

(2023) 01 CHH CK 0049
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1687, 1719 Of 2022

Anil Kurre

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 09-01-2023

Acts Referred:

Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)
Code Of Criminal Procedure, 1973 — Section 439, 482
Indian Penal Code, 1860 — Section 34, 107, 306

Citation : (2023) 01 CHH CK 0049

Hon'ble Judges : Sachin Singh Rajput, J

Bench : Single Bench

Advocate : K.R. Nair, Manoj Paranjpe, Vipin Tiwari, B.P. Banjare

Final Decision : Allowed

Judgement

Since both the appeals are arising out of same crime number therefore they are heard together and are being disposed by this common order.

The appellants are in jail since 26.09.2022 in connection with Crime No. 71/2022 registered at Police Station- Kukdur, District – Kabirdham (C.G.) for the offence punishable under Section 306, 34 of IPC and Section 3 (2) (V) of the Scheduled Casts and the Scheduled Tribes, Prevention of Atrocities Act, (hereinafter referred to as Special Act).

1. These appeals arise out of impugned order dated 13/10/2022 passed in Special Case No. 418/2022 by which, learned Special Judge, SC/ST (Prevention of Atrocities) Act, 1989 Kabirdham (CG) has rejected application for grant of regular bail filed by the appellants.

2. Prosecution case, in brief, is that on 26.09.2022 in respect to an incident occurred on 10.09.2022, the FIR has been lodged against two accused persons namely Praveen Singh Parihar and Anil Kurre. The allegations against the

accused persons are that they have committed an offence under Section 306 of IPC. It has been alleged that the present appellants have abetted and instigated the deceased Budhram Baiga who committed suicide. It has been alleged that the accused Praveen Singh Parihar Deputy Registrar, Forest Division Kawardha caught the deceased red handed while cutting the Teak wood Tree at Kamtakhol Forest and instead of taking any legal action, they were demanding Rs. 50,000/- from deceased.

3. Learned counsels for the appellants argued that according to the allegation of the prosecution, the deceased was found involved in cutting of the Teak wood tree and the appellants have demanded Rs. 50,000/- or else deceased would be implicated in the said crime. They further submit that ingredients of section 107 of the IPC are totally missing in this case, therefore instigation or harassment on the part of the appellants under Section 306 of IPC is not made out. They further submit that investigation is complete and charge-sheet has already been filed.

4. Mr. K.R. Nair, learned counsel for the appellant Praveen Singh Parihar submits that in order to attract provisions of Section 3 (2) (v) of Special Act, the prosecution must establish on record that the accused was knowing the victim. In the case in hand the appellant Praveen Singh Parihar met the deceased for the first time, therefore, it can not be said that the deceased was known to appellant. In CRA 1687 of 2022, learned counsel for the appellant submits that the appellant belongs to Scheduled Cast and therefore the provision of Special Act could not be attracted against him in order to substantiate the offence.

5. Shri Manoj Paranjpe submits that the alleged incident took place on 10.09.2022 and FIR was lodged on 26.09.2022 there is a delay of about 15-16 days in lodging the FIR. In order to substantiate their submissions, they relied upon the judgment of the Hon'ble Supreme Court in the case of Arnab Manoranjan Goswami Vs. State of Maharashtra reported in (2021) SCC 427, Gurucharan Vs. State of Punjab reported in (2017) 1 SCC 433. On the question of delay Shri Manoj Paranjpe relied upon the judgment of Supreme Court Sumedh Singh Saini Vs. State of Punjab (2020) SCC SC 1986.

6. On the other hand, learned State counsel heavily opposes the submissions of counsel for the appellants and submits that the name of the deceased was Budhram Baiga and the allegation is that he was found cutting Teak wood Tree and therefore the present appellants were harassing and threatening him to implicate him in the crime unless he pays Rs. 50,000/-. This fact has been corroborated from statement of the wife, son and daughter of the deceased and two independent witnesses namely Gian Lal Baiga and Sukhbai Baiga, who have categorically stated that the deceased was under pressure because of the instigation by the appellants, therefore the deceased committed suicide. However, he fairly submits that from perusal of the charge-sheet it does not appear that appellant Praveen Singh Parihar was knowing the caste of the deceased. However, he does not also dispute that the appellant Anil Kurre belonged to scheduled caste and therefore provision of Special Act would not be

attracted against him.

7. I have heard learned counsel for the parties and considered their rival submissions.

8. Hon'ble Supreme Court in case of Arnab Manoranjan Goswami Vs. State of Maharashtra (Supra) has held in Para- 55, 57, 62 which read as under :-

55. More recently in M Arjunan vs State, a two judge Bench of this Court, speaking through Justice R. Banumathi, elucidated the essential ingredients of the offence under Section 306 of the IPC in the following observations:

"7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.

57. Similarly, in Rajesh vs State of Haryana, a two judge Bench of this Court, speaking through Justice L. Nageswara Rao, held as follows:

9. Conviction under Section 306 IPC is not sustainable 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. 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.

62. Now in this backdrop, it becomes necessary to advert briefly to the contents of the FIR in the present case. The FIR recites that the spouse of the informant had a company carrying on the business of architecture, interior design and engineering consultancy. According to the informant, her husband was over the previous two years "having pressure as he did not receive the money of work carried out by him" The FIR recites that the deceased had called at the office of the appellant and spoken to his accountant for the payment of money. Apart from the above statements, it has been stated that the deceased left behind a suicide note stating that his "money is stuck and following owners of respective companies are not paying our legitimate due". Prima facie, on the application of the test which has been laid down by this Court in a consistent line of authority which has been noted above, it cannot be said that the appellant was guilty of having abetted the suicide within the meaning of Section 306 of the IPC. These

observations, we must note, are prima facie at this stage since the High Court is still to take up the petition for quashing. Clearly however, the High Court in failing to notice the contents of the FIR and to make a prima facie evaluation abdicated its role, functions and jurisdiction when seized of a petition under Section 482 of the CrPC. The High Court recited the legal position that the jurisdiction to quash under Section 482 has to be exercised sparingly. These words, however, are not meaningless incantations, but have to be assessed with reference to the contents of the particular FIR before the High Court. If the High Court were to carry out a prima facie evaluation, it would have been impossible for it not to notice the disconnect between the FIR and the provisions of Section 306 of the IPC. The failure of the High Court to do so has led it to adopting a position where it left the appellant to pursue his remedies for regular bail under Section 439. The High Court was clearly in error in failing to perform a duty which is entrusted to it while evaluating a petition under Section 482 albeit at the interim stage.

9. In the case of Gurucharan Singh Vs. State of Punjab (Supra) the Hon'ble Supreme has held in Para- 27 as under :-

27. The pith and purport of Section 306 IPC has since been enunciated by this Court in Randhir Singh v. State of Punjab and the relevant excerpts therefrom are set out hereunder :

12. Abatement involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

10. In light of the above pronouncements and looking into the facts and circumstances of the case, the allegation against the present appellants, that investigation is complete and the charge-sheet has already been filed, they are in jail since 26.09.2022, that the trial is likely to take some time and taking into consideration all the facts and circumstances, evidence collected so far, I am

inclined to allow this appeal.

11. Accordingly, these appeals are allowed. The impugned order rejecting bail application of the appellants is set aside. It is directed that the appellants shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- along with one solvent surety for the like amount to the satisfaction of the concerned trial Court on the condition that -

a) they shall appear before the trial Court regularly on each and every date, unless exempted from appearance.

b) they shall not make any attempt to tamper with the prosecution witnesses.

d) they shall not meet any prosecution witnesses till conclusion of trial.

It is made clear that if any of the aforesaid conditions is violated by the appellants, the State / victim would be free to move for cancellation of bail. It is clarified that this Court has not expressed any opinion on the merits of the case and the Court below shall decide the case independently on the merits and demerits of the case.

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