

(2023) 10 CHH CK 0005
In the Chhattisgarh High Court
Case No : ACQA No. 73 Of 2013

State of Chhattisgarh

APPELLANT

Vs

Tribhuwan Paswan @ Tannu

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 107, 147, 149, 306
Code Of Criminal Procedure, 1973 — Section 313, 378(1)

Citation : (2023) 10 CHH CK 0005

Hon'ble Judges : Sanjay Kumar Jaiswal, J

Bench : Single Bench

Advocate : Adil Minhaj, Bharat Sharma

Final Decision : Dismissed

Judgement

1. By this acquittal appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C"), appellant/State has challenged the legality and propriety of judgment of acquittal dated 13.05.2013 passed by the First Additional Sessions Judge, Manendragarh at Baikunthpur District Korea (C.G.) in Sessions Trial No.54 of 2012, whereby the trial Court has acquitted the respondents of the charges punishable under Sections 147 and 306 read with Section 149 of Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2. Case of the prosecution, in brief, is that, Seema Rajwade (deceased) was studying in Class-XII and lived with her family at village Salka. Smt. Shyamkali, mother (PW-12), Nisha Rajwade, sister (PW-11), Shivshankar Rajwade, father (PW-1), Brijmohan Rajwade, uncle (PW-13) and Laxmikant Rajwade, uncle (PW-5) were also lived in same locality. On 10.12.2011, at about 3.30-4.00 P.M., accused along with other delinquent children came to the house of Seema Rajwade at village Salka, called her and started abusing her by stating that why she sent obscene SMS, upon which, she stated that she had not sent the SMS. She further stated that delinquent girl had sent the SMS, then accused stated

that delinquent girl herself told them that said SMS had been sent by Seema. Accused started threatening Seema Rajwade by stating that "if she was a boy, they would have taken her away and now, they will see how she goes to study at Baikunthpur". Thereafter, at about 8.00 P.M., Seema Rajwade consumed overdose of chloroquine tablets, as a result of which, she died. Based on the information of her family members, a crime was registered and after investigation, charge-sheet was filed.

3. So as to hold the accused guilty, the prosecution has examined as many as 18 witnesses. The statement of the accused were also recorded under Section 313 of the Cr.P.C., in which, they denied the circumstances appearing against them and pleaded innocence and false implication in the case. In order to prove the defence, accused have examined two defence witnesses, namely Aniruddh Singh (DW-1) and Aftab Ahmed (DW-2). Both defence witnesses have stated that all accused belong to Congress Party and regional MLAs belong to Bharatiya Janata Party, who had always been trying to implicate the accused in a false case and under their pressure, without conducting an impartial investigation, Police has falsely implicated the accused in aforementioned crime in question.

4. After hearing both the parties, learned trial Court vide judgment dated 13.05.2013, acquitted the accused. The trial Court arrived at a conclusion on the basis of postmortem report of deceased Seema Rajwade, which was given by Dr. Ashish Kumar Karan (PW-17) vide Ex.P/16 and Ex.P/17, in which, it was mentioned that Seema Rajwade had consumed excessive chloroquine tablets and she died as a result of its overdose. It has been made clear that Seema Rajwade had committed suicide. Both the parties have not made any objection to the effect that Seema Rajwade had committed suicide by consuming chloroquine tablets in large quantities.

5. Learned counsel for the appellant/State would submit that eyewitnesses to the incident are deceased's sister Nisha Rajwade (PW-11), mother Smt. Shyamkali (PW-12), uncle Brijmohan Rajwade (PW-13) as well as uncle Laxmikant Rajwade (PW-5) and it is clear from their statements that accused had gone to the house of Seema Rajwade, abused her and threatened her by stating that "if she was a boy, they would have taken her away and now, they will see how she goes to study at Baikunthpur", as a result of said threat, she committed suicide under abetment, therefore, accused are guilty of abetment of suicide. He would further submit that judgment of acquittal passed by the trial Court is not justified. It is contended that prosecution has proved its case beyond reasonable doubt, as such, acquittal appeal be allowed.

6. Per contra, learned counsel for the respondents would submit that no such act has been done by the respondents conspiratorially or in the form of provocation, which can be termed as abetment, as such, case of abetment has not been proved against them. He would further submit that judgment of acquittal passed by the trial Court is based on evidence available on record, which does not call for any interference. He placed reliance on the verdict rendered by Hon'ble

Supreme Court in cases of Gurcharan Singh v. State of Punjab reported in (2020) 10 SCC 200 and Subramanya v. State of Karnataka reported in AIR 2022 SC 5110 to buttress his submissions.

7. Heard learned counsel for the parties and perused the material on record including the impugned judgment of acquittal.

8. The finding of trial Court that Seema Rajwade committed suicide by consuming chloroquine tablets in excessive quantity has not been disputed. According to the appellant, it has to be seen whether suicide took place as a result of abetment of the accused?

9. Abetment has been defined in Section 107 of the IPC. What is instigation and abetment and in what form can conspiracy, support or abetment be considered in the crime of suicide; in what form, is it necessary to prove it as an essential part of the crime, has been analyzed by the Hon'ble Supreme Court in case of Gurcharan Singh (supra) at paragraphs-13 to 17, which are as follows :

13. Section 107 IPC defines "abetment" and in this case, the following part of the section will bear consideration : -

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

First-Instigates any person to do that thing; or *****

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

14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

16. The necessary ingredients for the offence under Section 306 IPC was considered in S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190, 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.*, (2010) 1 SCC 707, 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."

10. On what basis and under what circumstances, the Appellate Court should intervene in the appeal against acquittal, the case has been analyzed by Hon'ble Supreme Court in case of *Subramanya* (supra), in which, other judicial precedents have also been mentioned and some guiding principles have also been propounded. Relevant portion of the said judgment reads as follows :

"39. *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235, is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against

acquittal ought to be cautious because the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial".

40. In *Shivaji Sahabrao Bolbade and Another v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033, in para 6, Krishna Iyer, J., observed as follows:

"6.In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents...."

41. This Court in *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225 : 1996 SCC (Cri) 972, in para 7 spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:

"7.While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions...."

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In other words, there should not be an acquittal of the guilty or a conviction of an innocent person.

42. In *Ajit Savant Majagvai v. State of Karnataka*, (1997) 7 SCC 110 : 1997 SCC (Cri) 992, in para 16, this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the trial Court:

"16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

43. This Court in Chandrappa (supra) highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an

appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

11. If I consider the facts and evidence available in the case at hand in the light of above judicial precedents, it is reflected that at the time when accused were told to deceased Seema Rajwada to come to the house, her sister Nisha Rajwade (PW-11), mother Smt. Shyamkali (PW-12), uncle Brijmohan Rajwade (PW-13) and uncle Laxmikant Rajwade (PW-5) were present.

12. Regarding the situation at that relevant time, Nisha Rajwade (PW-11), sister of deceased stated that accused had alleged that Seema Rajwade was sending obscene SMS on her mobile phone and stated that "if she had been a boy, they would have taken her, seen what was her status and how she would go to study". Smt. Shyamkali (PW-12), mother of deceased stated that accused had stated that "if she had been a boy, they would have taken her and seen how she goes to study at Baikunthpur". Uncle Brijmohan Rajwade (PW-13) stated that accused were abusing Seema and asked that why she had sent such SMS. This witness has not made any statement regarding threat. Second uncle, Laxmikant Rajwade (PW-5) has stated that accused were scolding Seema by stating that "if she was a boy, they would have dragged her and seen how she would go to school".

13. On the basis of statements of aforementioned witnesses, learned counsel for appellant/State has contended that Seema Rajwade had committed suicide due to threat.

14. In reply, learned counsel for respondents/accused has contended that accused had not made any such threat or abuse. Even if these facts are accepted as true, they do not constitute a fact of abetment. They have not committed any obvious act, which could be considered as abetment of suicide and they had no motive to commit such act. In the light of aforementioned judicial precedents, fact of abetment is not proved, as such, judgment of acquittal need not any interfere in the appeal.

15. If I consider the case at hand in the light of aforementioned judicial

precedents, it becomes clear that accused had expressed their opposition for sending obscene SMS to Seema Rajwade. There is no evidence on record that they had any criminal intention, upon which, Seema Rajwade would commit suicide. The trial Court has arrived at a finding that accused persons have taken defence for sending obscene SMS by Seema Rajwade, as a result of such allegation, she got embarrassed and went into depression, for which, accused are not found guilty. According to the trial Court, Seema Rajwade had consumed overdose of pills at night when her father had come home and she had also fallen into a state of depression because her own family had scolded her for sending obscene SMS.

16. Keeping all these facts into consideration in the light of aforementioned judicial precedents, no act or omission of instigating Seema Rajwade by accused has been established. At this stage, there are no facts and evidence available on record to hold the accused guilty of abetment of suicide. The conclusion of trial Court is justified and well merited.

17. Therefore, arguments advanced on behalf of the appellant/State, are not found acceptable.

18. In the result, acquittal appeal being devoid of substance, is liable to be and is hereby dismissed.