

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 234 of 2003**

Raju, aged 25 years S/o Lakhon Nayak, R/o Jaishree Chemical, Gajan, PS & District Ganjan, (Orissa) presently residing at Katkona, Hotment, PS Patana, District Korea, Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh.

---- Respondent

For Petitioner : Shri Anurag Verma, Advocate.

For Respondent/State : Shri Majid Ali, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board**05/08/2016**

1. This appeal is directed against the judgment dated 19.12.2002 delivered by the learned Additional Sessions Judge, Baikunthpur, District Korla, in Sessions Trial No. 380 of 2002 convicting the Appellant/Accused of having committed an offence punishable under Section 306 of the Indian Penal Code (hereinafter called 'the IPC') and sentencing him to undergo rigorous imprisonment for seven years and to pay fine of Rs. 2000/-.
2. The Accused/Appellant has been convicted only on the basis of dying declaration made by the wife. In this dying declaration, the wife has clearly stated that she has set herself on fire. A question was put to her that did you have a quarrel with someone to which she replied, yes. Then she was asked with whom did she have a quarrel. She answered with her husband. To the query as to what was the cause of the quarrel, she replied that her husband used to consume liquor and ganja and he acted like that. She further goes on to state that in the

house, there was no body else. The occurrence took place at 8-9 am. She was further asked a question and then also she again replied that she has set herself on fire. Thereafter, she was again asked a question and she says that her husband was suspicious about her. She has not even clearly stated that the husband was suspicious about her character or anything else.

3. In criminal cases, conviction has to be based when the case is proved by the prosecution beyond reasonable doubt. In this case, abetment by the husband is not proved. None of the independent witness has supported the case of the prosecution. They have all stated that the husband and wife used to live happily. Assuming that the dying declaration is correct all that is proved is that in the morning there was a quarrel between husband and wife over some issue when the husband expressed some suspicion. This, in my opinion, would not amount to an act which would fall within the meaning of abetment. To fall within the ambit of Section 306 IPC, it must be shown that the person has abetted to commit suicide. Abetment has been defined in Section 107 of the IPC which reads as follows:

"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."

4. To prove abetment, the prosecution has to prove that the person (in the present case, the husband) instigated the wife to commit suicide or that he had intentionally aided by any act or illegal omission in helping her to commit suicide. Clause *secondly* will not apply in this case and that will only apply in the case of conspiracy.

5. In the facts of the present case, no case for abetment is made out. Therefore, the appeal is allowed and the judgment dated 19.12.2002 delivered by the learned Additional Sessions Judge, Baikunthpur, District Korla, in Sessions Trial No. 380 of 2002, is set aside. The Appellant be set at liberty forthwith if not required in any other case, subject to the conditions enumerated in Section 437-A of the CrPC.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE