

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3194 of 1999

- Arjun Prasad Gupta, S/o. Lal Bihari Prasad Gupta, aged about 30 years Agriculturist, R/o. Village Lodhi, Police Station Shankergarh, District Surguja (CG)

---- Petitioner

Versus

- The State Of Madhya Pradesh Through its police station Shankergarh, District Surguja (CG)

---- Respondent

For Appellant	: Shri Sushil Dubey, Advocate
For Respondent/State	: Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

24/11/2017

This appeal has been preferred against the judgment and order dated 21.10.99 passed by the Sessions Judge, Surguja distt. Ambikapur in Sessions Trial No. 215/1998 convicting the accused/appellant for the offence punishable under Sections 498-A and 306 IPC and sentencing him to undergo rigorous imprisonment for two years and five years respectively and to pay fine of Rs. 500/- on each count with default stipulations.

2. In the present case, name of the deceased is Shakuntala, wife of the accused/appellant. Their marriage was solemnized on 22.05.91 and she died on 26.5.98 by hanging. Immediately after the incident, merger intimation Ex.P-14 was recorded at the instance of PW-7. Inquest

Ex.P-7 on the body of deceased was prepared and body was sent for postmortem examination which was conducted by Dr. Smt. J. Kujur (PW-9) vide Ex.P-21 and according to her cause of death was asphyxia due to hanging and death was homicidal in nature. On the basis of merg, FIR Ex.P-6 was lodged against the appellant under Section 306 IPC on 26.05.98. After filing of the charge sheet, trial judge framed charge against the accused/appellant under Sections 498-A and 306 IPC.

3. So as to prove the guilt of the appellant/accused, the prosecution has examined as many as 9 witnesses. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charge levelled against him and pleaded his innocence. This apart one defence witness has also been examined by the appellant/accused.

4. After hearing counsel for the parties, the trial Court has convicted and sentenced the appellant/accused as mentioned above. Hence this appeal.

5. Learned counsel for the appellant/accused submits that

i) even if the entire prosecution case is taken as it is, offence under Section 306 IPC is not made out because the basic ingredients of Section 306 IPC in particular Section 107 IPC are not attracted in the present case.

ii) at best the appellant can be convicted under Section 498-A IPC.

iii) It has been argued that the appellant has remained in jail for about 13 months and therefore his sentence may be reduced to the period already undergone by him.

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. Kehra Ram (PW-1) and Gajropan (PW-2) are the neighbours of the father of the deceased. They have stated that the deceased had informed them that she was subjected to cruelty by the appellant and that the appellant used to demand gold and silver. Urmila Devi (PW-3) is the sister of the deceased. She has stated that once she had gone to the house of the deceased and came to know that deceased was being subjected to cruelty by the appellant and that he used to demand gold and silver ornaments. Sugreev Prasad (PW-4) is the father of the deceased. He has stated that the deceased was subjected to cruelty by the appellant for demand of jewellery and TV. However he used to make her understand. He has stated that the deceased wrote letters Ex.P-1 to P-5 to him which were seized by the police. In lengthy cross-examination he remained firm so far as the cruelty being meted out to his daughter. Usha (PW-5) is the mother of the deceased has also made similar allegation against the appellant for subjecting her daughter to cruelty. R.N.Singh (PW-6) is the Constable who assisted in the investigation. Anirudh Tiwari (PW-8) is the Investigating Officer who has supported the prosecution case. Dr. Smt. J. Kujur (PW-09) conducted postmortem examination on the body of deceased Shakuntala and according to her, cause of death is asphyxia due to hanging and death was homicidal in nature.

9. Close scrutiny of the evidence makes it clear that to convict the

appellant/accused under Section 306 IPC the prosecution is required to prove the basic ingredients of that Section. 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 fine.

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.

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 facilitate the commission thereof, is said to aid the doing of that act.”

9. Considering the above provisions and the facts of the present case, I am of the considered view that the ingredients of ‘abetment’ are totally absent in the instant case for bringing home an offence under

Section 306 IPC. An offence under Section 306 IPC would stand only if there is an 'abetment' for the commission of the crime. In the present case offence under Section 306 IPC is not made out against the accused/appellant. Accordingly, conviction of the accused/appellant under Section 306 IPC is set aside and he is acquitted of the said charge.

However, considering the material available on record, the fact that the deceased was harassed up to some extent by the accused/appellant, he is liable to be convicted under Section 498-A IPC.

10. Next question which arises for consideration before this Court is as to what would be the appropriate sentence to be awarded to the appellant. Considering the facts and circumstances of the case, the fact that the incident had taken place 19 years back, appellant remained in jail for about 13 months, I am of the view that ends of justice would be served if the sentence imposed on him is reduced to the period undergone by him. However, the fine amount is enhanced to Rs. 5,000/- which is to be deposited before the trial court within six months and the same shall be disbursed to the parents of the deceased. If the appellant fails to deposit the fine amount within six months he shall undergo the default sentence of three months. Accused/appellant is reported to be on bail and therefore no further order is required.

In the result, appeal is partly allowed.

Sd/-

(Pritinker Diwaker)
Judge

