

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1122 of 2002

Tikam Sahu S/o. Gangaram Sahu, Aged about 24 years, Caste Sahu, Presently residing at H.S.C.L. Colony, Station Maroda, P.S. Nevai, District Durg (C.G.) Permanent address village Biroda, P.S. Berla, District Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Nevai, District Durg (C.G.)

---- Respondent

For Appellant : Mr. M.P.S. Bhatia, Advocate
For Respondent : Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

13.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 19-10-2002 passed by the Second Additional Sessions Judge, Durg, Session Division Durg (C.G.) in Sessions Trial No. 339/2001, wherein the said Court convicted the accused/appellant under Sections 306 and 498 A of the IPC, 1860 and sentenced him to undergo R.I. for 7 years, R.I. for 2 years respectively, for abatement of suicide and cruelty against deceased Mongra Bai, who is wife of the appellant.

2. In the present case, name of deceased is Mongra Bai, who was wife of the appellant. The marriage of the appellant and the

deceased took place in the year 1999. After the marriage, the appellant harassed the deceased and beat her, that is why she committed suicide by hanging herself. As per version of Dr. S.R. Churendra (PW-5), who conducted autopsy of the deceased, the cause of death is hanging and the duration of death is within 24 hours.

3. Bisantin Bai (PW-1) is mother of the deceased. As per version of this witness the appellant assaulted her daughter and he was not liking to her daughter and made certain comments regarding her complexion. Gangaram (PW-2) is father of the deceased, he deposed on the same line that as Basantin Bai (PW-1). From the statements of both the witnesses it is not clear as to what really happened on the date of incident or prior to the date of incident. Statements made by both the witnesses are bald in nature and the same is general statement.

4. 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 instigate 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.

5. As has been held by Hon'ble the Supreme Court in 2010 (1) SCC 750 – **Gangula Mohan Reddy Vs. State of Andhra Pradesh** the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s.306, there has to be a clear mens-rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

6. 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 thus:

“7. For offence u/s. 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 I.P.C. 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."

7. In the present case, the prosecution examined Bisantin Bai (PW-1) who is mother of the deceased and Gangaram (PW-2) who is father of the deceased. Both the witnesses are resident of Village Godhi. While the incident took place at H.S.C.L. Colony, Station Maroda, both the witnesses are not the neighbours of the locality,

therefore, they had no occasion to see as to what really happened with the deceased. The statement made by both the witnesses are hearsay evidence because they have deposed what is informed to them by the deceased.

8. In Kalyan Kumar Gagoi 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 circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is concerned, 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 other is inadmissible.

9. There is no suicidal note indicating real cause of death of the deceased. There is no dying declaration made by the deceased. As per version of Kunjlal Sahu (DW-1) and Tarabai (DW-2), they deposed that the deceased was suffering from stomach pain and she was going under treatment. From the overall assessment of the evidence there is no legally admissible evidence against the appellant for harassing the deceased prior to her death.

10. For commission of offence under Section 498-A, it has to be established that husband or relative of the husband subjected such a woman to cruelty.

For the purpose 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.

11. In the present case all the witnesses stated about the incident are hearsay witnesses, which is inadmissible evidence, therefore, it is not proved that the appellant committed any cruelty against the deceased, therefore, offence under Section 498-A of the IPC is not sustainable.

12. True it is that as per evidence, death of the deceased is caused within 7 years from the date of her marriage, but the question is whether section 113-B of the Indian Evidence Act, 1872 is applicable which reads as follows:

“ 113-B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.”

From the evidence, it is not established that the appellant who is husband of the deceased subjected the deceased to cruelty, therefore, presumption under Section 113 -B of the Evidence Act cannot be raised against the appellant.

13. For offence under Section 306 IPC there should be a clear *mens-rea* to commit the offence and there should be a direct or active act by the accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abatement, but from the record it cannot be inferred that the respondent instigated or intentionally aided the deceased to commit suicide.

14. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is set aside. The appeal is allowed. The appellant is acquitted of the charge under Sections 306 and 498-A of the IPC. 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

Santosh