

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 624 of 2002****Judgment Reserved on 07.08.2018****Judgment Delivered on 10.10. 2018**

- Rakesh Kumar Agrawal, S/o Shri Gauri Shankar Agrawal, aged about 33 years, Businessman, R/o Navagarh, Tahsil Navagarh, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through Officer-in-charge, Police Station – Navagarh, District Durg (C.G.)

---- Respondent

For Appellant	:	Shri V.G. Tamaskar, Advocate.
For State/Respondent	:	Shri V.A. Goverdhan, Penal Lawyer.

Hon'ble Shri Justice Gautam Chourdiya**C A V Judgment**

1. This appeal arises out of the judgment of conviction and order of sentence dated 14.06.2002 passed by learned 2nd Additional Sessions Judge (FTC) Bemetara, District Durg (C.G.) in Sessions Trial No. 419/2001, whereby, the appellant stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 306 of Indian Penal Code (for short 'IPC')	R.I. for 2 years & fine of Rs.2,500/- in default of fine further R.I. for 2 months.
Under Section 498-A of Indian Penal Code	R.I. for 1 year & fine of Rs.2,500/- in default of fine further R.I. for 2 months.
Both Sentences are directed to run concurrently	

2. The brief facts of the case are that the marriage between deceased Shashi Agrawal and Appellant/accused Rakesh Kumar Agrawal was solemnized on 12.02.1997 as per Hindu rituals and customs.

Thereafter, she came to cohabit with Appellant at Navgarh, District Durg (C.G.). Deceased Shashi Agrawal had come to her matrimonial home on 12.08.2001 for celebrating Teeja festival at Durg. However, she came back to her matrimonial home on 31.08.2001 and committed suicide on 02.09.2001.

3. Appellant/husband of deceased lodged merg intimation (Ex.P-6) in Police Station Navagarh and thereafter Station House Officer lodged FIR (Ex.P-7) on the basis of merg inquiry against the Appellant, his elder brother Manoj and sister-in-law Mithila, W/o Manoj, for having committed offences under Section 304-B r/w Section 498-A of the Indian Penal Code. During investigation statements of Ganesh Prasad (PW-1), Smt. Kalpana Agrawal (PW-7) and Smt. Shail Agrawal (PW-8) under Section 161 of Cr.P.C. were recorded wherein they have leveled allegations against the Appellant, his brother and sister-in-law that they are demanding dowry and harassing and torturing the deceased. Due to harassment of Appellant, his brother and sister-in-law she was committed suicide on 02.09.2001.
4. Inquest report (Ex.P-2) was prepared in presence of Vimla Bai (PW-1). Spot map (Ex.P-5) was prepared by Patwari Kejuram (PW-5). Postmortem on the dead body of the deceased was conducted by Dr. S.R. Chured (PW-11) and he gave postmortem report, wherein he opined that the deceased died on account of septicemic shock due to extensive, infected antemortem deep burn injuries. The total burn area was reported to be 100%. During investigation one letter (Ex.P-12) of deceased was seized by Sub Divisional Police Officer. After completion of investigation charge-sheet was filed against the Appellant, his brother Manoj and sister-in-law Mithila under Sections

304-B, 498-A and 34 of IPC. However, the trial Court charged the accused persons under Section 304-B in the alternative Sections 306 and 498-A of IPC.

5. So as to hold the accused persons guilty, the prosecution examined 12 witnesses. Statement of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, the accused persons examined Ram Singh (DW-1), Vinod Agrawal (DW-2), Shanti Bai (DW-3) and Indrani (DW-4) in their defence.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record, acquitted the brother of Appellant and sister-in-law namely Manoj and Mithila, but convicted and sentenced the appellant as mentioned in para-1 of this judgment, hence this appeal.
7. Learned counsel for the appellant submits that-
 - (i) There is no specific allegation against the Appellant regarding harassment, cruelty or any other demand of dowry by the Appellant.
 - (ii) The trial Court without appreciating the evidence adduced by the prosecution wrongly held the Appellant guilty. There is no evidence to prove that the Appellant provoked the deceased to commit suicide.
 - (iii) The trial Court did not appreciate the evidence and has wrongly come to the conclusion that the Appellant has abetted the deceased to commit suicide. Therefore, impugned judgment passed by the trial Court deserves to be set aside and the Appellant may be acquitted of the said charges.
 - (iv) The trial Court has failed to appreciate the evidence adduced by prosecution specifically letter (Ex.P-3) which contains no allegation against the Appellant regarding cruelty.
 - (v) The trial Court has wrongly ignored the evidence of defence witnesses Ram Singh (DW-1), Vinod Agrawal (DW-2), Shanti Bai (DW-3) and Indrani (DW-4) and

prosecution witnesses Vimla Bai (PW-1) and Naresh Dewan (PW-10) on the ground they all are the family members of the accused/Appellant.

8. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the law and as such there is no illegality or infirmity in it warranting interference by this Court.
9. Heard counsel for the respective parties and perused the material on record.
10. Deceased was married with Appellant on 12.02.1997, it is admitted by accused/Appellant also in his statement. There is no dispute regarding the death of deceased due to burn injury. This fact is proved by the prosecution as per inquest report by Vimal Bai (PW-1) and A.R. Khan (PW-4). It is proved by prosecution after 7 years of marriage deceased committed suicide.
11. Two allegations made against the accused/Appellant are as under:
 - (i) He was demanding dowry.
 - (ii) Appellant/accused has an illicit relationship with his sister-in-law which provoked the deceased to commit suicide.
12. Ganesh Prasad (PW-2) father of the deceased, has made allegation against the accused/Appellant, his brother and sister-in-law that they were demanding dowry. But, in his cross examination Ganesh Prasad (PW-2) admitted this fact at the time of marriage, he gave Rs.50,000/- to the accused/Appellant and family members of the Appellant.
13. As per Ganesh Prasad (PW-2) statement, after 2 and 3 years of

marriage no demand of dowry was made by the accused/Appellant. He also admitted that there is no allegation made by the deceased in her letter (Ex.P-3) regarding demand of dowry. Ganesh Prasad (PW-2) also admitted this fact that two children were born out of the wedlock of the deceased and the Appellant.

14. Kalpana Agrawal (PW-7) in her statement admitted that earlier deceased wrote a 2 to 3 letters and this fact is also admitted by her sister Smt. Shail Agrawal (PW-8) that deceased wrote near about 10 letters to her mother but only one letter (Ex.P-3) was produced before the Court below.

15. Smt. Shail Agrawal (PW-8) also stated in her statement that near about 5 to 10 letters were written by deceased and out of 10 letters, 2 letters contain demand of dowry. She also admitted that in the letter (Ex.P-3) there is no demand of dowry and 5 to 10 letters are in possession of brother of Smt. Shail Agrawal (PW-8).

16. From perusal of the letter (Ex.P-3) it is evident that the deceased did not make any allegation in her letter (Ex.P-3) against the Appellant that he was having illicit relationship with his sister-in-law. However, Smt. Kalpana Agrawal (PW-7) has stated that deceased was doubting that the accused/Appellant has illicit relationship with his sister-in-law on account of this she used to remain mentally disturbed and used to be quarrel between the husband and wife.

17. Let me first consider as to what amount to abetment under Section 107 of IPC. Similarly, the provision under Section 306 of IPC dealing with abetment of suicide also needs to be noticed. Both the provisions are reproduced hereunder :

“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.

Explanation1- A person, who by wilful misrepresentation, or by wilful concealment of a material fact which 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.

Explanation2- 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.

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.”

18. Considering the provisions contained in Sections 107 & 306 of the IPC, as quoted above, the Supreme Court in **Randhir Singh and another v. State of Punjab** reported in **(2004) 13 SCC 129**, has held that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also, it would involve that mental process of entering into conspiracy for the doing of that thing.

19. Reiterating the principle, the Supreme Court in **Kishori Lal v. State of M.P.** reported in **(2007) 10 SCC 797**, has held, thus, in para 6:

“6. Section 107, IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing.

These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

20. It is, thus, consistently held by the Supreme Court that before holding an accused guilty of an offence under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of each case and assess the evidence adduced before it in order to find out whether the treatment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement or provocation to the commission of suicide. Merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide, the conviction in terms of Section 306 of IPC is not sustainable.

21. Earlier, in **Mahendra Singh and another Gayatribai v. State of M.P.** reported in **1995 Supp (3) SCC 731**, the Supreme Court was dealing with a case, where, apart from allegations of harassment, abuse and torture, the deceased-wife complained of the accused's illicit relations with his sister-in-law. The Supreme Court allowed the appeal of the accused and set-aside his conviction by holding that neither of the

ingredients of abetment are attracted on the statement of the deceased.

22. In an extremely recent case the Supreme Court in **K.V. Prakash Babu v. State of Karnataka** reported in **2016 (4) Crimes 184 (SC)**, relying on its earlier decision in the matter of **Pinakin Mahipatray Rawal v. State of Gujarat** reported in **2013 (10) SCC 48**, has held that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498-A of the IPC.

23. The Supreme Court, thereafter, again quoted **Pinakin Mahipatray Rawal** (supra) and reproduced the observation made in the said case that to constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

24. Referring to **Ghusabhai Rasangbhai Chorasiya and Others v. State of Gujarat** reported in **(2015) 11 SCC 753**, the Supreme Court reproduced the observation made therein that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to Section 498-A of the IPC which includes cruelty to

drive the women to commit suicide, would not be attracted.

25. In **Ghusabhai Rasangbhai Chorasiya** (supra) the Supreme Court observed that “true it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in **Pinakin Mahapatray Rawal** (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. The accused may have been involved in an illicit relationship with the appellant No.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted.”

26. In **K.V. Prakash Babu** (supra) the Supreme Court concluded that extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

27. Dealing with the applicability of presumption engrafted under Section 113-A of the Evidence Act, the Supreme Court in **K.V. Prakash Babu** (supra), would observe thus in para 17 :

17. We are absolutely conscious about the presumption engrafted under Section 113-A of the Evidence Act. The said provision enable the Court to draw presumption in a particular fact situation when necessary ingredients in order to attract the provision are established. In this regard, we may reproduce a passage from Pinakin Mahipatray Rawal (supra) :-

“Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498-A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution.”

We have reproduced the aforesaid passage only to highlight that the Court can take aid of the principles of the statutory presumption.

28. In the case in hand, the evidence would suggest that the deceased was raising quarrel with the appellant because she was suspecting that the appellant had illicit relations with his sister-in-law, however, there is no allegation that such uncalled for conduct or behaviour of the appellant was performed in the presence of or in front of the deceased or that she was subjected to physical cruelty or maltreatment only for the reason that she was objecting to the appellant's relation with his sister-in-law.

29. It is also worth notice that the appellant's brother and sister-in-law in whose respect, the allegations of extra martial relationship was levelled against the appellant, were also accused before the trial Court, but have been acquitted of the charges. If the appellant's extra

marital relationship with co-accused Mithila was an action constituting abetment, the same yardstick would apply for Mithila also, however, she has been acquitted by the trial Court.

30. The judgments relied by learned State Counsel may not assist the Court in view of the clear legal position settled by the Supreme Court in **K.V. Prakash Babu** (supra).

31. For the foregoing, I am of the opinion that even if the appellant was having any extra marital or illicit relations with his sister-in-law in the absence of any proof of incitement or provocation or inducement to the deceased to commit suicide, the same would not amount to abetment under Section 107 of IPC, therefore, the appellant's conviction under Sections 306 and 498-A of IPC deserves to be and is hereby set aside.

32. For the reasons stated above, this Court is of the opinion that the prosecution has utterly failed to prove the guilt of the accused/appellant in relation to offence under Sections 498-A and 306 of IPC on the basis of evidence adduced by it and therefore, he deserves to be acquitted of these charges.

33. In the result, the appeal is hereby allowed. Judgment impugned is set aside and the accused/appellant is acquitted of the charge leveled against her. As the appellant is already on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-
(Gautam Chourdiya)
Judge