

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1131 of 2017

State Of Chhattisgarh Through The Station House Officer, Police
Station Saja, District Bemetara, Chhattisgarh.

---- Appellant

Versus

Prabhu Banjare S/o Late Narayan Banjare, Aged About 21 Years
R/o Village Bijathakur, Police Station Saja, District Bemetara,
Chhattisgarh.

---- Respondent

For State/appellant –Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

09/04/2018

Heard.

1. Instant leave to appeal is against the acquittal order dated 5/05/2017 under section 306 of IPC passed by the Sessions Judge, Bemetara in Sessions Trial No.67/2015.
2. As per the case of the prosecution, appellant was in love relation with the deceased Chuleshwari and the appellant had assured that he will keep her as his wife but it was being deferred from time to time. On 10/04/2015 deceased went to the house of appellant but the appellant refused to keep her as his wife whereby she was sad and in the result thereof she committed suicide by setting herself ablaze. When she was being taken to the hospital she disclosed the fact that because the appellant refused to marry her, therefore she has committed suicide. On the report, merged and the investigation FIR was registered under Section 306 of IPC and charge sheet was filed. Learned court below after evaluating the facts and evidence acquitted the accused, therefore this leave to appeal.
3. Learned counsel for the State/appellant would submit that

statement of PW-2, PW-3 and PW-4 would show that the deceased when wanted to marry and went to the house of the appellant, he refused her and therefore she was sad and after coming back she committed suicide by setting herself ablaze as such the appellant has abetted the deceased to commit suicide.

4. This fact is not in dispute that the deceased Chuleshwari committed suicide by setting herself ablaze. The mother of the deceased Satrupa Bai PW-2 stated that her daughter and the appellant were in love relation and before the incident of 6 months and before incident the appellant sent the deceased back on the ground that since she has not attained majority as such the appellant refused to marry. Consequently, deceased committed suicide. She stated that because the appellant refused to keep the deceased as his wife incident happened. Statement of PW-3 Jeetram Kaushal father of the deceased has stated while deceased Chuleshwari was taken to the hospital, she disclosed to the witness that initially the appellant assured to marry the deceased but he refused to keep her on the ground that she was not major and refused to marry. In the result, she committed suicide. Statement of Mukesh Kumar Kaushal PW-4 brother of the deceased corroborated the same fact. The sister-in-law of the deceased Manisha Kaushal PW-5 have not stated anything why the deceased committed suicide. Considering the statement of PW-2, PW-3 and PW-4 they all have stated that the deceased went to the house of the appellant but the appellant refused to marry her on the ground that she was not major and sent her back. Having said so she came back and committed suicide.

5. If statement of the witnesses are translated into principles laid down to consider the case under Section 306 IPC it do not disclose any abetment has been caused. This court in case of **Rajendra Das Vs.**

State of Chhattisgarh, reported in **2013 (2) CGLJ** in which it has been held in paras 7, 8 & 11 thus :

“7. For the offence u/s 306, the offence by the appellant by instigation depends upon the intention of a person who abets and not upon the act which is done by the person who is abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. Instigation has to be gathered from circumstances of a particular case. In a particular case, there may not be direct offence in regard to instigation which may have direct nexus to suicide. Therefore, in such case, an inference has to be drawn from the circumstances and it has to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

8. In *Gangula Mohan Reddy Vs. State of Andhra Pradesh* (2010) 1 SCC 750, Hon'ble the Supreme Court while interpreting Section 306 IPC held that “Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract section 306 IPC, there has to be a clear mens rea to commit the offence.”

11. In *Mohan Vs. State* represented by the Deputy Superintendent of Police, AIR 2011 SC 1238 Hon'ble the Supreme Court observed thus:

“.....While interpreting section 306 IPC held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC, there has to be a clear mens rea to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry related harassment and that the witnesses have improved upon their earlier statements is ignored then also section 306 IPC, is not attracted in the facts of the present case.”

6. In order to hold an abetment, prima facie reading of the statement of the witnesses in this case cannot be stated that there was a mens rea or community of intention was present. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. In this case statement of the prosecution witnesses do not show that any abetment has been caused as it is quite natural that if deceased was not major and the appellant has

sent her back when she asked him to marry it rather shows decision to do so.

7. Consequently, I do not find any offence is made out under Section 306 IPC. In the result, no ingredients are present to allow leave to appeal in this case to the State. Petition has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

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