

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2060 of 2000

Judgment Reserved on : 8.2.2018

Judgment Delivered on : 7.5.2018

Lakhan, S/o Hari, Caste Harizan, aged about 25 years, R/o Nawapara, Sadhvani, Police Station Gorela, District Bilaspur, M.P. (now Chhattisgarh)

---- Appellant

versus

- 1. State of M.P. (now Chhattisgarh) through the Police Station Gorela, District Bilaspur
- 2. Ganga Prasad, S/o Sarju Prasad Raidas, aged 58 years, R/o Chandpur, Police Station Jaithari, District Shahdol, M.P.

--- Respondents

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 21.7.2000 passed in Sessions Trial No.338 of 1997 (a Complaint Case) and Sessions Trial No.198 of 1995 by the Fourth Additional Sessions Judge, Bilaspur, Link Pendra Road, District Bilaspur convicting and sentencing the Appellant as under:

Conviction	Sentence
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.2,000/- with default stipulation
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.1,000/- with default stipulation

2. Facts of the case, in brief, are that the Appellant is the husband of

Durgabai (deceased). Marriage between them was performed in the year 1987 and Gouna took place in the year 1992. Out of their wedlock, two children took birth. On 15.4.1995, the Appellant/husband of the deceased lodged morgue intimation (Ex.P3) stating that in the night of 14.4.1995 a domestic dispute took place between him and the deceased and thereafter she went out to attend the call of nature, but she did not return after passing of a long time. On being searched, he found that she had hanged herself on a tree with her saree. On bringing her down, she died after 15 minutes. Inquest (Ex.P4) was prepared. At that time, father and mother of the deceased, namely, Ganga Prasad and Gitabai, respectively and nana (maternal grandfather) of the deceased Jhaduram were present there. Post mortem examination was conducted by Dr. R.C. Mishra (PW5) with the help of Dr. R.K. Gupta and Dr. L.N. Patel. Post mortem report is Ex.P2, according to which, on external examination, some injuries of ante mortem in nature were found. Cause of death is opined to be asphyxia. During morgue inquiry, statements of witnesses were recorded in which it was found that after the marriage, the Appellant/husband and in-laws of the deceased were making demand for TV and Scooter and, therefore, the deceased committed suicide. On the basis of morgue inquiry, First Information Report (Ex.P10) was registered. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 306 of the Indian Penal Code. Charge was framed against him under Section 306 of the Indian Penal Code. Subsequently, Ganga Prasad, father of the deceased filed a private complaint which was registered under Section 498A of the Indian Penal Code as Sessions Trial No.338 of 1997 against

the Appellant and his parents Hari and Rashidanbai.

3. Since both the sessions trial arise out of the same incident, after trial, the Trial Court decided both the cases by common judgment dated 21.7.2000 and acquitted Hari and Rashidanbai of the charge framed against them under Section 498A of the Indian Penal Code, but convicted and sentenced the present Appellant under Sections 306 and 498A of the Indian Penal Code as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. To rope in the Appellant, the prosecution examined as many as 6 witnesses. Statement of the Appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.
5. Learned Counsel for the Appellant argued that the Appellant has falsely been implicated. From the entire evidence collected by the prosecution, no offence under Section 306 of the IPC is made out. Case of the prosecution is based on the statements of Ganga Prasad (PW1), father, Jhaduram (PW2), nana (maternal grandfather), Gitabai (PW3), mother and Naresh (PW4), cousin of the deceased. Reliance has been placed on **2014 Cri.L.J. 2425 (SC) (Mangat Ram v. State of Haryana)**.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment and submitted that the Appellant has rightly been convicted and sentenced by the Trial Court.
7. I have heard Learned Counsel appearing for the parties and

perused the material available on record with utmost circumspection.

8. There is no dispute that the marriage between the Appellant and the deceased was solemnised in the year 1987, Gouna was performed in the year 1992 and out of their wedlock two children took birth.
9. Inspector Rajeshwar Singh (PW6) has stated that on 15.4.1995, on the information of the Appellant, he recorded morgue intimation (Ex.P3). Inquest (Ex.P4) was prepared by him on the spot. After morgue inquiry, he recorded FIR (Ex.P10). Thereafter, he recorded statements of witnesses under Section 161 of the Cr.P.C.
10. A bare perusal of inquest (Ex.P4) reveals that at the time of preparation of the inquest, Ganga Prasad, father of the deceased, Gitabai, mother of the deceased and Jhaduram, nana of the deceased were present there.
11. Post mortem was conducted by Dr. R.C. Mishra (PW5). His report is Ex.P2 in which he has opined the cause of death to be asphyxia. He has also reported that some abrasions were found on the body of the deceased, but they were ante mortem in nature.
12. Ganga Prasad (PW1), father of the deceased has stated that at the time of Gouna, the Appellant had demanded TV and Scooter. He had said that whatever he could give had been given by him earlier. He has further stated that at the in-laws' house also, the Appellant and in-laws of the deceased were asking the deceased why did she not bring TV and Scooter. 8 days prior to the death of

the deceased, when the deceased had visited her paternal house, she had told him that she had been warned that she will be put in danger if she does not bring TV, Scooter and ½ tola gold. Even 8 days had not passed after her return to her in-laws' house, his brother-in-law (sala) Bechuram informed him that the deceased had died. In paragraph 10 of his cross-examination, he has admitted that TV and Scooter were demanded at the time of Gouna. At that time, he had given cash of Rs.50/- and a Radio. In paragraph 19, he has further admitted that after 11 years of the Gouna, the deceased had started leaving separately from the in-laws' house along with her husband/Appellant. He has further admitted that he along with his wife was visiting the separate house of the deceased and the Appellant and the deceased and the Appellant/husband were also visiting their house. In paragraph 12, he has admitted that his daughter (the deceased) had told him that her in-laws used to make demand for TV and Scooter in drunken condition. He has further admitted that he never made any complaint regarding the demand of dowry before the death of the deceased. In paragraphs 14, 15 and 16, he has further admitted that mother-in-law of the deceased had gifted the deceased a coin of 25 paise made of gold which she had given to him. To take back the said coin, the deceased and her husband/Appellant had come to his house 7 days prior to the death of the deceased and they had returned on 9.4.1995.

13. Jhaduram (PW2), nana (maternal grandfather) of the deceased has stated that in the year 1992, when he came to his house, his wife told him that the deceased had informed that her in-laws and husband were harassing her by abusing her due to non-bringing of

TV and Scooter in dowry. Next day, when he went to the village of the deceased, he came to know that the deceased had died. He has further stated that when she was alive, she was visiting his house and had told him that her in-laws make demand for TV and motorcycle. But, these facts are not mentioned in his case diary statement (Ex.D2). In paragraph 8, he has admitted that the deceased had told him that when her nanad (sister-in-law) visits her in-laws house, at that time only, disputes take place. In paragraph 15, he has also admitted that the deceased was living separately from the in-laws' house along with the Appellant.

14. Gitabai (PW3), mother of the deceased has stated that the deceased had told her that TV and Scooter were not being given, therefore, her husband/Appellant and in-laws used to beat her. She has further stated that the deceased had visited her house 8 days prior to her death. The deceased had stayed for 4 days. At that time, she had told her about her problems. She has further stated that 3 days prior to the death of the deceased, Naresh (PW4), cousin of the deceased had visited the house of the deceased and told her that the deceased was beaten. In para 11, she has stated that at the time of Gouna, the Appellant had quarreled with the deceased due to not giving TV and motorcycle, therefore, at that time, he was given cash of Rs.50/- and a Radio. She denied the fact that a coin of 25 paise made of gold was given to her by the deceased which was gifted to the deceased by her mother-in-law and for taking back the said coin the deceased and her husband had come to her house.

15. Naresh (PW4), cousin of the deceased has stated that he had

gone to the house of the deceased to give her invitation of his marriage. At that time, the deceased had met him out of the house and told him that her husband used to beat her severely. 3-4 days thereafter the deceased died.

16. In Sessions Trial No.338 of 1997 (the Complaint Case), Complainant's Witness No.2, Jahid Ali has stated that on 14.4.1995, he had gone to Village Jagisar to purchase a goat. On not getting a goat there, he went to the village of the Appellant at about 9 p.m. There, he saw that the door of the house of the Appellant was open and the Appellant was beating his wife (the deceased). He tried to intervene, but the Appellant asked him to stay away saying that it was his domestic matter. He has further stated that at that time the parents (the acquitted accused) of the Appellant were present there and they saying that whatever will happen they will see asked the Appellant to beat the deceased. During cross-examination, he has stated that he had gone to the house of the Appellant for the first time. In paragraph 11, he has further stated that he did not know the house of the Appellant from before. Sitaram had sent his nephew along with him, then he knew about the house of the Appellant.
17. Before discussing the evidence on record, it would be appropriate to refer to the provisions of Sections 107 and 498A of the Indian Penal Code, which read as under:

“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 facilitates the commission thereof, is said to aid the doing of that act.

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 purposes 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.”

18. In (2007) 11 SCC 205 (Bhagwan Das v. Kartar Singh), it has been observed by the Supreme Court as under:

“15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often

harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304-B IPC may be attracted, whether it is a case of homicide or suicide. (Vide *Kans Raj v. State of Punjab*, (2000) 5 SCC 207, *Satvir Singh v. State of Punjab*, (2001) 8 SCC 633 and *Shanti v. State of Haryana*, (1991) 1 SCC 371.)”

- 19.** Further, it has been 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.”

- 20.** 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 of the 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.”

21. In (2013) 12 SCC 286 (**Atmaram v. State of Maharashtra**), It has been observed by the Supreme Court thus:

“19. From the discussion of the aforesaid evidence on record, we find that the prosecution has not been able to prove beyond reasonable doubt that the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive Purnabai to commit suicide. Rather, there appears to be some evidence in the depositions of PW 1 and PW 4 (father and sister of Purnabai) that Purnabai was sad due to a daughter being born to her and a son being born to the first wife of the appellant. These circumstances may have driven Purnabai to commit suicide by jumping into the well along with her daughter. Such a consequence from the mental state of Purnabai cannot be a ground for holding that the appellant was guilty of cruelty within the meaning of clause (a) of the Explanation to Section 498-A IPC. We, therefore, hold that the presumption under Section 113-A is not attracted and the appellant cannot also be held guilty of abetting the suicide of Purnabai. We have to bear in mind this note of caution in *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73: (SCC p. 90, para 17)

“17. the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a

finding that the accused charged of abetting the offence of suicide should be found guilty.”

20. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court and the judgment of the trial court holding the appellant guilty of the offences under Sections 306 and 498-A IPC and direct that the bail bonds executed by the appellant be discharged.”

22. In the light of aforesaid enunciation of law, the facts and the evidence of the present case are to be examined minutely.

23. On minute examination of the evidence adduced by the prosecution, it is clear that the marriage between the Appellant and the deceased was solemnised in the year 1987, Gouna was performed in the year 1992 and out of their wedlock two children took birth. The deceased committed suicide in the year 1995. At the time of Gouna, the Appellant demanded TV and motorcycle. At that time, he was given cash of Rs.50/- and a Radio. Thereafter, the deceased was being subjected to cruelty for demand of TV and motorcycle. There is no dispute that death of Durgabai was suicidal in nature and the same took place within 7 years of her Gouna. Ganga Prasad (PW1), father, Gitabai (PW3), mother and Jhaduram (PW2), nana of the deceased have stated that at the time of Gouna, the Appellant/husband had demanded for TV and Scooter. At that time, a Radio and cash of Rs.50/- were given to him. Though Ganga Prasad and Gitabai have stated that after the Gouna, the deceased went to her in-laws' house. Even thereafter, her in-laws and husband were harassing her for TV and Scooter. But, no panchayat meeting was called prior to the death of the deceased. From the admission of both the witnesses, it is also clear that after 1 year from the Gouna, the Appellant and the

deceased had started living separately from the house of the in-laws. From the statements of both these witnesses, it is also clear that 7-8 days prior to the death of the deceased, the deceased had visited her maternal house. At that time, the deceased and the Appellant had demanded back the coin of 25 paise made of gold from the parents of the deceased and their allegation was that the parents of the deceased have misappropriated the said coin. When the deceased herself along with her husband/Appellant had demanded back the coin made of gold from her parents with the aforesaid allegation of misappropriation, in these circumstances, it is not reliable that the deceased was subjected to cruelty by her husband. Likewise, Jhaduram (PW2), nana of the deceased has stated that whenever the deceased had visited him, she had told him that she was being harassed at her in-laws' house. They make demand for TV and Scooter, but this fact is not mentioned in his case diary statement. Thus, his statement is also not reliable. From the statements of Naresh (PW4) and Complainant's Witness No.2, Jahid Ali, it is clear that 3-4 days prior to the death of the deceased, Naresh had visited the house of the deceased. At that time, the deceased had complained him that her husband used to beat her and on the date of incident itself, when Complainant's Witness No.2, Jahid Ali had gone to the house of the Appellant, he also had seen that the Appellant was beating the deceased. Thus, it is clear that the Appellant used to beat the deceased, but the same was being done for demand of dowry is not established.

- 24.** From the aforesaid discussion, the only offence alleged under Section 498A of the IPC is proved against the Appellant not the offence alleged under Section 306 of the IPC. Therefore, the

Appellant is acquitted of the charge framed under Section 306 of the IPC, but the conviction imposed upon him under Section 498A of the IPC is affirmed.

- 25.** Considering the fact that during trial the Appellant remained in custody for 1 month and 19 days and after passing of the judgment of conviction and sentence, he remained in custody for about 6 months, i.e., total for about 7 months and 19 days, further considering the fact that the *lis* is pending since 1995 and now after passing of about 22 years, it would not be appropriate to send the Appellant back to jail, I am of the opinion that it would be in the interest of justice to sentence him with the period already undergone by him. Ordered accordingly. The sentence of fine imposed upon him is affirmed.
- 26.** Consequently, the appeal is allowed in part to the extent indicated above.
- 27.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE