

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 390 of 2018**

State of Chhattisgarh, Through- The Incharge Police Station
Katghora, District- Korba (C.G.)

---- Appellant

Versus

1. Jamuna Prasad Sahu, S/o Samayram Sahu, Aged About 37 Years, R/o Village Churikala, Bajrang Chowk, P.S. Katghora, District- Korba (C.G.)
2. Dipika Sahu, W/o Jamuna Prasad Sahu, Aged About 32 Years R/o Village Churikala, Bajrang Chowk, P.S. Katghora, District- Korba (C.G.)

---- Respondents

For State/ Appellant	:	Mr. Lav Sharma, Panel Lawyer.
For Respondentd	:	Mr. Govind Ram Miri, Advocate with Mr. Basant Kaiwartya, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

02/01/2019

1. This acquittal appeal is preferred under Section 378 (3) of the Code of Criminal Procedure, 1973 against judgment dated 13.03.2018 passed by Additional Judge to the court of Additional Sessions Judge, Katghora, District- Korba (C.G.) in Session Trial No. 16/2017, wherein the said court acquitted both the respondents for commission of offence under Section 306 of IPC, 1860.
2. As per version of the prosecution, respondent No. 1- Jamuna Prasad Sahu harassed and tortured telephonically to the deceased namely Nandani Jaiswal. Again, respondent No. 2 - Dipika Sahu harassed by using abusive language against her due to which the deceased committed suicide by way of

pouring kerosene on her body and set ablaze herself. Matter was reported and investigated and after completion of trial, the trial court acquitted both the respondents as mentioned above.

3. Learned counsel for the State/ appellant submits that there is dying declaration against both the respondents and other corroborative piece of evidence, but the trial court overlooked the same and recorded finding of acquittal contrary to the facts and legal aspect of the matter.
4. On the other hand, learned counsel for the respondents 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.
5. As per dying declaration (Ex.-P/7), the deceased made declaration that respondent No. 1- Jamuna Prasad Sahu harassed her telephonically for a period of one and half year. Again, she made declaration that when she scolded respondent No. 1, his wife namely Dipika Sahu/respondent No. 2 entered into his house and made quarrel with her and assaulted her that is why she poured kerosene on her body and set ablaze herself.
6. From dying declaration, harassment is made telephonically, but no call details was proved before the trial court regarding telephonic conversation between the deceased and respondent No.1- Jamuna Prasad Sahu. Any such

conversation can be proved only after certificate as per Section 65B of the Indian Evidence Act, 1872, but that is not done in the present case, therefore, dying declaration is not corroborated with call details. It is also not established as to what was real subject of conversation. When subject of conversation is not clear, it cannot be held that the respondent No.1- Jamuna Prasad Sahu abetted the deceased to commit suicide.

7. 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.

8. 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 she commits suicide.

9. In the present case, the total evidence laid by the prosecution against respondent No. 2- Dipika Sahu that she used some abusive language against the deceased. Now the point is whether using abusive language against anyone is sufficient to establish charge under Section 306 of IPC. Using obscene words in public place falls within ambit of Section 294 of IPC, but mere using of obscene words is not sufficient to establish charge under Section 306 of IPC.
10. The trial court has elaborately discussed the entire evidence and came to conclusion that basic ingredients for establishing offence under Section 306 of IPC is lacking and recorded finding of acquittal.
11. After reassessment of entire evidence, this Court has no reason to record contrary finding. It is not a case where respondents should be called for hearing again for full consideration of this appeal.
12. Accordingly, the acquittal appeal is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge