

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Acquittal Appeal No. 19 of 2015**

Smt. Mangali Bai W/o Shri Jodhram Nirala Aged About 59 Years
R/o Village Kutela, PS and Tah. Sarangarh, Distt. Raigarh, Civil
and Revenue District Raigarh C.G.

---- Appellant**Versus**

1. Nawadha Banaj S/o Mangalchand Banaj Aged About 42 Years R/o Village Bataupali, Ps Kosir, Distt. Raigarh C.G.
2. State Of Chhattisgarh through Police Station Kosir, Distt. Raigarh C.G.

---- Respondents

For Appellant	:	Shri Manoj Kumar Sinha, Advocate.
For Respondent No.1	:	Shri Rakesh Pandey, Advocate.
For Respondent No.2/ State	:	Shri Chitranjay Patel, G.A.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****18/08/2015**

(1) Heard on admission.

(2) Learned counsel for the Appellant submits that the Additional Sessions Judge, Sarangarh, District Raigarh, Chhattisgarh has committed an error by acquitting Respondent No.1 - Nawadha Banaj for the offence under Section 306 of the Indian Penal Code, 1860 (for short 'the IPC') though there was sufficient evidence regarding torture and abetment against him, by giving him the benefit of doubt.

(3) Mangli Bai (PW-3), mother of deceased – Radha Bai deposed before the trial Court that earlier Radha Bai was married to Ram Kumar Mirri, resident of Sarangarh as per social rituals. Thereafter, a divorce had taken place between them, which termed as 'Chhod Chutti'. After the divorce, 12 to 15 years ago, her daughter was married to

Respondent No.1 as per social rituals known as 'Churi Custom'. Out of the wedlock with the present Respondent No.1, two children were born, a girl and a boy, aged about 10 and 8 years respectively. At the time of incident, both the children were in the house of their maternal grandfather and grandmother at Kutela as deposed by Mangli Bai (PW-3). On the date of incident, deceased – Radha Bai made a call to her parents and told that she wanted to talk to her children. Thereafter, father of the deceased arranged the talk and both the children talked to their mother and when the father of the deceased made a further call, then Respondent No.1 informed him that the deceased had consumed insecticide and died. As deposed by Mangli Bai (PW-3) in paragraph 4 the deceased was being tortured and beaten by Respondent No.1 on account of doubt of character and this abetted her to commit suicide. Radha Bai committed suicide by consuming insecticide. Rahul Banaj (PW-7), son of the deceased and Respondent No.1, corroborated the allegation of torture and beating. The deceased died by committing suicide as she consumed insecticide is not in dispute. At the time of incident she was in the house of Respondent No.1 is also not in dispute. The evidence of above two witnesses go to show that there was an abetment for suicide on account of torture and beating. By giving benefit of doubt, the trial Court committed an error in acquitting Respondent No.1.

(4) After hearing the arguments, the instant acquittal appeal is heard finally at the motion stage itself.

(5) For the purpose of appreciation of the above arguments advanced, the evidence adduced by the parties, the impugned judgment and the documents available are perused.

(6) On a close scrutiny, it appears that the deceased was earlier married to one person. Thereafter, about 12-15 years ago from the incident, she married with Respondent No.1 as per 'Churi Custom'. Out of the wedlock, two children were born, namely, Rahul Banaj (PW-7) and Ragini Banaj. In the present case, the alleged marriage by 'Churi Custom' performed about 15 years ago, Section 113-A of the Evidence Act, not applicable. In the present case, the prosecution has to establish ingredients of Section 107 of the IPC regarding abetment of suicide. The prosecution has to prove either of any of the ingredients mentioned regarding abetment.

(7) As per paragraph 4 of the evidence of Rahul Banaj (PW-7), a day prior to the incident he went to his maternal uncle's house at village Kutela. It goes to show that he is not an eyewitness regarding torture and beating. Mangli Bai (PW-3) is also not an eyewitness. She also deposed at paragraph 4 that Respondent No.1 used to beat her daughter Radha Bai doubting her character and therefore, she committed suicide by consuming insecticide. At paragraph 1 of her deposition, Mangli Bai (PW-3) deposed that her daughter used to say that she will not live without her children and her mother-in-law may kill her children. She further deposed that on account of the torture and beating, her daughter committed suicide. There is no direct evidence regarding the incident. From the evidence of these two witnesses, it is surfaced that on account

of beating and torture, the deceased committed suicide. No suicidal note was recovered to consider the instant criminal appeal for final hearing. The Court has to appreciate whether on account of the evidence of these two witnesses, namely, Mangli Bai (PW-3) and Rahul Banaj (PW-7), *prima facie*, appeal is to be admitted for final hearing or not.

(8) As per requirement of Section 107 IPC, the prosecution has to prove all the three ingredients given in that section. Mangli Bai (PW-3) deposed regarding the torture and beating by Respondent No.1. There is a point to be noted that the alleged Churi Custom marriage (though it is not in a form of full-fledged marriage as it is not proved by the prosecution) of the deceased was performed without a lawful divorce from her husband with whom she married firstly. Even though if it is treated as valid marriage, after lapse of a long time i.e. the period of about 15 years, Section 113-A of Evidence Act is not applicable. If the evidence led by the prosecution surfaced for any of the ingredients as mentioned in Section 107 of IPC then only one can be convicted under Section 306 of IPC. For the sake of argument, if the prosecution story regarding torture and beating is held to be correct, even then mere torture and beating as deposed by the aforesaid two witnesses does not constitute any of the ingredients as mentioned in Section 107 of IPC. The trial Court in the detailed discussion has held that since the ingredients of the abetment are not proved therefore abetment for suicide may not be held conclusive. In paragraph 35 of the judgment of trial Court, it is mentioned that the deceased was treated and the documents Ex. D/1 to D/12 were adduced by the defence to prove that she was a patient of uterus cancer which was operated and the uterus was removed. She

was under treatment and she committed suicide on account of the reason that she was not being cured properly. The trial Court held that the ingredients of Section 107 of IPC are not proved and on the other hand, looking to the statement of Respondent No.1 under Section 315 of the Code of Criminal Procedure and the documents adduced in support of his statement, the trial Court held that the prosecution has failed to prove that the deceased committed suicide on account of abetment in any way by Respondent No.1 as required in Section 107 of IPC.

(9) In view of the above discussion, I do not find the present acquittal appeal to be a fit case for admission as the prosecution has failed to prove the ingredients of Section 107 of IPC and as such, Respondent No.1 has rightly been acquitted of the charge by giving the benefit of doubt. In the considered view of this Court, there is no material available to admit the instant acquittal appeal for final hearing.

(10) Consequently, the appeal is liable to be and is hereby dismissed at the motion stage itself.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE