

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03-12-2019

Delivered on 06-02-2020

CRA No. 520 of 2015

1. Smt. Ranjana Pandey W/o Pravin Pandey Aged About 25 Years R/o Sakin Bangalipara, Street No.-3, Police Station-Sarkanda, Civil And Revenue District- Bilaspur, Chhattisgarh.
2. Smt. Sulochana Tiwari W/o Kuber Tiwari Aged About 50 Years R/o Sakin- Shri Bihar Street No.-3, Police Station- Sarkanda, Civil And Reveuen District- Bilaspur, Chhattisgarh.

---- Appellants

Versus

- State of Chhattisgarh S/o Through The Police Station-Chakarbahta, District- Bilaspur, Chhattisgarh

---- Respondent

ACQA No. 53 of 2015

- Vidya Prakash Pandey S/o Late Radhelal Pandey Aged About 63 Years R/o Main Road Village Sakari P.S. Chakarbhata Revenue And Civil District Bilaspur, Chhattisgarh,

---- Appellant

Versus

1. State of Chhattisgarh Through Police Station Chakarbhata, Revenue And Civil District Bilaspur, Chhattisgarh.
2. Smt. Ranjana Pandey W/o Pravin Pandey Aged About 25 Years R/o Bangali Para Gali No.03 P.S. Sarkanda Revenue And Civil District Bilaspur, Chhattisgarh.
3. Smt. Sulochana Tiwari W/o Kuber Tiwari Aged About 50 Years R/o Shri Bihar Gali No.03 P.S. Sarkanda Revenue And Civil District Bilaspur, Chhattisgarh.
4. Kuber Prasad Tiwari S/o Janardan Prasad Tiwari Aged About 66 Years R/o Shri Bihar Gali No.03 P.S. Sarkanda Revenue And Civil District Bilaspur, Chhattisgarh.

5. Banshilal Tiwari S/o Pyarelal Tiwari Aged About 66 Years R/o Tikaripara Ward No.03 P.S. Takhatpur Revenue And Civil District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondents

For Appellants in : Mr. Praveen Dhurandhar,
CRA No. 520 of 2015 Advocate.

For appellants in : Mr. R.S. Marhas and
ACQA No.53 of 2015 Mr. Rahul Kumar, Advocates.
For respondents : Mr. Sunil Sahu, Advocate.
No. 2 to 5.

For respondent/State : Mr. Raghavendera Verma, GA.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. As both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. Both the appeals are preferred against the judgment dated 20-4-2015 passed by the Additional Sessions Judge, Bilaspur (CG) in Session Trial No. 98 of 2013 wherein the said Court has convicted the appellants Smt. Ranjana Pandey and Smt. Sulochana Tiwari (CRA No. 520 of 2015) for commission of offence under Sections 306 of IPC 1860 and sentenced them to undergo RI for seven years and fine of Rs.1000/- each with default stipulations.

3. ACQA No. 53 of 2015 is filed by appellant Vidya Prakash Pandey, father of the deceased/victim against acquittal of respondent No.4 Kuber Prasad Tiwari and respondent No.5 Banshilal Tiwari and for enhancing the sentence awarded to Smt. Ranjana Pandey and Smt. Sulochana Tiwari.

4. In the present case, name of the deceased is Aarti Rani Pandey who is sister of Pravin Pandey. Smt. Ranjana Pandey who is daughter of Sulochana Tiwari was married to Pravin Pandey on 26-6-2009. It is alleged that Kuber Prasad Tiwari, Bansilal Tiwari and Ranjana Pandey gave threat to Aarti Rani Pandey for obstructing her marriage. It is also alleged that Aarti Rani Pandey was harassed by showing her obscene picture in mobile phone. Said Aarti Rani Pandey committed suicide by hanging on 21-2-2012 in her house at village Sakari. The matter was reported and investigated and four persons as mentioned in the charge-sheet have been tried by the trial court and out of them two were convicted and two were acquitted.

5. Learned counsel for the appellants in CRA No. 520 of 2015 submits as under.

- I) The case of the prosecution is based on suicidal note but no date and time are mentioned in the said suicidal note as to when deceased Aarti Rani Pandey met the persons charge-sheeted.

- ii) It is also not mentioned that when she met Smt. Ranjana Pandey and Sulochana Tiwari.
- iii) From the evidence of Vidya Prakash Pandey (PW/5) it is established that one male child was born to Ranjana Pandey on 26-6-2010 and thereafter she left the house at Sakari and they were living at Bemetara and thereafter Ranjana Pandey never came back to the house at Sakari, therefore, abetment or instigating the deceased Aarti Rani Pandey to commit suicide, is not established.
- iv) Smt. Shyama Pandey (PW/7), mother of the deceased Aarti Rani Pandey deposed before the trial court that harassment to Aarti Rani Pandey took place before 4-5-2012.
- v) PW/8 Ku. Anamika Pandey, younger sister of the deceased Aarti Rani Pandey, deposed before the trial court that after birth of male child of Ranjana Pandey, she left the house at Sakari and was living with her husband at Bemetara.
- vi) Suicidal note (Ex.P/5) is doubtful document because it was found after

seven days of death of said Aarti Pandey. It cannot be ruled that it may be written by Ku. Anaimka Pandey (PW/8).

- viii) Ranjana Pandey also lodged report at Police Station on 6-7-2011 under Section 498-A of IPC against her father-in-law Vidya Prakash Pandey (PW/5) and other family members and her husband Pravin Pandey was arrested in the said case, therefore, to take revenge a false case is made out.
- ix) The trial Court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

6. In Acquittal Appeal No. 53 of 2015 filed by appellant Vidya Prakash Pandey, learned counsel for the appellant submits as under:

- I) Witnesses examined by the prosecution have successfully established that suicidal note was left by the deceased Aarti Rani Pandey by which it is established that due to fake obscene picture shown to deceased, she committed suicide, therefore, charge under Section 306 of IPC is clearly established.

- ii) From the other witnesses, it is established that abetment on the part of all the persons charge-sheeted is proved, but the trial court acquitted two persons which is not proper.
- lii) It is a case where acquitted persons should be held liable for offence of crime in question and all be sentenced for maximum period provided under Section 306 of IPC.

7. On the other hand, learned counsel for the State would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

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

9. Case of the prosecution is based on document (Ex.P/5). In the said document it is mentioned that one fake obscene CD was prepared which was shown by all the persons charged.. It is mentioned in the said declaration that CD was shown by Ranjana Pandey and her father and mother namely Sulochana Tiwari and Kuber Prasad Tiwari and elder brother of her father namely Bansilal Tiwari, but no one was examined before the trial court to whom all these persons have shown

the said CD regarding deceased. Vidya Prakash Pandey (PW/5) did not depose that CD was seen by him. It is also not clear from the statement of this witness as to when the said CD was shown to deceased Aarti Rani Pandey. Though he deposed that Ranjana Pandey and her mother have shown some material in mobile but Aarti Rani Pandey did not inform him regarding contents of said CD (para 16). Smt. Shyam Pandey (PW/7) did not depose regarding CD. Though she deposed that one mobile was shown to her daughter by Ranjana Pandey and Sulochana Tiwari, but from her version (para 10), it is clear that after December, 2010 Ranjana Pandey did not return to village Sakari while the incident took place on 21-2-2012. Vidya Prakash Pandey (PW/5) also deposed that Ranjana Pandey was not staying at village Sakari after 22-12-2010 (para 20). PW/8 Ku. Anamika Pandey who is daughter of Vidya Prakash Pandey (PW/5) deposed on different line. As per version of these witnesses, Aarti Rani Pandey committed suicide because one false case of dowry harassment filed by the accused persons. From her statement, it is not clear when the said case was filed and against whom the said case was filed.

10. From the entire evidence, it is clear that Ranjana Pandey was not residing with deceased on the date of incident and she left the house at Sakari in the year 2010, therefore, she had no occasion to show any obscene CD to the deceased in the year 2012 i.e., at the

time of commission of suicide by the deceased on 21-2-2012. The other persons charge-sheeted namely Sulochana Tiwari, Kuber Kumar Prasad Tiwari and Bansilal Tiwari were residing at different places and they had also no occasion to contact with the deceased.

11. The next point for consideration of this court is whether paper (Ex.P/5) which is undated document of the deceased can be treated as suicidal note. There is no clear description in the said note regarding her meeting with the persons charge-sheeted and named above. 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.

12. 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”.

13. 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.

14. In the said note (Ex.P/5) it is mentioned that either she will commit suicide or she will flee away. It means, till writing of the letter she was not determined to commit suicide. There is no connecting piece of evidence against the convicted persons or acquitted persons regarding their meeting with the deceased on the date of incident or

prior to the date of incident, therefore, contents of Ex.P/5 is not dependable. For establishing the charge under Section 306 IPC, there should be a live link with death of deceased and act of all the four persons as mentioned above, therefore, offence under Section 306 of IPC is not established against appellants Ranjana Pandey and Sulochana Tiwari. The trial court has already acquitted Kuber Prasad Tiwari and Bansilal Tiwari.

15 Accordingly, CRA No. 520 of 2015 filed by the appellants Ranja Pandey and Sulochana Tiwari is allowed. Conviction and sentence imposed by the trial court is hereby set aside. They are acquitted of the charges framed against 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.

16. Acquittal Appeal No. 53 of 2015 being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju