

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.2187 of 1999**

Bhagirathi, S/o. Shankerram, aged about 25 years, R/o.  
Village Pachira, PS Surajpur, Distt. Surguja (MP) (Now CG)

---- Appellant

**Versus**

State of MP, Through Police Station Surajpur, Distt. Surguja MP  
(Now Chhattisgarh)

---- Respondent

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For the appellant : None present  
For the respondent/State : Shri Rajendra Tripathi, Panel Lawyer

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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****27.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 12.8.1999 passed by Additional Sessions Judge, Surajpur, Session Division Surguja (MP Now CG) in Sessions Trial No.318/1994, wherein the said Court convicted the appellant for the commission of offence under Sections 306, 304-B and 498A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.500/-; RI for 8 years: RI for one year and to pay fine of Rs.200/- respectively with default stipulations.

2. In the present case, name of the deceased is Indraso Bai, who was the wife of the appellant. It is alleged that the appellant demanded dowry and harassed the deceased for non-fulfilling the demand of dowry and again committed cruelty against her and

abetted her to commit suicide. The deceased committed suicide in the intervening night of 01.6.94 and 02.6.94 by hanging.

3. To substantiate the charges, the prosecution has examined as many as 11 witnesses. To nullify the charges the defence side has examined two witnesses.

4. Shivram (PW-1) is brother of the deceased and resident of Village Korja. He deposed that after marriage his sister came to parental home and stated regarding assault by the appellant on account of less dowry. Dhanushdhari (PW-4) is father of deceased and resident of Village Korja. He also deposed that when her daughter came to parental house she stated about harassment and assault by the appellant. Smt. Kamla (PW-5) is mother of the deceased and resident of village Korja. She also deposed on the same line with that of Dhanushdhari. Rest of the witnesses are investigating officers or persons who assisted during investigation after registration of FIR.

5. As per merg intimation (Ex-P/7), the incident took place at Village Pachira on 02.6.1994. All the witnesses examined by the prosecution are hearsay witnesses and from their evidence it is not clear what had really happened on the date of incident or before the incident. No one made any complaint during lifetime of the deceased and there is no medical evidence during the life time of the deceased to show any physical violence on her body.

6. For commission of offence under Section 304B of the IPC, it has to be proved that the death of a woman is caused by any

bodily injury or occurs otherwise than under normal circumstance within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

7. Definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961 reads as under:

“2. Definition of 'dowry'. - In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation II – The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code.”

8. Plain reading of Section 2 of Dowry Prohibition Act., 1961 makes it clear that demand must be made on account of marriage, but there is no evidence as to who really demanded the dowry and from whom and at what time the demand was made. Statement made by all the witnesses of the prosecution are hearsay evidence and the same is not received as relevant evidence.

9. 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 demand for dowry was made or any physical or mental harassment was done by the appellant.

**11.** For commission of offence under Section 498-A, it has to be established that husband or relative of the husband subjected such a woman to cruelty.

For the purpose of this Section , “cruelty” means -

“ (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

**12.** In the present case, evidence adduced by the prosecution is hearsay evidence and the same is not admissible in evidence, therefore, on the basis of inadmissible evidence it cannot be inferred that any cruelty was made against the deceased.

**13.** 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 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.

**14.** 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.

**15.** 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.”

**16.** In the present case, there is no evidence to establish as to what really happened on the date of incident or prior to the date of incident. In totality of facts, it is not established that the deceased was abetted by the appellant. Charges under Section 304 B, 498A and 306 IPC is not established against the appellant as the evidence for any of the offence is lacking. Finding arrived at by the trial Court is not sustainable.

**17.** 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 charges under Sections 304B, 498A and 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**