

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1530 of 2015**

Jagan Gawde, S/o. Lachchhu Gawde, aged about 30 years,
Occupation-Mason, Caste Madiya, R/o. Village Tirthum,
Pujaripara, Police Station Kodenaar, Distt. Bastar (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Station House Office, Police
Station Kodenaar, Distt. Bastar (Chhattisgarh)

---- Respondent

For the appellant : Shri Manoj Mishra, Advocate
For the respondent/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****28.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 05.10.2015 passed by Sessions Judge, Bastar at Jagdalpur (CG) in Sessions Trial No.67/2015, wherein the said Court convicted the appellant for the commission of offence under Section 306 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, name of the deceased is Bodi Gawde, who was the wife of the appellant. It is alleged that after the marriage the appellant harassed the deceased and assaulted her brutally that is why she committed suicide by hanging.

3. To substantiate the charges, the prosecution has examined as many as 10 witness. Smt. Mirki (PW-1) is mother of the

deceased. As per the version of this witness, injuries were found on the body of the deceased on the date of incident. But she was not aware as to what had really happened in the house of the deceased at Village Tirthum. This witness is the resident of Village Bastanar and she has no occasion to see the incident occurred in the house of the deceased at Village Tirthum. Bijlu Mandavi (PW-2) is resident of Bastanar and he deposed what was informed to him by some other person. Dasru Mandavi (PW-3) is brother of the deceased and he is also resident of Village Bastanar. He deposed that his sister informed him regarding beating by the appellant. Smt. Mangli Gawde (PW-5) is the resident of Village Tirthum and she deposed that sometime there was quarrel between the deceased and the appellant but she is not aware of the reason for quarrel and her version is not sufficient to establish that it is the appellant who caused injuries on the body of the deceased.

4. True it is that Dr. Pawan Tekade (PW-9) found 19 injuries on the body of the deceased, but there is no direct evidence to show that the injuries were caused by the appellant. The appellant is the husband of the deceased residing with her, but for invoking Section 106 of the Indian Evidence Act, 1872, it is essential to prove the sole presence of the appellant on the same house with the deceased on the date of incident. Then only it can be said that factum of causing injury is within the knowledge of the appellant. This Section shows that when any fact is specially

within the knowledge of a person the burden of proving the fact is upon him. This Section speaks about the burden on the appellant only when prosecution is able to establish that he is the sole person who was in the company of the deceased while she sustained injuries. In the present case no one is saying that the appellant was the sole resident of the house in the company of the deceased and when this burden is not discharged by the prosecution the burden of proving for injuries will not lie on the appellant.

5. True it is that the appellant is the husband of the deceased and there is serious doubt that he may have inflicted injuries upon his wife, but any suspicion however strong cannot take place of proof.

6. 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.

7. 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.

8. As has been held by this Court in the 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."

9. In the present case, the witnesses adduced by the prosecution are hearsay witnesses and hearsay evidence is inadmissible in evidence. The prosecution cannot be relieved without establishing the fact as to who really caused injuries on

the body of the deceased but the prosecution has failed to discharge such burden. Therefore, it is not established that it is the appellant who caused injuries on the body of the deceased thereby instigated his wife to commit suicide.

10. 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 charges under Section 306 of the IPC. He is in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

Sd/-

(Ram Prasanna Sharma)

JUDGE