

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 26.10.2017****Judgment delivered on 21.11.2017****Criminal Appeal No.99 of 2000**

1. Rajesh Kumar Mohileshwar, Aged 29 years, Son of Kashiram, R/o. Tihupara, Simga.
2. Danduram Kosle (**deleted as per order dated 07.12.16**)
3. Gulab Bai Aged 30 years, W/o. Danduram Kosle, R/o. Duldula, PS Simga, Distt. Raipur.

---- Appellants**Versus**

The State of Chhattisgarh through PS Simga

---Respondent

For Appellants	: Shri Kishore Bhaduri, Advocate
For respondent/State	: Shri Anil Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.11.2000 passed by Second Additional Sessions Judge, Baloda Bazar, Session Division Raipur (CG) in Session Case No.17/95 wherein the trial Court convicted the accused/appellants under Sections 306 of the Indian Penal Code and sentenced them to undergo Rigorous imprisonment for seven years and to pay fine of Rs. 2000/- each and also convicted them under Section 498-A of the Indian Penal Code and sentenced them to undergo Rigorous imprisonment for two years and to pay fine of Rs.1000/- each with default stipulations.

2. As per the prosecution case, name of the deceased is Parvati Bai who was married with accused/appellant Rajesh. Accused/appellant Gulab Bai is sister of Rajesh and accused/appellant Danduram is husband of Gulab Bai. Parvati Bai committed suicide on 14.10.1994 and it is alleged that the accused persons demanded dowry from the deceased, harassed her and assaulted her and some time she was not even provided with food, that is why she committed suicide.

3. The matter was reported at Police Station and after completion of investigation, charge sheet was filed before Chief Judicial Magistrate, Baloda Bazar. The case was committed to the Court of Sessions where the accused/appellants did not plead guilty and the trial was conducted. After completion of trial, they were convicted as aforementioned.

4. Learned counsel for the appellants submits as under :-

i) that statements of Leni Bai (PW-1), who is mother of the deceased, Nathulal (PW-2), who is father of the deceased, Shyam Kumar (PW-3) who is brother of the deceased, are hearsay in nature and their versions are inadmissible as per Section 60 of the Indian Evidence Act, 1872 and cannot be acted upon.

ii) that Rajkumar (PW-4), Dheliya Bai (PW-5), Ramji Sahu (PW-15), BBL Shrivastava (PW-16) deposed regarding some quarrel between the deceased and her husband and they further deposed about one agreement between the parties for keeping the deceased well and good. But the same is not incriminating circumstance for guilt or abetment of suicide.

iii) that evidence regarding demand of dowry is not established and that any of the appellants instigated the deceased to commit the suicide is also not established. There is no evidence to establish the charge under Section 306 of the IPC and charge under Section 498A of the IPC.

5. On the other hand, learned counsel for the State submits that the judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking jurisdiction of the appeal.

6. I have heard learned counsel for both the parties and perused the material available on record.

7. Leni Bai (PW-1) is mother of the deceased. She deposed that after marriage when her daughter came to the parental home, she informed that the accused/appellant Rajesh and her mother-in-law demanded auto rickshaw and land and assaulted her. She further deposed that the deceased and her husband reached to a compromise thereafter the accused/ appellant Rajesh assured them that he will keep the deceased well and good. She further deposed that her daughter told her that even after the compromise, the accused persons namely Rajesh and Danduram assaulted her and then the matter was reported to Police Station.

8. Nathulal (PW-3) deposed in the same line. Shyam Kumar (PW-3), who was brother of the deceased, also deposed in the same line. From their evidence it appears that they have deposed before the Court what is informed to them by the deceased. From their evidence, it is not clear as to what really happened in the

matrimonial house of the deceased. Hearsay evidence is the second hand evidence as per Section 60 of the Evidence Act and the said evidence cannot form basis for any conclusion.

9. Rajkumar (PW-4) deposed that some quarrel took place 4-5 days ago in the house of the deceased, but it was not clear from his statement as to what was the reason for the quarrel and who were the parties of the quarrel.

10. Dhelia Bai (PW-5) has not supported the version of the prosecution. Bisambhar (PW-6) is the witness of inquest, Shricharan (PW-7), Ramesh Goutam (PW-8), Sub Inspector Virendra Sharma (PW-9), Sub Inspector Jeevan Nagesh (PW-10), Head Constable Baram Verma (PW-11), Amar Singh (PW-12) deposed regarding assistance in the investigation.

11. Ramji Sahu (PW-15) deposed that some dispute arose between the deceased and her husband and thereafter the accused/appellant Rajesh made in writing that he will keep the deceased in his responsibility. BBL Shrivastava (PW-16) deposed on the same line. Dr. Arvind Nerewal (PW-17) conducted autopsy on 15.10.94 and as per the version of this medical expert the deceased died suicidal death. But no mark of violence was found in her body.

12. In the present case, the deceased died on 14.10.94, but there is no substantive evidence on record to show what was really happened on that day or on the previous days that forced the deceased to take the extreme step to end her life. There is no

suicidal note as to what happened to her on the date of incident or on the previous days. Again when medical report is negative regarding violence, it cannot be inferred that any cruelty was committed against the deceased.

13. To establish the charge under Section 498A IPC, it is to be proved that husband and his relatives have subjected the deceased to cruelty. For the purpose of this section “cruelty” means -

“ 498A- Husband or relative of husband of a woman subjecting her to cruelty - xxx xxx xxxx

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”

14. From the evidence it is not established as to which of the accused/appellants harassed the deceased and what was the mode of harassment or conduct to cause grave injury or danger to her life.

15. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the case 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.

Therefore, a person said to have abetted, doing of a thing when he or she instigate any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

16. As has been held by *Hon'ble the Supreme Court in 2010 (1) SCC 750 – Gangula Mohan Reddy Vs. State of Andhra Pradesh* the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s.306, there has to be a clear mens-rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

17. Learned counsel for the appellant has relied on a decision of this Court in case of *Rajendra Das Vs. State of C.G., reported in 2013 (2) CGLJ* in which it has been held in paras 7, 8 and 11 thus:

“7. For 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 I.P.C. However, the words uttered in a fit of anger or omission without any intention can not 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 can not 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 M. Mohan Vs. State represented by the Deputy Superintendent of Police, AIR 2011 SC 1238 Hon'ble the Supreme Court observed thus:

"17.....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. In the totality of the facts of the case, it is not established that any of the appellants has instigated the deceased on the date of incident or on the previous day and that was sarcastic for her to take the extreme step. Again evidence regarding physical violence is lacking and regarding mental violence, the evidence is hearsay. It is not safe for this Court to come to a conclusion that any of the appellants has abetted the deceased to commit suicide. Considering the facts and circumstances of the case and the evidence adduced by the prosecution, this Court of this view that benefit of doubt should be extended to the accused/ appellants.

19. For the foregoing reasons judgment of conviction and order of sentence passed by the trial Court is set aside. The appellants are acquitted of the charges under Sections 306 and 498A of the IPC. All the appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Ram Prasanna Sharma)
JUDGE