

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3451 of 1999

Reserved on : 13.12.2019

Delivered on : 20.12.2019

Shivshanker Verma, S/o Ramadhar Verma, aged 22 years, R/o Village-Saber, Police Station- Kasdol, District- Raipur (M.P.) (Now C.G.)

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant : Mr. Manoj Mishra, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Mr. Rajkumar Yadav, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Manoj Mishra, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 24.12.1999 passed by Second Additional Sessions Judge, Baloda Bazar, District- Raipur (M.P.) (Now C.G.) in Session Trial No. 508/1997, wherein the said court convicted the appellant for commission of offence under Section

376 (1) & 306 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 1000/- on each count with further default stipulations. All the sentences to run concurrently.

3. In the present case, date of incident is five months since date of report i.e. 26.11.1997. As per version of the prosecution, the appellant committed sexual intercourse with the prosecutrix on allurement of marriage and thereafter, refused to get marriage. Due to the refusal, the prosecutrix committed suicide. The matter was reported at Police Station- Kasdol, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
4. Learned counsel for the appellant submits as under:-
 - (i) The prosecutrix is not examined before the trial court and statement of other witnesses is not sufficient to bring home the guilt under Sections 376 (1) & 306 of IPC.
 - (ii) The trial court recorded finding on the basis of evidence which is legally inadmissible.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.
5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
6. I have heard learned counsel for the parties and perused the records.

7. To substantiate the charge, the prosecution examined as many as 18 witnesses. The prosecutrix was not examined because she died before her examination. Bisahu Das (PW-3) has not supported version of the prosecution. As per version of this witness, he has not informed the police that the appellant allured the prosecutrix for marriage and due to denial by the appellant for marriage, she committed suicide. Kartikram (PW-6) is father of the prosecutrix. This witness has also not deposed about the reason of suicide of his daughter. Tulsi Ram Verma (PW-7) is brother of the prosecutrix. Though, he deposed before the trial court that the appellant used to come to his home, but he is not aware as to why his sister committed suicide.
8. Smt. Jana Bai (PW-8) is mother of the prosecutrix. As per version of this witness, deceased informed her that she conceived from the appellant, but she is not able to state as to how relation between the appellant and the deceased was maintained. From evidence of this witness, it is not clear that what is the reason of commission of suicide. No birth register was produced before the trial court to ascertain age of the prosecutrix. Kartikram (PW-6) who is father of the deceased and Smt. Jana Bai (PW-8) who is mother of the prosecutrix, both have not deposed about date of birth of the deceased. No one entered into witness box from school to depose about date of birth of the prosecutrix.
9. As per version of Assistant Sub-Inspector-T.R. Dewangan (PW-15), one school register was seized in which date of birth of the prosecutrix was mentioned as 05.07.1982, but no one from the school was

examined to prove the school register. No one examined to establish who admitted the prosecutrix in the school. In absence of documentary evidence, age of the prosecutrix is not proved. From oral evidence of father and mother, age of the prosecutrix is not proved. No radiological examination was conducted in the present case to establish age of the prosecutrix because she died before initiation of investigation. In absence of the evidence, age of the prosecutrix was not proved to be below 18 years. When age of the prosecutrix was not proved to be below 18 years in absence of statement of the prosecutrix, the appellant has been deprived of the opportunity to bring on record the consent for physical relation on the part of the deceased. If the deceased was consenting party, the charge under Section 376 (1) is not made out.

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 the matter of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in

2010 (1) SCC 750, 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. There is no evidence to connect the appellant for abetment. If physical relation is maintained out of consent then the same is not abetment of suicide. In absence of connecting piece of evidence, the charge under Section 306 of IPC is also not established.
13. Accordingly, the 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 376 (1) & 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