these witnesses have turned hostile, the Court below ought to have taken into consideration the dying declaration which was recorded while the deceased was under treatment in the hospital, wherein she has categorically stated

that the Respondent/accused used to abuse and also used to assault her under the regular influence of alcohol and that on one occasion he had also asked her, why she does not end her life. This aspect ought to have been taken into consideration by the Court below and the dying declaration itself was a sufficient piece of evidence brought before the Court below by the prosecution as proof to establish the offence under Section 306 IPC against the Respondent/accused.

4. Learned Counsel for the State further refers to the statement of PW-11, the Executive Magistrate before whom the dying declaration was recorded and thus submitted that the prosecution has, in fact, proved its case so far as the recording of the dying declaration also was concerned.
5. So far as the other relevant materials are concerned, this Court is not inclined to accept the version of the State on account of the fact that the prosecution witnesses themselves have not supported the case of the prosecution and most of the witnesses have either turned hostile or have not supported the case of the prosecution. The only issue which is fairly being contended by the State Counsel is the non-consideration of the dying declaration by the Court below.
6. A perusal of Ex.P-8, the dying declaration, which was recorded on 23.7.2012, clearly reflects that on two occasions on a query being put by the Magistrate she had stated as under:

“जब वे नशा में नहीं होते हैं तब वे कुछ भी नहीं बोलते ।

XXXXX

XXXXX

XXXXX

प्रश्न – तुम्हारा पति से कैसा संबंध है ?

उत्तर – अच्छा संबंध है। पीने पर पगला जैसा होकर नहीं पीने पर कुछ भी बोल दो हंस देते हैं ।”

7. A bare perusal of the above referred to statement made before the

Executive Magistrate by the wife/deceased lying in the hospital itself reflects that the relationship between the husband and the wife was very cordial and normal and there was no strained relationship whatsoever. The only fact that was bad habit of the Respondent/accused being alcoholic and after consuming alcohol the Respondent/accused used to get agitated and wild and used to abuse and assault the deceased.

8. So far as the law in respect of an offence under Section 306 IPC is concerned, it is by now well settled by the Supreme Court in the case of **(2002) 5 SCC 371 (Sanjay Singh Sengar v. State of M.P.)**, wherein the Supreme Court has categorically held that “ingredients of Section 107 IPC 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 paragraph 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 Criminal Revision No.511 of 2004 in the case of **Nihalluddin v. State of Chhattisgarh** dated 3.11.2010 has also relied upon the above referred to judgment of the Supreme Court and also the earlier judgments of 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 v. 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. In the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased is not established by the prosecution by any element of evidence.
11. Hon'ble the Supreme Court again in the case of **[2011 (3) SCC 626] (M. Mohan v. 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 v. 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. For the foregoing reasons, in view of the law laid down by the Supreme Court, if this Court considers the facts of the present case what clearly reflects from the statement of the deceased itself is that there was no strained relationship except for the fact that the Respondent/accused while under the influence of alcohol used to abuse the deceased as well as assault her occasionally. This action on the part of the Respondent/accused cannot be said to be one which could meet the ingredients otherwise required for making out a case for abetment as is required under Section 107 IPC. It is well settled law and as discussed above that in order to make out a case under Section 306 IPC, the prosecution has to conclusively prove and establish the ingredients of abetment, i.e., ingredients of instigation, incitement or abetment or forcing the deceased to commit the act of suicide. In the present scenario, the ingredients of Section 107 IPC are definitely missing from the prosecution case and in addition the dying declaration also shows that the deceased herself had said that the relationship with her husband was very good and except for the period when he was under the influence of alcohol.
14. Thus, for the foregoing reasons, this Court is of the opinion that no strong case has been made out calling for interference with the

impugned judgment. The criminal miscellaneous petition being devoid of merit deserves to be and is hereby dismissed. Consequently, the acquittal appeal is also dismissed.

Sd/-

(P. Sam Koshy)
Judge