

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 4 of 2010

Judgement reserved on 6-9-2018

Judgement delivered on 29-10-2018

- Radheshyam S/o Haldhar Saura aged about 29 years, R/o Salhejhariya Police Station Basna, Mahasamund (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Basna, District Mahasamund (CG).

---- Respondent

For Appellant : Mr. Manoj Paranjpe, Advocate.

For Respondent/State : Ms. K. Tripti Rao, Panel Lawyer

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 3-12-2009 passed by the Sessions Judge, Mahasamund (CG) in Sessions Trial No. 53 of 2009 wherein the said Court convicted the appellant for the commission of offence under Sections 306 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for eight years and to pay fine of Rs.5000/- with default stipulations.

2. In the present case, deceased namely Subhashini was wife of the appellant who committed suicide by hanging herself in the house of the appellant on 15-6-2009. The matter was reported and investigated. In investigation it is found that

deceased committed suicide due to harassment and continuous beating by the appellant. The appellant was charge-sheeted. After completion of the trial Court, the trial court has convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

- i) Ingredient of abetment which is defined in Section 107 of IPC is not established by the prosecution, therefore, charge is not established;
- ii) There is no sufficient evidence on record to show that the deceased was subjected to cruelty and it is also not clear as to what happened on the date of occurrence, therefore, finding recorded by the trial Court is not sustainable.
- iii) It is not a case where the appellant by his act or omission or by continuous course of conduct created such circumstances that the deceased had left with no option except to end her life;
- iv) Element of positive complicity on the part of the abettor at the point of time is lacking in the present case.
- v) Domestic quarrel and perfunctory abuses

normally occur in the family and the same is not constituting the abetment.

- vi) Prosecution has not examined any witness from neighbourhood regarding cruelty on the part of the appellant, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned State counsel would submit that the finding arrived at by the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below in which impugned judgment is passed.

6. To substantiate the charges, the prosecution has examined as many as 11 witnesses.

7. In the present case, place of incident is Salhejhariya where the deceased committed suicide. PW/1 Jagannath Bisal is father of the deceased who is resident of village Toshgaon. This witness has made general statement regarding beating to the deceased by the appellant. PW/2 Prakash Barik is also resident of village Toshgaon to whom the deceased informed about beating by the appellant. PW/3 Mahesh Bhoi is resident of village

Atarla to whom father of the deceased namely Jagannath informed that the appellant used to beat the deceased. PW/4 Ram Bihari is also resident of village Toshgaon and as per version of this witness when he reached to the house of the appellant on 14-6-2009 the deceased informed him that the appellant had beaten her. PW/6 Sanyasi deposed that in the meeting arranged by the people of locality the appellant assured that he will not beat the deceased in future.

8. From the entire evidence, the only evidence established by the prosecution is that the appellant had beaten the deceased. Though Dr. Jaya Prakash Prathan (PW/10) examined the deceased after her death, but as per report of this witness he did not find any mark of injury, therefore, version of prosecution witnesses is not supported by the version of medical evidence.

9. All the witnesses appear to be hearsay. 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."

10. When second hand evidence is inadmissible then it is difficult to hold that any physical or mental harassment was done by the appellant.

11. In order to hold a 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 In the present case, though prosecutrix informed about beating by the appellant, but the same is not substantiated by the

medical evidence. The witnesses cited by the prosecution are not the eye witnesses, but they are stating before the trial court what is informed to them by the deceased or family members of the deceased. In absence of the evidence of the deceased, version of other witnesses is treated to be hearsay evidence which has been held inadmissible in Kalyan Kumar Gogoi (supra).

13. Looking to the inadmissible evidence, it is not established that the deceased was beaten by the appellant. Charge under Section 306 of the IPC is not established, therefore, conviction of the appellant under Section 306 of IPC is not sustainable.

14. Consequently, 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 charge under Section 306 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 CrPC.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju