

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 114 of 2009****Reserved on : 16.11.2018****Delivered on : 28.11.2018**

Sirmukh Singh @ Sarmukh Singh, aged about 48 years, S/o Late Niranjana Singh Dhillan, R/o Satabdi Nagar, Telibandha, P.S. Teli Bandha, Raipur, Tahsil and District- Raipur (C.G.)

---- Appellant**Versus**

The State of Chhattisgarh, through P.S.- Telibandha, District- Raipur (C.G.)

---- Respondent

 For Appellant : Mr. Y.C. Sharma, Advocate.
 For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 04.02.2009 passed by Sessions Judge Raipur, District- Raipur (C.G.) in Session Trial No. 93/2008, wherein the said court convicted the appellant for commission of offence under Sections 343, 330 & 306 of IPC and sentenced to undergo R.I. for 1 year and fine of Rs. 1000/-, R.I. for 2 years and fine of Rs. 1000/- & R.I. for 5 years and fine of Rs. 2000/- respectively with further default stipulations.
2. In the present case, name of the victim/ deceased is Hemlal. The appellant is doing transportation business by possessing two trucks. In truck bearing registration No. CG-04 DA-9355, the deceased was engaged as driver. On 17.02.2008, the

deceased left the truck at Village- Kharora and informed the appellant regarding unloading of iron ore. On 18.02.2008 when the deceased did not return with truck, the appellant moved for searching the same. The appellant took the deceased to Raipur. It is alleged that the appellant confined the deceased for three days in his house and caused hurt to compel him for restoration of truck that is why he committed suicide by hanging himself on a ceiling fan. Matter was reported and investigated and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) As per judgment of the trial court (Para 39), there is no direct evidence regarding instigation for committing suicide, therefore, finding of the trial court regarding commission of offence under Section 306 of IPC is not sustainable.

(ii) The medical expert Dr. Ullas Gonnade (PW-4) was not shortened regarding cause of death, therefore, it cannot be said that death is suicidal.

(iii) Raja Pal (PW-8) has admitted that he left the deceased at Police Station- Tikrapara to lodge report regarding theft of the vehicle, therefore, harassment by the appellant is not established. Finding recorded by the trial court is liable to be reversed.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant

material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. To substantiate the charge, the prosecution examined as many as 10 witnesses. Joginder Singh Saluja (PW-1) is a person who shown house of the deceased to the appellant and some other persons. Bhupendra Singh (PW-2) deposed on the same line. Shivji Singh (PW-3) is a person who assisted during investigation. Dr. Ullas Gonnade (PW-4) is a person who conducted autopsy of the deceased but did not opine that it is a case of suicide. He admitted in his cross-examination that he did not give any information regarding nature of death, therefore, from evidence of medical expert Dr. Ullas Gonnade (PW-4), it is not established that death was suicidal. Ishwari Vibha (PW-5) is brother-in-law of the deceased. He made conversation in telephone with family members and deceased- Hemlal. He did not state anything against the present appellant and his version is based on suspicion. It is settled law that the suspicion cannot take place of proof.
6. Harishankar (PW-6) is father of the deceased. He made conversation on telephone with his son/deceased who informed regarding missing of truck. This witness has also made statement on the basis of suspicion that anyone has assaulted him but suspicion cannot take place of proof.

7. Khediyabai Pal (PW-7) is grandmother of the deceased. As per version of this witness, she made conversation with deceased in telephone and deceased informed her that he has been assaulted but from her statement it is not clear as to who assaulted him. Version of this witness is also based on suspicion which cannot take place of proof. Raja Pal (PW-8) is cousin (brother) of the deceased and he saw swelling on the face of the deceased, but he is not in position to tell how that swelling was caused. This witness has also deposed on the basis of suspicion, but suspicion cannot take place of proof. Sewak Ram Pal (PW-9) has seen deceased sitting in a Sumo vehicle and as per version of this witness, deceased did not inform him that anyone assaulted him. Version of this witness has also not stated any incriminating circumstances against the appellant.
8. Rajesh Khare (PW-10) was Station House Officer at the time of incident at Police Station- Telibandha and he investigated the matter. He received information that deceased returned to his home and rest of his version is regarding investigation which is not incriminating piece of evidence against the appellant.
9. On overall assessment of the entire evidence, it is not clear that the deceased was confined for three days or more by the appellant and he had been voluntarily caused hurt by the appellant to compel restoration of the truck, therefore, offence

under Sections 343 & 330 of IPC is not established against the appellant as the evidence is lacking.

10. In order to substantiate the charge under Section 306 of IPC, it is compulsory that the case should fall within the ambit of Section 107 of IPC, which should comprise:-

- (i) instigating a person to commit an offence.
- (ii) engaging in a conspiracy to commit an offence.
- (iii) intentionally aiding a person to commit an offence.

Therefore, a person said to have abetted, doing of a thing when he or she instigates any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

11. As has been held by ***Hon'ble the Supreme Court in 2010 (1) SCC 750 – Gangula Mohan Reddy Vs. State of Andhra Pradesh***, the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person under Section 306, there has to be a clear *mens-rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

12. Looking to the entire evidence on record, there is no evidence against the appellant for instigation, conspiracy or intentionally

aiding to commit suicide, therefore, offence under Section 306 of IPC is also not established.

13. Accordingly, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charges framed against him under Sections 343, 330 & 306 of IPC. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge