
(2014) 04 OHC CK 0068
In the Orissa High Court
Case No : JCRLA No. 20 of 2002

Sarjan Kheti

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306, 363, 493

Citation : (2015) 2 Crimes 344 : (2014) 1 ILR 1008 : (2014) 2 OLR 199

Hon'ble Judges : S. Pujahari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Pujahari, J,

1. This Jail Criminal Appeal is directed against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Sonapur in Sessions Case No. 34/23 of 2000. The learned Additional Sessions Judge, Sonapur vide the impugned judgment and order held the appellant guilty of charges under Sections 493/306 of the Indian Penal Code (for short "I.P.C.") and sentenced him to undergo rigorous imprisonment for six years and to pay a fine of Rs. 2,000/- and in default to undergo rigorous imprisonment for one year on each of the aforesaid counts and also directed both the sentences to run concurrently. The prosecution came to the trial court with a case that the appellant inducing the deceased with a promise to marry, kidnapped her from the lawful guardianship of her parents residing at Jharsuguda and kept her in the house of his brother-in-law at Rengali Camp and from there he took her to the house of his first cousin (P.W. 4), being the daughter of his father's sister, at Tarava and kept her there. The parents of the deceased came to know about the same. Then, the mother of the deceased (P.W. 15) arrived there in order to take her back to their house. When the appellant saw the mother of the deceased in the house of his cousin, he fled away from the house giving a push to the deceased and did not return. The mother of the deceased persuaded her to

return back to Jharsuguda with her, but as the appellant had deserted her, out of shame and humiliation, on the next day, i.e., on 12.06.1999 morning she poured kerosene on her body and immolated her by setting her to fire, as a result of which she sustained 90% burn injuries. Hara Mahaling (P.W. 1), a neighbor of the P.W. 4 hearing the hullah arrived there, where the deceased had disclosed the aforesaid and thereafter she was shifted to the District Headquarters Hospital, Bolangir where she succumbed to the injuries. The matter was reported at Tarava Police Station by Hara Mahaling (P.W. 1) in writing (Ext. 1), pursuant to which Tarava P.S. Case No. 70 dated 12.06.1999 was registered and investigated. On completion of investigation, police found substance in the report (Ext. 1) against appellant and placed charge-sheet alleging offences under Sections 363/493/306 of I.P.C. against him.

2. On the basis of the aforesaid prosecution case placed before the trial court, the trial court framed charges for the aforesaid offences against the appellant and the appellant having denied the charge, he was asked to face the trial. On the conclusion of the trial, the trial court basically relying on the evidence of Hara Mahaling (P.W. 1), the informant in this case and the mother of the deceased, namely, Dukhibai Sankar (P.W. 15) as well as the doctor, namely, Dr. Jyotirmayee Sahu (P.W. 11), repelling the defence plea of denial, returned the judgment of conviction and sentence, as stated earlier, while acquitting the appellant of the charge u/s 363 of I.P.C.

3. Learned counsel for the appellant has assailed the judgment of conviction and sentence, advancing the contention that in this case there being no credible evidence on record to disclose that the appellant abetted the commission of suicide of the deceased in any manner or he had sexual intercourse with the deceased giving her the impression that he was lawfully married to her, the trial court erred in returning the judgment and order of conviction and sentence. Therefore, he has submitted, the same is liable to be set-aside and the appellant is entitled to an order of acquittal.

4. In response, the learned Additional Standing counsel appearing for the State, has supported the impugned judgment of conviction and sentence drawing the notice of this Court to the evidence recorded by the trial court.

5. The evidence on record discloses that the deceased committed suicide, inasmuch as the mother of the deceased (P.W. 15), deposed that she arrived in the house of P.W. 4 in search of her daughter and when she persuaded her to return to Jharsuguda with her (P.W. 15), she told that she (deceased) had no face to return since she left the house with the appellant and went inside the house of P.W. 4 and set fire on her. The door was broken and P.W. 4 extinguished the fire on her body by pouring water. P.W. 1 - Hara Mahaling, who immediately arrived at the spot, deposed that the deceased disclosed before him to have committed suicide (by burning herself?) by pouring kerosene on her body out of shame and humiliation. His evidence is corroborated in this regard by his F.I.R. version (Ext. 1). Their such evidence also gets corroboration from the evidence

of the doctor (P.W. 11), who conducted autopsy over the dead body of the deceased, inasmuch as she deposed that the deceased to have died of shock arising out of extensive burn on her body which was about 90%. Such evidence of the doctor gets corroboration from the postmortem report (Ext. 6), a contemporaneous document, prepared by him. The defence had not disputed the said evidence in the trial court. There is also no material to discard the aforesaid evidence of P.Ws. 1 and 15 nor there is any evidence on record to show that the doctor, P.W. 11 had not bestowed the required care and caution while conducting the postmortem examination. The counsel for the appellant also does not dispute the fact that there is ample acceptable evidence adduced in the trial court by the prosecution, disclosing that the deceased died of suicide. In such view of the matter, the finding rendered by the trial court that the deceased died of suicide relying on such evidence, warrants no interference.

6. The appellant had taken the deceased with him and put her in the house of his cousin (P.W. 4) at Tarava with a promise to marry her. There is unimpeachable evidence of the mother of the deceased (P.W. 15) in this regard, which also stands corroborated from the version of the father of the deceased (P.W. 16) and also the cousin of the appellant (P.W. 4), in whose house the deceased was lodged by the appellant. So also, P.W. 1 stated that the deceased was there in the house of P.W. 4. The mother of the deceased deposed that in search of the deceased she arrived in the house of P.W. 4 and persuaded the deceased to accompany her (leaving the appellant), the deceased told her that the appellant brought her with promise to marry and since she left the house she had no face to return and then the deceased went inside the house and set fire to her. The aforesaid is also the version of P.W. 1, before whom the deceased had made a dying declaration. There is nothing on record to discard the aforesaid evidence adduced by the prosecution inasmuch as in spite of incisive cross-examination made by the defence, nothing was elicited from them to discard their said version. But, the learned counsel for the appellant submits that the aforesaid does not attract the ingredients of the charge u/s 306 of I.P.C. Therefore, it would be apposite to have a look to the statutory provisions contained in Section 306 of I.P.C., which is extracted 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.

Abetment has been defined in Section 107 of I.P.C., which is also extracted hereunder;

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 -- A person who, by willful misrepresentation, or by willful 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.

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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.

7. Instigation of crime is abetment. The Hon"ble Supreme Court had the occasion to deal with aspect of "instigation" as an abetment of commission of suicide in the case of Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), . The Hon"ble Apex Court held that in case of an instigation, there should be intention to provoke, incite or encourage the doing of the act. Therefore, the same speaks of a positive act on the part of the abettor. Besides instigation, abetment of crime can also be made by engagement on a conspiracy. A conspiracy is an agreement by two or more persons to do an illegal act or legal act in an illegal manner and in pursuance of the same if an act or illegal omission taken place, one can be said to have abetted the crime. Therefore, mere deliberation for commission is not an abetment. Clause Thirdly speaks of doing a thing in order to facilitate the commission of the act, so also an omission to do an legal act which facilitates the commission of such act.

8. Keeping in mind the aforesaid, when the evidence on record as spelt out by P.W. 1 and also the mother of the deceased (P.W. 15), who was present in the spot and speaks the circumstance, in which the deceased set her to fire is addressed, it is seen that they have made no whisper against the appellant to have done any overt act which can said to have provoked the deceased to commit suicide much less is the evidence that the appellant intentionally provoking the deceased to commit suicide. No circumstance has also been proved by the prosecution from which an inference can be drawn for the same. There is also no material regarding the appellant was engaged in any conspiracy with anyone for doing of anything relating to the commission of suicide by the deceased. The prosecution has also not come with a case that the appellant made any agreement with anyone for doing of anything, pursuant to which the deceased committed suicide nor there is any evidence in this aspect either direct or circumstantial. Furthermore, there is also absolutely no evidence that the appellant by his act or illegal omission 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. Rather, the evidence discloses that when the

mother of the deceased persuaded the deceased to return with her to Jharsuguda leaving the appellant, the deceased, who had no courage to face the society as she eloped with the appellant, she committed suicide. Therefore, absolutely there is no evidence of any abetment made by the appellant in commission of suicide by the deceased.

9. So far as the conviction u/s 493 of I.P.C. is concerned, prosecution is required to establish the following ingredients by legally acceptable evidence, those are:- (i) the accused practised deception; (ii) such deceit was to induce a woman to believe that she was lawfully married to him; and (iii) there was cohabitation or sexual intercourse as a result of the deception. Section 493 of I.P.C., therefore, presupposes a marriage between the accused and the victim which may not be necessarily by following a ritual or by customary ceremony, but there must be an inducement to the woman that such marriage between him and the woman was lawful and giving that impression if an accused cohabits or had sexual intercourse in pursuance of such deception, then the accused can be guilty of a charge u/s 493 of I.P.C. The evidence in this case does not disclose that the appellant practised any deceit which made the deceased to believe that she was lawfully married to him and in pursuance of the same, they cohabited or had sexual intercourse. Rather, the evidence discloses that the appellant giving her the promise to marry had taken her from Jharsuguda and lodged her in the house of his cousin (P.W. 4) and the deceased was there to marry him. Absolutely there is no evidence of any marriage or deceit of a lawful marriage, as disclosed from the evidence of P.W. 1, before whom the deceased had stated that she had come there to marry the appellant. There is also no evidence of any cohabitation or sexual intercourse between them much less is the evidence in pursuance of the impression of a lawful marriage, the deceased was having the same with the appellant. There being no iota of evidence in this regard, the conviction of the appellant on a charge u/s 493 of I.P.C. by the trial court, therefore, unsustainable.

10. Thus, on reappraisal of the evidence on record, I am constrained to observe that in this case, even though there was no evidence attracting the ingredients of the offences charged, the learned Additional Sessions Judge, Sonapur in oblivion to the relevant statutory provisions in the Penal Code and the ingredients thereof, held the appellant guilty of the impugned charges and sentenced, as stated earlier. Resultantly, for the foregoing reasons, this Jail Criminal Appeal is allowed. The impugned judgment and order of conviction and sentence are set-aside. Consequentially, the appellant is acquitted of the charges and he be set at liberty forthwith if in custody, unless his detention is required otherwise.