

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 16.12.2019

Delivered on : 06.02.2020

CRA No. 417 of 2017

Smt. Nandini Manikpuri, W/o Hemant Manikpuri, aged about 23 years, R/o Village- Mulmula, District- Janjgir-Champa. At Present Address- Vishnu Chowk, Tifra, Bilaspur, Police Station- Sirgitti, District- Bilaspur (C.G.) **---- Appellant**

Versus

State of Chhattisgarh through Police of Police Station- Sirgitti, District- Bilaspur (C.G.) **---- Respondent**

with

CRA No. 561 of 2017

Deepak Sahu, S/o Videshi Sahu, aged about 24 years, R/o Yadav Nagar, Tifra, Ward No. 07, Police Station- Sirgitti, Civil and Revenue District- Bilaspur (C.G.) **---- Appellant**

Versus

State of Chhattisgarh Through- Station House Officer, Police Station- Sirgitti, District- Bilaspur (C.G.) **---- Respondent**

For Appellants : Mr. Govind Dewangan, Advocate in
CRA No. 417 of 2017 & Mr. Sunil
Sahu, Advocate in CRA No. 561 of
2017.

For State/respondent : Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Since both the appeals are preferred against the same judgment, they are heard analogously and are being disposed of by this common judgment.
2. Both the appeals are preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 08.03.2017 passed by Fourth Additional Sessions Judge, Bilaspur (C.G.) in Session Trial No. 133/2016, wherein the

said court convicted both the appellants for commission of offence under Section 306/34 of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 5000/- each with further default stipulations.

3. In the present case, name of the deceased is Archana Nirmalkar. She committed suicide on 30.05.2016 at her residence situated at Yadav Nagar, Tifra, Bilaspur. As per version of the prosecution, the deceased was married with one Jagdish Prasad Nirmalkar and she was blessed with two daughters. Appellant- Nandini Manikpuri was residing in adjoining house of the deceased and appellant- Deepak Sahu was resident of same locality. As per version of the prosecution, appellant- Deepak Sahu committed rape with the help of appellant- Nandini Manikpuri that is why she was under depression and ended her life. The matter was reported, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

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

(i) There is no ingredient of offence under Section 306 of IPC regarding abatement of suicide, but the trial court has not appreciated the evidence in its right perspective.

(ii) The trial court has relied on evidence of witnesses which have not supported version of the prosecution.

(ii) The finding recorded by the trial court is not based on legal evidence, the same is liable to be set aside.

5. On the other hand, learned counsel for the respondent 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.
6. I have heard learned counsel for the parties and perused the records.
7. To substantiate the charge, the prosecution examined as many as 25 witnesses. The only witness who deposed regarding the incident is Jagdish Prasad Nirmalkar (PW-18) who is husband of the deceased. From evidence of this witness, one suicide note was found and after reading the same, it appears that something wrong was done against the deceased by appellant- Deepak Sahu. As per version of this witness, her wife informed him that appellant- Deepak Sahu committed rape with her by threatening and as per suicidal note Ex. P/38, it is mentioned that appellant- Deepak Sahu has not left her to face the society.
8. On overall assessment of the evidence, the fact emerges that it may be a case of rape against the deceased by appellant- Deepak Sahu. From document (Ex. P/39) which is an affidavit by the deceased, she lodged a report against appellant- Deepak Sahu regarding rape and in the said affidavit, it is mentioned that no such offence of rape was committed by appellant- Deepak Sahu. It means, the report was lodged

against appellant- Deepak Sahu and the deceased availed remedy available to her against the said appellant.

9. From suicide note Ex. P/38, it is not clear as to what really happened with her on the date of incident i.e. on 30.05.2016 or prior to the date of incident. 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.

10. As has been held by Hon'ble the Supreme Court in the matter of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in **2010 (1) SCC 750**, 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 he commits suicide.

11. For commission of offence under Section 306 of IPC, there has to be live-link between act of any of the appellant and death of the deceased, but from the entire record, the same is not clarified. If the appellant- Deepak Sahu has committed rape on deceased and she has lodged report, she should have waited for the result of legal action, but that is not done. Any offender must be brought to book by punishing when found guilty, but it appears that the deceased was not followed the legal course and it also appears that she was not calm, but was hyper sensitive. From the entire evidence, it is not established that the appellants have instigated or intentionally aided the deceased to end her life, therefore, the charge under Section 306 of IPC is not established, therefore, the finding arrived at by the trial court is not sustainable.
12. Accordingly, both the appeals are allowed. Conviction and sentence passed by the trial court is set aside. The appellants are acquitted of the charge under Section 306 of IPC.
13. Appellant- Nandini Manikpuri is reported to be on bail. Her bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C. Appellant- Deepak Sahu is reported to be in jail. He be set at liberty forthwith if not required in any other case.

Sd/-
(Ram Prasanna Sharma)
Judge