

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 584 of 2011**

Ishwari Gupta @ Kallu, S/o Late Narayan Prasad, Aged about 31 years, R/o village- Dukanpara, Kharora, District- Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through : Police Station Kharora, District Raipur (C.G.)

---- Respondent

For Appellant : Mr. Manoj Paranjpe & Mr. Bharat
Sharma, Advocates.

For State/respondent : Mr. Sanjeev Pandey, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

24/09/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 02.07.2011 passed by Third Additional Sessions Judge, Raipur (C.G.) in Session Trial No. 230/2010, wherein the said court convicted the appellant for commission of offence under Section 306 of IPC and sentenced to R.I. for 7 years and fine of Rs. 1000/- with further default stipulations.
2. In the present case, name of deceased is Sarita Gupta, who died on account of burn injuries on 24.06.2009 in house of the appellant at village- Kharora, District-Raipur (C.G.). To substantiate the charge, the prosecution examined as many as 10 witnesses. Sharad Kumar Sahu (PW-1) is neighbour of the deceased and as per version of this witness, the deceased told her just after the incident that she sustained

burn injuries on account of accident and it is sustained by burn of stove. This witness has not deposed anything against the appellant regarding his instigation or intentionally aiding to her to commit suicide by the appellant. If version of this witness is taken as it is, the case is not of suicide, but it is a case of accident. No other person was examined as to what was really happened before the incident.

3. Raju Gupta (PW-2) is father of the deceased who is resident of Bhilai not resident of place of incident. As per version of this witness, it is the appellant who caused burn injuries to the deceased by pouring kerosene, but that is not version of the prosecution and this witness has stated out of imagination because he was not present at the place of incident and he was not known as to what was really happened in the house of the appellant. From his cross-examination, it is clear that there was no dispute between the appellant and the deceased and there was no demand of dowry with relation to marriage.
4. Kiran Gupta (PW-3) is mother of the deceased who is also resident of Durg and per version of this witness, deceased called her on telephonic and informed that appellant is harassing her, but no call details have been produced before the trial court to establish that both have made telephonic conversation on the date of incident. Version of this witness is also based on information given by the deceased and in that way, this witness is completely hearsay witness. In the 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 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.”

5. Pawan Gupta (PW-4) is also hearsay witness, whom incident was informed by his mother. Rest of the witnesses have assisted during investigation after registration of FIR. In order to hold the 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 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.

6. As has been held by Hon'ble the Supreme Court in the matter of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in **2010 (1) SCC 750**, 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.
7. In the present case, evidence adduced by the prosecution is either hearsay or it is based on imagination and therefore, it is not clear that any instigation or intentionally aiding is done by the appellant. *Mens rea* on the part of the appellant is lacking which requires direct act and active act which led the deceased to commit suicide. Some bitter experience during routine married life is natural and that is not sufficient to hold that since long back of the incident, there was quarrel between the parties. It is a case of instigation as there is no live link between the act of the appellant and the act of the deceased. Finding of the trial Court is not sustainable looking to the entire evidence on record.

8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Section 306 of IPC. The appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

Sd/-
(Ram Prasanna Sharma)
Judge