

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2842 of 1999

Judgment Reserved on : 4.1.2018

Judgment Delivered on : 27.3.2018

Shyamlal, S/o Sudharshan, aged about 45 years, r/o Village Bag Tarai, P.S. Gurur, District Durg, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Gurur, District Durg

--- Respondent

For Appellant	:	Shri R.S. Patel, Advocate
For Respondent/State	:	Shri Neeraj Kumar Sharma, Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 15.10.1999 passed by the Additional Sessions Judge, Balod in Sessions Trial No.350 of 1996 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 7 years
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 3 years

2. Case of the prosecution, in brief, is that Premvati (the deceased) was the wife of the Appellant/accused. It is alleged that an illicit relationship had developed between the Appellant and some other woman, namely, Hemlata. The Appellant used to visit her house

and took her for roaming. Therefore, quarrel used to take place between the Appellant and his wife. It is further alleged that the Appellant was not maintaining her wife well and used to beat her. On 26.7.1995, in the night and thereafter in the early morning at about 5:00 a.m., again a quarrel took place between the Appellant and his wife in which the Appellant assaulted the wife and left his house in the early morning. Thereafter, the wife consumed a pesticide. Her daughter Bhuneshwari saw her and running she went towards the pond of the village where she found her father/the Appellant. She told him about the incident. Premvati was taken to hospital where she died at about 9:30 a.m. Morgue intimation (Ex.P1) was recorded in Police Station Dhamtari. Thereafter, since the jurisdiction was of Police Station Gurur, the matter was forwarded to Police Station Gurur. Inquest (Ex.P9) was prepared. Post mortem examination on the dead body of Premvati was conducted by Dr. Abdul Rashid (PW7). Post mortem report is Ex.P5 in which he opined that the cause of death was asphyxia due to poison intake. During investigation, vide seizure memo (Ex.P2), container of Triazophos Hostathion pesticide was seized from the house of the Appellant. Preserved viscera of the deceased and the other seized articles were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P14 which states that Phosphomidan pesticide was found in the viscera of the deceased (Articles A and B) as well as in the liquid sent for examination in a white plastic bottle (Article D). 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 for offence punishable under Section 306 of the Indian Penal Code. Charges were

framed against him under Sections 498A and 306 of the Indian Penal Code.

3. To rope in the accused/Appellant, the prosecution examined as many as 13 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication. 1 witness has been examined in his defence.
4. 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 argued that the marriage between the Appellant and Premvati (the deceased) had taken place 20 years prior to the date of death of Premvati. There is no evidence on record regarding cruelty done with her. The Trial Court has completely overlooked the material available on record showing the fact that the deceased was suffering from T.B. Dr. Bina Chatterjee (PW4) has categorically stated that the deceased was not well and was under her regular treatment from 6.7.1995 to 26.7.1995 (1 day prior to the date of death). It was further argued that the Appellant did not have any illicit relationship with Hemlata. Even if for the sake of argument it is considered that the Appellant used to visit the house of Hemlata and for this reason only, the Premvati committed suicide, no case is made out against the Appellant under Section 306 of the Indian Penal Code.

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. Admittedly, the marriage between the Appellant and Premvati (the deceased) was solemnised 20 years prior to the death of Premvati.
9. Dr. Bina Chatterjee (PW4) has stated that on 27.5.1997 at about 9:00 a.m., Premvati (the deceased) was admitted in her hospital. She was in serious condition and was unconscious. She has further stated that Premvati died at about 9:30 a.m. In cross-examination, she has stated that on 6.7.1995 and 26.7.1995 Premvati had visited her hospital for treatment.
10. Bhuneshwari (PW3), daughter of the deceased has stated that on 27.7.1995, she woke up at about 7:00 a.m. At that time, her mother came out of the room and smell of medicine was coming out of her mouth. She, running, immediately went to the pond of the village and told her father (the Appellant) there about the incident. Her father returned home along with her. Thereafter, her father and uncle took her mother to the hospital. She has further stated that along with her father, they (this witness and her mother) also used to visit house of Hemlata. She has further stated that for the last 2-4 years, her mother was suffering from T.B. and was unwell. In cross-examination, she has stated that no quarrel took place between her father and mother in her knowledge.

11. Kheduram (PW5), who was a resident of same village where the Appellant and deceased Premvati were residing, has stated that the Appellant was having an illicit relationship with Hemlata and, therefore, quarrels had been taking place between the Appellant and his wife (the deceased). He has further stated that the Appellant used to beat his wife. In the fateful night also, the Appellant had assaulted his wife and thereafter he had gone to the house of Hemlata and slept there in the night. He has further stated that thereafter Premvati had also gone to the house of Hemlata. A dispute had taken place there between Premvati and Hemlata. There, the Appellant had again assaulted Premvati. He has further stated that he had heard only about the incident taken place at the house of Hemlata. He had not seen the incident. The Appellant used to beat Premvati and had slept in the house of Hemlata is not stated by him in his statement recorded under Section 161 of the Code of Criminal Procedure.
12. Amrikabai (PW6) has stated that Premvati (the deceased) had told her that she was suffering from stomach pain, the Appellant was not taking care of her, he does not stay at home and used to stay at the house of Hemlata. She has not further supported the case of the prosecution and has been declared hostile. In cross-examination, she has admitted that the Appellant is the *Kaka-Sasur* (father-in-law) of Hemlata. She has categorically stated in paragraph 9 that her house is situated far away from the house of Hemlata and whatever has been stated by her regarding relationship between the Appellant and Hemlata is a hearsay statement.

13. Mominbai (PW8) has not supported the case of the prosecution and has been declared hostile. During cross-examination, she has admitted that the Appellant had an illicit relationship with Hemlata. She has further admitted that the Appellant is *Kaka-Sasur* (father-in-law) of Hemlata.
14. Shivnarayan (PW9) has not supported the case of the prosecution and has been declared hostile.
15. Jitu Kumar (PW1), a ward boy of the Christian Hospital, Dhamtari has stated that on 27.5.1997, he had given intimation of death of Premvati in Police Station Dhamtari.
16. Station House Officer B.B.S. Rajput (PW10) has stated that on the intimation of the ward boy, he had recorded morgue intimation (Ex.P1). Constable Vishwajeet (PW11) has stated that he had taken the morgue intimation (Ex.P1) to Police Station Gurur, District Durg, where, on the basis of Ex.P1, morgue (Ex.P12) was registered.
17. Assistant Sub-Inspector S.K. Sarkar (PW12) has stated that vide Ex.P2 he had seized from the spot on being given by the Appellant a canister filled with about 50 grams liquid and words Triazophos and Hostathion and the word poison were printed thereon. Shekhar (PW2) has supported the above seizure. Inspector B.L. Paul (PW13) is the witness who investigated into the offence in question.

18. Daulal (DW1), brother of the deceased has stated that the deceased was suffering from stomach pain. She was being treated at Dhamtari hospital. Relationship between the Appellant and the deceased was cordial. The deceased had never made him any complaint against the Appellant.

19. 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.”

20. 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.”

21. 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.”

22. In the light of aforesaid enunciation of law, the facts of the present case are to be examined.
23. There is no dispute that the death of Premvati was suicidal in nature and the same took place after 20 years from her marriage. The present also does not appear to be a case of dowry demand.

As per the prosecution story, the Appellant was having an illicit relationship with Hemlata due to which disputes were arising between the Appellant and his wife Premvati (the deceased) and in which the Appellant used to beat Premvati. Due to all these, Premvati committed suicide.

24. Bhuneshwari (PW3), daughter of the deceased and Daulal (DW1), brother of the deceased are the close relatives of the deceased and the Appellant as well. Both the witnesses have not stated anything about the illicit relationship between the Appellant and Hemlata. As per the statement of Bhuneshwari (PW3), the whole family was visiting the house of Hemlata and no quarrel took place between her father (the Appellant) and mother (the deceased) in the name of Hemlata. Daulal (DW1), brother of the deceased has also stated that the deceased was visiting his house and he was also visiting her house, but the deceased never made him any complaint against the Appellant about his alleged illicit relationship with Hemlata.

25. From the statement of Amrikabai (PW6), it is further clear that the Appellant is *Kaka-Sasur* (father-in-law) of Hemlata. Bhuneshwari (PW3), daughter of the deceased has also stated that the deceased was suffering from the disease of T.B. for the last 2-4 years and she was under treatment. This fact is also admitted by Daulal (DW1), brother of the deceased.

26. Dr. Bina Chatterjee (PW4) has also stated that the deceased had visited her hospital on 6.7.1995 and 26.7.1995. From the above

also, it is clear that the deceased was ill and she was under treatment. Except the alleged illicit relationship between the Appellant and Hemlata, there is nothing on record to show that the Appellant committed any cruelty with the deceased. The so called alleged illicit relationship is also not established.

27. In **(2009) 6 SCC 757 (U. Suvetha v. State By Inspector of Police)**, it was observed by the Supreme Court that living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage, but the same would not attract the worth of Section 498A of the Indian Penal Code.
28. In the light of above discussion, no case is made out against the Appellant under Section 306 of the Indian Penal Code.
29. In the result, the appeal is allowed. The conviction and sentence imposed upon the Appellant is set aside. The Appellant is acquitted of the charges framed against him.
30. 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