

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1267 of 2002**

Smt. Dropati Bai, wife of Shatruhan Sahu, aged about 45 years, R/o Village Deori, P.S. Kurud, Tahsil and District Dhamtari, Chhattisgarh

---- **Appellant**

versus

State of Chhattisgarh through Police Station Kurud, District Dhamtari, Chhattisgarh

--- **Respondent**

For Appellant	:	Shri Vishnu Koshta, Advocate
For State/Respondent	:	Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

19.3.2018

1. The instant is an appeal against the judgment dated 28.11.2002 passed in Sessions Trial No.313 of 2001 by the Additional Judge to the Court of Additional Sessions Judge, Dhamtari convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation
Under Section 498A of the Indian Penal Code	No separate sentence has been imposed

2. Facts of the case, in nutshell, are that marriage of Sunitibai (deceased) was solemnised with Tilakram (PW4) 6 years prior to her death. It is alleged that no child took birth from her even after passing of a period of 6 years from the marriage. The Appellant, who is mother-in-law of deceased Sunitibai, was quarreling and torturing her in this regard. On 9.6.2001 also, in the agricultural field, the Appellant quarreled with the deceased saying that even after treatment, the deceased was unable to give birth to a child. Due to the harassment, the deceased committed suicide by consuming perisulfan insecticide. Morgue intimation (Ex.P5) was

lodged by Ganesh (PW5), *dever* (brother-in-law) of the deceased. Inquest (Ex.P2) was prepared on 10.6.2001. Post mortem examination on the dead body was conducted by Dr. V.K. Pandey (PW7). His report is Ex.P6 in which he opined that it was a suicidal death due to consumption of an insecticide. Viscera was preserved and the same was advised to be sent for chemical examination. On the basis of morgue inquiry, First Information Report (Ex.P7) was registered on 21.6.2001. Viscera and seized clothes of the deceased were sent for chemical examination vide Ex.P8. No FSL report is available on record. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 306 of the Indian Penal Code. Charges were framed against her under Sections 306 and 498A of the Indian Penal Code.

3. To bring home the offence against the Appellant, the prosecution examined as many as 9 witnesses. The Appellant was also examined under Section 313 of the Code of Criminal Procedure in which she denied the guilt and pleaded innocence. No witness has been examined in her defence.
4. The Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that since Videshram (PW1), father of the deceased has categorically stated that the deceased committed suicide because she was frustrated due to her being issueless (childless), the Appellant cannot be held

guilty for abetting the deceased for committing suicide. Hence, the conviction and sentence imposed upon the Appellant is illegal and deserves to be set aside. As per the evidence of Shivbati (PW2), mother of the deceased, the only allegation against the Appellant is that after 6 years of the marriage, the deceased was childless. On account of that, the Appellant used to quarrel with the deceased. But, as per definition under Section 306 of the Indian Penal Code, the said allegation is not coming within the definition of abetment. Tilakram (PW4), husband of the deceased has also stated that even after passing of 6 years from their marriage, the deceased was childless and on account of that she remained frustrated all the time and, therefore, she committed suicide. The conviction and sentence imposed upon the Appellant is illegal and against the provisions of law.

6. On the contrary, Learned Counsel appearing for the State/Respondent supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. There is no dispute that the deceased was wife of Tilakram (PW4) and their marriage took place 5-6 years prior to her death. There is also no dispute on the fact that the deceased was childless. Morgue intimation was lodged by Ganesh (PW5), *dever* (brother-in-law) of the deceased vide Ex.P5. He has stated that on the date of incident, in the morning hours, all the family members including the deceased had gone to work in the agricultural field. At about 11:30 a.m., the deceased returned home for cooking food. As per his statement, no dispute or quarrel took place in the agricultural

field between the deceased and any of the family members. He has further stated that at about 2:00 p.m., he returned home to take food. At that time, the deceased was not found at home. On making search for her in her paternal village, she was not found there also. Next morning, when they climbed on the *Chhajja* (balcony) of the house, they found dead body of the deceased there.

9. Head Constable Ramesh Kumar (PW6) is the witness who recorded the morgue intimation (Ex.P5).
10. Videshram (PW1), father of the deceased has also stated that at about 6:00 p.m., his son-in-law Tilakram (PW4) had come to his house and asked about the deceased and he had returned same day. Next day, he came to know that his daughter (deceased Sunitibai) had committed suicide by consuming poison. Shivbati (PW2), mother of the deceased has also stated that when she and her mother-in-law Rajwati were present at home, Tilakram, husband of the deceased had come to her house in search of the deceased and thereafter he had returned. Next day, she came to know that the deceased had committed suicide.
11. Post mortem examination on the dead body was conducted by Dr. V.K. Pandey (PW7). His report is Ex.P6 in which he has opined that the death was suicidal in nature and the cause of death was consumption of insecticide. Though there is no FSL report on record, from the statement of Dr. V.K. Pandey (PW7) and the other evidence available on record, it is clear that the deceased had committed suicide after consuming a poisonous substance.
12. Tilakram (PW4), husband of the deceased has stated that the

deceased was childless. She was not doing any work with interest and due to the frustration of her being childless, she committed suicide. He has not stated that the Appellant ever quarreled with the deceased for her being childless. Ganesh (PW5), *dever* (brother-in-law) of the deceased has also stated that the deceased remained under frustration because she was childless and she was not taking interest in any domestic work. He has further stated that no dispute had taken place between the Appellant and the deceased. Though Videshram (PW1), father of the deceased has stated that because of the deceased being childless, the Appellant used to torture her and whenever the deceased visited her paternal house, she told about this fact and on the date of incident also, a quarrel had taken place between the Appellant and the deceased at the house and in the agricultural field. But, during cross-examination, in paragraphs 12 and 15, he has categorically admitted that the deceased having seen another's child used to get frustrated that she was unable to give birth to a child. He has further admitted in paragraph 13 that the deceased had not told him anything that any quarrel had taken place between her and the Appellant. She had told about this fact to her mother. In paragraph 16 also, he has admitted that he never called any village meeting nor did he lodge any report in police station that the Appellant used to torture or harass the deceased.

13. Shivbati (PW2), mother of the deceased has stated that in the evening of the date of incident when her son-in-law Tilakram (PW4) had come to her house, he had told her that a quarrel had taken place between the Appellant and the deceased in the morning and also in the agricultural field in the afternoon. She has further stated that in the month of *Magh* (as per Hindu Calendar), when the

deceased had come to her house (paternal house), she had told her that due to her being childless, the Appellant used to quarrel with her and torture her. She has further stated that the Appellant used to address the deceased as a *Banjh*. But, this fact is not mentioned in her case diary statement (Ex.D1). In paragraph 5, she has admitted that in the month of *Magh*, when the deceased had told her about the quarrel and torture being given to her by the Appellant, the deceased had not told her anything about the quarrel or torture took before or after the month of *Magh*.

14. Gangaram (PW3), *nana* (maternal grandfather) of the deceased, who is the witness of inquest (Ex.P2) has also categorically stated that the deceased used to visit his house, but she did not tell him anything about the alleged quarrel.
15. On minute examination of the above evidence, it is clear that husband Tilakram (PW4) and *dever* Ganesh (PW5) have not supported the case of the prosecution regarding quarrel between the Appellant and the deceased. Gangaram (PW3), maternal grandfather of the deceased has also not supported the case of the prosecution. Though Videshram (PW1), father of the deceased has stated that on the deceased's coming to her paternal house, she had told about the quarrel taking place between the Appellant and her on account of her being childless, but he has admitted the fact that this fact was told by the deceased to her mother not to him.
16. Shivbati (PW2), mother of the deceased has only alleged that the deceased had told her in the month of *Magh* that the Appellant used to harass her due to her being childless, but the deceased never made her any such complaint before or after the month of

Magh. Even if for the sake of argument, it is considered that any such incident had taken place in the month of *Magh*, there is nothing on record to show that on the date of incident any quarrel had taken place between the Appellant and the deceased. From the admission made by Videshram (PW1), father of the deceased, it is also clear that the deceased always remained under frustration because of her being childless. He never called any village meeting or made any report against the alleged quarrel taking place between the Appellant and the deceased. Thus, it cannot be ruled out that the deceased herself committed suicide due to the frustration of her being childless. From the evidence available on record, case of the prosecution against the Appellant under Sections 306 and 498A of the Indian Penal Code is not established beyond reasonable doubt.

17. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against her.
18. It is reported that the Appellant is on bail. Her bail bonds shall continue for a further period of six months from today in view of the provisions contained in Section 437A of the Code of Criminal Procedure.
19. 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