

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2099 of 2000**

Kailash, son of Sewaram Chandravanshi, aged about 20 years, resident of Lakhanpur, Police Station Pipariya, District Kawardha, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through the Station House Officer, Kunda, District Kawardha

--- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

13.8.2018

1. The instant appeal is directed against the judgment dated 27.7.2000 passed by the Additional Sessions Judge, Mungeli, District Bilaspur in Sessions Trial No.93 of 1998 convicting and sentencing the Appellant 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.1,000/- with default stipulation
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that Kalyanibai (the deceased) was wife of the Appellant. Their marriage was performed 3-4 months prior to the date of incident. After the marriage, the Appellant used to torture her for demand of TV and cycle. On the occasion of

Devuthani (Ekadashi), the deceased had gone to her maternal house. She was not returning to her matrimonial house. On being inculcated, she returned her matrimonial house. On 13.12.1997, Ayodhya (PW1), father of deceased Kalyanibai received information from Lalji (PW2) that Kalyanibai was vomiting near the school of Village Paraswara. He went to the spot. At that time, Kalyanibai told him that she had consumed a tablet of sulfas due to being harassed by the Appellant/husband. She was taken to the hospital where it was found that she had died. Information of her death was communicated by Dr. V.P. Jaiswal (PW9). On the basis of the said information, morgue intimation (Ex.P2) was recorded and First Information Report (Ex.P1) was registered. Inquest (Ex.P8) was done. Post mortem examination on the dead body of Kalyanibai was conducted by Dr. V.P. Jaiswal (PW9) along with his companion Dr. G.K. Suryavanshi on 13.12.1997 itself. Their report is Ex.P3A in which it is opined that Kalyanibai died due to asphyxia as a result of suspected poisoning. Viscera was preserved and sent for chemical examination. But, no report thereof 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 Appellant and charges were framed against him under Section 304B of the Indian Penal Code in the alternative charges were framed under Sections 306 and 498A of the Indian Penal Code.

3. To bring home the offence, the prosecution examined as many as 12 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has

been examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that there is no evidence on record regarding any kind of instigation or abetment caused to the deceased by the Appellant. There was no willful conduct of the Appellant to drive the deceased to commit suicide. He further submits that from the evidence on record, it is clear that the deceased voluntarily left her matrimonial house and thereafter she was found vomiting near her maternal house. There is no evidence on record on the basis of which it could be presumed that the deceased committed suicide because the death which occurred due to consumption of poisonous substance was suicidal or accidental is not established from the medical evidence. He further submits that there is no evidence on record regarding demand of dowry. Whatever dispute was existing between the Appellant and the deceased was of domestic nature and, therefore, there is no evidence on record regarding any cruelty or harassment subjected by the Appellant to the deceased. Hence, the Appellant deserves acquittal.
6. Per contra, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.

8. Sections 107 and 498A of the Indian Penal Code run thus:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(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.”

9. It is not in dispute that the deceased was married with the Appellant 3-4 months prior to her death. Ayodhya (PW1) is father of deceased Kalyanibai. He has stated before the Court that on the date of incident, one boy came to him and told him that Kalyanibai was lying under a tree and was vomiting there. When he went to the spot, he saw that people were standing nearby the spot and they were preparing for taking Kalyanibai to hospital. On being asked by him from the deceased, she told him that the Appellant had beaten her for the whole night and, therefore, she had consumed 3 tablets. He has further stated that on the occasion of *Ekadashi*, the deceased had visited his house and at that time she had refused to go back to her matrimonial house and told him that her husband/Appellant used to harass her, but she did not tell him that why was the Appellant harassing her. In paragraph 10 of his cross-examination, he has admitted that 1 day prior to the incident, *kaka sasur* (uncle's father-in-law) of the deceased had come and told him that the deceased had gone out of the house since morning.
10. Lalji (PW2) has stated that on the date of incident, when he was taking his cattle, on the way, he saw that the deceased was coming staggeringly. On being asked, she told him that her husband/Appellant had harassed her, therefore, she had run out, in the night she had stayed at Pandatarai and she had consumed sulfas.
11. Gouribai (PW7), mother of the deceased, has also stated that on the occasion of *Ekadashi*, the deceased had come to her maternal house and she had refused to return to her matrimonial house. The deceased had told that her husband/Appellant used to beat

her. *Bhanja* (nephew) of this witness had taken the deceased to her matrimonial house. In her cross-examination, this witness has admitted the fact that prior to the occasion of *Ekadashi* also, the deceased had visited her maternal house 2-3 times, but on those occasions, she had not told about beating to her by the Appellant. She has further admitted that they had not called any village meeting because the dispute between the Appellant and the deceased was of domestic nature as is usually happens between a husband and a wife.

12. Nakul (PW8), cousin of the deceased has supported the statement of Gouribai (PW7) and has only stated that he had taken the deceased to her matrimonial house once.
13. Alakhram (PW10) has stated that he received information that the deceased was lying near the school. He went to the spot and asked the deceased. She told that her husband/Appellant had harassed her, therefore, she had consumed tablet of sulfas.
14. Dr. V.P. Jaiswal (PW9) conducted post mortem examination on the dead body of Kalyanibai on 13.12.1997. His report is Ex.P3A in which it is stated that he did not find any injury on the body of the deceased. Nails of the fingers of the deceased had turned bluish and froth was coming out of her mouth. Cause of death was asphyxia as a result of suspected poisoning. For confirmation, viscera was preserved and was advised for its chemical examination.
15. Assistant Sub-Inspector G.B. Sahu (PW6) has stated that he recorded inquest (Ex.P8), prepared spot-map (Ex.P9) and also recorded FIR on zero (Ex.P6) and sent the same to Police Station

Kunda.

16. Head Constable Brijendra Tiwari (PW12) has stated that he recorded statement of witnesses under Section 161 of the Code of Criminal Procedure. He also prepared spot-map (Ex.P10).
17. Nagendra Pratap Singh (PW11) is the witness who filed the charge-sheet only.
18. A minute examination of the above evidence makes it clear that on the date of incident, the deceased was found moving in staggering condition near the school of Village Paraswara. At that time, she had already consumed some poisonous substance. From the statements of Ayodhya (PW1), father of the deceased and Gouribai (PW7), mother of the deceased, it is also clear that no talk was done by the Appellant regarding demand of dowry and no cruelty was done by him with the deceased for demand of dowry. Though as per their statements, on the occasion of *Ekadashi*, the deceased had refused to go back to her matrimonial house saying that her husband/Appellant used to harass her, she had not told why was she being harassed by the Appellant. Prior to that occasion also, she had visited her maternal house 2-3 times, but on those occasions, she had not told about harassment by the Appellant. Gouribai (PW7), mother of the deceased has also stated that they never called any village meeting regarding harassment by the Appellant to the deceased because the dispute between the Appellant and the deceased was of domestic nature which usually takes place between a husband and a wife. Though Ayodhya (PW1), father of the deceased has deposed that on being asked from the deceased, she had told him that her

husband/Appellant had beaten her for the whole night due to which she had consumed sulfas, as per the post mortem examination report (Ex.P3A), no bodily injury was found on the dead body of the deceased. In these circumstances, it is suspicious that the deceased was beaten for the whole night. There is no evidence on record to establish that the deceased was instigated or abetted in any way by the Appellant to commit suicide. As regards harassment, the evidence on record reveals that the dispute between the deceased and the Appellant was of domestic nature which usually takes place between a husband and a wife. Therefore, in my considered opinion, the offences alleged against the Appellant under Sections 306 and 498A of the Indian Penal Code are not proved beyond reasonable doubt.

19. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
20. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
21. 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