

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No.1468 of 2003

(Arising out of judgment of conviction dated 07.08.2003 and order of sentence dated 11.08.2003 passed by Learned Additional Judicial Commissioner-II, Khunti, in S.T. Case No.451 of 2000)

Ram Prasad Hazam, son of late Bihari Hazam, resident of Village Birdidih, P.S. Sonahatu, District Ranchi.

... .. **Appellant**

Versus

The State of Jharkhand.

... .. **Respondent**

PRESENT : SRI ANANDA SEN, J.
: SRI GAUTAM KUMAR CHOUDHARY, J.

For the Appellant : Mr. Naveen Kumar Jaiswal, Advocate
(*Amicus Curiae*)

For the State : Ms. Anuradha Sahay, A.P.P.

J U D G M E N T

By Court, :

09th December, 2024

This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction dated 07.08.2003 and order of sentence dated 11.08.2003 passed by Learned Additional Judicial Commissioner-II, Khunti, in S.T. Case No.451 of 2000, whereby and wherein the appellant has been convicted for offence under Section 306 IPC. He was sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.2000/- under Section 306 IPC.

2. Heard learned counsel for the appellant and learned A.P.P. for the State at length and perused the material available on record.

3. Learned counsel representing the appellant submits that a false case was foisted against the appellant without any evidence whatsoever. There is no evidence that the appellant had instigated the deceased to commit suicide by administering poison. He submits that there is no eye witness of this incident, as out of the total five cited prosecution witnesses, no one was present during the last breath of the deceased. It is further submitted that P.W.-2

has been declared hostile. He further submits that the viscera of the deceased which was sent for FSL examination had been sent in an unsealed packet so there was possibility of tampering with the said viscera or the same could have been changed.

4. Per contra, learned A.P.P. representing the State opposes this Criminal Appeal and submits that the appellant has been rightly held guilty for instigating the deceased to commit suicide, as it is revealed from the F.I.R. that the appellant was enraged with his wife (deceased) for not having a child even after 7 – 8 years of the marriage and he abetted her to commit suicide by administering poison. It is also submitted that the forensic expert has also found poisonous substance in the viscera of the deceased.

5. The history of the case dates back to 02.04.2000, on which day a *fardbeyan* came to be filed by the informant – Mahendra Hajam, alleging therein that on the same day he was sleeping in the house when Sahdeo Hajam along with one Ghonu Hajam came and told him that his daughter – Kalpana Devi (deceased), was suffering from severe stomach ache and she is calling him. On hearing this, he along with his son and cousin reached Biradidih village in the morning with the medicine for stomach ache to the house of his son-in-law, where he found his daughter lying on a cot and her body was covered with a cloth. On removing the cloth, he found his daughter dead with blood oozing out of her nose and foam coming out of her mouth. There were black marks on her body. He stated that her daughter (deceased) was married with Ram Prasad Hazam (appellant herein) and there was no child out of the said wedlock, and as she did not bear a child, her husband used to torture her and threaten her to perform second marriage and at the end he killed her daughter by administering poison.

On the basis of the aforesaid *fardbeyan*, F.I.R. being Sonahatu P.S. Case No.12/2000 has been registered under Sections 328/ 302/ 34 IPC. Charge-sheet has been submitted against the appellant under Sections 328/ 302 IPC. Thereafter, cognizance was taken against the appellant and the case was committed to the Court of Sessions. The appellant pleaded not guilty and the

appellant claimed to be tried. Thereafter charge was framed under Section 302/328 IPC.

6. Altogether 05 prosecution witnesses have been examined in this case:-

a) P.W.-1 namely Surendra Nath Mahto, deposed that he came to know that wife of Ram Prasad Hazam (appellant) has died. He stated that police came and prepared a *panchnama* of the body of the deceased which was recovered from the house of Ram Prasad Hazam. The police also prepared the inquest report.

b) P.W.-2 namely Ram Singh Munda has been declared hostile.

c) P.W.-3 namely Mahendra Hazam, is the informant of this case. He deposed that Ghonu Hajam and Bhondu Hajam came to him and told that his daughter is suffering from stomach ache. When he reached Biradidih village he saw his daughter dead and her body was covered with a cloth. On removing that cloth, he found that blood was oozing out of her nose and mouth. There were blood clots because of the injury on her chest. His daughter was married to Ram Prasad Hazam 7-8 years back and there was no child from them because of which the appellant used to torture her and threaten her to perform second marriage and at the end he killed her daughter by administering poison.

d) P.W.-4 namely Gopaljee Jha is the Forensic Expert. He stated that he examined the visera of Kalpana Devi. He found aluminium phosphide which is commercially known as sulphas and generally used as food grain preservation which is gastro intestinal irritant and is poisonous.

e) P.W.-5 namely Uma Shankar Ravi is the Investigating Officer of this case. He proved the signature on *fardbeyan*. He stated that after investigation, charge-sheet was filed under Sections 328/ 302/34 IPC. He also prepared the inquest report and the same was proved by him with his signature. He sent the dead body for post-mortem examination. He received the FSL report. He inspected the place of occurrence and recorded the statement of the witnesses.

7. Several documentary evidences have also been

exhibited by the prosecution, which are as follows:-

- i. Ext.1 :- Signature of Surendra Nath Mahto on Panchnama
- ii. Ext.1/1 :- Signature of O.C. in the inquest report
- iii. Ext.1/2 :- Inquest report
- iv. Ext.2 :- Signature of informant on fardbeyan.
- v. Ext.2/1 :- Fardbeyan
- vi. Ext.3 :- Signature of Shri Gopaljee Jha in FSL report.
- vii. Ext.4 :- Formal F.I.R.

8. On a close scrutiny of the F.I.R. and the evidence led by the prosecution, we find that the appellant and the deceased had got married 7 – 8 years ago and with the efflux of time, hatred cropped up in the mind of the appellant because her wife (deceased) did not bear a child. On the ill-fated day, informant got information that his daughter is suffering from stomach ache and on reaching at his daughter's matrimonial home, he found his daughter dead. The informant apprehended that his daughter has been instigated by the appellant to consume poison due to which she died.

9. From the evidence of the prosecution witnesses, we find that P.W.-1 is a formal witness. P.W.-2 has turned hostile. P.W.-4 and P.W.-5 are the official witnesses. So far as P.W.-3 (informant) is concerned, he is the only witness who stated something about the incident. When we go through his evidence, we find that he stated about some cruelty and harassment meted upon the deceased but the said act of the appellant took place earlier which cannot be said to be a direct act of abetment to commit suicide considering the proximity of time. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the appellant which compelled the deceased to commit suicide, cannot be said to be an act of abetment. Further, from the entire evidence of P.W.-3, we find that there is no whisper of instigation by the appellant to the deceased to consume poison, thus, only on the basis of conjectures and surmises, the appellant cannot be held responsible for consumption of poison by the deceased.

10. In order to address the issue regarding the applicability of Section 306 IPC in the facts of the present case, it would be apposite to go through Section 306 IPC, which deals with abetment of suicide. Section 306 IPC reads as hereunder:-

"306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The Hon'ble Supreme Court in the case of **Gurcharan Singh v. State of Punjab** reported in **(2020) 10 SCC 200**, at para-16 and 17, took note of several judgments of the Hon'ble Supreme Court dealing with Section 306 IPC, which is as under:-

"16. The necessary ingredients for the offence under Section 306 IPC were considered in S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] where explaining the concept of abetment, Dalveer Bhandari, J. wrote as under : (SCC p. 197, para 25)

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

17. While dealing with a case of abetment of suicide in Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13)

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the

victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

11. In this case, we could not find any active act on the part of the appellant which can be said to have forced the deceased to consume poison. The alleged harassment took place at an earlier point of time, which cannot form basis of the incident which took place after a considerable long period. The proximity of time is important in this context. Further, there is no evidence establishing any act on part of the appellant to facilitate the commission of suicide in the proximate time.

12. Having pondered over the rival contentions, pleadings and material, so also after applying the *ratio decidendi* of the judgments of Hon'ble Supreme Court, discerning the facet of Section 306 IPC, we find that the defence toe the lines for acquittal.

13. Accordingly, this Criminal Appeal stands **allowed**. The impugned judgment of conviction dated 07.08.2003 and order of sentence dated 11.08.2003 passed by Learned Additional Judicial Commissioner-II, Khunti, in S.T. Case No.451 of 2000, are hereby set aside. The appellant is acquitted of the charges. As the appellant is on bail, he is discharged from the liability of bail bonds, so are the bailers.

14. Trial Court Record be transmitted back to the Court concerned.

15. Pending I.A. if any, stands disposed of.

16. Considering the sincere efforts put in by Mr. Naveen Kumar Jaiswal, learned *Amicus Curiae* representing the appellant in the disposal of this Appeal, we direct the Jharkhand High Court Legal Services Committee to pay a remuneration of Rs.7,500/- to Mr. Naveen Kumar Jaiswal, Advocate (*Amicus Curiae*).

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

HIGH COURT OF JHARKHAND, RANCHI

Dated:- 09/12/2024

AFR / Prashant