
(2014) 07 OHC CK 0025
In the Orissa High Court
Case No : Criminal Appeal No. 88 of 1991

Himansu Meher

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 107, 306

Citation : (2014) 4 Crimes 449 : (2014) 2 OLR 670

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Judgement

D. Dash, J.—The present appeal has been directed against the judgment of conviction and order of sentence passed by the learned Sessions Judge Bolangir in Sessions Case No. 62 of 1990 convicting the appellant for offence under Section 306 IPC and sentencing him to undergo rigorous imprisonment for four years with payment of fine of Rs. 100/- with default stipulation to undergo simple imprisonment for 7 days.

2. Facts necessary for disposal of the above appeal run as under:

"Appellant had developed illicit relationship with the daughter of P.W. 1 and 2. When it came to the knowledge of P.W. 1 and his wife that appellant, a married man with his wife and children is having such illicit relationship, they being the parents had no other option but to immediately go for engagement of marriage of their daughter by finalizing her marriage with a bridegroom of their choice. Accordingly, betrothal ceremony was held seven days prior to the occurrence. It is next stated that the daughter of P.W. 1 was then taken to the house of the appellant and there she remained with the appellant. When an unmarried girl remained under the same roof where the family of the appellant were residing, the villagers persuaded the father of the appellant to accept her as his daughter-in-law. It is alleged that during that time the appellant has kept her confined in a room of the house. Some gentleman requested the wife of the appellant to

return the ornaments given to the daughter of P.W. 1 by the bridegroom side at the time of betrothal ceremony. So, those were returned. It is next stated that despite the persuasion of the villagers, the appellant did not finally accept the daughter of P.W. 1 as his wife which ultimately compelled the daughter of P.W. 1 to commit suicide. The present appellant is said to have thus abated the commission of suicide by refusing to marry her after having illicit relationship with her for long and lastly having kept her confined in his house even after completion of her betrothal ceremony.

Initially an U.D. Case was registered. In course of inquiry when the above facts came to light, police registered a regular case and took up investigation. On completion of investigation finally the appellant faced the trial in Court of law being charged for above offences."

3. Prosecution in order to establish this case has examined eight witnesses whereas the two witnesses have been examined from the side of the defence.

4. The plea of the defence is that of alibi with specific statement to the effect that he was not present in the house when daughter of P.W. 1 committed suicide and during the time he was staying at Kermili where he came to know about the death after about three days.

5. Learned counsel for the appellant submits that in this case, the appreciation of evidence as done by the trial Court is improper. According to him, the trial Court ought not to have relied upon the evidence of P.W. 1, 3 and 4 for fastening the guilt upon the appellant for offence under Section 306 IPC. He further submits that the prosecution evidence as laid do not make out a case for offence under Section 306 IPC. Thus, he contends that the finding of the trial Court is unsustainable being based on improper appreciation of evidence and also the same is contrary to law and is liable to be set aside. According to him, the judgment of conviction and consequential order of sentence have no base to stand.

6. Learned counsel for the State, on the other hand, supports the finding of the trial Court which according to him is based on proper appreciation of evidence. According to him, the trial Court has taken all the circumstances as those emanate from the evidence and has accordingly proceeded to appreciate the evidence of the prosecution as well as other evidence. He contends that the finding rendered by the Trial Court holding the appellant guilty of the offence under Section 306 IPC is unsustainable.

7. Keeping the rival submission in mind, this Court is now called upon to have a look at the evidence laid by the prosecution.

It is the case of the prosecution that deceased committed suicide in the house of the appellant and the dead body of deceased was recovered therefrom. The doctor conducting autopsy over the body has been examined as P.W. 6. He has found ligature mark 12 1/2" x 1/2" (single), non-continuous deficient over left

mastoid process present below the chin and above thyroid and the base of the ligature mark was according to his evidence hard, yellow and parchment like. P.W. 6 on dissection has found that subcutaneous tissues under the ligature mark as hard, white and glistening when the hyoid and thyroid cartilage were found to be intact and normal. His evidence is on the score that the cause of death is on account of suicidal hanging. Said evidence of P.W. 6 has practically gone unchallenged. He has further deposed that the ligature mark that he found was caused by a rope. The report of P.W. 6 has been admitted in evidence as Ext. 3. There is no evidence to counter it. Therefore, the case stands established that the deceased committed suicide.

8. It is the prosecution case that the appellant abated commission of such suicide. P.W. 1 is the father of the deceased. It is his evidence that when his daughter had gone to the shop to purchase gudakhu (local tooth paste with tobacco base) the appellant forcibly dragged and took her to his house and kept her under wrongful confinement there. It is further submitted that the appellant did not allow the deceased to come out of his house. Though he further states that her daughter was taken by the appellant, during cross-examination, he has stated to have not seen the appellant on Tuesday when he had seen to his house where he found his daughter hanging dead. The most important part of his evidence is that the appellant had taken her daughter forcibly from near the shop when she had gone to purchase gudakhu. During cross-examination however he had clearly admitted to have not seen such forcible taking of his daughter by the appellant. He has rather stated that he heard it from the villagers, when also P.W. 1 has not stated before the I.O. in course of investigation in the statement under Section 161 Cr.P.C. that when her daughter had gone to purchase gudakhu, the appellant had forcibly taken her to his house. This has been proved through the I.O. (P.W. 4) who had deposed so in para-4 of his cross-examination. Similar is the evidence of P.W. 3 who had stated to have heard appellant forcibly dragging the deceased to his house. So in view of such material contradiction not only that said evidence of taking away is unacceptable as also being an improvement during trial but also the same is hearsay. He has further deposed that on their arrival, they put no pressure upon the father of the appellant to allow the deceased to go away from the house. It is his evidence that this was not done because by then she has already been outcaste being treated as the second wife of the appellant. P.W. 4's evidence is also running in the same vein that he had heard it from others that the deceased was taken to the house by the appellant. Thus there appears no direct evidence on this score to have been laid by the prosecution that on Sunday when the deceased had been to the shop of the village to purchase gudakhu, it is the appellant who had forcibly taken her to the house and kept her confined there. The trial Court appears to have completely erred in law by stating in para-8 of the judgment that it appears from the evidence of P.W. 1, 3 and 4 and that Brundabati was taken to the house by the appellant.

Fact remains that at the time of death due to suicide, Brundabati was there in

the house of the appellant and the dead body has been recovered from that house. When the appellant is facing charge under Section 306 of IPC, the trial Court appears to be not right in holding that in view of above, it was for the appellant to explain as to how and under what circumstances Brundabati died and non-explanation of that itself stands as a circumstance for attracting the offence under Section 306 IPC.

9. At this stage, it is felt to apposite to have a look at statutory provision contained in Section 306 IPC which run as under:

"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."

From a bare reading of the provision, it is clear that to constitute an offence under Section 306, IPC, the prosecution has to establish : (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime.

The parameters of "abetment" have been stated in Section 107 IPC, which defines "abetment" of a thing as follows:

"107. Abetment of a thing - A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing"

"Explanation 1 - A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing." Illustration-

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"Explanation 2 - Whoever, either prior to or at the time of the commission of an act does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

In case of Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), , Apex Court had the occasion to deal with the aspect of instigation as an abetment of commission of suicide. Instigation of crime is abetment. Such word "instigate" is not defined in the IPC. The meaning of said word was considered by the Apex Court in case of Ramesh Kumar Vs. State of Chhattisgarh, . Instigation is to good, urge the forward to provoke, incite or encourage to do "an act". To satisfy

the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence must capable of being spelt out. Where the accused had by his act or omission or by continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation. Besides instigation, abetment of crime can also be made by agreement or conspiracy and conspiracy is a crime when two or more persons do or cause to be done an illegal act or an act which is not illegal by illegal means and in pursuance of the same if act or illegal omission had taken place, one can be said to have abetted the crime. Therefore, mere deliberation for commission is not abetment. Clause thirdly speaks of doing a thing in order to facilitate the commission of an act, so also an omission to do illegal act which facilitate to the commission of such act.

10. In view of aforesaid when the evidence on record spelt out by the prosecution witnesses No. 1, 3 and 4 are gone through, it is seen that they have not whispered anything against the appellant to have done any overt act. At the cost of repetition, it may be stated here that the trial Court has erred in-law by concluding that these witnesses have stated that on Sunday when the deceased had been to the shop to purchase gudakhu, the appellant had forcibly taken her to his house and kept her confined therein. Thus there remains no evidence from the side of the prosecution that the appellant did any such overt act which can be said to have provoked the deceased commit suicide much less is the evidence that the appellant intentionally provoked the deceased to commit suicide. No such other circumstances has also been proved by the prosecution from which inference can be drawn on that count not there appears any such circumstances to have been created by the appellant so as to say that the deceased had no other option but to commit suicide. Also there surfaces no such material establishing the fact that the appellant was engagement with conspiracy with any one for doing of anything relating to the commission of suicide by the deceased. It is not the case of the prosecution that the appellant had made any agreement with any one for doing of anything, pursuant to which the deceased committed suicide. There is neither any evidence in this respect either direct or circumstantial. Absolutely no evidence is also surfacing to the effect that the appellant by his act or conduct contributed to the commission of suicide or facilitated the commission of suicide by the deceased, either before or during the time of commission of suicide. Therefore, it is seen that there is absolute lack of evidence on the score of the abetment made by the appellant in commission of that suicide by the deceased. In view of the same, I am constraint to observe in this case that without any evidence on record attracting ingredients of under Section 306, IPC, conviction has been recorded for the said offence by the learned Sessions Judge, Bolangir being oblivious to the statutory provisions and the ingredients thereof. Therefore, the finding of guilt rendered by the trial Court

of the appellant is liable for commission of offence under Section 306 IPC and consequentially the order of sentence as stated above are liable to be set aside.

11. In the result, the criminal appeal is allowed. The impugned judgment and conviction of order of sentence are thus hereby set aside. Consequentially the appellant is acquitted of the charge.