

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 57 of 2015

Against the judgment of conviction dated 11.12.2014 and order of sentence dated 16.12.2014 passed by the learned Ad hoc Additional District and Sessions Judge-1st, Sitamarhi in connection with Sessions Trial No. 435/2012/50/2012 arising out of Dumra P.S. Case No. 229 of 2012, G.R. No. 2057 of 2012, T. R. No. 1007 of 2012.

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Puja Kumari, D/O Sri Manoj Kumar, Resident of Village - Gangiya, P.S. - Katra, Distt. - Muzaffarpur. At present village - Simra, Near Simra Chowk, Science College, P.S. - Dumra, District - Sitamarhi

....Appellant

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (SJ) No. 72 of 2015

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Virendra Sah, Son of Raghunath Sah, Resident of Village - Bhauprasad (Lohdih), P.S. - Dumra District - Sitamarhi

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No. 57 of 2015)

For the Appellant : Mr. Jagdish Prasad, Advocate
Mr. Virendra Kumar, Advocate

For the Informant : Mr. Ashhar Mustafa, Advocate

For the State : Mr. Z. Hoda, A.P.P.

(In CR. APP (SJ) No. 72 of 2015)

For the Appellant : Mr. Ajay Thakur, Advocate

For the Respondent : Mr. Ashhar Mustafa, Advocate

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CORAM: HONOURABLE SHRI JUSTICE BIRENDRA KUMAR

C.A.V. JUDGMENT

Date: 29-05-2017

Both the appellants Puja Kumari and Virendra Sah faced trial along with four others in Sessions Trial No. 435 of 2012/50 of 2012 arising out of Dumra P.S. Case No. 229 of 2012 for the offences under



Sections 306/120B, 354, 323 of the Indian Penal Code as well as under Sections 67, 67A, 84B of the Information Technology Act, 2000.

2. The appellants have been convicted under Sections 306 and 120B of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.50,000/-. In default of payment of fine, rigorous imprisonment of six months have been ordered for the offence under Section 306 of the Indian Penal Code and no separate sentence has been awarded for the offence under Section 120B of the Indian Penal Code.

3. The appellants were acquitted of other charges as referred to above. Other four accused Lovely Kumari, Bhairav Rai, Akhilesh Paswan and Gauri Yadav have been acquitted of all the charges by the same judgment giving benefit of doubt.

4. Contention of the learned counsel for the appellants is that the matter is of love-affairs and the victim was done to death as honour killing by the prosecution side and thereafter, the present false case has been lodged. The post-mortem report would reveal that no case of suicide by hanging was found by the Doctor. Their contention is that even if the entire prosecution case and the evidences are accepted, the prosecution has failed to prove that death of the victim was result of abetment of the appellants. Their contention is that on the very same evidence, the learned trial court has acquitted the other accused persons



and convicted the appellants and did not consider that if on the same materials two views are possible, the view in favour of the accused should be preferred. Their next contention is that there is complete lack of evidence of criminal conspiracy to abet the suicide, hence, conviction under Section 120B of the Indian Penal Code is also bad in law. Learned counsel submits that the learned trial court has wrongly relied on the suicide note of the victim, only against the appellants. His contention is that on careful perusal the suicide note (Ext. 5) would reveal that the victim was frustrated from different corners as a result whereof she committed suicide. Therefore, the finger cannot be pointed against the appellants alone and benefit of doubt should have been given the appellants also.

5. To counter the aforesaid submission, learned counsel for the informant submits that there is definite and sufficient evidence pointing the allegation against the appellants that the abetment of the appellants was result of the suicide committed by victim Kanchan Bala. His submission is that, in fact, the appellant Birendra Sah was harassing her sexually and mentally to enter into forceful marriage with the victim which was not liked by her and she found herself tortured by different acts committed on different occasion by the appellant Birendra Sah against her and she committed suicide. Therefore, the finding of the



learned trial court should not be interfered with for trivial and negligible discrepancies in consideration of the evidence.

6. The prosecution case as disclosed in the First Information Report (Ext. 9) lodged by Manish Kumar Jha (P.W. 4) the brother of the victim-girl is that in the night of 22.08.2012 Kanchan Bala, the sister of the informant slept in the house along with the mother. In the early morning, the mother and the informant went for morning walk. In the meantime, Kanchan Bala committed suicide by hanging herself with the ceiling and with the help of her *Dupatta*. When the informant and his mother returned back they noticed the aforesaid suicide.

The reason for suicide is disclosed that victim Kanchan Bala and appellant Puja Kumari along with acquitted accused Lovely Kumari were studying in Shail Computers since January, 2011. Appellant Birendra Sah was also visiting thereat as he had some affairs with Puja Kumari and acquitted accused Lovely Kumari. Appellant Birendra Sah was in the habit of teasing and sexually harassing Kanchan Bala. The informant and she had gone to appear in the examination of B.Sc. Part-II in June, 2011. On the college gate, appellant Puja Kumari took the victim to her house where appellant Birendra Sah was present. They all locked the victim inside the room and with the help of Puja and Lovely, Birendra Sah took some objectionable and sexual coloured photographs and video recording with the victim-girl. Everything was



done to blackmail the victim to pressurize her for the purpose of marriage. The victim was threatened by appellant Birendra Sah to marry with him, failing which the appellant would commit murder of the victim as well as her brother. The victim reported everything to her father. Thereafter the father went to lodge an FIR but at the police station, the matter was compromised between the parties as the appellant Virendra Sah sought unconditional apology.

In July, 2012 again the informant and Kanchan Bala had gone to appear in B.Sc. Part-III examination at Ram Shakal Singh, Science College. This time appellant Birendra Sah had objectionable behaviour with the victim-girl and on protest made by the informant, he was assaulted by the appellant Birendra Sah and others already acquitted. However, the Magistrate on examination duty pacified the matter. Other acquitted accused persons were also present at the time of occurrence and all attempted to kidnap the informant and had threatened the informant that they would get informant murdered. This time Dumra P.S. Case No. 186 of 2012 was lodged. Thereafter the appellant Birendra Sah started pressurizing the informant and others for his marriage with the victim-girl as well as for withdrawal of the aforesaid police case. The aforesaid torture is the reason for suicide.

7. During trial, the prosecution examined altogether 14 witnesses. Thirty documents vide Ext. 1 to Ext. 30 were exhibited on



behalf of the prosecution and three material exhibits Ext. i to Ext. iii were marked.

8. The defence also examined a witness Abhay Ranjan and produced Ext. A to Ext. E in support of the defence.

9. The learned trial Judge has referred and discussed, in details, the prosecution evidences, oral and documentary, as well as the defence evidences. Only relevant portion of the evidence is being referred here to decide whether the suicide was result of the abetment of the appellants. P.W. 4 Manish Kumar Jha is informant of the case as well as full-brother of victim Kanchan Bala. He has supported the prosecution case as disclosed in the First Information Report. P.W. 1 Vikash Kumar Jha is brother of the deceased who came after the occurrence of suicide and supported the prosecution case as disclosed in the First Information Report as hearsay witness. P.W. 2 Nisha Jha is mother of the deceased. She has also supported the prosecution case as disclosed in the FIR. P.W. 3 Uday Kant Jha is father of the deceased. This witness has also supported the prosecution case as disclosed in the FIR as hearsay witness vide paragraph 11 of his deposition. P.W. 5 Ram Sagar Singh is Examination Controller of the College where the informant and victim had appeared in the examination and he has proved the supporting documents such as signature on attendance-sheet, identity cards, writing on the answer-sheet etc. to substantiate that on



10.07.2012, the informant and the victim had appeared in the examination. P.W. 6 Dineshwar Prasad Singh is landlord where the informant and her deceased sister were residing and the occurrence of suicide took place. He has supported the occurrence of suicide as hearsay witness. P.W. 7 Chandraketu Jha is search witness in whose presence the note-book and diary written by the victim were recovered and are Ext. A and A/1 as well as Ext. 5 in this case. P.W. 8 Doctor Anil Kumar Srivastava performed the post-mortem examination and submitted the post-mortem report vide Ext. 8. P.W. 9 Harishchandra Thakur is first I.O. of this case who did major part of the investigation and P.W. 10 Vimal Kumar Singh is the second I.O. who submitted charge-sheet in this case. P.W. 11 Sri Niraj Kumar, Judicial Magistrate has deposed that in his presence from the seized pen drive the positive photographs and copy of the video were prepared and again sealed by the Investigating Officer. P.W. 12 Arvind Kumar Singh is a witness on the inquest report. P.W. 13 Ramesh Chandra Srivastava is a Clerk posted in the Court of Chief Judicial Magistrate who has deposed that the pen drive and positive of the same were produced by Sri Niraj Kumar, Judicial Magistrate, in whose presence, the positive of the photographs were prepared. P.W. 14 Doctor Sarda Nand Singh is handwriting expert. He had compared the admitted handwriting of the deceased with Ext. 5



said to be the suicide note left by the deceased and found that the writing on admitted papers and on Ext. 5 are of the same person.

10. First contention of the learned counsel for the appellants is that the matter was of love-affairs between the victim-girl and appellant Virendra Sah. They wanted to marry but the family members did not agree for the same, hence, the victim might have been murdered as honour killing. In support of the aforesaid contention, submission is that the Doctor has not found any oozing of blood from the mouth or nose of the deceased and the tongue was not protruded or any other sign for conclusion of a case of suicide was also not present, vide the post-mortem report Ext.8.

11. The Doctor (P.W. 8), who performed post-mortem, has deposed that on external examination, he found that both eyes were closed, mouth was closed, tongue inside, blackish ligature mark half inch wide around upper part of neck obliquely present with knot mark, present on right side of upper most part of neck below right ear.

12. According to opinion of this expert, death was caused due to asphyxia leading to cardiac failure as a result of above noted injuries due to hanging caused by rope like substance, it may be a folded “dupatta”. There is nothing in the cross-examination of this witness to suggest a case of throttling and there is no case that any other means for commission of death was used. Moreover, the perusal of suicide note



would reveal that the matter is of suicidal death and not a homicidal death.

As per medical jurisprudence protrusion of tongue or oozing of blood from mouth or nose is not necessary in each and every case of hanging. Therefore, I hold that the death was a suicidal death.

13. Now the question remains to be considered is whether the death of victim Kanchan Bala was the result of any positive act on the part of the appellants to instigate or aid in committing suicide.

14. Section 306 of the Indian Penal Code defines the offence of abetment of suicide as follows:-

“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.”

15. The word abetment has been defined under Section 107 of the Indian Penal Code as follows:-

“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 aides, by any act or illegal omission, the doing of that thing.”

Explanation 2 which has been inserted along with Section 107 reads as under:



“Explanation 2.--- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

16. In **Remesh Kumar vs. State of Chhattisgarh** reported in (2001)9 SCC 618, the Hon’ble Apex Court examined different shades of the meaning of “Instigation” and in paragraph 20 observed as follows:-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable to being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

17. In **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)**, 2009(11) SCALE 24, the Hon’ble Apex Court held that there should be intention to provoke, incite or encourage the doing of an act by the latter.

18. In **State of West Bengal vs. Orilal Jaiswal & Another** reported in (1994)1 SCC 73, the Hon’ble Apex Court cautioned in the



matter of consideration of evidence for offence under Section 306 of the Indian Penal Code as follows:-

“16. In State of West Bengal vs. Orilal Jaiswal & Another, (1994)1 SCC 73, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

19. Paragraph 20 and 21 of the judgment of Hon’ble Apex Court in **Gangula Mohan Reddy vs. State of Andhra Pradesh** reported in 2010(1) PCCR 247 is being reproduced below:-

“20. 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.”

“21. The intention of the Legislature and the ratio of the cases decided by this Court is 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 option and this act must have been intended to push the deceased into such a position that he committed suicide.”



20. In **Mohan Singh vs. The State of M.P.** reported in **1997 Cr. Law Journal 894**, the Hon'ble Apex Court held that mere allegation of harassment made by the deceased in her dying declaration against the accused is not sufficient to constitute the offence of abetment to commit suicide.

21. In the backdrop of aforesaid legal position, let this Court consider the evidence on the record.

22. The prosecution case is that at the time of first occurrence in June, 2011, when the informant came out of the examination hall along with the victim sister, appellant Puja Kumari took her to her house and thereat under duress some sexual coloured and obscene photographs of deceased and appellant Virendra Sah were taken just to blackmail the deceased to marry with Virendra Sah. The aforesaid fact was complained by the deceased to her parents. The said photographs have been produced in this case as Ext. 25 series which were enlarged as positive photographs from the soft copy of the recovered pen drive. The photographs would reveal that in none of the photographs, the victim was protesting, rather she was happy and happily joined with appellant Virendra Sah. The photographs were taken on different occasions in different attires. Therefore, it cannot be said that the photographs were taken forcefully by putting the victim under duress at one time and the victim was feeling tortured and humiliated. P.W. 4 has categorically



been asked in the cross-examination regarding the photographs and after a look on the photographs, he identified that the photographs are of victim and appellant Virendra Sah taken on different occasions and in different attires and none of the photographs reveals that the victim was protesting or was under duress. Therefore, the prosecution case that the victim was tortured after obtaining of her obscene photographs with appellant Virendra Sah and she was thinking to finish herself is not believable and acceptable. The prosecution did not rely on any seized video before the trial court or before this Court, hence, they are not referred herein. Moreover, the act of suicide was committed after more than a year of the alleged above act. Therefore, it cannot be said that the suicide had proximity with the alleged occurrence of taking of the photographs.

23. The second occurrence, allegedly, took place on 16.08.2012 again at the time of examination and at the school centre. This time the named accused persons including the acquitted accused persons attempted to misbehave with the deceased giving colour of a sexual harassment when the act was protested by the informant, he was assaulted by the accused persons rather attempt to kidnap him was committed. For this occurrence, Dumra P.S. Case No. 186 of 2012 was registered. However, there is no whispering about the occurrence of obscene photographs of the victim taken by the named accused persons



last year. The suicide note (Ext.5) also does not disclose anything regarding such photographs of the deceased taken forcefully with appellant Virendra Sah. For the obvious reason that none of the photographs shows that any force was used for clicking those photographs nor the same were taken, at one occasion, as alleged.

24. P.W. 2 deposed that she along with her daughter had gone for a photo framing at Anand Photo Framing, Shankar Chouk, Dumra. At that time also the accused persons blackmailed the victim by saying that the obscene photographs would be made public if the victim would refuse to marry with the appellant Virendra Sah. This occurrence was for the first time disclosed after the suicide. Moreover, P.W. 2 had not stated the same before the police during investigation which would be evident from her cross-examination as well as confrontation of the Investigating Officer with the aforesaid statement. Moreover, D.W. 1 the proprietor of Anand Photo Framing has denied that any occurrence had taken place at his shop on 16.08.2012.

25. The note book and the diary, which were being used by the victim, do not disclose that she was in the habit of writing diary. Ext. A is undated writing of the victim-girl as proved by the informant wherein she has written as follows:-

“I do not know why my family do not like my behavior and me. They know Kanchan is very bad girl. I am sure my friends are wrong but I am not able to make distance from them. How can



they say I am absolutely wrong. I accept I am wrong but I understand that I am a good girl than I believe them.”

26. The learned trial Judge has relied on the suicide note for giving benefit of doubt to other co-accused as they are not named in the suicide note and for convicting the appellants as their name had appeared in the suicide note.

27. In the undated suicide note, vide Ext. 5, she has addressed different parts of the notes to different persons, especially, to the police officer, to her brother (informant) and to her parents. A careful perusal of the suicide note does not indicate that the suicide was result of the abetment by the appellants only. “At one place, she has stated **“sorry mother, excuse me, the only fault of mine is that I did not go with him. What I could have done you (mother) too want to marry me. Now I cannot appear in the exam, therefore, I want to finish myself so that no one would get troubled.”**

28. At another place, she addressed to his brother (informant of this case) **“Bhaiya you do not feel comfortable in going to coaching institute with me. Now you are free to go alone. Due to me you were not free. Excuse me, due to my reasons, you were abducted, disturbed but you people doubt on me. If I would have disclosed to you regarding the happening with me you would have stopped my education, appearance in the examination. What I could have done**



when I was helpless. Now you people would feel no problem, he (appellant) has crossed all the limitations”.

29. P.W.2 or P.W. 3 have cunningly denied that they were willing to get the victim married for the reasons best known to them. P.W. 4 admits that in Sanha to the police, he had written that marriage of the victim is already fixed and settled. Whereas the victim, in her suicide note, has expressed her unhappiness on the proposal of her marriage by the family members.

30. P.W. 2 as eye-witness and P.W. 3 and 4 as hearsay witness have stated that in the night, the victim had seen a T.V. serial wherein a girl, victim of crime, finding herself helpless from all corner committed suicide. After watching the serial, the victim was weeping but on consolation from mother, she slept and, in the early morning, committed suicide.

31. The aforesaid material clearly reveals that there is nothing to point finger only against the appellants of their willful conduct which would likely drive the deceased to commit suicide to establish the requirements to prove the charge of abetment to commit suicide. In my view, there is complete lack of such evidence in this case against the appellants. The victim might be a hypersensitive person reacting, differently, from the different acts. In the present case, she expressed reaction against the opinion of the parents about her, behaviour of the



brother in feeling shy in accompanying the victim knowing that she might be in affair with some boy, the inaction of the police in not giving the desired result and other circumstances as discussed above.

32. Learned counsel for the informant has relied on judgment of the Hon'ble Apex Court in **Praveen Pradhan Vs. State of Uttranchal and Anr.** reported in (2012)9 SCC 734, **Kamalakar Nandram Bhavsar and Ors. Vs. State of Maharashtra** reported in (2004)10 SCC 192, **Didigam Bikshapathi and Anr. Vs. State of A.P.** reported in (2008)2 SCC 403, **Virendra Kumar Vs. State of U.P.** reported in (2007)9 SCC 211, **Moti Lal Vs. State of M.P. (Now Chhattisgarh)** reported in (2004)2 SCC 469 and **Sahebrao and Anr. Vs. State of Maharashtra** reported in (2006)9 SCC 794 for his submission that the referred cases would reveal that in similar situated facts and circumstances, the Court held that instigation to commit suicide was there.

33. On careful perusal of the aforesaid judgments, in my view the same are not applicable in the present facts and circumstances of this case and the case laws referred before.

34. The learned trial Court has failed to consider the aforesaid evidences which creates doubt on the prosecution allegation that the suicide was result of the abetment committed by the appellants. Therefore, the judgment of conviction and sentence dated 11.12.2014 and 16.12.2014, for offence under Section 306 of the Indian Penal Code,



passed by the learned Ad hoc Additional District and Sessions Judge-1st, Sitamarhi, in connection with Sessions Trial No. 435/2012/50/2012 arising out of Dumra P.S. Case No. 229 of 2012, G.R. No. 2057 of 2012, T. R. No. 1007 of 2012, are hereby set aside. There is no evidence at all to prove the charge of criminal conspiracy against the appellants nor the learned trial court has specifically discussed the evidence on the record to prove the aforesaid charge. Therefore, the conviction of the appellants under Section 120B of the Indian Penal Code is also not sustainable and, accordingly, the same stands set aside. Appellant Puja Kumari is already on bail, hence, she is exonerated from the liability of bail bond. Appellant Virendra Sah is in custody, hence, let him be released at once.

35. Since commission of suicide is no offence, there is no question of allowing any compensation to the victim of crime. Accordingly, both the appeals stands allowed.

(Birendra Kumar, J)

Kundan Sharma

AFR/NAFR	A.F.R.
CAV DATE	10.05.2017
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