

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 3111 OF 1999

1. Gorakhnath, S/o Kurso Ram Patel, aged about 53 years, R/o Village Kirari, Police Station Dabhra, District Bilaspur.
2. Yashwant Singh, S/o Gorakhnath Patel, aged about 27 years, R/o Village Kirari, Police Station Dabhra, District Bilaspur.
3. Tomeshwar @ Manmohan, S/o Bhagwant Singh Patel, aged about 34 years, R/o Village Kirari, Police Station Dabhra, District Bilaspur.
4. Pushpeshwar Singh @ Baba, S/o Fatte Singh Patel, aged about 34 years, R/o Village Kirari, Police Station Dabhra, District Bilaspur.
5. Kiran Patel, W/o Tomeshwar @ Manmohan Patel, aged about 29 years, R/o Village Kirari, Police Station Dabhra, District Bilaspur.

... Appellants

Versus

The State of Madhya Pradesh, through the District Magistrate, Bilaspur.

... Respondent

For Appellants	:	Mr. Kishore Narayan, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

26/07/2017

1. The instant appeal has been preferred by the Appellants assailing the judgment of conviction and sentence dated 16.11.1999 passed by the Additional Sessions Judge, Sakti, Bilaspur (as it then was), presently under the District of Janjgir-Champa, in Sessions Trial No. 413 of 1998.
2. Vide the impugned order, all the Appellants have been convicted for the offence punishable under Section 306 of IPC and Appellants No.1 and 5 have been sentenced to undergo R.I. for three years with fine of Rs.5000/- each with default stipulation and Appellants No. 2 to 4 have been sentenced to undergo R.I. for five years with fine of Rs.10,000/- each with default stipulation.
3. Pending the appeal before this Court, Appellant No.1 Gorakhnath Patel has died and therefore the appeal so far as Appellant No.1 is concerned abates and the appeal survives only so far as Appellants No. 2 to 5 are concerned.

4. Brief facts of the case as per the prosecution are that on 17.7.1997 at around 11pm the deceased Premlata is said to have poured kerosene upon her and set herself ablaze causing grievous burn injuries, to which she later on succumbed at around 2am during the same night. An FIR was lodged against the six accused persons for the offence punishable under Section 306 read with Section 34 of IPC. The prosecution in all led evidence of 30 witnesses and the defence in turn examined one witness Kedar Singh as DW-1.

5. After the conclusion of the evidence, the Court below vide impugned order acquitted the third accused Bihari Lal Patel, son of the first accused Gorakhnath Patel (since died), and convicted all the other accused Appellants before this Court for the offence punishable under Section 306 of IPC and imposed the sentence as mentioned in the second paragraph of this judgment. It is this judgement of conviction and sentence which has been assailed by the Appellants in the present appeal.

6. Contention of the learned Counsel for the Appellants is that the prosecution in fact has not been able to prove its case beyond reasonable doubt so as to establish the charge which has been leveled against the Appellants. It was also the contention of the learned Counsel for the Appellants that the present Appellants have been convicted for the offence under Section 306 of IPC. According to him, for establishing the offence under Section 306 of IPC, necessary ingredients of abetment as is defined under Section 107 of IPC has to be made out and for which the prosecution should lead cogent and substantive piece of evidence. In the instant case, there is no evidence whatsoever except for the two interested witness that is the husband of the deceased, PW-18 Sanat Kumar, and the son of the deceased, PW-9 Arun Kumar aged about 12-13 years at the relevant point of time. According to the Counsel for the Appellants, in the

absence of any substantive material to establish the abetment with which the offence under Section 306 could have been made out, the entire case of the prosecution stands collapsed and the impugned order which has been passed only on assumption and presumption deserves to be set aside/quashed.

7. Per contra, opposing the appeal learned Counsel for the State submits that it is a case where the judgment of conviction does not warrant any interference as the same has been passed after due consideration of the evidence which have come on record. According to the learned Counsel for the State, there has been categorical evidence led by PW-18 Sanat Kumar and which has been supported by the evidence of PW-9 Arun Kumar, to establish the offence. She further submits that it is the act on the part of the present Appellants which had forced the deceased to take such an extreme step of ending her life by committing suicide. According to the State Counsel, it is a case where on the same day in the evening at around 7-7:30pm, a meeting was called in the house of Appellant No.1 (since died) and in the said meeting, the Appellant No.2 Yashwant Singh, another son of Late Gorakhnath Patel (Appellant No.1) had made a specific character assassination of the deceased alleging illicit relationship that she was having with Bihari Lal Patel, one of the other sons of Late Gorakhnath Patel (Appellant No.1). It is also stated by the State Counsel that in addition to the allegation on the character of the deceased, the accused persons also had asked the deceased and her family members to immediately vacate their house and to leave the village. According to the State Counsel, this conduct of the accused persons forced her to take the extreme step of committing suicide by pouring kerosene upon her and setting herself ablaze. The State Counsel also opposing the appeal submitted that an oral dying declaration was made by

the deceased to PW-18 Sanat Kumar and PW-9 Arun Kumar, which would reflect the role played by the Appellants which led the deceased committing suicide.

8. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, the undisputed fact is that the deceased along with her husband, PW-18 Sanat Kumar, and her son, PW-9 Arun Kumar, were staying at the house adjacent to the house of the accused persons. It is also not in dispute that so far as the accident that took place on 17.7.1997 is concerned, a written report for the first time was lodged after about 10 days time on 28.7.1997. No proper justification or explanation has been given for the delay in the lodging of the written report by PW-18 Sanat Kumar. The only explanation which appears to have been given is that they were busy in performing the last rites of the deceased. What is also pertinent to mention at this juncture is that the original written report which was lodged on 28.7.1997 did not have the bearing of the PW-9 Arun Kumar to have attended the meeting that was held at the house of Late Gorakhnath Patel (Appellant No.1). This has for the first time reflected in the FIR which was registered by the police authorities after more than seven months, that is, on 4.2.1998 (Exhibit P-15). The written complaint has been exhibited as Exhibit P-11. Thus, there was sufficient time in the intervening period for improving upon the case by the two interested persons, that is, the husband and son of the deceased, PW-18 and PW-9 respectively.

9. So far as the oral dying declaration of the deceased is concerned, it is said that the oral dying declaration was made by the deceased before her husband (PW-18) and son (PW-9) while she was being taken to the hospital. However, while she was being taken to the hospital in the jeep there were other persons also sitting beside PW-18 and PW-9, who were

Virendra Singh (PW-7), the Sarpanch of the Village and Appellants No. 1, 2 and 5. The Sarpanch (PW-7) is an independent witness and in his deposition he has not stated anything so far as any dying declaration that was made by the deceased while she was being taken from the place of incident to the hospital. Thus, the statement of PW-18 and PW-9 so far as there being an oral dying declaration gets weakened in the absence of any independent support being received by the prosecution to substantiate this contention.

10. It is also pertinent to take note of the evidence of PW-4 Maya Devi, PW-5 Vishnu Prasad, PW-6 Geeta Patel and that of PW-7 Virendra Singh, the Sarpanch of the village. All these witnesses PW-4 to PW-6 are the persons who are immediate neighbours of the family of the deceased on the date of incident and those were the persons who had reached the spot immediately on the alarm being raised by the deceased and her family members and in their presence also the deceased has not made any such averment for the extreme step taken by the deceased being on account of the act on the part of the accused persons whereby they had accused the deceased of having illicit relationship with Bihari Lal Patel, one of the sons of Late Gorakhnath Patel (Appellant No.1) and one of the accused persons who has been acquitted by the Court below itself.

11. The perusal of the record would reveal that the only accusation against the present Appellants is of having a meeting on the fateful day i.e. on 17.7.1997 in the evening whereby the deceased was accused of having an illicit relationship. However, this fact of there being a meeting held in the evening had not been corroborated or proved by any of the immediate neighbours who have been examined by the prosecution. The averment of the meeting held in the evening being reflected only from the deposition of the husband (PW-18) and son (PW-9) of the deceased. Further, what is

also reflected from the deposition of PW-18 is that in paragraph 6 of his evidence he has categorically made a statement that the deceased had committed the suicide on account of the accusation made on her character by the villagers and that she was not naming anybody so far as the individual accusation is concerned. This statement of PW-18 Sanat Kumar further weakens the case of the prosecution.

12. Having discussed the evidence part which have come on record, now what is more important is, to see as to that what is the alleged role played by the accused persons and whether the same can be brought within the ambit of the term 'abetment' which is required for making out an offence under Section 306 of IPC. As far as the allegation of abetment for committing suicide is concerned, if it is seen in the light of abetment as defined in Section 107 of IPC, there has to be an instigation or abetment to do a particular thing visible for setting the provisions of Section 107 in motion. Section 306 of 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 life."

If we see the provisions of Section 306 of IPC, it is evidently clear that implicating somebody for the offence punishable under Section 306, the necessary ingredient to prove the said offence is abetment. Abetment has been defined under Section 107 of IPC. For ready reference, the provisions of Section 107 is reproduced below:-

"Section 107. 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 places 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.

Explanation 1. – A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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 facilitates the commission thereof, is said to aid the doing of that act.”

If we see the definition of abetment, it clearly stipulates that, firstly, there has to be an instigation by a person to do a thing; secondly, the person must engage himself with one or more than one person conspiring to do something and, thirdly, there should be an intentional aid by the said person or an illegal omission on the part of the said person for doing of that thing.

13. On perusal of the aforesaid legal position so far as abetment is concerned, what is more important is to analyze whether the allegations which have been casted against the Appellants would fall within the ambit of abetment.

14. The only allegation which has been attributed against the Appellant is that of accusing the deceased of having an illicit relationship with one of the accused persons who has been acquitted, namely, Bihari Lal Patel. Apart from the said accusation, it is said that the accused person had asked the deceased to vacate the premises and to leave the village. What cannot be brushed aside is the statement of the husband (PW-18) of the deceased in this regard, who says that in the meeting itself he had consoled his wife (the deceased) that he was not believing the accusations and that she need not worry about such allegations which have been made. This itself shows that she had all the support rendered by her husband at the time of the accusation itself. What also is to be seen is that, even if for argument sake though there is no evidence in support of any meeting held on 17.7.1997 in the evening, even then, the incident took

place at around 11-11:30 O'clock at night whereas the meeting is alleged to have taken place at around 7-7:30 pm in the evening and there was much gap during this period and during which time the deceased is said to be normal in her behaviour and she along with her family members had peacefully gone to sleep. Thus, there does not seem to be any immediate provocation or instigation at the hands of the Appellants in any manner which compelled and forced the deceased to end her life by committing suicide.

15. So far as the law in respect of the offence punishable under Section 306 of IPC is concerned, it is by now well settled by a series of decisions of the Hon'ble Supreme Court. The Hon'ble Supreme Court in a decision made in the case of **M. Mohan v. State** [2011 (3) SCC 626], 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. Similar view was taken by Hon'ble Supreme Court in **Gangula Mohan Reddy v. State of A.P.** [2010 (1) SCC 750]. The Hon'ble Supreme Court again in a series of judgement has spelt out as to what is the requirement of law to prove a case under Section 306 of IPC against a person.

16. In view of the aforesaid legal position as it stands and taking into consideration the nature of evidence which has come, except for the statement of the two interest witnesses i.e. the husband (PW-18) and son (PW-9) of the deceased, there is no evidence whatsoever to prove the allegations leveled against the present Appellants so far as the abetment

as is required under Section 107 of IPC to make out a case under Section 306 of IPC.

17. The appeal therefore deserves to be and is accordingly allowed. The Appellants are acquitted of the charge leveled against them. They are on bail. However, their bail-bonds shall remain in operation for a period of six months in view of the provisions contained in Section 437-A of CrPC.

Sd/-
(P. Sam Koshy)
Judge

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