

(2001) 11 CHH CK 0004
In the Chhattisgarh High Court
Case No : Criminal Revision No. 46 of 2001

Ku. B. Usha Dandasi and Another

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 24-11-2001

Acts Referred:

Evidence Act, 1872 — Section 6, 7, 8

Penal Code, 1860 (IPC) — Section 107, 108, 109, 110, 111

Citation : (2002) 3 CGLJ 31 : (2001) 5 MPHT 12 : (2002) 1 MPJR 102

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Avinash Mishra, Uttam Pandey, for the Appellant; Ranbir Singh, Government Advocate and R.K. Jajodiya, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Fakhruddin, J.—This Revision has been preferred against the order dated 25-01-2001 passed by the Special Judge, Durg in S.T. No. 22/2001, whereby charge u/s 306/34 of I.P.C. has been framed against the applicants.

2. Briefly narrated the facts are that Ku. Beenu Sharma, the girl aged about 19 years was a student of Class XII. She was studying in Saraswathi Higher Secondary School, Kailash Nagar, Bhilai. The applicants are class fellows and were studying in the same Section. Accusations were made against the deceased that she is a thief and has stolen articles. The incident of alleged theft occurred in the class room on 12-08-2000 and 16-08-2000. The suicidal note is there on the record and has been filed at page No. 27 as Annexure A-10. A perusal of the suicidal note prima facie goes to show that name of Usha and Archana are mentioned with reference of the accusations made against the deceased.

3. The prosecution has also recorded the statements of the witnesses including that of Ms. Lata Bambekar, Class Teacher and Samir Kumar Jha, Principal. The statements of Revindra Kumar Sharma and Savita Sharma - Father and Mother of the deceased were also recorded. The statement of father of the deceased

mentions the name of Usha and the accusations made.

4. Section 107 to 113 of I.P.C. are relevant for the purposes of this case and are quoted below.

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.

108. Abettor :- A person abets an offence, who abets with the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

108A. Abetment in India of offences outside India :- A person abets an offence within the meaning of this Code, who, in (India), abets the commission of any act without and beyond (India) which would constitute an offence if committed in (India).

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishments :- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

110. Punishment of abetment if person abetted does act with different intention from that of abettor :- Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

111. Liability of abettor when one act abetted and different act done :-

When an act is abetted, and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it.

Proviso :- Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

112. Abettor when liable to cumulative punishment for act abetted and for act done :- If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted and constitutes a distinct offence, the

abettor is liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor :- When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

5. Learned counsel for the applicants placed reliance upon 1999(1) Crimes 631 (Jhanaklal v. State of M.P.) and 1995 M.P.L.J. 458 (Vedprakash Tarachand Bhaiji v. State of M.P.). These judgments have been read in full. The facts and circumstances of those cases are altogether different from this case. In the present case, the deceased was aged about 19 years and was a student of Class XII. She committed suicide and had left the suicidal note containing accusations made against her. Each case depends on its own facts. There cannot be a straight jacket formula. The pain and agony suffered by the deceased, prima facie for the purposes of the charge, go to show the seriousness of the matter. For some persons an accusation of stealing may not be a matter but for a student and especially a girl student it certainly matters and the constant attitude towards her, which is reflected in the suicidal note cannot be ignored for the purposes of framing of charge. It is open to the accused persons to put all such defences and take all such pleas available to them under the law. Learned counsel also referred to mens-rea fact. The mens-rea has to be gathered from the attending circumstances.

6. Learned counsel for the State submits that the prosecution has placed relevant material and Sections 108, 110 and 112 of I.P.C. are quite pertinent. The suicidal note certainly speaks about the accusations made.

7. Sections 6, 7 and 8 of the Evidence Act are pertinent and are quoted below:

6. Relevancy of facts forming part of same transaction :- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

7. Facts which are the occasion, cause or effect of facts in issue :- Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

8. Motive, preparation and previous or subsequent conduct:- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding,

in reference to such suit or proceeding, or in reference to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceedings, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.

8. Learned counsel for the State submitted that for the purposes of framing the charge, the law is well settled. He placed reliance upon the Judgment passed in the case of State of M.P. Vs. S.B. Johari and Others, . In this case, the apex Court has observed that "it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial."

9. Learned counsel appearing for the applicants practically read out the entire documents inviting the decision on merits of the case as well and the learned prosecutor appearing for the State countered each and every argument to negative the defence version. However, taking into consideration the fact that the accused persons in the present case are also girls, practically of the same age which was that of the deceased and they may have their own defence and keeping in mind the interest of the rival parties and the stage at which these arguments have been advanced, in the opinion of this Court, ends of justice would serve if the minute details are left to be decided by the Trial Court where the parties i.e. prosecution and the defence both will have opportunity. The witnesses and accused persons shall appear before the Trial Court and it will have advantage of noting their demeanour and conduct as well. The facts and circumstances sought to be relied on by prosecution can better be appreciated if the accused persons are given opportunity before the Trial Court as any observations made in their absence here may influence one way or the other.

10. Having thus considered, there is no infirmity in the impugned order of framing the charges. The revision fails and is dismissed.

11. Before parting, it is however made clear that the trial Court shall decide the case strictly on its own merits in accordance with law without being influenced by any of the remarks made in this order.