

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2707 of 1999**

1. Fool Chand, son of Ramdayal Sahu, aged about 35 years
2. Kacharabai, wife of Ramdayal Sahu, aged about 65 years,
3. Uttam Kumar, son of Ramdayal Sahu, aged about 26 years

All residents of village Bhurkuni, P.S. Abhanpur, Distt. Raipur
.... **Appellants**

Versus

The State of Madhya Pradesh (Now Chhattisgarh.) through Police
Station Abhanpur, Distt. Raipur **Respondent**

For the Appellants	:	Mr. Barun Chakrawarti, Advocate
For the State	:	Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Judgment/Order on Board

29.08.2017

1. This appeal is against the Judgment/order dated 29th Sept. 1999 passed by the Court of Sessions Judge, Raipur in Sessions Trial No.199/1998 whereby the appellants were convicted under section 306 of IPC and sentenced to undergo R.I., for 5 years each and to pay a fine of Rs.200/-, in default of payment of fine to further undergo one month additional R.I.
2. Despite repeated calls the counsel for the appellant failed to appear. The message was sent through the Court messenger and also the name of the counsel was displayed in video display Board (Monitor), however, no one appeared. One of the Junior counsel came and contended that they are not

handling the case though the names of advocates were shown in the cause list. Under the circumstances, Shri Barun Chakrawarti who is in the Panel of Legal Aid Services was requested to assist the Court. He went through the record for a considerable time and made his submissions on behalf of the appellants.

3. (I) Brief facts of the case are that daughter of one Kejau Ram namely Phoolbasan Bai was initially married to a person of village Khati before 12-15 years of the incident. Subsequently since she could not bear the child as such she was evicted from the house. Consequently she came back to her father's house Kejau Ram and started living in her father's house. Likewise, the wife of accused Phoolchand (A-1), has deserted him and he was alone for the last 4 years prior to the incident. Consequently at the request of Phool Chand and the villagers, Kejaaram got her daughter married with Phulchand 10 years back. Appellant no.2 Kachara Bai is mother-in-law and appellant No.3 Uttam Kumar is brother-in-law.

(ii) It is the case of prosecution that Phool Basan was kept properly for a few days after the marriage and subsequently all the accused i.e., husband, mother-in-law and brother-in-law started abusing and torturing the deceased with cruelty. It is alleged that she was not given food properly and was also often subjected to assaults. However, despite that Phoolbasan Bai used to live there and during such period, 3 children were born namely Bhaneshwar who was six years old at the time of incident; Om Prakash aged about 4 years and one Meena 1 year and 3 months old approximately.

(iii) It is further case of prosecution that because of ill-treatment being given to the deceased Phoolbasan many a time she had to come back to the house of her father and sister to whom the deceased narrated that the accused were not giving food and mainly her husband Phool Chand (A-1) used to assault after consuming liquor at every time and her brother-in-law Uttam Kumar (A-2) also used to abuse her and and beat her children. It is also stated that even after the delivery, she was put to starvation and she was not given the food properly, therefore, she became weak and even her children were also not taken care of by the accused properly and one of the sons Omprakash when suffered from some disease, he was also not treated, therefore, he was provided treatment by Kejau Ram at his place. It is because of the fact that the deceased was not given proper food and clothing and for the reason that the deceased was used to be sent for doing work, the delivery of 3rd child namely Meena Kumari had taken place in the father's place.

(iv) According to the prosecution, on 18.04.1998 after doing the work at the field all along the day, Phoolbasan became tired and she was feeling not well, therefore, she came back to the house and lied down. At that time, the accused hurled abuses at her and subjected her to harassment, therefore, under the circumstances, Fulbasan Bai along-with 3 children jumped into a Julum canal and committed suicide. A report was made by the husband (A-1) on 20.04.1998 and investigation was carried out. Thereafter, the charge sheet was filed u/s 306 of IPC.

4. During the course of trial, the appellants abjured the guilt

and claimed to be tried. The prosecution on their behalf had examined the father of deceased Kejau Ram as P.W.1. One Santosh Kumar Verma who is Sarpanch of Gram Panchayat Julum as P.W.2; Devlal the village Kotwar as P.W.3; Rewa Ram, the villager as P.W.4; Paltan, the villager as P.W.5, Ganga Sagar as P.W.6, Narayan a villager as P.W.7; Dr. Sanjay Kumar Dadu, Assistant Professor as P.W.8, Paishwani Shukla, the Police Constable as P.W.9; Laxman Singh Thakur, the Patwari as P.W.10; Nirbhay Singh, A.S.I., as P.W.11, Saroj Bai who was working as labour as (P.W.12), Kachri Bai the sister of deceased as P.W.13; Shyam Bati a villager as P.W.14, Bahur Singh, an agriculturist as P.W.15; Lururam Nagwanshi, constable as P.W. 16; Himani Khanna, the City Superintendent of Police as P.W.17, Satish Dubey the Police Inspector as P.W.18. In defence, the accused had also examined one Daulal as D.W.1; Laxminarayan as D.W.2 and Maunik Ram as D.W.3.

5. The trial Court after evaluating the entire evidence, convicted and sentenced the accused as aforesaid. Hence this appeal.
6. Learned counsel for the appellant would submit that reading the evidence of main witnesses i.e., Kejauram, the father (P.W.1), brother Rewaram (P.W.4), sister of deceased Kachri Bai (P.W.13) and the Panch witnesses of the village namely Narayan (P.W.7) and Bahur Singh (P.W.15) along-with statement of independent witness Shyamwati (P.W.14) would show that neither the appellants had instigated nor any cruelty was meted out by the appellants. It is stated that it was an accident as all of them jumped into a canal and died.

It is further submitted that in order to convict the accused with the aid of section 107 of IPC, there has to be proof of positive instigation or any conspiracy to commit the offence. Here he went through the statements of witnesses and would submit that under the facts and circumstances, nothing would point out to show that there has been any instigation caused by these appellants to commit the suicide by the deceased. Therefore, in any case, the conviction cannot be sustained u/s 306 of IPC and it is required to be set aside. He also referred to the case law reported in ***2011 SC 1238 B. Mohan vs. State represented by Dy. Superintendent of Police*** and ***(2007) 11 SCC 205 Bhagwan Das Vs. kartar Singh*** and would submit that there has to be *mens rea* on the part of the accused to prove the abetment to commit suicide.

7. Per contra, learned State Counsel supports the judgment of conviction and order of sentence passed by the trial Court and submit that the judgment/order is well merited which do not require any interference.
8. Perused the records of the court below. In order to hold the person guilty u/s 306 IPC it is necessary that the act of the appellant should fall within the ambit of section 107 of IPC, which should comprise the following :
 - (i) instigating a person to commit an offence;
 - (ii) engaging in a conspiracy to commit an offence;
 - (iii) Intentionally aiding a person to commit an offence;
9. In order to find out as to whether the facts of abetment exists or not or whether the deceased was subjected to cruelty, predominantly the statements of relatives of

deceased as also the independent witnesses were also examined. The father of deceased Kejaw Ram was examined as P.W.1. According to him, the deceased Phoolbasan was married to Phoolchand Sahu (A-1) and Kacharabai A.W.2 was the mother-in-law and Uttam Kumar A-3 was brother-in-law. He stated that 12-15 years back, his daughter Phool Basan was married to a person of village Khati. However, she was evicted from the house because she could not bear a child. Thereafter, she came back to her matrimonial house. Subsequently, Phool Chand contacted him with the proposal of marriage since his wife had also left him. The accused has also said to the witness that he has no desire to take any jewelery or ornament and he will not take it. It is stated that the accused had accepted to marry the daughter of Kejauram and again after 8 days, he came along-with some persons of his village and subsequently the deceased was married to Fulchand A-1 according to the caste custom by wearing bangles (*Churi* System).

10. The witness P.W.1 further stated that thereafter, the daughter joined her matrimonial home at village Bhurkuni. After 6-7 months of marriage, Kejaw Ram had visited the in-laws' place of his daughter then his daughter has disclosed that her brother-in-law Uttam Kumar, mother-in-law Kachra Bai and her husband were abusing her and the husband Phulchand after consuming liquor used to abuse and assault her. He stated that after birth of the first son Baneshwar (deceased), the mother-in-law had reduced the food to her the allegations that the deceased had come from a naked family. He told to Kachara Bai that if his daughter Phulbasan

is not given food, the child would die for want of milk, therefore, he can serve his daughter. On which, accused Phulchand brought his daughter to the house of Kejauram. Thereafter the witness had provided treatment to his daughter at his house and subsequently she became healthy and then he sent back his daughter to the matrimonial home.

11. The witness P.W.1 has further stated that the son-in-law after consuming liquor, used to beat her and the mother-in-law Kachara Bai, A-2 also used to beat her by saying that she has come from a naked family and the brother-in-law also used to beat his daughter Phoolbasan. Subsequently when another son was born namely Omprakash again the food was reduced and she was subjected to torture and cruelty. She was not given proper food and her son Om Prakash was suffering from some disease, therefore, he brought the child alongwith Phoolbasan to his house and provided treatment and thereafter he sent back his daughter to village Bhurkuni. Thereafter, in course of time, the 3rd child Meena Kumari was also born and looking to the pathetic condition of his daughter at the time of first and second deliveries, he brought his daughter to his house for her third delivery. The daughter was kept in his house for 2-3 months and was treated. Subsequently when she became healthy, she was sent back to her matrimonial home.
12. Witness P.W.1 narrating the further incident has stated that one day Phoolchand A-1 had severely beaten his daughter, therefore, she ran away from the house and went to his other daughter's house namely Kachari Bai but as her sister was not there, at that time, Phoolchand and other persons

namely Lalit reached there and brought Phoolbasan to the house of Kejaw Ram alongwith two children. He has stated that at that time Phoolchand again consumed liquor. Narrating the incident, it is stated that even after delivery of 3rd child she was not given the daily household needs and food also and the accused Uttam Kumar used to beat the children even in front of father i.e., witness Kejauram. It is stated that thereat was also extended which was disclosed by the deceased that she would be killed in a way that nobody will come to know. The witness has further stated that many a time, he went to the house of deceased to give financial support. However, all of a sudden in the month of *Jeth*, A-3 Uttam Kumar came to the house and enquired whether his daughter Phoolbasan had come. Subsequently he came to know that his daughter and 3 children have died. In the cross examination of this witness, minor contradiction appears with respect to the statement about giving proper food to the deceased. However that do not help the facts in issue in either way. Therefore, primarily the misbehaviour and illtreatment has been projected by this witness. The evidence would show that the facts deposed fall short of the abetment to commit suicide.

13. The brother of deceased Rewa Ram was examined as P.W.4. He deposed that whenever his sister Phoolbasan comes to visit their house, she used to disclose that she sustains grief at her matrimonial home as she was not given proper food by her mother-in-law and sister-in-law and in respect of husband, it was stated that he always used to drink and assault while in respect of Uttam Kumar it is stated that he

used to abuse. The witness however has stated that she was always ready to go back to her in-laws house.

14. The sister of the deceased namely Kachri Bai (P.W.13) has also identified the accused. She has deposed that 2-3 months before the incident, Fulbasan out of provocation against her in-laws had come to her village. At that time, she was not in the house. However, when she came back, her sister had already gone back and it was disclosed by the husband of Kachri Bai that Phoolbasan had stated that her husband, brother-in-law and mother-in-law used to torture her after consuming liquor. It is further stated that when Phoolbasan Basan went to matrimonial home, thereafter she used to complain.
15. The independent witness P.W.14 Shyamwati who performed the delivery has stated that at the time of 3rd delivery, she disclosed that she got sorrow from the first husband and thereafter from the second husband, she was not getting proper food, therefore, she became weak and used to get the food of morning in evening that too without there being any curry.
16. Likewise, P.W.15 Bahur Singh who is also a villager has stated that he was called by Kejau. At that time few of the villagers were present and he asked why Phoolbasan has come to her matrimonial home. She disclosed that she was subjected to assault and was not being given food and Phool Chand after consuming liquor used to assault her. The witness Narayan (P.W.7) has also narrated the similar incident that some dispute was going on, at that time Phoolchand was in drunken condition, therefore, he tried to

make them understand not to quarrel. The death of Phoolbasan and 3 children was not in dispute as their dead bodies were found in Julum canal.

17. According to the Doctor (P.W.8) who conducted the postmortem of Phoolbasan, the possibility of death was given as drowning vide report Ex.P-15 & P-16 and the death was caused in between 24 to 48 years of such postmortem. The postmortem was conducted on 20.04.1998. Likewise the bodies of Bhaneshwar aged about 6 years, Omprakash aged about 4 years and Meena Kumari, 15 months old child, were subjected to postmortem. In respect of Baneshwar the postmortem report was conducted vide Ex.P-17 & P-18. In respect of Meena, the postmortem report was given as Ex.P-19 & P-20 and in respect of Om Prakash, the report was given vide Ex.P-21 & P-22 wherein the cause of probable death was given as drowning. Therefore, the fact that all the 4 deceased i.e., Phoolbasan Bai, the mother; Bhaneshwar & Omprakash both sons and Meena Kumari the daughter have died by way of drowning is not in dispute.
18. The aforesaid statements if are translated into the principles prescribed to prove the case u/s 306 IPC, it would be relevant to quote the law laid down in case of ***Rajendra Das Vs. State of Chhattisgarh, reported in 2013 (2) CGLJ*** in which it has been held in paras 7, 8 & 11 thus :

“7. For the offence u/s 306, the offence by the appellant by instigation depends upon the intention of a person who abets and not upon the act which is done by the person who is abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or

omission without any intention cannot be termed as instigation. Instigation has to be gathered from circumstances of a particular case. In a particular case, there may not be direct offence in regard to instigation which may have direct nexus to suicide. Therefore, in such case, an inference has to be drawn from the circumstances and it has to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

8. In *Gangula Mohan Reddy Vs. State of Andhra Pradesh (2010) 1 SCC 750*, Hon'ble the Supreme Court while interpreting Section 306 IPC held that "Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract section 306 IPC, there has to be a clear mens rea to commit the offence."

11. In *Mohan Vs. State represented by the Deputy Superintendent of Police, AIR 2011 SC 1238* Hon'ble the Supreme Court observed thus:

".....While interpreting section 306 IPC held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC, there has to be a clear *mens-rea* to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry related harassment and that the witnesses have improved upon their earlier statements is ignored then also section 306 IPC, is not attracted in the facts of the present case."

19. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence u/s 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The person has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide.
20. In order to convict a person for abetment of suicide, mere fact that the deceased was treated with cruelty by the accused/husband may not be sufficient to prove abetment by the accused in commission of the suicide. In order to hold an abetment, there must be mens-rea or community of intention. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. The mere fact even if it is admitted that the deceased wife was treated with cruelty by the husband or her in laws may not be sufficient to prove the fact that the accused abetted commission of suicide by the deceased. There has to be some proof of any incitement to the commission of suicide or conspiracy or act facilitating the commission of suicide.
21. Therefore, taking into the statements of witnesses P.W.1, the father Kejau Ram; P.W.4 the brother Rewa Ram, P.W.13 the

sister Kachri Bai and P.W.7 the Panch of the village Narayan and P.W.15 Bahur Singh and independent witnesses Shyambati (P.W.14), though some element of cruelty comes out but it do not fall within the four corners of the abetment coupled with the *mens rea* to show that the appellants had abetted and instigated to commit suicide by deceased Phoolbasna Bai alongwith 3 children. Consequently, it will be difficult to cover the facts under section 306 of the IPC and accordingly the the conviction is liable to be set aside.

22. Further taking into consideration the evidence of the witnesses, the incidental averments have been made against Kachara Bai and Uttam Kumar A-2 and A-3 and no specific allegations have been levelled against them except the fact that they also used to beat the deceased and her children. The statement of father Kejau Ram (P.W.1) would show that there have been some specific allegations of torture and treating the deceased with cruelty on husband. It is stated that after consuming liquor the husband used to beat the wife and did not provide necessary household goods which are required to live her life. He has stated that at different points of time, he brought the daughter and her husband and made them to understand especially the husband but things did not improve. The brother P.W.4 Rewaram also averred similar facts and he has stated that Phool Chand used to consume liquor and used to torture his sister after consuming liquor. The sister P.W.13 Kachri Bai has also made similar allegations. However, omnibus allegations have been made by the sister and further stated that after 5-6 years of marriage, the complaints started. In the

statement of Bahur Singh (P.W.15) he has also stated that when she came to her father's house at that time, it was disclosed that she was not given food by the in-laws and the main allegations appears to be existing against the husband that after consuming liquor, he used to beat the wife. Therefore, the evidence would show that the deceased Phool Basan Bai was subjected to cruelty predominantly by the husband Phoolchand (A-1) whereas as against the other accused, i.e., Kachra Bai (A-2) and Uttam Kumar (A-3) general allegations appears to have been made. Consequently, the entire evidence if are evaluated would show that the prosecution was able to prove the cruelty against the husband u/s 498-A whereas against appellants 2 & 3 sufficient evidence is absent.

23. In the result, I am inclined to convict the appellant Phoolchand u/s 498-A IPC whereas he is acquitted of the charges u/s 306 IPC. So far as it relates to appellants 2 & 3 Kachra Bai and Uttam Kumar, they are acquitted of all the charges.
24. Now coming to the sentence part of appellant No.1 Phoolchand, as he is convicted u/s 498-A of IPC, he is directed to undergo R.I., for three years and to pay a fine of Rs.1000/-. In absence of payment of fine, he is further directed to undergo R.I., for two months. On perusal of the order dated 18.10.2001 passed in subsequent appeal i.e., Cr.A.No.2955 of 1999 whereby appellant no.1 Phoolchand was released on bail, It appears that he has already spent in jail for certain period during the course of trial and after filing of appeal. The period already undergone by him is treated as

set-off. Appellant Phoolchand shall surrender before the trial Court to undergo the remaining jail sentence.

25. Accordingly, the appeal stands disposed of with the above modification.

**Sd/-
GOUTAM BHADURI
JUDGE**