

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2070 of 2000**

1. Surendra Kumar Chandravanshi, aged 23 years, S/o. Rameshwar Chandravanshi,
2. Shivbati Bai, aged about 40 years, W/o. Rameshwar Chandravanshi;
3. Rameshwar Chandravanshi, aged 46 years, S/o. Natthu Chandravanshi;

All R/o. Village Kharhatta, PS Bodla, Distt. Rajnandgagon (M.P.)

---- Appellants**Versus**

The State of M.P. (Now State of Chhattisgarh)

---Respondent

For Appellants	: Shri Arun Kochar, Advocate
For respondent/State	: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****02.11.2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.8.2000 passed by Additional Sessions Judge, Khairagarh (Link Court), Kawardha in Session Case No.197/98 wherein the trial Court convicted the appellants under Sections 306 of the Indian Penal Code and sentenced them to undergo Rigorous imprisonment for five years and to pay fine of Rs.1000/- each and also convicted them under Section 498-A of the Indian Penal Code and sentenced them to undergo Rigorous imprisonment for three years and to pay fine of Rs.1000/- each with default stipulations.

2. As per the prosecution case, marriage of deceased Rukhmani Bai was solemnized with appellant No.1 Surendra

Kumar Chandravanshi in the year 1996. After the marriage the accused appellants demanded certain articles like motor cycle, television and other articles and again they demanded huge quantity of sweets (laddu) for a function namely Sadhori and when the demand was not fulfilled they harassed the deceased, that is why she committed suicide on 06.02.21998.

3. The matter was investigated by the police and after investigation, charge sheet was filed, the trial Court framed the charges against the appellants in which the appellants plead innocent and thereafter the trial was conducted, after examination of the prosecution witnesses statement of the accused/appellants under Section 313 of the Cr.P.C. was recorded. After hearing the parties, the trial Court convicted and sentenced the appellants as aforementioned.

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

i) that from the medical evidence it is not established that it is a case of suicide and no FSL report has been produced before the trial Court regarding consuming poison by deceased Rukhmani Bai,

ii) that there is no suicidal note and also there is no evidence that the deceased died suicidal death, hence, offence under Section 306 IPC is not made out.

iii) that statements of father of the deceased namely Pardeshi (PW-2), Siya Bai (PW-3)-mother of the deceased, Boondi Bai (PW-4) are contradictory and the same is contradicted by their previous

statement recorded under Section 161 of the Cr.P.C. and it is not established that the deceased was harassed by any of the appellants.

iv) Evidence regarding the demand of dowry is not sufficient to establish the charge under Section 306 IPC that any of the appellants instigated the deceased to commit suicide and therefore, abetment of suicide is not proved against the appellants. Again when no cruelty is established against the appellants, offence under Section 498A of the IPC is not made out.

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. As per the evidence of Pardeshi (PW-2)-father of the deceased, marriage of his daughter Rukhmani Bai was solemnized with appellant Surendra Kumar in the year 1996 and she remained in the house of her in-laws for about 1 ½ years. He further deposed that when Rukhmani Bai visited his house after marriage, she informed that her in-laws are harassing her and demanding motor cycle and television. He further deposed that the accused Surendra Kumar demanded huge quantity of sweets (laddu) at the time of function Sadhori which was to be solemnized before the birth of the child of Rukhmani Bai. He

further deposed that after four months of the birth of the child, Rukhmani died.

8. Siya Bai (PW-3) – mother of the deceased also deposed in the same line. Boondi Bai (PW-4) – mother of Pardeshi and grand mother of deceased also stated on the same line. Duryodhan Prasad (PW-7) deposed that once Rukhmani informed him that articles like Television and Motor Cycle were not given and that is why she has been harassed by the appellants.

9. The witnesses are hearsay witnesses and from their evidence it is not clear what really happened with Rukhmani. Rukhmani never lodged any report against any of the appellants during her life time and there is no medical evidence during her life time that any physical violence was committed against her. Hearsay evidence is the second hand evidence and Indian Evidence Act, 1872 makes rider to act on the basis of the hearsay evidence.

10. In the present case, date of incident is 06.02.1998 and there is no evidence on record to show as to what was really happened on 06.02.98 or on the previous day that forced the deceased Rukhmani Bai for taking extreme step to end her life. Again from the evidence of Dr. RK Bakshi (PW-6) cause of death of deceased was asphyxia and it is possible by consuming some poisonous substance, but viscera report was not received from FSL and therefore it is not clear as to what was the nature of poisonous substance and how it reached to the deceased. There

is no suicidal note and there is no evidence found on the date of death of the deceased that she was in depression mood and made up her mind to end her life. The evidence adduced by the prosecution is not sufficient to give a conclusion that it is a case of suicide. It may be a case of suicide, but when the criminal charge under Section 306 IPC is levelled the prosecution is under obligation to prove its case that it is a case of commission of suicide and that is not the case here.

11. 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.

12. 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.

13. 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.”

14. In the present case, it is not proved that any of the appellant has instigated deceased Rukhmani on the date of incident or on a previous date to commit suicide or they have intention to aid to

commit suicide. In the totality of the facts, it is not established that deceased Rukhmani was abetted by any of the appellants and charges under Section 306 IPC is not established against them.

15. So far as offence under Section 498A of the IPC is concerned, no direct evidence has been produced before the trial Court. As there is no medical evidence regarding injury on the body of Rukhmani before her death it cannot be said that the injuries were caused by any of the appellants. Again there is no evidence that on what account mental torture was actually done by any of the appellants. All the evidence are hearsay in nature and on the basis of hearsay evidence, offence under Section 498A IPC is not established and conviction for both the offences are not sustainable.

16. In the opinion of this Court, benefit of doubt should be extended to the accused appellants and 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