

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3384 of 1999

- Ram Niwas Yadav, S/o. Shri Ram Jatan Yadav, aged about 27 years, Occupation Agriculture, R/o. village Akhora Khurd, PS-Ambikapur, District Surguja (CG)

---- Appellant

Versus

- The State Of Madhya Pradesh (Now CG) through PS Ambikapur, District Surguja (CG)

---- Respondent

For Appellant	: Shri A.K.Prasad, Advocate
For Respondent/State	: Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgement on Board

24/11/2017

This appeal arises out of the judgment and order dated 29.11.99 passed by the Additional Sessions Judge, Ambikapur in Sessions Trial No. 178/1998 convicting the accused/appellant under Section 306 IPC and sentencing him to undergo RI for five years and fine of Rs. 200/- with default stipulation.

2. As per prosecution case, on 05.06.98 there was some quarrel between the appellant and the deceased Rajendra, younger brother of the appellant over dispute of cutting mango tree. It is said that the accused/appellant beat the deceased and out of anger, after jumping the wall he went to the house of his mother and locked the room from inside. It is further stated that the appellant gave a threat to the deceased that as soon as he will come out of the room, he would be

beaten and being scared, deceased committed suicide in the room by hanging. At the instance of the appellant merged Ex.P-6 was recorded on 5.6.98 and on the next day FIR Ex.P-7 was registered against the appellant under Section 306 IPC. Inquest on the body of deceased was prepared vide Ex.P-1 and body was sent for postmortem examination which was conducted by Dr. V. K. Shrivastava (PW-5) vide Ex.P-5 and according to him, cause of death was asphyxia due to hanging. After filing of the charge sheet, trial judge has framed charge under Section 306 IPC.

3. So as to hold the accused persons guilty, the prosecution has examined 8 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. By the judgment impugned the Court below has convicted and sentenced the appellant as mentioned above. Hence this appeal.

5. Contention of counsel for the appellant is that

i) even if the entire prosecution case is taken as it is, offence under Section 306 IPC is not made out against the appellant.

ii) present is a case of normal *maarpeeth* between the two brothers but unfortunately deceased committed suicide.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available

on record.

8. Gayatri (PW-1) is the wife of the the deceased. She has stated that there was some dispute between the appellant and deceased over cutting of mango tree and the deceased was threatened by the appellant as a result of which he went inside the room, locked from inside and committed suicide by hanging. In cross-examination she has stated that due to dog bite his mental status was not firm. Saran Sai (PW-2) is a hearsay witness. Abhimanyu (PW-3) is a witness to inquest Ex.P-3. Samundri (PW-4) mother of the deceased and (PW-7) Ramroop are the hearsay witnesses. Dr.V. K. Shrivastava (PW-5) is the doctor who conducted postmortem examination on the body of the deceased, has opined that cause of death was asphyxia due to hanging. I. Tirkey (PW-6) is the Head Constable who assisted in the investigation. M.S.Chouhan (PW-8) is the Investigating Officer who has duly supported the prosecution case.

9. To convict the accused under Section 306 IPC the prosecution is required to prove the basic ingredients of Section 306 IPC. Sections 306 and 107 of the Indian Penal Code reads as under:

306. Abetment of Suicide.*-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 life.*

To see whether the act of the respondents/accused can be termed as cruelty, a glimpse of “abetment” enshrined in Section 107

IPC appears to be the need, which reads as under:

Section 107. 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 places 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.*

Explanation 1. – *A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

Explanation 2.- *Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”*

10. In the present case, none of the witnesses has deposed that the deceased was ever instigated by the accused/appellant prompting him to commit suicide. Except Gayatri (PW-1) wife of deceased who has stated that the deceased was threatened by the accused/appellant and therefore he committed suicide, none of the witnesses had ever stated anything against the accused/appellant. Even if looked from any angle, the allegation made against the appellant do not constitute the offence under Section 306 IPC as the ingredients of abetment defined in Section 107 IPC are completely absent in this case.

11. Keeping in view the ingredients of Sections 306 and 107 IPC, I am of the considered view that the ingredients of 'abetment' are totally absent in the instant case. An offence under Section 306 IPC would stand only if there is an 'abetment' for the commission of the crime. Thus, taking the totality of the material on record and the facts and circumstances of the case into consideration, it is evident that it is the deceased who alone is responsible for his death.

12. In view of the above determination, I am of the opinion that the ingredients of the offence of Section 306 IPC have remained unproved and thus the appellant deserves to be acquitted. The appeal is thus allowed. Appellant is on bail and therefore no further order is required.

Sd/-

(Pritinker Diwaker)
Judge