

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20-12-2019

Delivered on 30-01-2020

CRA No. 675 of 2001

1. Rati Ram Patel (Dead and deleted)
2. Shyamlal Patel S/o Ratiram Aged About 26 Years R/o Village Doto, P. S. Bilaigarh District Raipur Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
3. Baldu Ram Marar S/o Hari Ram Aged About 60 Years R/o Village Doto, P. S. Bilaigarh District Raipur Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
4. Dwarika Prasad Jatwar S/o Mohitram Jatwar Aged About 32 Years R/o Village Doto, P. S. Bilaigarh District Raipur Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
5. Man Kunwar (Dead and deleted)
6. Ramcharan Patel S/o Sukhram Aged About 32 Years R/o Village Doto, P. S. Bilaigarh, District Raipur Chhattisgarh Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
7. Budhwara Bai W/o Ratiram Marar Aged About 30 Years R/o Village Doto, P. S. Bilaigarh, District Raipur Chhattisgarh Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
8. Shankar Marar S/o Ratiram Marar Aged About 30 Years R/o Village Doto, P. S. Bilaigarh, District Raipur Chhattisgarh Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---- Appellants

Versus

- State of Chhattisgarh through P. S. Bilaigarh, District Raipur Chhattisgarh Now Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondent

For Appellants : Mr. Manoj Mishra, Advocate appears
as Amicus Curiae.

For respondent/State : Mrs. Subha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24-7-2001 passed by 2nd Additional Sessions Judge, Baloda Bazar (CG) in Sessions Trial No. 503/1997 wherein the said Court has convicted the appellants for commission of offence under Section 306 read with Section 34 of IPC, 1860 and sentenced them to undergo rigorous imprisonment for five years and to pay fine of Rs.500/- each with default stipulations.
2. During pendency of the appeal, appellant No.1 Ratiram Patel and appellant No.5 Mankunwar died and no application is filed for continuation of the appeal on their behalf, therefore, their appeal is finally abated.
3. As per version of prosecution, on the date of incident, on 8-6-1997 a meeting was called by the Gram Panchayat and in the said meeting all the appellants were present including the people of locality. It is alleged that all the appellants insulted the deceased for cultivation of land of one Mangalibai. They warned the deceased not to cultivate the said land but deceased refused to act on warning of the appellants and thereafter all the appellants assaulted the

deceased and insulted him that is why he committed suicide by hanging himself. The matter was reported and investigated. After completion of trial, appellants were charge-sheeted and convicted as mentioned above.

4. Learned counsel for the appellants would submit as under:

- i) If the entire prosecution case is accepted as it is, the appellants could not have been convicted for the offence under Section 306 read with Section 34 of IPC.
- ii From the evidence of Maniram (PW/4), Ratiram (PW/5) and Rathram (PW/10) it is established that the deceased had slapped Ramcharan.
- iii) The trial court should have disbelieved the statement of Doojram (PW/6) and Mangali Bi (PW/7).
- iv) The trial court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial

Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. Budhnath (PW/1), Doojram (PW/6), Mangali Bai (PW/7), Siyaram Patel (PW/9) and Rathram (PW/10) are eye witness account to the incident. As per version of these witnesses there was a complaint against the deceased that he used to beat his mother. PW/6 Doojram asked the deceased to provide food to the people of locality, but deceased refused to provide food. It is deposed by the witnesses that the deceased assaulted one Ramcharan and thereafter persons present in the meeting assaulted the deceased.

8. From the evidence it is clear that it is a case of assault by two sides. Now the point for consideration of this court is whether the assault is equivalent to abetment of suicide. For establishing charge under Section 306 of IPC, prosecution is under obligation to establish the ingredients of Section 107 of IPC which relates to abetment which may be read as under.

(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 cooperation.

9. In **Gangula Mohan Reddy vs. State of Andhra Pradesh** reported in **(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 can not 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".

10. In **M. Mohan Vs. State represented by the Deputy Superintendent of Police**, reported in **(2011) 3 SCC 626**, Hon'ble Supreme Court observed thus:

"17.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."

11. For establishing the charge under Section 306 IPC, there should be a live link between the act of the appellants and the death of the deceased. In the present case, it has come on record that first deceased had assaulted one Ramcharan and thereafter some members who were present in the meeting assaulted the deceased. In this way, it is a case of counter assault. There is no evidence that any one can imagine that such assault would lead to death of the deceased. There is no link with death of the deceased and act of the appellants, therefore, offence under Section 306 read with Section 34 of IPC is not established. Therefore, finding arrived at by the trial Court is not sustainable.

12. Resultantly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellants is hereby set aside and they are acquitted of the charges under Sections 306 read with Section 34 of IPC framed against them. The fine amount, if paid, shall be refunded to them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view,of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju