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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 438 of 2014****Judgment Reserved on 28.11.2016****Judgment Delivered on 16.01.2017**

Komal Sahu S/o. Vishram Sahu Aged About 34 Years R/o. Village & P.O. Kandel, P.S. Arjuni, Tahsil & District Dhamtari, Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through: P.S. Arjuni, District Dhamtari, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri Alok Nigam, Advocate.
For the Respondent/ State:		Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 5.3.2014, passed by the Sessions Judge, Dhamtari in Sessions Trial No. 61 of 2012, whereby and whereunder the learned Sessions Judge has convicted the appellant/ accused under Section 306 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo RI for 7 years and to pay fine of Rs.100/-, in default of payment of fine, to further undergo SI for three months.

2. The case of the prosecution, in brief, is that deceased – Devki Bai was wife of the appellant and out of their wedlock two sons were born. The appellant developed illicit relationship with co-accused Chitrarekha Sahu (acquitted) and in the month of December, 2011 he eloped with her.

A meeting of caste society was held in village Kandel, in which the appellant and co-accused Chitrarekha Sahu admitted that they have illicit relationship and in this meeting the appellant was counseled to stay with his wife i.e. deceased Devki Bai and Chitrarekha Sahu was advised to go and reside with her husband, which was agreed by them. After a month, in December, 2012 the appellant again brought co-accused Chitrarekha Sahu to his residence and the deceased objected to it on which she was abused, beaten and threatened. The deceased left the house of the appellant came to her parental house. She was advised by her father to go back to her marital home.

3. Manik Ram Sahu (PW-2), father of the deceased, brought his daughter to the house of the appellant but the appellant refused to keep her and abused both of them, on which Manik Ram Sahu (PW-2) brought back his daughter to his own residence. The deceased stayed for two months in her parental home. Again a meeting of caste society was called, in which the appellant agreed to have the deceased at his residence. In presence of village elders, one partition agreement was drawn in January, 2012, in which the appellant agreed to give a partition share of 2.70 acres of agricultural lands and one house to the deceased and her two sons, but he never fulfilled this agreement.

4. On 27.10.2012, deceased – Devki Bai Sahu consumed poisonous pesticide in her marital home at village Kandel. She was admitted for treatment in Christian Hospital, Dhamtari, but expired during the treatment on the same day at 5:00 pm. Information to this effect was sent to police station Arjuni, District Dhamtari, on the basis of which, merged intimation Ex.

P/13 was recorded. Inquest was conducted vide Ex. P/3. The postmortem of the deceased was conducted by Dr. Rajesh Suryavanshi (PW-11) and by report is Ex. P/12, it was reported, that the cause of death was consumption of poisonous substance and the nature of death was suicidal. The First Information Report Ex. P/21 was recorded on 30.10.2012. On the basis of mere enquiry, offence was registered under Section 306 read with Section 34 of the IPC, against the appellant and co-accused Chitrarekha Sahu vide Ex. P/5. Register of proceedings of caste society was seized. From the spot of the incident, one container of the insecticide was seized vide Ex. P/10. Viscera preserved in postmortem was seized vide Ex. P/11 which was sent for FSL examination. The FSL report Ex. P/28 confirmed the presence of Organophosphorus insecticide in viscera of the deceased. On completion of the investigation, the appellant and co-accused Chitrarekha Sahu were charge-sheeted.

5. The appellant and the co-accused were charged for the offences punishable under Section 306/ 34 of the IPC. On his denial of charge, the trial was conducted. The prosecution examined as many as 16 witnesses. The defence examined two witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against him, the appellant pleaded innocence and false implication. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed whereby co-accused Chitrarekha Sahu was acquitted of charge, but the appellant has been convicted and sentenced as mentioned above. Hence, this appeal.

6. The grounds of the appeal are. that the trial court has erred in giving the finding of conviction against the appellant. The prosecution witnesses had been unreliable. The prosecution has failed to prove its case beyond reasonable doubt. There is no evidence of abetment to commit suicide against the appellant on record. On these grounds, the appellant has prayed for acquittal.

7. Learned counsel for the appellant submits, that there is no evidence on record regarding abetment as provided under Section 107 of the IPC. None of the witnesses had stated anything about the circumstances, in which the deceased consumed poison for the purpose of committing suicide. The statements of the witnesses are full of contradictions, omissions and exaggerations which cannot be made basis for conviction. It is prayed that the appellant is entitled for benefit of doubt.

8. Considering the material on record, grounds taken in the appeal and the arguments advanced on behalf of the appellant, the question before this court is, whether there is sufficient and reliable evidence of the prosecution to form the basis of conviction against the appellant under Section 306 of the IPC. The evidence before the trial court and the findings arrived at by the trial Court are perused.

9. Manik Ram Sahu (PW-2), father of the accused stated that the appellant had illicit relationship with co-accused Chitrarekha Sahu, to which the deceased raised objection and this resulted in quarrel between the appellant and the deceased. The appellant even assaulted and gave beatings to the deceased. Thereafter, a meeting of village society was

called, in which the appellant and the deceased were advised to carry on living with their respective families. After passing of 20 days of this meeting, the appellant brought co-accused Chitrarekha Sahu to his house and gave beating to the deceased. The deceased left and came to her parental house and started residing with her father. After a month or so, the deceased again went to village Kandel. Manik Ram Sahu (PW-2) came to know that the appellant had given partition to his children. After sometime, the deceased again came to his village, then she told him that the appellant used to excessively beat her. Later on, he came to know that the deceased consumed poison and died.

10. Manik Ram Sahu (PW-2) stated in his cross-examination, that his daughter and appellant had married life of 17 years, during this period he heard no complaints. He never lodged any report about torture or ill-treatment of his daughter. He admits that he had not been to the village of the deceased three to four months prior to death of the deceased, however later he admits that he had been to the village of the deceased one month before her death. By this admission, it is clear that this witness is not able to explain about the circumstances just before the incident when the deceased consumed poison. Similar is the statement of Kasturiya Bai (PW-3), mother of the deceased. She is unable to state about the circumstances just before the death of the deceased. In cross-examination, she admitted that she does not know for what reason her daughter consumed poison, it is her assumption that since the appellant had kept co-accused Chitrarekha Sahu with him, that was the reason that the deceased consumed poison.

11. Narottam Sahu (PW-1) is the witness of the village meeting. He has not stated anything about the circumstances before death of the deceased. Tarkeshwar Dhimar (PW-4) is a hostile witness who has not supported the case of the prosecution in any manner. Rikhiram Sahu (PW-5) is also the witness of village meeting, in which it was alleged that the appellant had illicit relationship with the co-accused. He stated that after compromise, the appellant again brought Chitrarekha Sahu and kept in his house. The appellant used to beat the deceased often and asked her to bring money from her father to stay in his house. He also came to know about the ill-treatment given by the appellant to the deceased. In his cross-examination, he was confronted with his previous statement Ex. D/3. His statement in court seems to have been improved along with presence of omissions and contradictions. Hence, this witness is not fully reliable witness.

12. Pokhraj Sahu (PW-6), son of the appellant, who is a child witness. He stated about the dispute between his father- appellant and mother-deceased, about keeping co-accused Chitrarekha Sahu at their residence. Further, he stated that on the date of incident, when he came back to his residence at about 12:00 to 1:00 pm in the afternoon, he saw that his father had bound his mother and brother Tribhuvan with ropes and was administering poison mixed in milk to his mother and younger brother. The appellant also caught hold of him and tried to forcefully administer poison to him, as such he became unconscious. He regained consciousness in the hospital. In cross-examination, he denied that at the time of incident, his father was not at the residence. He admits that he is residing with his maternal grandfather since 3-4 months. He admitted that he did not give

any such statement to police that he saw his father bound his mother and younger brother with ropes. He admits that he gave statement to police that when he came home, the poisonous milk was given to him and his brother by his mother the deceased to drink, though he states that he gave such a statement because he was told to say so. This shows his admissions that he was tutored for giving police statement. Hence, his statement in court with improvements and manipulation is doubtful.

13. N.P. Chandrakar (PW-16) is the Investigating Officer who recorded the statement of Pokhraj Sahu (PW-6), who stated in cross-examination, that he did not give any statement, that when he came home on the date of incident he found that his father tied his mother and brother with ropes and then he tried to administer poison to him as well. This shows that Pokhraj Sahu (PW-6) has given an improved statement before the court and it cannot be taken into consideration.

14. Pawan Kumar Sahu (PW-7) stated about the illicit relationship of the appellant and co-accused Chitrarekha Sahu, He came to know that the deceased has consumed poison. He informed the appellant about the incident and the appellant came back and took the deceased and his both sons to hospital at Dhamtari, where the deceased and his child Tribhuvan were declared dead. He is also a witness of the proceedings to a meeting of Sahu Samaj. He has not stated anything about any otherwise act and conduct of the appellant before the incident.

15. Other witnesses examined by the prosecution have given statements about the investigation which is not needed to be considered and analyzed.

The statements of witnesses who had the knowledge of affairs between the deceased and the appellant and who could have stated about the act and conduct of the appellant just before the incident is material.

16. On scrutinizing the evidence of these witnesses, it is found that Manik Ram Sahu (PW-2), father of the deceased and Kasturi Bai, mother of the deceased have though alleged that the deceased was subjected to cruelty by the appellant and the appellant had illegally kept co-accused Chitrarekha Sahu at his residence and continuing with the illicit relationship, the reason for committing suicide was that the deceased always objected to it. It does not appear to be disputed that the appellant was having illicit relationship with co-accused Chitrarekha Sahu since quite sometime. The deceased had been objecting to their relationship since the beginning and she also left the house of the appellant to reside with her father Manik Ram Sahu (PW-2). It was the outcome of village meeting of caste society that she again came to reside in village Kandel at the residence of the appellant. This went on until the appellant agreed in a meeting of caste society to give partition of agricultural land and a house to the deceased and her kids. This was the situation sometime before the death of the deceased, which continued to be so till the day, when the deceased herself consumed poison and also administered poison to her two sons. The statement of Pokhraj Sahu (PW-6) has been found to be improved statement which is not worth considering. None of the other witnesses have stated anything about the circumstances that led to the situation in which the deceased consumed poison herself and administered poison to her sons.

17. The trial court believed the allegation that the appellant now and then used to give beating to the deceased and this shows that the deceased was subjected to cruel behaviour by the appellant. The admission in statement of Manik Ram Sahu (PW-2), that the appellant and the deceased had a married life of 17 years. In such a case, the applicability of Section 113-A of Evidence Act cannot be made, which clearly provides that the unnatural death should occur within seven years of marriage. Whether the deceased was subjected to physical violence and beatings just before her death is a question which can be answered by the doctor Dr. Rajesh Suryavanshi (PW-11) who conducted the postmortem of the deceased Devki Sahu vide report Ex. P/12. In cross-examination, he admitted that neither he found any recent injury on the body of the deceased nor any symptoms that the deceased was tied with rope before her death. On the other hand, it is clearly indicated that at the time when the deceased consumed poison, she was not subjected to any force or violence and secondly, the allegation made by her parents Manik Ram Sahu (PW-2) and Kasturi Bai (PW-3) is also found to be without substance, especially, when they have stated that they were not in contact with the deceased 3 to 4 months before her death.

18. In such a case, the finding of conviction can be recorded only when the proof is brought on record as provided under Section 107 of the IPC. Firstly, that the deceased was instigated to commit suicide, secondly, that there had been some conspiracy in which the appellant and others acted or omitted to do anything in such a manner so as to compel the deceased to commit suicide and thirdly by some act or omission the deceased was aided to commit suicide. There is no such kind of evidence on record. None of the witnesses have stated about the circumstances in which the deceased

consumed poison on the fateful day. The circumstance that the appellant was having and maintaining illicit relationship with co-accused Chitrarekha Sahu was not created on the date of incident and that was continuing from quite sometime and till date. It is true that the deceased had objection to this relationship of the appellant and co-accused Chitrarekha Sahu, but according to the outcome of the village meetings held, it can be assumed that the deceased and her children were given partition which she had accepted. It may be the frustration or depression or loss of mental balance of the deceased which led her to commit suicide and in these circumstances deceased consumed poison herself and administered poison to her sons as well, due to which one of her son has died. The appellant accused of course is morally responsible for this incident, but when considered under the provisions of law, the conviction of the appellant is not based on legally admissible evidence of the prosecution.

19. In view of the above discussions and findings, this appeal is allowed. The impugned judgment of conviction and order of sentence is hereby set aside and the appellant is acquitted of the charge framed against him. He is reported to be under custody, he be released forthwith unless otherwise required in any other case.

Sd/-

(Rajendra Chandra Singh Samant)
Judge