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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.949 of 2015**

Judgment Reserved on : 23.7.2019

Judgment Delivered on : 17.9.2019

Roshan Lal, S/o Moolchand Dewangan, aged about 40 years, R/o Village Dhanora, P.S. Utai, Civil and Revenue District Durg, Chhattisgarh

**---- Appellant**

**versus**

State of Chhattisgarh through P.S. Utai, Civil and Revenue District Durg, Chhattisgarh

**--- Respondent**

**and**

**Criminal Appeal No.983 of 2015**

1. Govind Sahu, son of Chetan Ram Sahu, aged about 20 years,
2. Shakti Chaturvedi, son of Ram Dayal Chaturvedi, aged about 18 years,

Both R/o Village Dhanora, P.S. Utai, Civil and Revenue District Durg, Chhattisgarh

**---- Appellants**

**versus**

State of Chhattisgarh through P.S. Utai, District Durg, Chhattisgarh

**--- Respondent**

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For Appellant in Cr.A.No.949/2015 : Shri Shrawan Agrawal, Advocate

For Appellants in Cr.A.No.983/2015 : Shri Uttam Pandey, Advocate

For Respondent/State : Shri K.K. Dewangan, Dy. Govt. Adv.

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**Hon'ble Shri Justice Arvind Singh Chandel**

**C.A.V. JUDGMENT**

1. Since both the appeals arise out of a same judgment, they are decided together by this common judgment.
2. The Appellants have preferred the instant appeals against judgment dated 31.7.2015 passed by 6<sup>th</sup> Additional Sessions Judge, Durg in Sessions Trial No.11 of 2014, whereby each of them have been convicted and sentenced as under:

| <b><u>Conviction</u></b>                                        | <b><u>Sentence</u></b>                                                             |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------|
| Under Section 306 read with Section 34 of the Indian Penal Code | Rigorous Imprisonment for 10 years and fine of Rs.3,000/- with default stipulation |

3. Facts, in brief, are that deceased's name was Kumari Parvati, who, on the date of incident, was aged about 15 years. According to the prosecution, on 27.11.2013 at about 2 p.m., the deceased along with her friend Reshma (PW3) went to the house of Khalendra (PW6), a student of engineering, for asking him whether he will give them tuition. Allegedly, all the Appellants along with other villagers came there and said both the girls (Parvati and Reshma) that they had come there to do wrong acts, they were vagabond and they were also defaming the village. Thereafter, both the girls returned home. Parvati set herself on fire at home. During treatment, she died at Sector-9 Hospital, Bhilai on 11.12.2013. Morgue (Ex.P18) was lodged. After morgue inquiry, an offence was registered. Statements of witnesses were recorded under

Section 161 of the Code of Criminal Procedure. On completion of investigation, a charge-sheet was filed for offence punishable under Section 306 read with Section 34 of the Indian Penal Code. Charges were framed against the Appellants under Section 306 read with Section 34 of the Indian Penal Code.

4. In support of its case, the prosecution examined as many as 14 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt. No witness has been examined in their defence.
5. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the Appellants submitted that the Appellants have been wrongly convicted by the Trial Court. There is no evidence on record against the Appellants. On the basis of the evidence adduced by the prosecution, offence under Section 306 of the Indian Penal Code is not made out against any of the Appellants. Even if the statements of the witnesses are taken to be as they are, no case is made out against the Appellants. Essential ingredients of Section 107 of the Indian Penal Code is missing. The statements of the witnesses are not reliable.
7. Learned Counsel appearing for the State/Respondent supported the impugned judgment.

8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. Dr. P. Akhtar (PW1) is the witness who conducted post mortem examination on the dead body of Kumari Parvati on 12.12.2013. His report is Ex.P1 in which he opined that cause of death was septicemia and shock which occurred due to 96% ante mortem burns.
10. Ram Prasad (PW2) is father of the deceased and Sarita (PW4) is mother of the deceased. Madhav (PW5) is brother of the deceased. From the statements of these three witnesses, it reveals that they were not present at the place of incident.
11. Ram Prasad (PW2), father of the deceased, has deposed that when he reached his house at 3 p.m., he found the deceased there in burnt condition. On being asked, she told him that she along with Reshma (PW3) had gone to the house of Khalendra (PW6) for asking him about giving them tuition. At that time, the Appellants and some other persons addressed them as characterless girls due to which she set herself on fire. In his cross-examination, this witness has admitted the fact that at the time of inquest proceeding, he had not told this fact to the police nor did he lodge any report till death of the deceased.
12. Sarita (PW4), mother of the deceased, has also deposed that when she went to the hospital, the deceased told her that she along with Reshma (PW3) had gone to the house of Khalendra

(PW6). At that time, the Appellants used filthy words against the deceased and, therefore, she set herself on fire. What filthy words were used for the deceased was not told by the deceased to this witness.

13. Madhav (PW5), brother of the deceased, has also stated that on getting information, he went to the hospital. At that time, dying declaration (Ex.P8) of the deceased was recorded in his presence.
14. The dying declaration (Ex.P8) of the deceased was recorded by Naib-Tahsildar Ranjana Ahuja (PW14). She has deposed that on being asked about the reason of burn, the deceased told her that boys of the locality had teased her and on being asked about names of those boys the deceased did not tell her their names.
15. Reshma (PW3) is the witness who had accompanied the deceased to the house of Khalendra (PW6). In her Court statement, this witness has stated that at about 3 p.m, both had gone to the house of their neighbour for asking him for giving them tuition. After asking about the tuition, when they were returning for their homes, many persons gathered there and started abusing them. They also asked her and the deceased whether said boy Khalendra was their *saiyan*. This witness has further deposed that thereafter both of them went to the house of the deceased. The deceased poured oil on her and set herself on fire in the bathroom of her house in presence of this witness. She has further stated that she did not know who were the persons who abused them. She has categorically stated that the Appellants were not the persons who

abused them. This witness has been declared hostile.

- 16.** Khalendra (PW6) has deposed that two girls of his neighbour had come to his house for seeking English tuition. Later on, he came to know that one of those two girls died due to burn injuries. This witness has further deposed that at the time when the said two girls had come to his house, many boys including the Appellants, who were present there, told him that he used to call girls and do wrong with them. Thereafter, those two girls returned. In paragraph 9, this witness has stated that first 5-6 boys had come, but, thereafter, 15-20 persons gathered there and the allegations were levelled by the said first 5-6 boys. He has not categorically stated that the Appellants were the boys who were indulged in those 5-6 boys.
- 17.** Patwari Kamlesh (PW7) is the witness who prepared spot-map (Ex.P5). Head Constable Prakash Das (PW8) recorded morgue intimation on zero, conducted inquest (Ex.P3) and recorded numbered morgue (Ex.P10) on the basis of morgue recorded on zero. Inspector P.S. Netam (PW10) is the Investigating Officer. He recorded First Information Report (Ex.P11) on the basis of morgue inquiry. He prepared spot-map (Ex.P6) and recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. Dr. Aniruddh Mene (PW12) is the witness who first examined the deceased at Sector-9 Hospital, Bhilai on 28.11.2013. Head Constable Bhikham Sahu (PW13) seized a container from which smell of kerosene was coming out vide Ex.P21.

18. Before discussing the evidence on record, it would be appropriate to refer to the provisions contained in Section 107 of the Indian Penal Code, which runs as under:

**“107. 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 aids, by any act or illegal omission, the doing of that thing.

***Explanation 1.***—A person who, by wilful misrepresentation, or by wilful 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.”

19. While dealing with the issue, it has been observed by the Supreme Court in **AIR 2010 SC 327 (Gangula Mohan Reddy v. State of Andhra Pradesh)** as follows:

**“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 (2011) 3 SCC 626 (**M. Mohan v. State Represented By The Deputy Superintendent of Police**), the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 of the Indian Penal Code there has to be a clear *mens rea* to commit the offence:

“45. The intention of the legislature and the ratio of the cases decided by this Court are 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/she committed suicide.”

21. In the light of aforesaid enunciation of law, the facts and the evidence of the present case are to be examined minutely.
22. It is not in dispute that on the date of incident both deceased Parvati and her friend Reshma (PW3) had gone to the house of Khalendra (PW6) for asking him about giving them English tuition. As per the prosecution story, at that time, the Appellants and some other villagers used filthy words about the character of the two girls. As a result thereof, Parvati poured kerosene on her and set herself on fire at her house in presence of her friend Reshma (PW3). During the course of treatment, she died in the hospital. Sole eyewitness Reshma (PW3) has categorically stated that she

is not aware about who committed the alleged act. In paragraphs 4 and 10 of her statement, she has further categorically stated that the Appellants were not indulged in the persons who abused them.

**23.** Though Khalendra (PW6), in examination-in-chief, has stated that when both the girls had come to him, the Appellants and other boys had said him that he used to call girls and do wrong with them, this witness has not stated anything that the Appellants or the other boys said anything wrong to both the girls. In paragraphs 9 and 15 of his statement, this witness has also stated that both the girls had come to him. At that time, 5-6 boys had also come to him and those 5-6 boys themselves had levelled allegations. Thereafter, 15-20 persons also came there. Who were those 15-20 persons has not been stated by this witness. The Appellants were indulged in the aforesaid 5-6 boys who had come to him first, there is no specific statement given by this witness in this regard. Therefore, it appears that the Trial Court has wrongly relied upon the statement of this witness.

**24.** Other witnesses Ram Prasad (PW2), Sarita (PW4) and Madhav (PW5), who are father, mother and brother of the deceased, respectively, are not eyewitnesses of the incident. In their Court statements, Ram Prasad (PW2) and Sarita (PW4) have stated that in the hospital, the deceased told them that the alleged wrong was done to the deceased by the Appellants themselves. Madhav (PW5) has also stated that the dying declaration (Ex.P8) of the deceased was recorded in his presence. At that time, the deceased had named the Appellants for the alleged act. But, Naib Tahsildar Ranjana Ahuja (PW14), who recorded the dying

declaration (Ex.P8) of the deceased, has categorically stated that on being asked the names of the boys who did wrong with the deceased, she did not tell their names. The deceased told her that the boys were friends of her brother. Since as stated by Ranjana Ahuja (PW14) while recording the dying declaration (Ex.P8) the deceased did not tell her names of any of the boys, statements of Ram Prasad (PW2), Sarita (PW4) and Madhav (PW5) in this regard are not reliable. Thus, from the evidence available on record, it is clear that some boys had used filthy words regarding character of the deceased and her friend Reshma (PW3), but the Appellants were indulged in those boys there is no clinching evidence available on record. Thus, the conviction of the Appellants is not in accordance with the evidence available on record and law.

- 25.** Consequently, the appeals are allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
- 26.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

**(Arvind Singh Chandel)**  
**JUDGE**