

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1983 of 2000

1. Manoj Kumar, S/o Shankarlal Rajgariya, aged 27 years,
2. Vimal Kumar, S/o Shankarlal Rajgariya, aged about 26 years,

Both residents of Padamnampur, H.I.G.-26, District Durg, At Present
Pujari Industry, Somni

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants : Shri D.R. Agrawal and Shri Dharendra
Prasad Mishra, Advocates
For Respondent/State : Shri Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

7.5.2018

1. This appeal is directed against the judgment dated 4.8.2000 passed by the 2nd Additional Sessions Judge, Rajnandgaon in Sessions Trial No.29 of 2000 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 7 years and fine of Rs.5,000/- with default stipulation

2. The prosecution story, in brief, is that deceased Neelkamal was employed as a driver in Pujari Industry owned by the present Appellants/accused. It is alleged that on 2.8.1999 at about 9:30 a.m., vehicle of the industry/company was not getting started. At

that time, Appellant Manoj came there and asked why the vehicle was not taken by the deceased by pushing. The deceased replied that the vehicle needs self work. On this, Appellant Manoj abused the deceased in the name of his mother and sister and beat him also. On being demanded his labour wages by the deceased, Appellant Manoj refused to pay him the wages. The incident was witnessed by Chetan and Billu. It is alleged that both the Appellants levelled a false allegation of commission of theft of diesel on the deceased due to which the deceased was under depression. On 5.8.1999, he consumed poison and committed suicide. He was taken to hospital by his family members, where he was declared to be dead. On receiving a memo from the hospital, morgue intimation (Ex.P12) was recorded. Inquest (Ex.P1) was prepared on 6.8.1999. Post mortem examination was conducted by Dr. S.P. Kesharwani (PW7). His report is Ex.P15 in which he found that the cause of death was asphyxia due to consumption of poison and the nature of death was suicidal. During preparation of inquest (Ex.P1), from the pocket of the deceased a photo copy of his driving licence behind which a suicidal note was allegedly written by the deceased was seized vide Ex.P17. On 7.8.1999, letters (Ex.P5 to P9) allegedly signed by the deceased and one typed report/complaint dated 2.8.1999 (Ex.P10) allegedly signed by the deceased were also seized from possession of Suraj Kumar (PW2), brother of the deceased vide Ex.P4. On the basis of morgue inquiry, First Information Report (Ex.P21) was registered on 10.8.1999. Viscera of the deceased was sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P23 in which it is reported that Organo Phosphorous Pesticide – Demecron was found in the viscera of the deceased. Statements

of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed against the Appellants for an offence punishable under Section 306 read with Section 34 of the Indian Penal Code. Charge was framed against them under Section 306 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 13 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. No witness has been examined in their defence.
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 the Appellants have been falsely implicated in the case. None of the ingredients of Section 107 of the Indian Penal Code regarding abetment is attracted to the present case. 20 days prior to the date of incident the deceased was employed in the factory/industry of the Appellants. As per the allegation, the altercation took place on 2.8.1999. Thereafter, the deceased left the job and went away. The deceased committed suicide on 5.8.1999. No evidence is available on record that after 2.8.1999 the deceased met with any of the Appellants or any talk took between him and any of the Appellants. It is further submitted that in Ex.P10, which is a typed report/complaint, allegedly signed by the deceased, there is no

mention about the presence of Appellant Vimal during the incident occurred on 2.8.1999. As per Ex.P10, the incident was witnessed by Chetan and Billu, but they have not been made a witness nor have they been examined before the Court. In these circumstances, any such incident had taken place is not established. It is further submitted that there is no evidence on record to establish that the so called dying declaration (Ex.P5 to P9) and the dying declaration written behind the photo copy of the driving licence (Ex.P11), were written by the deceased. No other document which was written by the deceased was seized to compare and obtain an expert's opinion regarding this and establish that the aforesaid seized documents were written by the deceased. It is further submitted that even if for the sake of argument it is considered that all the documents are in the handwriting of the deceased, it is not proved from the contents of the said documents that the Appellants instigated the deceased in any way to commit suicide. It is further submitted that the witnesses, namely, Lakhanlal (PW1), Suraj Kumar (PW2), Suklal (PW3) and Santosh (PW9) are close relatives of the deceased. Though they have stated against the Appellants yet the Trial Court itself has not relied upon their statements on the ground that they have largely improved their version before the Court. Therefore, no offence is made out against the Appellants. Hence, the Appellants deserve acquittal.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment and submitted that it is duly proved that the dying declaration (Ex.P5 to P9 and Ex.P11) were written by the deceased. Therefore, the Appellants have rightly

been convicted and sentenced by the Trial Court.

7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. Before discussing the evidence on record, it would be appropriate to refer to the provisions of Sections 107 and 306 of the Indian Penal Code, which read as under:

“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.

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

9. In (2007) 11 SCC 205 (Bhagwan Das v. Kartar Singh), it has

been observed by the Supreme Court as under:

“15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304-B IPC may be attracted, whether it is a case of homicide or suicide. (Vide *Kans Raj v. State of Punjab*, (2000) 5 SCC 207, *Satvir Singh v. State of Punjab*, (2001) 8 SCC 633 and *Shanti v. State of Haryana*, (1991) 1 SCC 371.)”

- 10.** Further, it has been 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.”

- 11.** 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 of the 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.”

12. In (2013) 12 SCC 286 (**Atmaram v. State of Maharashtra**), It has been observed by the Supreme Court thus:

“19. From the discussion of the aforesaid evidence on record, we find that the prosecution has not been able to prove beyond reasonable doubt that the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive Purnabai to commit suicide. Rather, there appears to be some evidence in the depositions of PW 1 and PW 4 (father and sister of Purnabai) that Purnabai was sad due to a daughter being born to her and a son being born to the first wife of the appellant. These circumstances may have driven Purnabai to commit suicide by jumping into the well along with her daughter. Such a consequence from the mental state of Purnabai cannot be a ground for holding that the appellant was guilty of cruelty within the meaning of clause (a) of the Explanation to Section 498-A IPC. We, therefore, hold that the presumption under Section 113-A is not attracted and the appellant cannot also be held guilty of abetting the suicide of Purnabai. We have to bear in mind this note of caution in *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73: (SCC p. 90, para 17)

“17. 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 the 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. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court and the judgment of the trial court holding the appellant guilty of the offences under Sections 306 and 498-A IPC and direct that the bail bonds executed by the appellant be discharged.”

- 13.** In the light of aforesaid enunciation of law, the facts and the evidence of the present case are to be examined minutely.
- 14.** Lakhanlal (PW1) is grand father of the deceased. He is a hearsay witness. He has stated that he had heard that the deceased was driving the vehicle of Appellant Manoj in Pujari Industry and on taking place of some dispute, Appellant Manoj had slapped the deceased 2-3 times. Thereafter, a report was lodged in the police station, but no action was taken into the matter. Thereafter, both the Appellants had asked the deceased why does he not commit suicide and thereafter the deceased committed suicide. But, this fact is not mentioned in his case diary statement (Ex.D1).
- 15.** Suraj Kumar (PW2), brother of the deceased, has stated that on 2.8.1999, he was present at his house. At that time, the deceased came to him and told him that the Appellants beat and abused him and also threatened him of his life due to which he was under depression. The deceased was continuously weeping and did not take food. The deceased had also reported the matter in the Harizan Police Station. He has further stated that although on

5.8.1999, he was at his field, he came to know that the deceased had consumed some substance. He went to the house of the deceased. At that time, the deceased told him that the Appellants had asked him to commit suicide, therefore, he has attempted to commit suicide by consuming poison. But, all these facts are not mentioned in his case diary statement (Ex.D2). He has further stated that from his house, the police had seized dying declaration (Ex.P5 to P10) and from the pocket of the deceased Ex.P11 was seized. As per the statement of this witness, Ex.P5 to P9 and P11 are in the handwriting of the deceased and Ex.P10 also bears the signature of the deceased. In paragraph 9 of his cross-examination, he has admitted that he recognised the handwriting of the deceased to some extent only. He has further stated that for comparison of the handwriting, the police had also called for a handwritten copy of the deceased, but the said copy has not been made available on record by the prosecution.

16. Suklal (PW3), maternal uncle of the deceased, has stated that on 2.8.1999 the deceased had come to his house and told that the Appellants abused and beat him and asked him to die by drowning otherwise they will kill him. He has further stated that the deceased had also told him that his death will be good. On this, he had inculcated the deceased. Thereafter, on 5.8.1999, the deceased consumed poison. He has further stated that when the deceased was being taken to hospital, he told him that the Appellants were the assailants. But, these facts are not mentioned in his case diary statement (Ex.D4).
17. Dr. S.P. Kesharwani (PW7) is the witness who conducted post mortem examination on the dead body of the deceased on

6.8.1999. He has stated that his report is Ex.P15 in which he found that the cause of death was asphyxia due to consumption of poison and the nature of death was suicidal.

18. Dr. Sanjay Buxi (PW8) has stated that on 5.8.1999, the deceased was brought to his hospital in dead condition. He informed the police regarding the death of the deceased vide Ex.P16.
19. Santosh (PW9), another brother of the deceased, has stated that on 4.8.1999, when he went to his house, at that time, the deceased told him that on 2.8.1999, on a dispute taking place due to driving of the vehicle, the Appellants levelled an allegation that the deceased had committed theft of diesel and they also assaulted the deceased and asked him to die by drowning. Thereafter, the deceased went to Police Station Somni. The police officials told the deceased that he was to be beaten on committing theft, what will happen if he had committed theft. From there, the deceased went to Harizan Police Station, Rajnandgaon to make a report. This witness has further stated that on 5.8.1999, one boy came to him and informed that the deceased was ill. He went to the house of the deceased. At that time, the deceased was conscious and he told him that the Appellants had levelled an allegation on him of theft of diesel and defamed his caste and threatened him of his life and, therefore, he was committing suicide. All these facts are not mentioned in his case diary statement (Ex.D5).
20. Shivshankar (PW10) is the witness before whom photo copy of the driving licence (Ex.P11) of the deceased behind which a suicidal note was allegedly written by the deceased was seized vide Ex.P17.

- 21.** Assistant Sub-Inspector K.L. Sahu (PW11) is the Investigating Officer of the case. He has stated that he partly investigated the offence in question. During the course of investigation, he recorded morgue intimation (Ex.P12), prepared inquest (Ex.P1) of the dead body, seized photo copy of the driving licence (Ex.P11) of the deceased vide Ex.P17. During cross-examination, he has stated that he was unable to state that when was the document (Ex.P11) was kept in the pocket of the shirt of the deceased.
- 22.** S.P. Mishra (PW13), another Investigating Officer of the case, has stated that during investigation, he seized the documents (Ex.P5 to P10) from Suraj Kumar (PW2) vide seizure memo (Ex.P4). He has further stated that during investigation, he had recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.
- 23.** From a minute examination of the above evidence, it is clear that as per the contents of Ex.P10, which is a typed report/complaint allegedly signed by the deceased, the incident of 2.8.1999 was witnessed by Chetan and Billu, but none of the two persons have been cited as a witness nor has any of them been examined before the Trial Court. Though relatives of the deceased Lakhanlal (PW1), Suraj Kumar (PW2), Suklal (PW3) and Santosh (PW9) have stated that the deceased had come to their houses and told them about the incident took place on 2.8.1999 yet all the above witnesses have improved their statements on this point during their examination in the Court.
- 24.** Even if for the sake of argument it is considered that any such incident had taken place on 2.8.1999 in which the Appellants had abused and beaten the deceased, from the evidence available on

record it is clear that there is no evidence to the extent that after 2.8.1999 and till 5.8.1999 any meeting took place between the Appellants and the deceased and the Appellants again told him anything.

- 25.** The so called dying declaration (Ex.P5 to P9 and Ex.P11) had been allegedly written by the deceased, but apart from the statement of Suraj Kumar (PW2), brother of the deceased, there is no oral or documentary evidence available on record on the basis of which it could be inferred that the handwriting of the said documents is of the deceased. Though Suraj Kumar (PW2) has stated that the said documents were written by the deceased yet in paragraph 9 he has categorically stated that he recognised the handwriting of the deceased to some extent only. Therefore, from the statement of this witness also, it is not established beyond reasonable doubt that the contents of the documents (Ex.P5 to P9 and Ex.P11) were written by the deceased himself. Besides this, as per the statement of this witness, the police had called for a handwritten copy of the deceased for comparison of the handwriting, but no such handwritten copy of the deceased is available on record. From the statement of Suraj Kumar (PW2), it is also clear that the deceased had passed examination of XIIth Standard. In these circumstances, many documents written by the deceased could be available with the prosecution for comparison/examination of handwriting of the deceased, but no such document was seized by the prosecution for comparison/examination of handwriting of the deceased through a handwriting expert.

- 26.** Even if for the sake of argument it is considered that the

documents (Ex.P5 to P9 and Ex.P11) are in the handwriting of the deceased then also from the contents of the said documents it is not established that the Appellants, other than the incident took place on 2.8.1999 ever instigated the deceased to commit suicide. According to the statement of Suraj Kumar (PW2), after the incident of 2.8.1999, the deceased was under depression and thereafter he committed suicide on 5.8.1999.

27. In the premises of aforestated, the offence alleged against the Appellants under Section 306 of the Indian Penal Code is not made out beyond reasonable doubt. The Appellants are entitled to get benefit of doubt.
28. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
29. 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.
30. Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE