

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SB: Hon'ble Mr. Justice Ram Prasanna Sharma****CRA No. 2786 of 1999**

1. Dev Ranjan Vachchad s/o. Jitendra Nath Vachchad, Caste Bengali, aged about 29 yearss, Driver.
2. Smt. Saraswati w/o. Jaidev Vachchad Caste: Bengali, aged abot 32 years, occupation Housewife.

Both are residents of Bengali Camp, Kirandal, Police Station Kirandal, District Bastar (MP) Now CG.

---- Appellants.**Versus**

- State of Madhya Pradesh (now CG).

-Respondent.

For Appellants	:	Mr. Rajendra Tripathi, Advocate
For respondent/State	:	M. Bhaskar Payasi, Panel Lawyer

Oral Judgment**(11-5-2018)**

This appeal is directed against the judgment of conviction and order of sentence dated 5-10-1999 passed by 3rd Additional Sessions judge, Bastar, Sessions Division Bastar at Jagdalpur in Sessions Trial No. 328 of 1998, wherein the said Court has convicted both the appellants for commission of offence punishable under Sections 306 read with Section 34 and 498(A) of the IPC 1860 and sentenced them to undergo RI for ten years and to pay fine of Rs.5,000/- each and RI for three years and to pay fine of Rs.5,000/- each respectively with

default stipulations.

2) In the present case, name of deceased is Nisha Rani who was married to appellant Devrajan about 1 ½ years ago since her death. It is alleged that appellant Smt. Saraswati is sister-in-law (Bhabhi) of the appellant Devrajan and both were having illicit relation and they committed physical violence against the deceased and mentally harassed her, therefore, she committed suicide by hanging.

3) To substantiate the charge prosecution has examined as many as 10 witnesses. To nullify the charge, defence side examined two witnesses.

4) I have heard learned counsel for both parties and perused the record of the trial Court.

5) Dr. B.L. Suryavanshi (PW/4) conducted autopsy of the deceased and as per version of this witnesses cause of death of deceased Nisharani is hanging and nature of death is suicidal. Case of the prosecution is based on the statements of PW/2 Bola Sarkar, who is maternal uncle of the deceased, PW/6 Sanjit Roy who is brother of the deceased, PW/7 Sujata Malik, PW/8 Beena Viswas and PW/9 Narayan Chandra Roy, who is maternal uncle of the deceased.

6) As per version of PW/2 Bola Sarkar, he met the deceased after marriage and she informed him that both the appellants were torturing her. PW/6 Sanjit Roy deposed that the deceased informed him

regarding illicit relation between both the appellants. PW/7 Sujata Malik deposed that deceased informed her regarding beating to her by appellant Saraswati and behaviour of both the appellants was objectionable against her. PW/8 Beena Biswas deposed that deceased informed her that in-laws have assaulted her. PW/9 Narayan Chandra Roy deposed that deceased informed him regarding quarrel between the deceased and appellant Saraswati.

7) The incident took place on 13-5-1997 at wee hours at Bangali camp, Kirandul. PW/2 Bola Sarkar, PW/6, Sanjit Roy, PW/7 Sujata Malik and PW/9 Narayan Chandra Roy are the residents of village Bacheli and PW/8 Beena Biswas is a resident of village Kalkoli. No one was examined from Bangali camp where the said incident took place. There is nothing on record to show that as to what really happened with deceased on the date of incident or prior to date of incident which was sarcastic for her to end her life.

8) So far as the charge under Section 306 of the IPC is concerned, 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 instigates 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.

- 9) 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.

- 10) Again, in the matter of **Rajendra Das Vs. State of C.G., reported in 2013 (2) CGLJ 387**, 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 evidence 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.”

11) In the present case, no complaint was made during life time of the deceased against any of the appellants and no opinion of expert is there regarding physical violence against the deceased. No suicidal note is produced before the trial Court and there is no dying declaration of the deceased to establish the real cause of her death. All the witnesses examined by the prosecution are hearsay evidence deposed before the court on the basis of what is stated to them by the deceased, but their version is not corroborated from any material evidence. Now, the point for consideration is whether hearsay evidence is admissible evidence and whether the findings can be recorded on the basis of hearsay evidence.

12) In matter of **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 circumstances, 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.

As hearsay evidence of this witness inadmissible the same is not to be used against the respondents to bring home the guilt.

13) The respondents have also been charged for commission of offence punishable under Section 498A of the IPC. Section 498A of IPC reads as under:-

Section 498 A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any willful 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.

- 14) In the present case, there is no legal evidence to show any physical assault against the deceased. It is also not established as to what prompted the deceased to take extreme step to end her life. In absence of any cogent evidence, charges under Section 498 A is not substantiated against the respondents.
- 15) In the present case, it is not proved that any of the respondents have instigated deceased Nisharani on the date of incident or on a previous date to commit suicide or they have intention to aid to commit suicide. Looking to the facts and circumstances of the case, I am of the view that the finding arrived at by the trial Court is not sustainable.
- 16) Accordingly, the appeal is allowed. Conviction and sentenced passed by the trial Court is set aside. The appellants are acquitted of the charges under Section 306 and 498-A of the IPC framed against them. Both the appellants are reported to be on bail. Their bail bonds shall continue for a period of six months in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju