

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 14/02/2019

Judgment Delivered on : 18/03/2019

CR.A. No. 1493 of 2018

Sant Kumar Tambrey, S/o. Shivcharan Tambrey, Aged About 27 Years, Caste Satnami, R/o. Village Sukri Kala, Police Chowki Urga, Police Station -Kotwali, Korba, District Korba Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : The Station House Officer, Police Station Champa, District : Janjgir Champa, Chhattisgarh

-----Respondent

For Appellant : Mr. Gurudev I. Sharan, Advocate

For Respondent/State : Mr. H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

18/03/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Sessions Judge, Janjgir, District – Janjgir-Champa (C.G.), in Sessions Case No.14/2012 on 12.07.2012, convicting the appellant for the offence under Section 509 read with Section 34 of the Indian Penal Code and sentencing him to undergo simple imprisonment for 2 months and fine of Rs.2500/- with default

stipulations.

2. Facts of the case in brief is this that the deceased Radhika Suryavanshi, aged 17 years was student of Class-10th. On 14.11.2011, the deceased was accosted by the appellant and other co-accused persons, who insulted her by saying that she is a prostitute and that they want to inform about this to her father. It is alleged that the appellant and the co-accused persons met with the brother of the deceased and made allegations against character of the deceased, asking that she should be married off immediately. Feeling insulted, the deceased for committing suicide immolated herself. The deceased died on 15.11.2011 and before her death dying declaration (Ex.P-20) was also recorded, in which she made allegation against the appellant and other co-accused persons. Morgue intimation (Ex.P-13) was recorded and on completion of morgue enquiry and inquest procedure, FIR was lodged against the appellant and other co-accused persons registering the offence under Section 306/34 of the Indian Penal Code. The case was investigated and the charge-sheet was filed against the appellant for trial in offence under Section 306/34 of the Indian Penal Code.
3. The trial Court charged the appellant with offence under Section 509 and 306 read with Section 34 of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 18 witnesses on its behalf. On examining the appellant under Section 313, he denied all the

incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned hereinabove.

4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The statement of the witnesses that the appellant and other made allegation against the character of the deceased does not amount to an offence under Section 509 of the Indian Penal code. On the contrary, the appellant and the co-accused persons had informed the family of the deceased for the purpose of correcting the deceased and they had no other intention. Therefore, the offence under Section 509 of the Indian Penal Code is not made out. In the alternative, it is submitted that the appellant has already undergone the sentence of imprisonment and has also paid the fine amount, but the career of the appellant is in the process of making and conviction against him can be a hurdle in his appointment to any government job, therefore, this Court may kindly be pleased to order that the conviction against him shall not come in the way of future prospects of the appellant.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the

prosecution has proved its case beyond all reasonable doubts. Therefore, no case is made out for acquittal. Hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Raj Kumar Suryavanshi (P.W.-1) is the brother of the deceased Radhika Suryavanshi has stated that the appellant came to him and said that he should keep his sister (the deceased) in control and marry her otherwise he will take her. The appellant has also said that his sister has brown eyes and she has entered into business of prostitution. Subsequent to that, the deceased immolated herself. In cross-examination, his statement has remained un rebutted.
9. Ranjeeta Suryavanshi (P.W.-2) has stated that in her presence, the appellant and others said that the deceased is working as prostitute and she will be taken by them. Her statement has also remained un-rebutted in her cross-examination.
10. Chhatbai Bareth (P.W.-3) has not made any statement in this respect. Similarly Anil Kumar Suryavanshi (P.W.-4), Yashwant Kumar Pradhan (P.W.-5), Bindulata Suryavanshi (P.W.-6) and Kushal Suryavanshi (P.W.-7) have not made statement against

the appellant and other co-accused persons.

11. Question that arises whether making allegation on character of a woman and calling her a prostitute amounts to insult to the modesty of the woman. Though word modesty finds mention in Section 354 and 509 of the Indian Penal Code, but it has not been defined anywhere. It is not a case, in which, the appellant and other co-accused persons were teasing the deceased, on the contrary, they were making statement regarding her character, which was made firstly in presence of witness - Ranjeeta Suryavanshi (P.W.-2) and thereafter in presence of Raj Kumar Suryavanshi (P.W.-1), who happens to be the brother of the deceased.
12. After closely scrutinizing the evidence of all the witnesses in this case, I am of this opinion that when a woman is called prostitute, who is not in such a profession, in that case it is an insult to her character and thus insult to her modesty. In this case when the victim was called prostitute and her character was stained by the appellant, the result has been disastrous for the reason that the victim committed suicide. Therefore, I do not find any reason to interfere with the impugned judgment of conviction. The sentence imposed upon the appellant has already been suffered and fine has also been paid by him, therefore, there is no reason to consider in that respect.

13. Considered on the alternative prayer made by the counsel for appellant that this Court may be pleased to pass an order that the conviction will not come in the way of appellant in future. This prayer cannot be entertained by this Court in criminal appellate jurisdiction. It is the privilege of the State to consider and decide the entitlement of a candidate to the government services and also to make policy as to the conviction in which offences would be regarded as offence under moral turpitude. This can not be interfered with or commented upon by this Court while exercising criminal jurisdiction, therefore, this prayer is rejected.
14. After due consideration, this appeal is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge