

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2416 of 1999**

1. Sukhiram Gadariya, son of Sumeri, Gadariya, aged about 35 years,
2. Dukhiram Gadariya, son of Sumeri Gadariya, aged about 24 years,
3. Baisakhiya Bai, wife of Sumeri Gadariya, aged about 55 years --- **Her appeal is abated vide order dated 6.2.2018**

All residents of Village Nawapara (Damru) Balodabazar, District Raipur, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Shri Vinod Kumar Tekam, Advocate
For State/Respondent	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board**

10.4.2018

1. The instant appeal has been preferred against the judgment dated 27.8.1999 passed by the 2nd Additional Sessions Judge, Baloda Bazar in Sessions Trial No.125 of 1997, whereby each of the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.200/- with default stipulation
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.300/- with default stipulation

2. During pendency of this appeal, Appellant No.3, Baisakhiya Bai died. Therefore, her appeal is abated vide order dated 6.2.2018.
3. Case of the prosecution, in brief, is that Appellant No.2, Dukhiram, is husband of Panchmati Bai (the deceased), Appellant No.1,

Sukhiram is elder brother of Appellant No.2 and Appellant No.3, Baisakhiya Bai is mother-in-law of the deceased. Marriage between Appellant No.2 and Panchmati Bai was solemnised 3 years prior to the date of incident, i.e., 2.1.1997. Appellant No.1 lodged a report that Panchmati Bai had set her on fire at home. On receiving this information, Assistant Sub-Inspector D.P. Shukla (PW14) went to the spot along with police personnel and Additional Tahsildar D.S. Kunjam (PW9). As told by Panchmati Bai, Dehati Nalishi (Ex.P13) was recorded by D.P. Shukla (PW14). Dying declaration (Ex.P9) of Panchmati Bai was recorded by Additional Tahsildar D.S. Kunjam (PW9) in which she told that her mother-in-law/Appellant No.3 and the other two Appellants used to abuse her and her parents due to which she set her on fire after pouring kerosene on her body. Thereafter, Panchmati Bai was taken to the hospital at Baloda Bazar. She was examined by Dr. R.S. Joshi (PW1). His report is Ex.P1 in which he opined that Panchmati Bai had sustained 80% burn injuries. She was referred to Medical College Hospital, Raipur, but before taking her to Raipur, she died in the hospital at Baloda Bazar. Morgue Intimation (Ex.P12) was recorded by Constable Nand Kumar (PW6). Inquest (Ex.P8) was prepared. Post mortem examination on the dead body of Panchmati Bai was conducted by Dr. M.M. Deodhar (PW5) on 3.1.1997. His report is Ex.P6 in which he opined that cause of death was ante mortem extensive burns and mode of death was shock. Statements of witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, a charge-sheet was filed against the Appellants under Sections 498A and 306/34 of the I.P.C. Charges were framed against them under Sections 498A and 306 of the I.P.C., in the alternative under Section 304B of

the I.P.C.

4. To bring home the offence against the Appellants, the prosecution examined as many as 14 witnesses. The Appellants were also examined under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. No witness has been examined in their defence.
5. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants argued that finding of the Court below is perverse and contrary to law and, therefore, the same is liable to be set aside. There is no direct or indirect evidence of abetment or enticement by any of the Appellants due to which the deceased committed suicide. There is no evidence on record against the Appellants that they had proximate relation to her death and also it is not indicated that any of the Appellants had instigated or cooperated or assisted the deceased in committing suicide. The Court below should have seen that the ingredients of Section 107 of the IPC are not at all attracted in the present case. There is no allegation of demand of dowry or cruelty by the Appellants. Thus, the offence alleged against the Appellants is not made out.
7. On the contrary, Learned Counsel appearing for the State/Respondent supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and

perused the record with utmost circumspection.

9. At this juncture, it is appropriate to look into the provisions of Sections 306 and 107 of the Indian Penal Code, which read as under:

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing.—A person abets the doing of a thing, who—

First.— Instigates any person to do that thing;
or

Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

10. As per the definition given in Section 107 of the Indian Penal Code, an abetment is constituted by any one of the following three ingredients:

- “(i) instigating a person for doing of a thing, or
- (ii) engaging in a conspiracy for the doing of that thing, or
- (iii) intentionally aiding the doing of that thing.”

11. A person is said to “instigate” another to an act, when he actively suggests or stimulates him to the act by any means of language direct or indirect whether it takes the form of express solicitation or of hints, insinuation or encouragement. The word “instigate” means to goad, urge forward, provoke, incite or encourage to do an act.

12. As Section 306 of the IPC makes abetment of commission of suicide punishable, therefore, for making liable for an offence punishable under Section 306 of the IPC, it is the duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused, it is necessary to see that his act must fall in any of the three ingredients as enumerated under Section 107 of the IPC and, therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more persons in any conspiracy for seeking that the deceased commits suicide or he must intentionally aid by any act or illegal commission of the suicide by the deceased.

13. Further, it is observed by the Supreme Court in **AIR 2010 SC 327 (Gangula Mohan Reddy v. State of Andhra Pradesh)** as under:

“**20.** Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide,

conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

- 14.** In **(2011) 3 SCC 626 (M. Mohan v. State Represented By The Deputy Superintendent of Police)**, the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence:

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

- 15.** In the light of the above enunciation of law, facts of the present case are to be examined minutely.
- 16.** There is no dispute that the marriage took place 3 years prior to the date of incident. Within 7 years of her marriage, the deceased committed suicide and her death was unnatural.
- 17.** Dr. R.S. Joshi (PW1) is the witness who first examined the deceased in her burnt condition on 2.1.1997. His report is that the deceased had sustained 80% burn injuries.
- 18.** Musuram (PW2), Ledhwa (PW3) and Hiranman (PW4) have not

supported the case of the prosecution and have been declared hostile. They have stated that a village meeting had been convened in which father of the deceased had stated that money of *Phaldan* will be given by Appellant No.2/husband of the deceased to him thereafter he will send his daughter (the deceased) to her in-laws' house. They have further stated that in the village meeting, no complaint was made by deceased Panchmati Bai.

19. Constable Nand Kumar (PW6) has stated that he had taken the dead body of deceased Panchmati Bai for post mortem examination. Sub-Divisional Officer (Police) P.K. Singh (PW7) prepared inquest (Ex.P8) and recorded statements of some witnesses. Head Constable Radheshyam Mishra (PW12) has stated that Appellant No.1, Sukhiram had lodged a report on 2.1.1997 that Panchmati Bai had burnt and, therefore, he had recorded his report in Rojnamcha Sanha (Ex.P10). Hemantram (PW13) is the witness before whom the police had seized one container of kerosene, a stick of match box and saree vide Ex.P11.
20. Bisambhar (PW8), father of the deceased has stated that the Appellants were harassing and torturing his daughter Panchmati Bai (the deceased). They had taken back the deceased to their house after holding a panchayat meeting. Next day, she committed suicide. He has further stated that the deceased had a 1½ months' old son. He has stated that a panchayat meeting had been convened in which the deceased had complained that she was not being given clothes to wear and food to eat. On this, she was persuaded and sent back to her in-laws' house. During cross-examination, he has admitted that Appellant No.2/husband of the

deceased was living with the deceased separately. He has further admitted that the Appellants were maintaining the deceased happily according to their standards. He has admitted that the deceased, on visiting her maternal house, had stayed there for about 9 months and thereafter she had returned to her matrimonial house. He has further admitted that a sum of Rs.4,000/- for *Phaldan* was left to be given by the Appellants, therefore, he had asked to first give the amount of *Phaldan* and thereafter to take the deceased back. He has further admitted that visit of the deceased to her in-laws' house was not prohibited.

21. Panchram (PW10), brother of the deceased has stated that in the first Holi festival after the marriage, he had taken his sister (the deceased) back to her maternal house. At that time, the deceased had told him that her mother-in-law/Appellant No.3 and husband/Appellant No.2 used to harass and torture her and they were not giving her food. She stayed at her maternal house for about 4-5 months. Thereafter, a village meeting was convened in which the Panchas persuaded both the parties. Few days thereafter, Appellant No.1 and his uncle came to the maternal house of the deceased and took her back to her in-laws' house. 1-2 days thereafter, the deceased committed suicide. During cross-examination, he has also admitted that first farewell after the marriage was good. Thereafter, she stayed at her matrimonial house for about 6 months, but she did not make any complaint. He has also admitted that 1-2 months after the marriage, a partition had taken place between Appellant No.1 and Appellant No.2. Thereafter, Appellant No.2/husband was living with the deceased separately.

- 22.** Fagnibai (PW11), mother of the deceased has stated that on the second occasion, when the deceased had come to her maternal house, she had told that her husband/Appellant No.2 used to beat her and her mother-in-law/Appellant No.3 did not give her food. She has further stated that thereafter she had stayed at her maternal house for about 7 months. Thereafter, a village meeting was called. After convening of the meeting, the deceased was taken back to her in-laws' house. Next day, the deceased committed suicide. She has also admitted that Appellant No.2, after the marriage, had separated from his family and was living with the deceased separately. She has further admitted that according to their standards, they were maintaining the deceased happily. She has further admitted that after the death of the deceased, they came to know from others that in-laws of the deceased used to beat the deceased. The deceased never told them about said beatings.
- 23.** Additional Tahsildar D.S. Kunjam (PW9) is the witness who recorded dying declaration (Ex.P9) of the deceased on 2.1.1997. As per his statement, he recorded the dying declaration (Ex.P9) in the Government Hospital, Baloda Bazar. But, as per the dying declaration (Ex.P9), it was recorded at Village Nawapara. As per Dehati Nalishi (Ex.P13), the dying declaration (Ex.P9) was recorded in the house of the deceased at Village Nawapara. Thus, statement of D.S. Kunjam (PW9) that he recorded the dying declaration (Ex.P9) in the Government Hospital, Baloda Bazar is totally contrary to the dying declaration (Ex.P9) and Dehati Nalishi (Ex.P13). Hemantram (PW13), who is a witness of dying declaration (Ex.P9), has stated that in his presence, the Additional

Tahsildar had not put any question to the deceased. From a perusal of the dying declaration (Ex.P9), it reveals that the deceased committed suicide only because her mother-in-law/Appellant No.3 taunted her that she had returned from her maternal house after a long stay of 9 months and on this the Appellants had abused the parents of the deceased and, therefore, the deceased committed suicide.

- 24.** A minute examination of the above evidence, particularly, the statements of Bisambhar (PW8), father of the deceased, Panchram (PW10), brother of the deceased and Fagnibai (PW11), mother of the deceased makes it clear that the deceased had stayed at her maternal house for a long period and she was taken back by the Appellants to her matrimonial house after a village meeting. From the statements of the above witnesses, it is also clear that after the marriage, Appellant No.2/husband was living with the deceased/wife separately and the Appellants were maintaining the deceased well according to their standards. There is nothing on record to show that any cruelty was done with the deceased for demand of dowry nor was she subjected to continuous cruelty. But, from the record, it is clear that Appellant No.2 was living with his wife/deceased separately. From the evidence, it is also clear that father of the deceased himself had demanded money of *Phaldan* and had said that he will send the deceased back only on giving him the money of *Phaldan*. From the evidence, it is also clear that after staying at her maternal house for about 8-9 months, the deceased committed suicide at her matrimonial house on the next day of her return thereto. As per the dying declaration (Ex.P9), mother-in-law/Appellant No.3

had taunted the deceased for her stay at her maternal house for a long period of about 9 months and the Appellants had abused her parents, therefore, she committed suicide. Though the dying declaration (Ex.P9) was recorded at which place and before whom is not clear yet if according to Ex.P9, the deceased had given her statement, even then from her statement, the only thing that is established is that Appellant No.3/mother-in-law had taunted the deceased for her stay at her maternal house for a long period of about 9 months and the Appellants had abused her parents. This does not establish that the deceased was subjected to continuous cruelty due to which she committed suicide.

- 25.** In **1995 (3) Supp SCC 731 (Mahendra Singh v. State of M.P.)**, their Lordships of the Supreme Court, considering the definition of 'abetment' given in Section 107 of the IPC, found that the charge and conviction of the Appellant for an offence under Section 306 of the IPC was not sustainable merely on the allegation of harassment to the deceased. It is further held that none of the three ingredients of abetment are attracted on the statement of the deceased.
- 26.** In the instant case also, there is nothing on record to attract the ingredients of Section 107 of the IPC. Thus, the offence alleged against the Appellants is not proved beyond reasonable doubt.
- 27.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. Appellants No.1 and 2 are acquitted of the charges framed against them.
- 28.** It is reported that the Appellants are on bail. Their bail bonds shall

continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.

- 29.** Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge