

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.588 of 2001**

Lakhan @ Puniram Dewangan, S/o. Mishrilal Dewangan, aged about 30 years, R/o. Pendrawan PS Sarsinwa Distt. Raipur (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Sarsinwa Distt. Raipur (Chhattisgarh)

---- Respondent

For the appellant : None present
 For the respondent/State : Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****26.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 22.6.2001 passed by Second Additional Sessions Judge, Baloda Bazar (CG) in Sessions Trial No.265/2000, wherein the said Court convicted the appellant for the commission of offence under Section 306 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, name of the deceased is Janki Bai, who was the wife of the appellant. It is alleged that after the marriage the appellant harassed the deceased that is why she committed suicide by setting her ablaze.

3. Dr. Narayan Singh (PW-10) conducted autopsy on the body of the deceased and noticed that the deceased suffered burn injuries to the maximum and cause and nature of death is suicidal.

4. Now the point for consideration is whether the appellant abetted the deceased to commit suicide.

5. 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 instigate 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 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.

7. As has been held by this Court in the case of **Rajendra Das Vs. State of C.G., reported in 2013 (2) CGLJ** in which 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 offence 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.”

8. In the present case, the prosecution is based on the statement of Jhaduram Dewangan (PW-1), brother of the deceased, Basantha Bai (PW-2), mother of the deceased, Benuram (PW-3), brother of the deceased, Susheela Bai (PW-12), sister-in-law (bhabhi) of the deceased. Rest of the witnesses are either assisted during investigation after registration of FIR or investigated the matter.

9. Jhaduram (PW-1) deposed that marriage of the deceased took place in the year 1993 with the appellant. But he did not depose the date of marriage. As per the version of this witness, the deceased came to Village Jhuri 15-20 days before the incident on account of marriage ceremony of her brother. He further

deposed that the deceased informed him against the appellant that he is not providing food and clothing to her and she is not happy with the husband. Basantha Bai (PW-2), mother of the deceased, deposed on the same line what was narrated to her by the deceased. She further deposed that the appellant assaulted her daughter and committed physical violence against her. Benuram (PW-3), brother of the deceased, also deposed in the same line. Susheela Bai (PW-12), sister-in-law of the deceased also deposed in the same line. All the four witnesses examined by the prosecution are resident of Village Jhuri, but the incident took place in Village Pendravan. These witnesses have stated what is informed to them by the deceased. No complaint was made during lifetime of the deceased against the appellant and no medical examination was conducted during her life time in support of physical violence if any committed by the appellant. There is nothing on record to establish that the appellant committed physical violence during the life time of the deceased. All the witnesses are not the residents of Village Pendravan where in the incident took place. Therefore, their version is based on hearsay evidence because they have deposed what was informed to them by the deceased.

10. In view of this Court there is other possibility of manipulation after the death of the deceased who was close relative of all the four witnesses.

11. In **Kalyan Kumar Gagoi 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 concerned, 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

(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 other is inadmissible.”

12. There is no suicidal note indicating the real cause of death of the deceased and no dying declaration was made by the deceased after burn injuries. From overall assessment of the evidence, it is clear that there is no legally admissible evidence against the appellant that he harassed the deceased prior to her death. Date of marriage is also not established by the bald statement of all the four witnesses and, therefore, it is not safe for this Court to presume against the appellant under Section 113A of the Indian Evidence Act, 1872. Presumption under the Section is available when the harassment is established by the prosecution. The prosecution is based on hearsay evidence which is not

admissible, therefore, presumption under Section 113A of the Evidence Act cannot be raised against the appellant.

13. For offence under Section 306 IPC there should be clear *mens-rea* to commit the offence and there should be a direct or active act by the accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abatement, but from the record it cannot be inferred that the respondent instigated or intentionally aided the deceased to commit suicide.

14. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is set aside. The appeal is allowed. The appellant is acquitted of the charges under Section 306 of the IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE