
Vishram And Ors Vs State Of Chhattisgarh

Criminal Appeal No.2486 Of 1999

Court: Chhattisgarh High Court

Date of Decision: Oct. 21, 2019

Acts Referred:

Indian Penal Code, 1860 " Section 34, 107, 306#Code Of Criminal Procedure, 1973 " Section 437A

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Rajkumar Gupta, Smita Jha

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. The appeal is preferred against judgment dated 27.8.1999 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities), Act, 1989, Bilaspur in Session Trial No.247/1997 wherein the said Court convicted both the appellants for commission of offence under

Section 306 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay fine of Rs. 1000/- with default

stipulations.

2. In the present case name of the deceased is Grahan Bai who was residing with the appellants. It is alleged that appellant Vishram married to

Grahan Bai by way of bangle form during the lifetime of his first wife Asmat Bai. As per the version of the prosecution, the appellants harassed her

and appellant Vishram assaulted her and stopped talking terms with her that is why she committed suicide on 03.6.1997 at about 5.00 pm at village

Sukulkari. The appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) There is no cogent evidence regarding harassment by any of the appellants to the deceased, therefore, their case does not fall within the definition of

abetment as defined under Section 107 IPC.

(ii) The trial Court recorded conviction on the basis of dying declaration but that dying declaration is not sufficient to bring home the guilt.

(iii) The trial Court has not evaluated the entire evidence in its true perspective and recorded a wrong finding for commission of offence under Section

306 which is liable to be set aside.

4. 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 marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. To substantiate the charges, the prosecution has examined as many as 16 witnesses. But from the entire evidence, there is no connecting piece of

evidence regarding instigation or intentionally aiding the deceased for commission of suicide. Asst. Sub Inspector Shiv Shankar Singh, (PW-13)

recorded dying declaration of the deceased as per Ex-P/6. In the said document it is mentioned that Asmat Bai harassed her and appellant Vishram

used to beat her and stopped talking terms with her. These statements are general and bald statements. From this dying declaration, it is not clear as to

what was the nature of harassment by appellant Asmit and when she was assaulted by appellant Vishram. No medical report is submitted regarding

any physical violence on the part of appellants Vishram. Stopping of talking terms is not equivalent to instigation to commit suicide or intentionally

aiding for the same.

7. Now the point for consideration is whether the appellants abetted the deceased to commit suicide.

8. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the case should fall within the ambit of Section 107 of the 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 instigate 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.

9. 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 U/s.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.

10. In the present case, there is no one who had occasion to see as to what was really going on in the house of the deceased. The dying declaration is

also not establishing any instigation or intentionally aiding on the part of any of the appellants.

11. For offence under Section 306 IPC there should be clear mens-rea to commit the offence and there should be a direct or active act by the

accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abatement, but from the record it

cannot be inferred that the respondent instigated or intentionally aided the deceased to commit suicide.

12. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is not sustainable and the same is hereby set

aside. Accordingly, the appeal is allowed and the appellants are acquitted of the charges under Section 306 of the IPC. The appellants are reported to

be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.