

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1006 of 2003**

1. Ameena @ Geta, W/o Mubark Husain, R/o Zone-2, Balaji Nagar, Thana Chawani, Distt. Durg (C.G.)
2. Vikkey @ Ashok, S/o Parasram Rasal, R/o Zone – 2, Balaji Nagar, Thana Chawani, Distt. Durg (C.G.)

---- Appellants**Versus**

State of Chhattisgarh, through Thana Chawani, Distt. Durg
(C.G.)

---- Respondent

For Appellants : Mr. Arun Kumar Shukla, Advocate
For Respondent/State : Mr. Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****13/03/2020**

(1) When the matter is called out for hearing, none is present on behalf of the appellants/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the panel of High Court Legal Service Committee to represent the appellants.

(2) On being asked, Shri Arun Kumar Shukla, Advocate who is one

of the empanelled lawyers of High Court Legal Service Committee, is ready and willing to argue the matter. Therefore, in the interest of justice, Shri Arun Kumar Shukla, Advocate, who is one of the lawyers in the panel of High Court Legal Service Committee, is appointed as counsel to represent the appellants.

(3) Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

(4) This appeal arises out of the judgment of conviction and order of sentence dated 6th September, 2003 passed by the Special Judge & Additional Sessions Judge, Durg (C.G.) in Special Case No. 29/2003, convicting the accused/appellants for the offence punishable under Section 306 of Indian Penal Code (henceforth "IPC") and sentencing each of them to undergo rigorous imprisonment for three years plus fine of Rs. 3,000/- with default stipulation.

(5) Case of the prosecution, in brief, is that on the fateful day i.e. 29.11.2002 at about 12.00 p.m. accused persons namely J (juvenile), Sanju Choudhary & Vikky @ Ashok, after brutally assaulting Om Prakash (since deceased), took him to the house of Ameena @ Geeta, wife of Mubarak Hussain and confined him in a room and locked the door from the outside. The said incident was witnessed by Vijay Bhadur, brother of the deceased, who narrated the entire incident to his mother Dhanotabai. Thereafter, when Dhanota Bai along with his son – Vijaybahadur reached the house of Ameena @ Geeta, wife of Mubarak Hussain (place of occurrence), they saw that house was locked from outside and her son Om Prakash was found in hanging condition.

Thereafter, they broke the lock and pulled out his son Om Prakash and found that he had already died. Thereafter, Dehati Nalisi (Ex. P/1) was lodged by Dhanouta devi immediately on 29.11.2002 at out post – Khurshipaar and thereafter Dehati Marg (Ex.P-2) was also prepared. Thereafter, numbered FIR was lodged vide Ex.P-8. As per Ex.P-3, inquest report was prepared in presence of witnesses. Spot map was prepared vide Ex. P-16. The dead body was sent for postmortem, which was conducted on 29.11.2002 by Dr. A.P. Sawant (PW-8) vide Ex. P-13, who noticed ligature mark on the body of deceased. In his opinion cause of death of deceased was asphyxia as a result of hanging. During investigation, one nylon rope was seized vide Ex. P/10; one broken lock vide Ex. P/11 and one Key (Ex.P-12) were seized from appellant No. 1 (Ameena).

(6) After usual investigation, charge-sheet under Sections 323, 342, 306 read with Section 34 & 120-B, 364 and 302 of the Indian Penal Code and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was filed against the accused persons namely Vikky @ Ashok, Sanju Choudhary, Mubarak Hussain & Ameena @ Geeta. After filing of chargesheet, the trial Judge framed charge against all four accused persons under Sections 147, 302 of the IPC, alternatively Section 302/149 read with Section 120-B of the IPC; under Section 306 of the IPC alternatively Section 306/149 read with Section 120-B and 364 of IPC and under Section 3 (2) (v) of the Scheduled Caste and Tribes (Prevention of Atrocities) Act, 1989 (henceforth “Act, 1989”). Accused persons denied the charges framed against them and prayed for trial. Another “J” being juvenile was

charge sheeted and tried separately before the Juvenile Court.

(7) So as to hold the accused persons guilty, the prosecution examined as many as 15 witnesses namely- Dhanotabai (PW-1), Vijay Bahadur (PW-2), Munnilal (PW-3), Rajkumar (PW-4), S.L. Manjhi (PW-5), Rajendra Singh (PW-6), Shersingh (PW-7), Dr. A.P. Sawant (PW-8), Sudarshan Yadav (PW-9), Nakchhedanram Sahu (PW-10), Mintlal (PW-11), I.A. Khedani (PW-12), Santosh (PW-13), Dr. Lal Umendsingh (PW-14) and Gyanchand (PW-15). Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they have taken the defence that due to some political dispute, caste dispute and greed of money, appellants have been falsely implicated in the crime in question. However, no defence witness was examined on behalf of the accused persons.

(8) Learned counsel for the appellants submits that in the instant case all the accused were acquitted of the charges under Sections 147, 302, alternatively Sections 302/149 & 120-B of the Indian Penal Code and Section 306 of the IPC, alternatively Sections 306/149 read with section 120(B), 364 of the Indian Penal Code and Section 3(2)(v) of the Act, 1989 except the present accused persons namely Ameena @ Geeta and Vikkey @ Ashok and they (Ameena @ Geeta and Vikkey @ Ashok) were sentenced in para four of this judgment. He further submits that according to the postmortem report (Ex.P-13), no single injury was found on the body of the deceased. He submits that the trial Court has convicted and sentenced only on the ground of abetment holding that deceased was wrongfully confined in the house of the Ameena @ Geeta, wife of Mubarak Hussain but the offence under

Section 306 IPC is not made out because the basic ingredients of Section 306 of the IPC in particular Section 107 IPC are missing in the present case because the appellants neither by word nor by any act instigated the deceased to commit suicide. Therefore, learned trial Court on the basis of assumption and presumption convicted the accused/appellants against the settled principle of law as no any abetment is made out nor any injury was found in the body of the deceased. He submits that as the deceased was chasing the daughter of Mubarak Hussain namely Anjuman and tried to develop intimacy with Anjuman but she (Anjuman) refused to marry him, he (Omprakash) committed suicide. He also submits that finding recorded by the trial Court that as the deceased was confined in a room and the door was locked from outside, it amounts to abetment, is unsustainable and bad in law. Lastly, he submits that the trial Court has not appreciated the oral and documentary evidence available on record while convicting and sentencing the accused/appellant under Section 306 of the IPC and, therefore, the appellants deserve to be acquitted of the said charge.

(9) Learned counsel for the State, while supporting the impugned judgment, would submit that it is proved by the prosecution witnesses that both the appellant i.e. Vikki @ Ashok and Ameena Bai @ Deepa locked the deceased in the house of Mubarak Hussain and due to that reason Omprakash (since deceased) has committed suicide by hanging and, therefore, the trial Court is absolutely justified in convicting and sentencing the accused/appellants as aforementioned, which does not call for any interference in the instant appeal.

(10) I have heard learned counsel appearing for the parties and perused the record of the courts below.

(11) First, I shall consider the evidence of prosecution witnesses namely Vijay Bahadur (PW-2) and Rajkumar (PW-4).

(12) Vijay Bahadur (PW-2) has stated in his evidence that when at about 12.00 pm, near his house, the children were playing, he saw that accused persons namely Vikkey @ Ashok and "J" juvenile were taking his brother Omprakash by using filthy language and ultimately they took his brother Omprakash in the house of Mubarak Husain where Vikky @ Ashok, Sanju Choudhary, Mubarak Hussain and Ameena @ Geeta and Javed (juvenile) brutally assaulted Omprakash (since deceased). Rajkumar (PW-4) has reiterated the same facts as narrated by Vijay Bahadur (PW-2) by stating that near his house Javed and Vikky @ Ashok assaulted Omprakash and, thereafter, they took him to the house of Mubarak Hussain and again there they beat him but not a single abrasion was found on the body of the deceased as per postmortem report vide Ex. P/13.

(13) It is apparent from the face of the record that no scratch mark was found on the body of the deceased. Deceased was the young boy, aged about 18 years and if four or five persons assaulted the deceased, then he (Omprakash) would have sustained number of contusions, bruises or abrasions on his body, but he did not suffer any injury in the said incident and, therefore, it cannot be said that deceased was beaten by the appellants. It is also apparent from the record that since deceased Omprakash was chasing Anjuman

(daughter of Mubarak Husain) and tried to have affair with her, the deceased was kept in the house of Mubarak Hussain unauthorizedly and the door was locked from outside by the family members of Mubarak Husain and only due to this reason, Omprakash committed suicide by hanging and this reason is treated as abetment by the trial Court, which is not acceptable under the law in light of the provisions contained in Section 107 of the IPC, which states 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 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 willful misrepresentation, or by willful 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.”

(14) In this case, charge has been framed against the accused/appellants under Section 306 of the IPC. As per the evidence of Dhanota Bai (PW-1), Vijay Bhadur (PW-2) and Rajkumar (PW-4) and the evidence of Sher Singh (PW-7) one key of broken lock was seized

from appellant Ameena @ Geena vide Ex. P/11. Thus, only the fact which has been established by the prosecution is that deceased was caught hold and kept in closed room by accused persons namely Vikki @ Ashok and Ameena @ Geeta and, therefore, in my opinion, ingredients of offence under Section 342 of the IPC are made out against the appellants. Though no specific charge under Section 342 of IPC has been framed against the appellant, however, looking to the contents of the charge framed against the appellants, the evidence adduced by the parties the prosecution has successfully proved offence under Section 342 of IPC i.e. wrongful confinement of deceased- Om Prakash by the appellants. In the given facts & circumstances of the case, non-framing of specific charge under Section 342 of IPC does not cause any prejudice to the appellants. Moreover, learned trial Court has given the finding in paragraphs 17 to 21 that the deceased was wrongly confined in the house of Mubarak Hussain by both the accused persons and thereafter the lock was broken by the witnesses and key of the broken lock was recovered vide Ex.P-11 and, therefore, in my considered opinion, appellants must be convicted under Section 342 of IPC in place of Section 306 of IPC. The maximum sentence is prescribed for the offence under Section 342 of IPC is of one year or with fine or with both.

(15) So far as the sentence part is concerned, considering the fact that the incident occurred way back in the year 2002, the appellants are facing trial since 2003, at the time of incident the appellant No. 1 was 41 years whereas appellant No. 2 was 21 years of age and at present appellant No. 1 must be of 58 years of age whereas appellant

No. 2 was 38 years and at present they are on bail, appellant No.1 has remained in jail for 280 days and appellant No.2 for 45 days, keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon paul Vs. Kanagalet and Others (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that the ends of justice would be served if the appellants are sentenced to the period already undergone by them and are directed to pay fine of Rs. 1,000/-each with default sentence.

(16) In the result, the appeal is allowed in part. The appellants are acquitted of the charge under Section 306 of the IPC and instead they are held guilty under Section 342 of IPC and are sentenced to the period already undergone by them. The appellants are directed to pay fine of Rs. 1,000/-each, in default of payment of fine they shall have to undergone additional simple imprisonment for two months. The fine amount already deposited by the appellants shall be adjusted accordingly.

The appellants are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge

