

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.4 of 2001**

Rohit Kumar S/o Jaan Singh, aged about 25 years, resident of village Jaburwahi Thana, Mahamaya, District Durg (CG).

---- Appellant

Versus

The State of Chhattisgarh, through the Police Station, Mahamaya, Distt. Durg (CG).

---- Respondent

For Appellant
For respondent/State

Shri Adil Minhaj, Advocate.
Shri SRJ Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

03/01/2017

1. The appellant stands convicted for the offence under Section 306 IPC and has been sentenced to undergo RI for 7 years vide judgment dated 20.12.2000 by the Additional Sessions Judge, Balod, District Durg (CG) in Sessions Trial No.353 of 1999.
2. Brief facts in nutshell are that, a merg intimation was lodged at Police Station, Mahamaya, Distt. Durg on 06.06.1999 by the father of the appellant namely Jaan Singh, PW-6. In the merg it was reflected that the deceased Sitabai wife of the appellant is said to have committed suicide by setting her on fire at around 2:30 am in the intervening night of 5-6th June, 1999. Written complaint was lodged on 08.06.1999 by PW-3, Deval Singh, the father of the deceased, alleging ill treatment, cruelty and torture inflicted by the appellant on

the deceased which forced her to commit suicide. A case was registered against the appellant for the offence under Section 306 IPC and after investigation, charge sheet was filed and the case was registered as Sessions Trial No.353 of 1999 before the Additional Sessions Judge, Balod, Distt. Durg.

3. The prosecution, in all, has examined as many as 8 witnesses and on behalf of defence, no witness was examined.
4. After conclusion of trial, the court below finally held that the prosecution has been able to establish its case beyond all reasonable doubts so far as offence under Section 306 IPC is concerned against the appellant and sentenced him for the period as enumerated in the first paragraph of this judgment, leading to filing of this appeal.
5. Learned counsel appearing for the appellant assailing the judgment submits that the entire judgment of court below is totally bad in law for the reason that the court below has not appreciated the evidence in its proper perspective. Counsel for the appellant vehemently submits that it is a case where infact the prosecution has miserably failed to prove the case against the appellant. The necessary ingredients as is required for making out a case under Section 306 IPC is not brought during the course of evidence by the prosecution. The necessary ingredients of the appellant having abetted the commission of the suicide by the deceased is not established at all. It was also contended that infact on the date of incident, the appellant was not present in the village itself and that he had gone out of village two days prior to the date of incident and it is only when he was informed

about the incident, he returned home. Thus, there is no possibility of the appellant having committed an act which forced the deceased to commit suicide.

6. Counsel for the appellant further referred to discrepancies in the statements which were recorded before the court below. According to him, the family members of the deceased during the course of investigation had made the allegation of cruelty and torture on the deceased by the appellant on account of demand of dowry whereas, in the court statement there is no reference with regard to deceased being subjected to ill treatment and torture on account of dowry. Thus, the prosecution story becomes highly improbable.
7. It was next submitted that there is ample evidence which has been brought before the court below by which it has been established that the deceased infact was suffering from Tuberculosis (for short, TB) and was under treatment. After sometime she abruptly stopped taking medicine and due to frustration from the said disease she might have committed suicide. It is a case where though initially on the date of incident or the next date there was no allegation whatsoever made by the family members of the deceased. It is only subsequent to the brother of PW-3, who is a policeman working as a Constable had made a written complaint for and on behalf of the PW-3, Deval Singh, which led to the registration of the complaint and the subsequent criminal prosecution of the appellant. PW-3, Deval Singh, in his deposition has categorically admitted the fact that written complaint was infact prepared by his brother and not by himself.

8. Another aspect which has been highlighted by the counsel for the appellant is the fact that PW-6, Jaan Singh, father in law of the deceased, who was present at the time of incident in the house, had rushed to save his daughter in law and in the process he also received burn injuries which too has been established and proved in the course of evidence of the prosecution. He further referred to the deposition of PW-3, Deval Singh, who has admitted that his daughter was suffering from TB and she was under treatment and that all expenses towards her treatment were borne by the appellant and his family members which also shows that they were also taking care of the deceased during the period when she was not well.
9. Thus, for all the aforesaid reasons, counsel for the appellant submitted that the case of the prosecution has not been properly proved and established. An inference can thus be drawn that the deceased was suffering from TB and out of frustration she has committed suicide and that there is no evidence of any cruelty or ill treatment on the part of the appellant against the deceased, neither is there any ingredients required for making out a case under Section 306 IPC and therefore, the judgment of conviction is not sustainable and the same deserves to be set aside/quashed and the appellant is liable to be acquitted from the charges.
10. On the other hand, learned counsel appearing for the State opposes the appeal and submitted that it is a case where the father of the deceased has categorically deposed before the court below in respect of ill treatment and torture which the deceased was subjected to at the

hands of the appellant. Further, he also took the court through the deposition of PW-3, Deval Singh wherein he has stated that few days back the deceased had visited his house and informed her sister in law in respect of ill treatment that was being inflicted upon her at the hands of the appellant which was later on informed to PW-3, the father of deceased. Thus, ill treatment and torture stands established. The other admitted fact is the short duration of marriage between the two which forces for drawing an adverse inference against the appellant.

11. Having considered the rival contentions put forth on either side and on perusal of the record, certain admitted facts which are necessary for being considered for just decision of the case are that, the date of incident was 06.06.1999 at around 2:30 am; two days prior to the date of incident the appellant was out of village which has been established from the evidence of PW-3 & PW-8 and the evidence of PW-3 also shows that he had no information available so far as some incident which might have happened immediately before the commission of suicide. Another aspect which has to be borne in mind is the fact that deceased was suffering from chronic TB and was being treated for the same by the appellant and his family. During the course of treatment, she stopped taking medicines. Father of the appellant tried to save her from the fire as a result of which he also sustained burn injury. PW-3, Deval Singh, has admitted in his cross examination that the expenses of the deceased for her treatment of TB was being met by her in laws.

12. The first ingredient required for an offence under Section 306-IPC is abetment by the accused persons for the commission of suicide. Abetment has been defined under Section 107 of the IPC and the ingredients for making out an offence of abetment is, there has to be instigation or incitement by the accused persons forcing the deceased to commit suicide or, secondly; the accused persons should also engage either individually or jointly conspiring for doing a thing which leads to commission of suicide and thirdly; there is an intentional aid by the accused persons by any act or an illegal omission leading to the commission of suicide.

13. The Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh Sengar vs. State of M.P) has categorically held that “ingredients of Section 107 are that instigating a person to do a thing and “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act which in the instant case is not reflected from the records. The Supreme Court in para-12 of its judgment has held as under:-

“The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation”.

14. Similarly, this Court while deciding Cr. Rev. No.511/2004 in the case of Nihalluddin vs. State of Chhattisgarh dated 3.11.2010 has also relied upon the above referred judgment of Supreme Court and also the earlier judgments referred by the Supreme Court, considering the ingredients required for an offence under Section 306/107 IPC and

held that there should be a clear *mens rea* to commit an offence under this Section and there should be a direct or active act by the accused which led the deceased to commit suicide. This Court while deciding the case of Nihalluddin vs. State of Chhattisgarh (supra) further held that there must be some evidence of instigation or cooperation or initial assistance by the accused persons forcing the victim/deceased to commit suicide to attract the offence under Section 306 IPC.

15. It is also trite at this juncture to mention that for making out a case under Section 306 IPC, the basic ingredient as defined in Section 107 IPC has to be established, but in the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased is not established by the prosecution by any element of evidence.
16. Hon'ble Supreme Court more recently in a decision made in the case of [2011 (3) SCC 626] (M. Mohan vs. State) held that abetment involves a mental process of instigation or intentionally aiding a person to do a thing. It required commission of direct or active act by the accused which led the victim to commit suicide. Seeing no other option and such act must be intended to push the victim into a position that he or she commits suicide. That is to say, there must be some evidence of instigation, cooperation or initial assistance by the accused to commit suicide by the victim.
17. Most recently, the Supreme Court in case of Mangat Ram Vs. State of Haryana, reported in 2014 (12) SCC 595 dealing with the provisions

of Section 306 IPC, held as under :

“.....The scope and ambit of Section 306 IPC has not been properly appreciated by the Courts below. Section 306 IPC reads as under:

“306. 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.”

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.”

18. In the instant case, no such evidence has been either brought on record or has come in the course of investigation and in the absence of any of the ingredients as required under Section 107 IPC, no case under Section 306 IPC could be made out against the appellant. Neither is there any evidence to show that immediately before the date of incident the appellant had created an atmosphere or situation at matrimonial house of the deceased which forced/compelled her to take extreme step of ending her life.

19. Under the given facts and circumstances of the case and also

keeping in mind the legal position settled by the Supreme Court in aforesaid cases, this court is of the opinion that the prosecution has not been able to establish the case beyond all reasonable doubts so far as offence under Section 306 IPC is concerned and conviction of appellant for the said offence is therefore not sustainable.

- 20.** Accordingly, the appeal is allowed. Judgment of conviction stands set aside. The appellant is acquitted of the charges levelled against him. The appellant is on bail. The bail bond of the Appellant shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A Cr.P.C.

Sd/-
(P.Sam Koshy)
Judge