

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1347 of 1999

1. Panchram, S/o Viseylal Sahu, aged about 25 years.
2. Somvati Bai, W/o Vlseylal Sahu, aged about 39 years.

Both residents of Bhramadaye Para, Khamtaray, District Raipur.

---- Appellants

Versus

- State of MP (now CG), through S.O. Khamtaray, District Raipur.

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer.

Judgement by Hon'ble Shri Justice Pritinker Diwaker

08/02/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 4.3.1999 passed by the Special Sessions Judge (Atrocities), Raipur in S.T. No.304/98 convicting the accused/appellants under Section 306 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for 5 years.
2. In the present case name of deceased is Thagiya Bai, wife of accused/appellant No.1 and daughter-in-law of accused/appellant No.2.
3. Case of the prosecution, in brief, is that the marriage of Thagiya Bai (deceased) was solemnized with accused/appellant No.1 about 7-8 years prior to the date of incident i.e. on 10.6.1998, on which date said Thagiya Bai was found lying dead on the railway track near her matrimonial home. Merg intimation (Ex.P-4) was lodged on 10.3.1998 at the instance of accused/ appellant No.1. Inquest over the body of deceased was

conducted vide Ex.P-6. On the report lodged by the father of deceased, FIR (Ex.P-1) was registered against the appellants and deceased accused Viseylal under Section 306 of IPC.

4. After completion of investigation, charge sheet was filed against the accused persons for the offence punishable under Section 306, 34 IPC and accordingly the charge was framed by the trial against them. The prosecution in order to bring home the charges levelled against the accused persons examined 9 witnesses in all. Statement of accused persons were also recorded under Section 313 Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner described above.
6. During the pendency of this appeal, accused/appellant No.2 Visheylal has expired and therefore this appeal is confined to accused/appellants No.1 & 3 only.
7. Learned counsel for accused/appellant submits that even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 306 IPC for the reason that taking an overall view of the material available on record into consideration, the ingredients of abetment contained under Section 107 of IPC are totally missing. Reliance is placed on the judgment rendered in the matter of Sanju alias Sanjay Singh Sengar v. State of MP reported in (2002) 5 SCC 371.
8. On the other hand, supporting the impugned judgment learned counsel for the State submits that harassment to the deceased was to such an extent that she was left with no other option but to end her life. Thus the conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting

interference by this Court.

9. I have heard counsel for the parties at length. I have gone through the impugned judgment as also trial court record.
10. Bisahu Ram(PW-1) is the father of deceased. In his evidence he has stated that his daughter was married to appellant No.1 Panchram, about 7-8 years ago. She had no issue and due to that she was subjected to torture by both physically and mentally, by the accused persons as a result of which she committed suicide by jumping over a moving train. He has further stated that the deceased used to visit his house and during those visits she used to tell that the accused persons used to beat and harass her on account of her inability to deliver a child. In the cross examination this witness has admitted that he lodged the report after three days of the incident. He has further admitted that next day of the incident, the matter was reported to the Sarpanch and other elders members of the village and as per their saying, he lodged the report with the police. He has further admitted that prior to this incident, he had not lodged any report in the police station with regard to harassment and cruelty committed by the accused persons towards his daughter. He has stated that though community meeting was convened on four occasions in respect of harassment committed upon his daughter by the accused persons but he is not aware of the reduction of minutes of those meetings into writing.
11. Smt. Sawana Bai (PW-2) is the aunt of deceased and has stated that the deceased used to tell her that the accused persons used to beat her for the reason that she could not deliver a child.
12. Parmanand (PW-3) is the witness of inquest (Ex.P-3).
13. Smt. Shanti Bai (PW-4) is the mother of deceased and has deposed almost on the same lines as that of PW-1, father of deceased.

14. S.K. Dwivedi (PW-5) is the Assistant Sub Inspector of Police who assisted in the investigation.
15. Dr. Ullhaas Gonnade (PW-6) is the doctor who conducted post-mortem examination over the body of deceased and opined that cause of death was shock and haemorrhage as a result of multiple injuries to body.
16. Shivchand Shukla (PW-7) is the Constable who helped in the initial investigation. Rajesh Khare (PW-8) is the investigating officer who has duly supported the prosecution case.
17. Nand Kumar Sahu (PW-9) is the person who was President of Sahu Community at the relevant point of time when the meetings with respect to harassment committed upon the deceased were convened. He has stated that there was a dispute between the deceased & her husband which they settled amicably.
18. Close scrutiny of the evidence makes it clear that there is no material or evidence to show that the accused/appellants had in any way goaded, provoked, incited, urged or encouraged the deceased to commit suicide. Even if looked from any angle, the allegations made against the appellants i.e. the deceased committed suicide on account of harassment by the accused/appellants, do not constitute the offence punishable under Section 306 IPC as the same do not fulfil the necessary ingredients of abetment as defined in Section 107 IPC. There was also evidence on record that the deceased was not able to deliver a child and thus, in our opinion, the possibility of deceased committing suicide out of depression due to her infertility/inability to deliver a child, cannot be ruled out. The trial Court has thus committed an illegality in convicting and sentencing the accused/appellants under Section 306 of IPC though the basic ingredients of abetment provided under Section 107 of IPC are quite amiss.

19. Accordingly, the appeal is allowed. Conviction of appellants under Section 306 IPC are hereby set aside and they are acquitted of that charge. The appellants are already on bail, therefore, their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
J U D G E

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