

State Of U.P. vs Anshu Srivastava And 2 Ors. on 9 May, 2018

Equivalent citations: AIRONLINE 2018 ALL 4219

Author: Harsh Kumar

Bench: Harsh Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Court No. - 50

Case :- GOVERNMENT APPEAL No. - 527 of 2018

Appellant :- State Of U.P.

Respondent :- Anshu Srivastava And 2 Ors.

Counsel for Appellant :- G.A.

Hon'ble Harsh Kumar,J.

Heard Ms. Anjum Haq, learned AGA for the State and perused the record.

The application has been moved by State for leave to file appeal against the impugned judgment and order dated 18.1.2018 passed by Additional Sessions Judge / Fast Track Court No.1, Lalitpur in S.T. No.06 of 2016, State of U.P. Vs. Anshu Srivastava and others, acquitting the respondents from the charges under section 306 IPC.

Upon hearing learned AGA and perusal of record, I find that as per prosecution case the son of first informant committed suicide by hanging himself and a suicide note is alleged to have been recovered mentioning therein that accused-respondents committed marpeet with him with support of two policemen R.P. Chaturvedi and Chetram and due to above reason he committed suicide.

In 2010 (4) Crimes 34 in the case of Madan Mohan Singh Vs. State of Gujarat, the Apex Court held that "merely because a person had a grudge against her superior and committed suicide on account of that grudge -- even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under section 306 IPC."

In the case of S.S. Chheena Vs. Vijay Kumar Mahajan 2010 (4) Crimes 101, the Apex Court held that "abetment involved a mental process of instigating or intentionally aiding a person in doing a thing -- without a positive act by accused as above, conviction cannot be sustained -- ingredients of abetment not attracted merely on statement of deceased."

In latest pronouncement in the case of Gurcharan Singh Vs. State of Punjab 2017 (98) ACC 285, the Apex Court held that "the intention of legislature is that in order to convict a person under section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active act leading the deceased to commit suicide, being left with no option."

Perusal of record shows that there is no evidence worth reliance to support the contention that the deceased was beaten by accused-respondents and two policemen on account of which torture he committed suicide, as P.W.3 Dr. M.C. Gupta, who has proved the postmortem report has not found any mark of injury over his body, except the ligature mark and so it may not be inferred under any imagination that the deceased was beaten, tortured or instigated/induced by the accused-respondents for committing suicide. Learned trial court has analyzed and discussed the prosecution evidence in detail and has not committed any mistake in holding that the suicide note has not been proved and there is no evidence to show that accused-respondents have committed any abetment or instigated or incuded the deceased to commit suicide.

It is settled principle of law as held by Hon'ble the Supreme court in the case of K. Prakashan Vs. P.K. Surenderan, (2008) 1 SCC 258 "When two views are possible, appellate Court should not reverse the Judgment of acquittal merely because the other view was possible. When Judgment of trial Court was neither perverse, nor suffered from any legal infirmity or non consideration/misappropriation of evidence on record, reversal thereof by High Court was not justified".

In view of discussions made above, I have come to the conclusion that the learned counsel for the applicant has failed to show any legal infirmity, incorrectness or perversity in the findings given in the impugned order of acquittal and there is no sufficient ground for interfering with or setting it aside the acquittal order and substituting it with conviction order. The application for leave to file appeal has no force and is liable to be dismissed.

The application for leave to file appeal is dismissed accordingly and the appeal also stands dismissed.

Order Date :- 9.5.2018 Tamang Order on Memo of Appeal Hon'ble Harsh Kumar,J.

Dismissed.

For order, see order of date passed on application for leave to file appeal.

Order Date :- 9.5.2018 Tamang