



PAWAN KUMAR VS STATE OF HIMACHAL PRADESH

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FACTS OF THE CASE

The appellant is Pawan Kumar while the respondent in this case is the State of Himachal Pradesh. The Hon'ble Sri Justice Dipak Misra presided over this case.

The appellant-accused was initially booked for the offenses punishable under Section 363, 366, and 376 of the Indian Penal Code, 1860 (IPC), it was consequently led to his acquittal. He later got obsessed with the idea of threatening the prosecutrix, and that continued and eventually eve teasing became a matter of routine. The situation gets worse, compelling the girl to think that her life is not worth living. Resultantly, she pours kerosene on her body, and her dying declaration was recorded during the course of investigation. The division bench of the High Court reversed the judgment of acquittal rendered by the Trial Court and convicted the appellant-accused under section 306 IPC. The appellant is of the view that the High Court should not interfere with the judgment of acquittal, whereas the respondents contended that the impugned judgment given by the High Court should be given the stamp of approval.

JUDGMENT GIVEN BY THE COURT

The appeal was subsequently dismissed. In the judgment, the court has relied on DY.INSPECTOR GENERAL OF POLICE

v. S.SAMUTHIRAM¹, the Court has emphatically laid down “the right to live with dignity as guaranteed under article 21 of the constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity, justice and the rights of a woman under Article 14 of the constitution. That apart, it creates an incurable dent in the right of a woman which she has under Article 15 of the constitution.” The Court further added that she has an individual choice which has been legally recognized, and that has to be socially respected.

Additionally, it was mentioned that the High Court rightly gave credence to dying declaration while convicting the appellant as there cannot be an absolute rule that a person who has suffered 80% burning injuries cannot give a dying declaration. Further in the judgment, the Court stated that it is clearly evident that conduct of accused was absolutely proactive as the instant case portrays deplorable depravity of appellant which led to a heart-breaking situation for a young girl who was compelled to put an end to her life. Therefore, the High Court has appositely exercised the jurisdiction by reversing the judgment of acquittal and appellant-acquittal.

ANALYSIS

The question in this case revolves around with the nature of jurisdiction the High Court exercises when it reappreciates the evidence, reverses the judgment of acquittal rendered by the Trial Court. The said Court

¹ (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229.



was expected to decide whether the High Court decision was obligatory.

In the case, Jadunath Singh v. State of U.P.², a three-Judge Bench stated that “in an appeal against acquittal, the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in Nur Mohammad v. King Emperor³.”

In the case, State of Rajasthan v. Sohan Lal⁴, the Court was of the opinion that the High Court had the jurisdiction to, only if the Court finds an absolute assurance of the guilt on the basis of the evidence on record.

In the case, Chandrappa v. State of Karnataka⁵, the Supreme Court culled out the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Which includes, an Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is found.

The next aspect which is required to be addressed is whether Section 306 of IPC gets attracted.

Section 306 of IPC speaks about Abetment to Suicide. It states that “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.” It can be perceived from the reading of Section 107 of IPC.

In the case, Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)⁶, a two-Judge bench stated that “as per the section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person(s) in any conspiracy for the doing of that thing, if an act of 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 legal omission, the doing of that thing.” The court has similar opinions in the case, Randhir Singh v. State of Punjab⁷.

In the case, Shaik Ibrahim v. State of A.P.⁸, learned single Judge of Supreme Court was of the opinion that instigation or abetment has to be understood in the context of age of the deceased, the society in which she lives, and the social acceptance of the nature of the words uttered by the convict and the attending circumstances.

Whereas, various High Courts have taken a view that, merely because a person committed suicide by feeling insulted or humiliated, due to the comments or utterances made by the accused, the accused cannot be said to be guilty of an offence under Section 306, IPC.^{9,10}

⁶ (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367.

⁷ (2009) 17 SCC 425 : (2011) SCC (Civ) 521.

⁸ 2005 (1) ALD Cri 163, I (2005) DMC 535.

⁹ V. ADINARAYANA v. STATE OF A.P. 2000 Cri LJ 1182 .

¹⁰ DEVRAJ v. STATE OF H.P. 1991 (3) Cri 383.

² (1971) 3 SCC 577 : 1971 SCC (Cri) 726.

³ 1945 SCC OnLine PC 28 : AIR 1945 PC 151.

⁴ (2004) 5 SCC 573 : (2008) 2 SCC (Cri) 53.

⁵ (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325.



In the case, Mahendra Singh v. State of M.P.¹¹, the Supreme Court held that merely because the deceased woman stated in her dying declaration that she was harassed by the accused, the accused cannot be held guilty of an offence under Section 306, IPC. In this case, the accused did get involved in eve teasing and threatening the deceased which has been witnessed by her family and acquaintances, which instigated her to take away her life. The dying declaration here can be reliable as there cannot be an absolute rule that a person who has suffered injuries cannot give a dying declaration.

CONCLUSION

After reviewing precedents and the judgment of the present case, I strongly believe that in this case the judgment was made in the interest of equity, justice and good conscious. Every individual has the right to live a dignified life; if another man's act disturbs a woman's life, instigating her to take away her life then it is rightly to convict him for the same under Section 306 of IPC. It is authentic of the court to dismiss the appeal.

¹¹1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157.