

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 3044 of 1999**

1. Satrugan Lodhi, aged about 24 years, son of Dhan Singh Lodhi
2. Dhan Singh Lodhi, aged about 49 years, son of Phool Singh Lodhi,
3. Deepwati Bai, aged about 45 years, wife of dhan Singh Lodhi
4. Anita Bai, aged about 22 years, daughter of Dhan Singh Lodhi

All residents of village Sarangpur, P.S. Khairagarh, Distt.
Rajnandgaon (C.G).

... **Appellants**

Vs.

- State of Madhya Pradesh (Now Chhattisgarh) through P.S.
Khairagarh, Distt. Rajnandgaon

... **Respondents**

For the Appellants	:	Mr. R. N. Jha, Advocate
For the respondent	:	Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18.08.2017

1. This appeal is against the Judgment/order of conviction and sentence order dated 30th Sept. 1999 passed by the learned Additional Sessions Judge, Khairagarh whereby the appellants have been convicted u/s 498-A, 306 and 306/201 IPC and sentenced as under:

U/s 498A IPC	:	R.I., for 3 years and fine of Rs.1000/-, in default of payment of fine, additional R.I., for 6 months
U/s 306 IPC	:	R.I., for 6 years and fine of Rs.1000/-, in default of payment of fine, additional R.I., for 6 months
U/s 306/201 IPC	:	R.I., for 3 years and fine of Rs.1000/-, in default of payment of fine, additional R.I., for 6 months

2. Briefly stated facts of the prosecution case are that deceased Lalitha Bai was married to Satrugan who was resident of village Sarangpur. After marriage, all things were normal for two years, but since 1998 the in-laws of Lalitha Bai started torturing her as she was abused on the ground that she does not know how to do the household job and stated that Satrugan would be married to another girl. It is also alleged that she was forced to go out of house. For such torture many persons had tried to intervene and try to make understand the appellants to mend their behaviour but the torture continued. Therefore, because of the behaviour meted out to Lalitha, she jumped into the well and committed suicide. Subsequent to her death, in order to cause disappearance of evidence, the family members of Lalitha without informing to the Police consigned the body of deceased to flames and the entire ashes were thrown into the water. The father of deceased Lalitha Bai namely Ramchand on 24.04.1999 lodged a *merg* intimation. Thereafter, the police started investigation and FIR was registered on 01.05.1999 u/s 498-A, 306 read with section 34 and 201 of IPC. The charge sheet was filed u/s 498-A, 306 & 201 of IPC.
3. During the course of trial, the appellants abjured the guilt and claimed to be tried. The prosecution on their behalf examined Kunti Bai one of the relatives of the deceased as P.W.1; Ramchand, the father of deceased as P.W.2; Kamla Bai, the mother as P.W.3; Awadh Ram, the brother as P.W.4, Gopal Ram, Sarpanch of Village Sirsahi as P.W.5; Amreshwar Singh, the Investigating Officer as P.W.6 and K.R. Nirala,

Asst. Sub Inspector as P.W.7. The trial Court after evaluating the entire evidence of witnesses, had convicted and sentenced the appellants as aforementioned. Therefore, the instant appeal.

4. Learned counsel for the appellants would submit that there is no evidence in the case to convict the accused u/s 306 IPC as the ingredients of abetment are completely absent. It is contended that the witnesses tried to improved their versions in the statement before the Court but the same were contradicted and material omissions were recorded which go to prove that the incident was an accident and Lalitha Bai fell into the well and she has not committed any suicide. It is further submitted that even if it is accepted that the incident was a suicide, there has to be *mens rea* on the part of accused/appellant to convict them and in absence of any proof of incitement to the commission of suicide or conspiracy or act facilitating the commission of suicide, the appellants could not be convicted. He placed reliance in ***AIR 2011 SC 1238 M. Mohan Vs. State represented by Dy.Superintendent of Police*** and ***(2007) 11 SCC 205 Bhagwan Das Vs. Kartar Singh and others*** and would submit that under the facts and circumstances of the case, the appellants deserve to be acquitted.
5. Per contra, learned State counsel opposes the same and submits that the judgment/order of the trial Court is well merited which do not call for any interference by this Court.
6. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the appellant should fall within the ambit of Section 107 of the IPC, which should comprise :-

- (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

7. In order to find out as to whether the factors of abetment exists or not or whether the deceased was subjected to cruelty, the statements of the relatives of deceased were examined. Kunti Bai who is stated to be relative of the deceased was examined as P.W.1 who has first seen the body of deceased into the well. She has not supported the case of prosecution. After declaring her hostile the suggestion given to her that the appellants being husband, father-in-law, mother-in-law sister-in-law used to torture the deceased was denied.

8. Ramchandra the father of deceased was examined as P.W.2. In his statement, he stated that whenever the deceased used to visit their house, she told that the appellants used to torture her and also used to assault and abuse her. As per his statement, he had attended the cremation of deceased. In the cross examination, the witness stated that neither he nor his son has at any point of time has made any complaint that Lalitha was meted out with cruelty and torture at her-in-laws place. With respect to any report on this issue was also denied. The witness has stated that before the incident, he had not made any complaint to the police thinking that the matter may be settled some time latter as it belonged to in-laws family of daughter. In the cross examination, this witness has accepted the suggestion given by the appellants that after the death of his daughter, he had disclosed the

fact to the police at the time of reporting the matter that his daughter was subjected to cruelty by the in laws. The merger intimation is marked as Ex.P-2. The merger intimation was made on 29.04.1999. The reasons for the delay has been stated that after the cremation, since his brother was out of village, as such, he made the report after the brother came back. This is also corroborated from the examination-in-chief. However, in cross examination, the minor contradiction appears that since he was in a state of sadness, as such, he did not make any report.

9. The FIR Ex.P-6 would show that the allegations were made that the appellant who was the husband, father-in-law, mother-in-law used to treat the deceased with cruelty and always asked her to go out of the house as she was not able to perform the house hold job and the deceased was told that some other girl will be brought home in lieu of the deceased. Therefore, except this nothing much has been stated by the father so as to attribute the offence to appellants.
10. P.W.3 Kamla Bai, the mother and P.W.4 Awadh Ram, the brother have stated that the deceased had disclosed that the in-laws used to torture her by beating. The mother further stated that she was being beaten by broom and they used to put the same into the mouth. The same fact, however, do not find place in the statement of the mother U/s Ex.D-1 of Cr.P.C., i.e. about the degree of cruelty by beating by broom. Ex.D-1 however shows that the deceased was subjected to cruelty as she could not perform the work in the house. The mother also made some statement that she has not reported

any cruelty to the Panchayat or the Police before the incident.

11. The brother Awadh Ram had stated that Lalitha Bai, her sister (deceased) was scolded by the family members. He has not made any particular allegations against any of the accused. At Para 7 of statement of the brother he has stated that he had disclosed that her sister was being tortured by the in-laws to Sarpanch of village Sirsahi and one person named Khelan. However, these two persons i.e., Sarpanch of village Sirsahi and Khelan had not been examined by the prosecution. Further in cross examination, though it is stated that her sister was subjected to torture and cruelty, for which they decided to hold meeting after the *Bojli* festival but she died before that. Therefore, such meeting could not be convened. However, when such statement is seen along-with Ex.D-2 which is statement u/s 161 Cr.P.C., such facts are found missing. In the statement made u/s 161, the fact finds place that her sister was subjected to beating by the in-laws and were asked to go out of the house since she could not perform the work. Further though the statements have been made that the sister was subjected to cruelty for demand of dowry, however, the same is missing in the statement u/s 161 and thereby there is material omission with respect to the police statement and the court statements and it appears that a lot of improvements have been made in the court statements. The said improvements when are examined in the light of statement of P.W.6, the I.O., Amreshwar Singh, he has confined his statements to Ex.D-1 & D-2 which were made by

the mother, brother, therefore, in absence of any direct evidence, it appears that considerable improvements were made in the statement.

12. The aforesaid statements if are translated into the principles laid 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.”

13. 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.

14. 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.
15. So after survey of the entire evidence on record, I am of the opinion that the prosecution has failed to substantiate the fact that the appellants have abetted and instigated the deceased and the same was coupled with mensrea so as to commit suicide which may be covered u/s 306 of IPC., is liable to set aside.
16. Further more it is the case of prosecution that the deceased died by drowning into the well. In the statement of P.W.2 Ramchand, father he has stated that he heard the incident. He went to the in-laws place of his daughter wherein he saw that his daughter was dead. Thereafter he stated that he participated in the cremation. Admittedly, no report was made at that time. Likewise the statement of P.W.4 Awadh

Ram, the brother also shows that after the incident they went to the house of deceased and saw the dead body of the deceased and the villagers also disclosed that the deceased has fallen down into the well and he participated in the cremation. Consequently, the allegations of prosecution that the appellants tried to cause disappearance of evidence has not been established. The appellants have tried to cause disappearance of evidence is diluted especially in view of the fact that when the FIR is made, no such statement was made and material contradiction exists as the statement of father discloses that he was under sorrow state as such did not report the matter whereas in the Court statement it is stated that he waited for brother to come, therefore, the report was made. Consequently, the father and brother also participated in the cremation and one 161 statement also do not whisper about such making any effort of causing disappearance of evidence, therefore, the conviction u/s 201 IPC cannot also be sustained which is set aside.

17. Now coming to the part of conviction u/s 498-A in the evidence of father P.W.2 it has been stated that the appellant used to torture her and also cause assault and also abused. Not making such report of assault and abuse has been properly explained by the father giving a reason that he waited for the things to improve and it is quite natural that immediately no one goes for filing a report in matrimonial cases as there are chances of damage of the relations instead of improvement. So the explanation given by the father is very plausible. Further in the statement of mother P.W.3, she also stated that her daughter had

disclosed that the appellant used to assault and abuse. Specifying the incident, it is stated that the girl was beaten by broom and at times, the broom was put into her mouth. There is no specific cross examination which has come up to deny the same except the fact that the report was not made to the police station initially. Not making the report to the police has also been explained by the father P.W.2. In the statement of son P.W.4 Awadhram it has been stated that his sister was being abused and in the statement he also stated that with respect to torture the same was disclosed to Sarpanch of village Sirsahi and one Khelan. The said witnesses i.e. the Sarpanch and Khelan were not examined, therefore, the statements of P.W.4 Awadh Ram cannot be disowned in toto. Gopal Ram (P.W.5) an independent witness has contended that before the death, the deceased has come to village Sirsahi and she has disclosed that her in-laws used to beat and abuse her. This witness further stated that after hearing the same, he had a dialogue with Shiv Ram and Satrugan and advised them not to treat the deceased with cruelty. The said statement remained unrebutted in cross examination. From the reading of section 498-A, it shows that the cruelty includes a willful conduct and the allegations of cruelty have been attributed to the present appellants. No plausible explanation has been given by the appellants. Consequently I am of the opinion that the trial Court has arrived at a correct finding of fact while holding the conviction u/s 498-A of IPC.

18. Now coming to the part of sentence it appears that the incident took place in April, 1999 and by now nearly 18 years

have elapsed. It appears that initially they were arrested on 03.05.1993 and were released on bail on 12.05.1993 by the trial Court thereby they were in custody for 9 days during trial and thereafter they were again taken into custody on 30.09.1999 and were released on bail on 31.10.2000 thereby they suffered jail sentence of about 1 year and 1 month. Thus the appellants have undergone the total period of jail sentence of 1 year 1 month and 10 days. Taking into degree of allegations made with respect to the cruelty and the fact that the incident relates way back to April, 1999, I am of the opinion that no purpose will be served to send the appellants again to jail. Consequently the jail sentence is treated as undergone whereas fine of Rs.1000/- is increased to Rs.5000/- per appellant which shall be payable and in absence of payment of the same, they shall suffer further imprisonment of one year R.I., The fine so paid shall be paid to the family members of the deceased. Accordingly, the appeal is partly allowed.

**Sd/-
GOUTAM BHADURI
JUDGE**