

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2976 of 1999**

- Narayan Devangan, son of Uttam Devangan, aged about 27 years, R/o village Achota, P.S. Arjuni, Tehsil and District Dhamtari, Madhya Pradesh (Now Chhattisgarh) --- **Appellant**

Versus

- The State of Madhya Pradesh (now Chhattisgarh) through the Police Station Arjuni, Distt. Dhamtari --- **Respondent**

CRA No. 2977 of 1999

- Smt. Pramila Devangan, wife of Uttam Devangan, aged about 44 years, R/o village Achota, P.S. Arjuni, Tehsil and District Dhamtari, Madhya Pradesh (Now Chhattisgarh) --- **Appellant**

Versus

The State of Madhya Pradesh (now Chhattisgarh) through the Police Station Arjuni, Distt. Dhamtari --- **Respondent**

For the Appellants	:	Miss Sharmila Singhai, Advocate.
For the State	:	Mr. Sangharsh Pandey, Dy.Govt.Adv.

Hon'ble Shri Justice Goutam Bhaduri

Judgment/Order on Board

19.09.2017

1. Both these appeals are against the Judgment/order dated 27th October, 1999 passed by the Court of Additional Sessions Judge, Dhamtari in Sessions Trial No. 217 of 1994 whereby appellant Narayan Dewangan of Cr.A.No.2976 of 1999 was convicted u/s 306 IPC and sentenced to undergo R.I., for 5 years and appellant Prameela Dewangan of Cr.A. No. 2977/1999 was convicted u/s 306 IPC and sentenced to undergo R.I., for 3 years. Further both the appellants were directed to pay a fine of Rs.1000/- each, in default of

payment of fine, to further undergo R.I., for six months.

2. As per the case of prosecution, on 03.05.1993, deceased Saroj Bai was married to appellant Narayan Dewangan. During her stay in her matrimonial home, she was treated with cruelty as the demands of Colour TV, Gas Cylinder, Fridge and land were not fulfilled. Consequently she died on 06.01.1994 by burn injuries. After her death, the *merg* intimation was given and the police started investigation and initially after investigation, the charge sheet was filed u/s 306, 498-A, 304-B & 109 of IPC. The prosecution on their behalf primarily relied on statements of P.W.10 Tikendra Kumar who is brother of deceased, P.W.11 Jhallu Ram, the father of deceased and the handwriting expert P.W.13 R.P. Pathak. The trial Court after evaluating the evidence convicted and sentenced the accused u/s 306 IPC, as aforesaid. Hence this appeal.
3. Learned counsel for the appellant would submit that the conviction in this case u/s 306 IPC cannot be sustained. It is contended that there has been material omissions and irregularities which exist as though the conviction is made by holding the fact that the deceased had written letter vide Ex.P.5 and for this, the statement of P.W.11 was relied on but the prosecution has not been able to prove Ex.P-5 which was written by the deceased. It is further contended that the carrier of the letter namely Yugal Kishore has not been examined. It is also contended that the comparison of handwriting by another alleged writing of the deceased has not been proved that the other writing was that of deceased. It is further submitted that the statement of witnesses would

show that the deceased was not able to adjust in her matrimonial home as she was not accustomed to perform the household jobs which she was required to do, therefore, she committed suicide of her own. It is further submitted that neither there is any abetment which was existing in this case nor there is any presumption which can be drawn since the basic ingredients to draw presumption u/s 113-A of the evidence Act was missing as the demand of dowry itself was not proved. She placed reliance on decisions of the Supreme Court in ***Mangat Ram Vs State of Haryana (2014) 12 SCC 595*** and ***Assoo Vs. State of Madhya Pradesh (2011) 14 SCC 448*** and would submit that under the circumstances the *mens-rea* and the abetment having been absent, the conviction cannot be sustained. She further referred to the statement of Mahendranath Dewangan who is relative of the deceased and submits that he has not supported the case of prosecution instead he has supported the contentions of the defence, thereby the actual cause of death has been explained and the presence of the said witness has also been referred by the prosecution witnesses.

4. Per contra, learned State Counsel submits that the order of the trial Court is well merited which does not require any interference by this court. He went through the statements of P.W.10 Tikendra Kumar and P.W.11 Jhallu Ram, as also the contents of the document Ex.P-5 and would submit that the statement of these witnesses would categorically demonstrate that there has been demand of dowry, consequently she died unnatural death. Therefore, the conviction u/s 306 IPC is well merited which do not call for

any interference.

5. Perused the records of the court below. The date of marriage in this case is 03.05.1993 and the death took place on 06.01.1994. The trial Court has not convicted the accused u/s 304-B of IPC and it was held that it was a case of suicide. There is no appeal by the State against such finding, therefore, the adjudication in this appeal is confined to the finding recorded by the court below u/s 306 of IPC.
6. In *Mangat Ram Vs. State of Haryana (2014) 12 SCC 595* , the Court held that the presumption u/s 113 of the Evidence Act would not automatically apply even if the married woman commits suicide within the period of 7 years of her marriage. It was further held that in order to draw presumption u/s 113-A of the Evidence Act, the prosecution has to prove that she was subjected to cruelty as the presumption can be drawn and defined u/s 498-A of IPC. The court in the said case in paras 29, 30, 31 held thus :

“29. In the instant case, of course, the wife died few months after the marriage and the presumption under Section 113-A of the Evidence Act could be raised. Section 113-A of the Evidence Act reads as follows:

“113-A. Presumption as to abetment of suicide by a married woman.-- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume having regard to all the other circumstances of the case, that

such suicide had been abetted by her husband or by such relative of her husband.”

30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.

31. In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana*, wherein this Court has examined the scope of section 113-A of the Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike section 113-B of the evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the evidence Act. This court held that, under Section 113-A of the evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband

has subjected her cruelty. Even though those facts are established, the court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A IPC."

7. In view of the principles as laid down, the evidence which is existing on the record in this case is perused. Tikendra Kumar, the brother of deceased is examined as P.W.10. At para 1 of his statement in examination-in-chief, he deposed that when her sister came, she stated that her mother-in-law, father-in-law and husband used to taunt her because of the fact that she has not brought the Colour TV, Fridge, Gas Cylinder etc., and were also making demand to bring those articles and they also used to insist to take her share of agricultural land of her father after getting it partitioned. It was also alleged that she complained that she was not given proper food etc. With respect to document Ex.P.5 which is a letter alleged to be written by the deceased, he stated at para 2 that the said letter was sent through his younger brother when he went to meet the deceased Saroj in village Achhora and before him only appellant Narayan, the husband had assaulted his sister while demanding dowry and the share of agricultural land. The letter Ex.P-5 is stated to be carried through his brother and it was said to be written by her sister, the deceased. The prosecution has not examined the younger brother of Tikendra who is stated to be carrier of

the letter. In the cross examination, the witness has deposed that he himself went to meet his sister at her in-laws place for 3 times. However, no complaint was ever made by her sister during such meet and further volunteered that he was not allowed to meet his sister alone.

8. The witness P.W.10 had also stated that after 20-25 days of the marriage, her sister had come to village Patora but she had not complained anything at that time and thereafter, during the month of *Ashad*, he had brought his sister but on the next day, the husband came to take her back. The witness stated that during the festival of *Teeja*, his sister came and stayed there for 8 days and the entire discourse was made. However, it is not being stated that what discourse was made but having asked whether the witness had enquired about such demand and treating the deceased with cruelty, the witness has stated that nothing was asked. It means that nothing was enquired. The witness has further deposed that from the day one of her marriage itself, his sister Saroj, the deceased was not happy and referring to Ex.P-5, he further stated that she earlier tried to commit suicide for two times. On suggestion of dispute, it was admitted by the witness that some person Dauva Dewangan had clamped allegations over the character of mother of the deceased, therefore, her sister felt self condemned and she became an eyesore in the sight of her in-laws. This witness has affirmed the contents of Ex.D-2 and letter which was written by him.
9. The prosecution has relied on a letter Ex.P-5 which is said to have been written by the deceased. In order to prove the

fact that the said writing of Ex.P-5 the written contents are marked from Q-1 to Q-6 and are said to have been written by Saroj, the deceased. Another copy written by Saroj, is marked as Ex.P-8. The contents of Ex.P-8 have been marked that is alleged writing of deceased and has been stated to be marked from S-1 to S-36. The Letter Ex.P-5 was seized by a seizure memo Ex.P-3. Ex.P-3 shows that two documents were seized. One is described as a letter written by Narayan Lal Dewangan on 23.09.1993 which is marked as Ex.P-6. The said letter is alleged to have been written by Narayan Dewangan, the accused appellant, whereas the second seizure which is shown as Ex.P-5 is a letter dated 23.10.1993 which is said to be written by the deceased. The record shows that the other documents were seized by Ex.P-7. By Ex.P-7, three documents were seized. One is invitation letter of marriage and the second is copy of 72 pages and the description is shown as “नेता जी की तुलादान” which is Ex.P-8. Another seizure was made vide Ex.P-7 which is marked as Ex.D-1. Therefore, the prosecution had produced two copies alleged to have been written by deceased Saroj to prove the hand-writing of Ex.P-5. Further seizure was made vide Ex.P-12 and the document described is one, a copy of full size and on the face of it, “*Garg Printing*” was written with the name of Narayan and another one was a register shown as Delux Register of Narayan. The said register is marked as Ex.P-13. The hand writing expert was examined in this case as P.W.13. He had stated that the handwriting in Ex.P-8 which is marked from S-1 to S-36 and in Ex.D-1 from S-37 to S-41 which is written by the same person who has

scribed the letter Ex.P-5 from Q-1 to Q-6.

10. Now the question falls for consideration is as to whether such letter Ex.P-5 was in the handwriting of the deceased or not. P.W.8 the constable Lal Bahadur Singh had stated that he has seized two documents from accused Narayan. One was a copy full size and a register. Having confronted with Ex. D-1 the copy, it was stated that he had not seized the document Ex.D-1 from the accused. P.W.12 the I.O., S.L. Marawi, with respect to the seizure has stated that the letter written by deceased and the two copies alleged to have been given by P.W.10 Tikendra, were seized by him. Only the witness P.W.10 Tikendra has stated that the written contents of Ex.P-5 was that of his sister. The carrier of such Letter i.e., brother of Tikendra to whom such letter was alleged to have been given has not been examined by the prosecution. Therefore, even if it is admitted that Ex.P-5 and Ex.P-8 as also Ex.D-1 were written by the same person, but to draw the presumption of guilt, the prosecution was required to prove that the contents of writing of Ex.P-5 was that of deceased Saroj. The records would show that the letter Ex. P-5, Ex.P-8 and Ex.D-1 were seized at the behest of Tikendra, P.W.10. The witness had deposed that the carrier of letter was his brother. The brother was not examined for the reasons best known to the prosecution. Therefore, the evidence with respect to the fact that letter was written by his sister becomes hear-say. Consequently, it would raise the doubt to admit the fact that it was written by deceased and the benefit has to lean in favour of the accused.
11. Even if such document Ex.P-5 i.e., the letter which is alleged

to have been written by deceased is admitted, the contents of it would be necessary to find out whether the deceased was subjected to cruelty for demand of dowry or not. A perusal of Ex.P-5 shows that the deceased has complained about her sickness and complained that she was being treated by one *Baiga* in village and she further complained that she was forced to eat certain things and at certain point of time, she was assaulted by the husband and once she had gone to bathroom with kerosene oil and had also eaten pieces of two bangles to die. The letter further complains of the fact that she was forced to work like a labour in the house and complained that certain adverse things were stated against her mother to the effect that some one had commented that her mother slept in someone's house. She has further explained that she never wanted to see the face of mother-in-law, but she has compelled to stay as her husband is greedy to get her share of land. The letter further says that her mother-in-law is in greed of dowry of colour TV, Fridge, Gas Cylinder etc., and lastly it was also stated that she neither got the love of her husband nor got the love of his mother and father and complained that the husband wanted to divorce her. The entire reading of letter would show that certain complaints were made about the greed of her mother-in-law but the demand as such in respect of TV, Fridge etc., has not been categorically spelled out. The prosecution though tried to project the demand of dowry but reading of Ex.P-5 would show that though the admissibility of it is in doubt but would show that it do not conclusively point out that she was subjected to cruelty for demand of dowry.

12. At the same time, the letter reflects that she complained about the fact that she was forced to work like a labour in the house. In this context, the document Ex.D-2 which is admitted to be written by P.W.10 when is seen it purports that it is an invitation letter dated 01.01.1994 inviting the deceased and the accused to come to the festival of Madai on 14.01.1994. Reading of Ex.D-2 would show that the relation as appears were cordial between the husband and wife and the in-laws and nothing has been stated about any previous cruelty or any promise to fulfill the demand. The said letter is dated 01.01.1994 and the date of incident is 06.01.1994. Therefore, just before the incident such invitation was offered and the tenor and contents of the letter would not show the strange relation existed between the deceased and in-laws. It is quite obvious that had there been any sort of such complaint of demand of dowry, coupled with cruelty, there would have been a natural consequence and some indication would have come in such letter. In order to establish the demand of dowry, the prosecution cannot rely on presumption and inference, on the contrary, the invitation letter Ex.D-2 which is written by the brother of deceased just before the incident negates such theory of cruelty for demand of dowry as otherwise, the language of letter could have been little otherwise or little indicative of facts.
13. Now coming to the statement of P.W.11, the father, he has stated that during the festival of *Bhaiduj*, one Yugal Kishore had gone to Saroj, the deceased, but no complaint was made. The witness has further stated that during *Teeja*

festival that the daughter disclosed that she was subjected to cruelty for demand of land, fridge, TV etc. Thereafter, he has stated that he along-with other family members had a dialogue with the accused and thereafter, the entire issue was settled. At this juncture, the statement of D.W.1 cannot be ignored. The witness has stated that he after marriage had gone to village Achhota where the deceased lived. The witness stated that the deceased used to remain depressed and when the reason was asked, she stated that she had to do all the work at in-laws place and further stated that she never used to work at her maternal place. The presence of this witness for certain meeting is not in dispute. Therefore, it gives an inference that the reason for suicide may be different and as has been stated that because she was made to work household job and could not adjust herself, therefore, that might have triggered certain facts to commit suicide.

14. The father of deceased has further stated that after *Bhaiduj* festival, he went to his daughter's place, however, at that time, she had not made any complaint. In the cross examination, he further stated that during the marriage no demand of dowry was made, however, the complaint about the demand of dowry was made when he came for the first time but this fact has not been stated in the Statement under 161 Cr.P.C., given to the police. Again in the cross examination, he has stated that for the first time when the daughter had come during Teeja Festival, she did not complain about any demand of dowry, therefore, there is contradiction in respect of timing and demand of dowry.

Further the witness has referred to certain mediation which took place wherein Tikendra and other elder members attended, but the witness had not deposed about any demand of dowry. On the contrary he stated that during such mediation, no discussion about the dowry took place. Therefore, the statement of father would show that actually no proof has been placed by the prosecution that there was demand of dowry and for that, the deceased was subjected to cruelty. It is natural consequence that if there had been any demand of dowry, certain discussion would have been taken place during the meeting of elders of the village but the facts and evidence suggest that no such discussion was ever made, thereby it cannot be conclusively said that the demand was existing in respect of dowry.

15. The handwriting of the accused Narayanlal Dewangan which has been proved as Ex.P-6 and a comparison of the same with the register document Ex.P-13 dated 23.09.1993 also do not help the prosecution to prove the fact of demand of dowry. Reading of Ex.P-6 would show that the communication was made by the husband i.e., one of the appellants wherein it was stated that he wanted to take back the deceased on a certain date. This also do not say about any complaint of demand of dowry. In view of the examination of the statements of witnesses, since the conviction is under Section 306 IPC, the presumption of suicide for cruelty cannot be invoked in favour of the prosecution as it was duty of the prosecution to prove demand of dowry u/s 113-A to draw a presumption of Evidence Act. It was obligatory on the part of prosecution to

prove that the demand was existing without any suspicion or any doubt and in absence of such proof, the benefit has to lean in favour of the appellants and accordingly, in this case also the circumstances lean in favour of the appellants to give them benefit of doubt with respect to demand of dowry.

16. 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;

17. 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."

18. 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.

19. 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.
20. Therefore, 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 made demand of dowry. Consequently the presumption u/s 113-A of the Evidence Act, cannot be drawn. Further the evidence is also missing that the appellants have abetted and instigated the deceased and the same was coupled with *mens-rea* so as to commit suicide, which may be covered u/s 306 IPC.
21. Therefore, on scrutiny of entire evidence on record, I am of

the opinion that conviction and sentence of the appellants cannot be sustained. Accordingly, the judgment of conviction and order of sentence dated 27.10.1999 passed by the Addl. Sessions Judge, Dhamtari, is set aside. The appeals are allowed.

22. It is stated that the appellants are on bail. Their bail bonds shall continue for a period of six months in view of provisions contained in Section 437-A of Cr.P.C.

**Sd/-
GOUTAM BHADURI
JUDGE**

Rao