

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2679 of 2000

Judgment Reserved on : 23.7.2018

Judgment Delivered on : 12.10.2018

- 1. Shyam Sunder, son of Gyan Dutt Pandey, aged about 38 years, R/o Village Labji, P.S. Sonhat, District Korla, M.P. (now Chhattisgarh)
- 2. Rukmani Devi, wife of Shyam Sunder Pandey, aged about 34 years, R/o Village Labji, P.S. Sonhat, District Korla, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh) through the Police Station Sonhat, District Korla

--- Respondent

For Appellants	:	Shri A.K. Prasad, Advocate
For Respondent/State	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 31.12.1999 passed by the Additional Sessions Judge, Baikunthpur, District Korla in Sessions Trial No.165 of 1999 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/-, in default of payment of fine, additional simple imprisonment for 3 months
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.200/-, in default of payment of fine, additional simple imprisonment for 1 month
Under Section 201 of the	Rigorous Imprisonment for 1 year

Indian Penal Code	and fine of Rs.200/-, in default of payment of fine, additional simple imprisonment for 1 month
-------------------	---

2. Case of the prosecution, in brief, is that Appellant No.2, Rukmani is the first wife of Appellant No.1, Shyam Sunder and out of their wedlock, 2 sons and 1 daughter have taken birth. In the year 1994, Appellant No.1 performed second marriage with Kiran (the deceased). It is alleged that after the marriage with Kiran, behaviour of the Appellants with her was not good and they were harassing her. They did not want any child from Kiran because on birth of any child by Kiran, her child will have to be given a share in the property. Therefore, whenever she got pregnant, she was forced to abort the child. Allegedly, due to physical and mental torture being given by the Appellants, Kiran committed suicide by consuming some poisonous substance on 8.1.1999. But, Appellant No.1/husband informed about the death of Kiran only to the relatives. He did not inform the police about her suspicious death. Even after being prevented by the witnesses, he cremated the dead body of Kiran on 9.1.1999. Thereafter, on 11.1.1999, morgue intimation (Ex.P1) was lodged by Siyamber (PW1), one of the villagers of the village where the Appellants were residing. During morgue inquiry, inquest (Ex.P3) was prepared and from the spot where dead body was cremated, ash of the dead body of Kiran was seized vide Ex.P4 which was sent to the Forensic Science Laboratory for chemical examination vide Ex.P15. No FSL report is available on record. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Sections 306,

201, 34 of the Indian Penal Code. Charges were framed against them under Sections 498A, 306 and 201 of the Indian Penal Code.

3. To rope in the accused/Appellants, the prosecution examined as many as 12 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. Appellant No.1 examined himself as a defence witness (DW1).
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that there is nothing on record on the basis of which it could be considered that Kiran died in suspicious condition. The evidence on record does not reveal cause of death of the deceased. Therefore, it is not established that the deceased committed suicide. It was further argued that after the death of Kiran, villagers of her village were informed about her death through Mangal (PW8), *jija* (brother-in-law) of Appellant No.1. On the next day of the death, i.e., on 9.1.1999, dead body of the deceased was cremated in presence of Shashi Kiran (PW4), sister of the deceased, Vijay (PW3), brother-in-law of the deceased and Banteshwar (PW2), uncle of the deceased. At that time, nobody had raised any suspicion regarding death of the deceased. Even thereafter, none of them or any other member of the family of the deceased did not lodge any

report in the police station alleging the death of the deceased to be suspicious. Thus, it is clear that had there been any suspicion regarding the death of the deceased, a report would have been lodged in this regard in the police station. Therefore, no offence is made out against any of the Appellants. They are entitled to get acquittal.

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. Siyamber (PW1) is the witness who lodged morgue intimation (Ex.P1) on 11.1.1999. He has deposed that on the date of incident, Sarpanch came to him and told that Kiran has died. Sarpanch himself asked him to intimate the death to the relatives of deceased Kiran. On this, he sent his son Mangal (PW8) to intimate about the death of Kiran to her relatives. Next day, this witness went to the house of the Appellants. Appellant No.1 told him that Kiran died due to vomiting and dysentery. He has further stated that at about 2:00-3:00 p.m., cremation of the dead body of Kiran was done in which he had participated. In his cross-examination, he has admitted the fact that he had seen the dead body of Kiran. At that time, no injury was present on her dead body. Colour of her face was not black. No froth was coming out of her mouth. In paragraph 5, he has further deposed that at about 10:00 a.m. of the next day, sister and brother-in-law of the

deceased had come. Along with them, 8-10 persons had also come. They had seen the dead body of Kiran and none of them had raised any suspicion. The cremation was done with their consent in the afternoon. He has further stated that he used to visit the house of the deceased. The deceased had never complained him about any beating given to her by the Appellants.

9. Banteshwar (PW2), who is uncle of the deceased, has stated that he had arranged the marriage of Kiran with Appellant No.1. Thereafter, Kiran had visited his house. At that time, she had told him that she was pregnant, but she was forced to abort her child. He has further stated that 1½ years thereafter, she had again visited his house and told his wife that she was pregnant and she was being beaten by the Appellants. Thereafter, the Appellants had come to bring Kiran back and at that time they had said that they will not ask Kiran to abort her child. Later on, he came to know that abortion of Kiran was done. He has further stated that on 9.1.1999, he came to know that Kiran had died. Then they reached to the village of the Appellants, but they came to know that dead body of Kiran had already been cremated. He has further stated that on being asked, Appellant No.1 had told him that froth was coming out from the mouth of deceased Kiran and Ayodhya Tiwari, at that time, had told him that Kiran had consumed poison. But, this fact is not mentioned in case diary statement of this witness. During cross-examination, this witness has admitted the fact that when Kiran had visited his house first time, she had thereafter returned along with her husband/Appellant No.1 happily. At that time, she had not made any complaint. He has further stated that in his presence, no beating was given to Kiran nor any

misbehaviour was done with her. He has further stated that he had visited the house of the Appellants thrice and on all the occasions of his visit, he had seen that Kiran was happy. She never told him about any misbehaviour or any beating given to her by the Appellants nor did he come to know about this from anyone else.

- 10.** Vijay (PW3), brother-in-law of the deceased has stated that Mangal (PW8), brother-in-law of Appellant No.1 came to his house and informed him about the death of Kiran. All they went to the house of the Appellants and on being asked, Appellant No.1 told them that Kiran died due to vomiting and dysentery. At that time, he had seen the dead body of Kiran. He had seen that on the whole body, a mix of oil and turmeric was administered. He has further stated that he had asked Appellant No.1 not to cremate the dead body till other villagers reach there. After waiting for 2-3 hours, cremation was done. This witness has not supported the case of the prosecution any further and, therefore, he has been declared hostile.

- 11.** Shashi Kiran (PW4) is sister of the deceased. She has stated that before the death of Kiran, her meeting with Kiran had taken place at Ambikapur. At that time, Kiran had told her that she had been beaten. In paragraph 8, this witness has stated that this occurred after 15 days of marriage of this witness. She has further stated that on getting intimation from Mangal (PW8), they went to the village of the Appellants. There, she saw the dead body of Kiran. She saw that face of Kiran was black and froth had also come out of her mouth. She has admitted the fact that after the death, a bath is given to the dead body and a mix of oil and turmeric is

administered on the dead body. She has further stated that her husband had also seen the face of the dead body of Kiran. But, Vijay (PW3), husband of this witness has not supported the above fact narrated by his wife. Shashi Kiran (PW4) has further stated that she had asked Appellant No.1 to cremate the dead body after reaching other people from Ambikapur, but he did not agree. She has further stated that when Kiran died, she was carrying pregnancy of 2-3 months and at that time, both the Appellants were saying that the dead body should be cremated early otherwise post mortem examination will be conducted. But, this fact is not mentioned in her case diary statement (Ex.D1).

12. Hiralal (PW5) has not supported the case of the prosecution and he has been declared hostile. He has also admitted that he had participated in the cremation of the dead body of Kiran. At that time, cremation was done with the consent of the relatives of deceased Kiran. Hirondiya (PW6) has also not supported the case of the prosecution and she has been declared hostile.
13. Mangal (PW8), *jija* (brother-in-law) of Appellant No.1, has stated that on the date of incident, he had gone to the house of the Appellants. At that time, eyes of Kiran were wide open and she was restless. He did not ask her anything. After sometime, she died. Thereafter, he informed about her death to her relatives and other villagers. This witness has also not further supported the case of the prosecution and has been declared hostile. During cross-examination, he has admitted the fact that at the time of cremation, sister and other relatives of the deceased had reached and they had not raised any suspicion.

14. Pradeep (PW10) is father of deceased Kiran. He has only stated that after the marriage, Appellant No.1 used to misbehave with deceased Kiran and also used to get her child aborted and this fact came to his knowledge from his wife. He has further stated that his son-in-law Vijay (PW3) informed him about the death of Kiran. He had also informed him that after the death of Kiran, her face was black and forth had come out of her mouth. In spite of that, this witness did not go to the village of the Appellants nor did he see the dead body of his daughter Kiran (the deceased). In his cross-examination, he has admitted that the deceased herself never told him about misbehaviour done with her by the Appellants. He has also admitted the fact that after getting the intimation of the death, since he had no suspicion regarding her death, he did not go to the house of the Appellants.
15. Kuntibai (PW11), mother of the deceased, has stated that after the marriage, the deceased had visited her house twice. First time, when she had visited her house, the deceased had not told her anything. On her second visit, she had told her that she had been subjected to abortion twice by Appellant No.1. She had also told that she was not being given food properly and on being asked by Appellant No.2, Appellant No.1 used to beat her. In paragraph 6 of her cross-examination, this witness has admitted the fact that this matter was of 1½ years before the death of Kiran. She has further stated that about the misbehaviour and abortion, they did not tell anything to their community nor did they lodge any report in this regard in the police station. This witness has further stated that when the deceased got pregnant third time, at that time also, the Appellants had tried to abort her child through a *dai* (midwife) and

when the midwife could not succeed in aborting the child of Kiran, the Appellants caused Kiran to fall down and made her abort her child. At that time, Kiran had stayed at the house of this witness for about 1 month. Thereafter, when Appellant No.1 visited her house to bring Kiran back, at that time, Appellant No.1 had assured that he will never ask Kiran to abort her child. But, all these facts are not mentioned in her diary statement (Ex.D3).

- 16.** Sub-Inspector P.R.K. Singh (PW12) was the Investigating Officer of the case. He has stated that during the course of investigation, he recorded morgue intimation (Ex.P1) and prepared inquest (Ex.P3). He seized ash of the dead body of Kiran vide Ex.P4. He registered numbered morgue intimation vide Ex.P10.

- 17.** In **(2001) 9 SCC 618 (Ramesh Kumar v. State of Chhattisgarh)**, it has been observed by the Supreme Court as under:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and

circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

18. Further, it is observed by the Supreme Court in **AIR 2010 SC 327 (Gangula Mohan Reddy v. State of Andhra Pradesh)** as under:

“20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

19. In **(2011) 3 SCC 626 (M. Mohan v. State Represented By The Deputy Superintendent of Police)**, the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence:

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the

deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

- 20.** I shall now examine the evidence available on record of the instant case in the light of above observations of the Supreme Court.
- 21.** It is clear that the dead body of Kiran had already been cremated and, therefore, post mortem examination on her dead body could not be conducted. Though ash of the dead body was seized from the spot and was sent to the FSL for chemical examination, no FSL report is available on record. Thus, even from the recovery of the ash, the case of the prosecution does not get help. Allegedly, before the cremation, when dead body was seen, at that time, Appellant No.1 told that the deceased had consumed poisonous substance and, therefore, froth had come out of her mouth. But, Siyamber (PW1), Banteshwar (PW2) and Vijay (PW3) have not stated anything in this regard. Shashi Kiran (PW4), sister of the deceased has stated that she had seen the dead body of deceased. She has stated that at that time face of the dead body was black and froth had come out of her mouth. As stated by this witness, at that time, her husband Vijay (PW3) and Banteshwar (PW2), uncle of the deceased were also present there, but none of them have supported the statement of Shashi Kiran (PW4). Pradeep (PW10), father of the deceased, has categorically admitted the fact that he had no suspicion in his mind about the death of his daughter Kiran and, therefore, he did not visit the house of the Appellants after the death of the deceased. Banteshwar (PW2), uncle of the deceased has categorically admitted the fact that in his presence, no misbehaviour was done

with the deceased nor was any beating given to her. He visited the house of the Appellants thrice, but on all the three occasions, the deceased did not tell him anything about any beating given to her or any misbehaviour done with her by the Appellants. Mangal (PW8), Siyamber (PW1) and Hiralal (PW5) have also admitted the fact that on 9.1.1999, at about 9:00-10:00 a.m., relatives of the deceased had reached to the house of the Appellants. They waited for other people till 2:00-3:00 p.m. and thereafter the dead body of the deceased was cremated. They have also stated that at that time, none of the relatives of the deceased had raised any suspicion about the death of the deceased. Though Shashi Kiran (PW4), sister of the deceased has stated that even after being prevented, the dead body of Kiran was cremated, but if she had any suspicion about the death of her sister Kiran, she herself or through her parents could lodge a report regarding suspicious death of Kiran, but it was not done. From the evidence adduced by the prosecution, mode of death of the deceased is not established. It was a suicidal death or was a natural death is not established. The deceased had consumed poisonous substance has also not been established. There is nothing on record on the basis of which it could be established that the deceased was continuously instigated to commit suicide as defined in Section 107 of the Indian Penal Code. From the evidence adduced by the prosecution, it is established that the deceased was aborted twice, but those abortions were got done forcefully or against her will, no clinching evidence is available on record in this regard. Apart from the above, no other allegation regarding harassment either physical or mental by the Appellants is established by the prosecution.

- 22.** In the light of aforesaid discussion, in my considered opinion, the offence alleged against the Appellants under Sections 306, 498A and 201 of the Indian Penal Code is not made out. The Appellants are entitled to get benefit of doubt.
- 23.** In the result, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
- 24.** It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
- 25.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE