

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.580 of 2011**

Vyas Narayan Barik, Age 24 yrs. S/o Shri Arjun Barik, R/o
Village Madhapali, P.S. Saraipali, District Mahasamund (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through the P.S. Saraipali, District
Mahasamund (CG)

---- Respondent

For Appellant : Shri J.A. Lohani, Advocate

For State/ Respondent : Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****10/12/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 8.7.2011, passed by the 2nd Additional Sessions Judge, Mahasamund(CG) in Sessions Trial No. 38/2010, whereby the appellant has been convicted under Section 306 of the Indian Penal Code, 1860 (for short the I.P.C.) and sentenced to undergo R.I. for 5 years and fine of Rs.500/- with default stipulation.

2. In the present case, name of the deceased is Dhajabai who was wife of the appellant. She committed suicide by consuming poisonous substance on 15.10.2009 in night at village Medhapali.

As per the prosecution case, the appellant and his parents used to suspect the character of the deceased and assaulted her for a number of times, due to their overt act she ended her lie. The matter was investigated and the appellant was charge-sheeted. After completion of trial, the trial Court has convicted and sentenced the appellant as aforementioned.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submits as under :

(i) The case of the prosecution is based on circumstantial evidence but, the same is with incomplete chain to link the present appellant for crime in question.

(ii) The trial Court has not evaluated the evidence of witnesses who have not supported their version.

(iii) The appellant himself after having information of death of the deceased rushed to the Police Station to lodge report which shows his innocence.

(iv) There are material improvements in the statements of prosecution witnesses while deposing before the trial Court, therefore, prosecution has failed to prove the allegations against the appellant. As there is sufficient evidence, finding of the trial Court is liable to be reversed.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with.

6. As per version of Rohni Bai (PW1) who is aunt of the deceased, marriage between the appellant and the deceased took place 1 ½ years ago from the date of incident. As per version of this witness the appellant assaulted the deceased in her presence and threatened her to assault if they will not leave their place. Version of this witness is supported by the version of Gangaram(PW2). As per version of this witness, a Panchayat was convened in which the appellant admitted his guilt and thereafter, they received information regarding death of the deceased. Santlal (PW3) was also present in the Meeting. As per version of this witness, the appellant admitted altercation between him and the deceased. Ganakram (PW4) also confirmed that marriage of the appellant and the deceased took place 1 ½ years ago from the date of incident. Punitram (PW5) also confirmed about the meeting regarding quarrel between the appellant and the deceased. Evidence of these witnesses goes to show that the appellant has harassed the deceased frequently till her death. All the witnesses were subjected to searching cross-examination but nothing could be elicited in favour of the defence.

7. As per Section 113A of the Indian Evidence Act, 1872, when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation – For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code, 1860 (45 of 1860).

8. True it is that mere fact of suicide within a period of 7 years by the wife will automatically not attract this provision but the fact remains in the present case that there is ample evidence against the present appellant for harassing the deceased since marriage upto her death.

9. The trial Court has elaborately discussed the entire evidence and came to the conclusion that there is positive act on the part of the appellant to instigate or aid in committing suicide by the deceased. Looking to the act of the appellant, mens rea on his part is established which leads to committal of suicide by the deceased. The finding of the trial Court is based on proper marshalling of evidence and this court has no reason to record a contrary finding.

10. Abetment to commit suicide is an offence punishable under Section 306 IPC, for which the trial Court has convicted and sentenced the appellant and this Court has no reason to interfere with the finding, therefore, conviction of the appellant under Section 306 IPC is hereby affirmed.

11. Heard on the point of sentence:

The trial court has awarded jail sentence of R.I. for 5 years and fine of Rs. 500/- for commission of offence under Section 306 of IPC. Looking to the gravity of the offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with.

12. Accordingly, the appeal is liable to be and is hereby dismissed.

13. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released after getting remission, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE