

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 429 of 1998**

- Harkeshwar Vaishnov, S/o Bhagawandas Vaishnov, aged about 20 years, Occupation – Agriculture, R/o Village Keshavpur, P.S. Ambikapur, District Sarguja (M.P.) (Now in Chhattisgarh)

---- Appellant**Versus**

- The State of Madhya Pradesh, Through Police Station Ambikapur, District Sarguja (M.P.) (Now in Chhattisgarh)

---- Respondent

For Appellant	:	Shri Nishikant Sinha, Advocate.
For Respondent/State	:	Shri Rajendra Tripathi, Penal Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****11.05.2018**

1. This appeal is preferred against the judgment dated 09.02.1998 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja (M.P.) (now Chhattisgarh) in Session Trial No.112/1997, wherein the said Court convicted the Appellant for commission of offence under Section 306, 304-B and Section 498-A of the Indian Penal Code for abetment of his wife namely Tapeshwari Bai on or before 14.03.1997, for committing her dowry death and for committing cruelty against her.
2. In the present case, name of the deceased is Tapeshwari Bai who was the wife of the Appellant. It is alleged that Appellant demanded dowry from the deceased and when demand is not fulfilled he tortured the deceased that is why she committed suicide by hanging.
3. To substantiate the charge the prosecution examined as many as nine witnesses. To nullify the charge the defence side examined two witnesses. Dr. A.K. Jain (PW-6) conducted autopsy of the deceased on 15.03.1997 and

opined that cause of death is hanging and nature of death is suicide.

4. Murli (PW-8) who is father of the deceased and Tihora Bai (PW-9) who is mother of the deceased supported the version of the prosecution. As per version of Murli (PW-8), the Appellant demanded Rs.20,000/- from him, but version of this witness is deviated from his statement made before the Police authorities under Section 161 of Cr.P.C. Earlier this witness stated that Appellant demanded money from his daughter and he was informed by her daughter regarding the said demand. He further deposed that his daughter informed him regarding beating to her by Appellant and demand of Rs.20,000/-. Tihora Bai (PW-9) deposed on same line that her daughter informed her regarding demand and assault made by the Appellant.
5. The incident took place at village Keshavpur and Murli (PW-8) and Tihora Bai (PW-9) are residents of village Mudaser. Both have not stated as to what really happened with the deceased on 14.03.1997 on the date of incident or prior to the date of incident. No one was examined from village Keshavpur as to what really happened with the deceased on the date of incident or prior to the date of incident. Version of mother and father of the deceased is hearsay evidence against information received from the deceased and they have stated before the Trial Court after the death of the deceased what is stated to them by deceased. Hearsay evidence is not received as relevant evidence. In **Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying “I do not know, but so and so told me”,

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying “someone told me that”. It would be

attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

6. When the evidence of both the witnesses is inadmissible, then it is difficult for this Court to hold that any demand was made by the Respondent or deceased was harassed by him.
7. For commission of offence under Section 304-B of IPC, it has to be proved that the death of a woman is caused by any bodily injury or occurs otherwise than under normal circumstance within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassed by her husband or any relative of her husband in connection with any demand of dowry.
8. Definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961 read as under:

“2. Definition of 'dowry' – In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the present of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation II – The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code.”

9. For establishing the offence under Section 304-B of IPC the prosecution has to be proved the proximity and liability between harassment and death, but there is no evidence on record to substantiate the same.
10. Offence under Section 498-A of IPC is also based on cruelty, but from the evidence adduced by the prosecution there is no foundational evidence of taunting, misbehaving or any direct active act on the part of the Appellant

against the deceased. From the evidence it is not clear as to how the mental condition of deceased was disturbed which was sarcastic and she ended her life.

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 instigates 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. 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 which read as under:

“7. For offence under Section 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 IPC. 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.”

13. In the present case there is no substance to establish that Appellant instigated or aided the deceased to commit suicide and there is no suicidal note indicating the real cause of fall of deceased and did not make dying declaration before the incident. On overall assessment there is no legal evidence against the Appellant for commission of offence under Section 306 of IPC. Presumption under Section 113 of Indian Evidence Act, 1872 is available only when harassment is established on the part of the Appellant but the same is not established and the finding recorded by the Trial Court is not sustainable.
14. Accordingly, the appeal is allowed. Judgment of conviction and order of sentence passed by the Trial Court is set aside. The Appellant is acquitted of the charges under Sections 306, 304-B and Section 498-A of the IPC framed against him. The Appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
JUDGE