

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 934 of 2001**

- Ashok Kumar s/o. Ramjilal Jaiswal, aged about 32 years, r/o. Gadapali, PS Korba, Dist. Korba (CG).

---- Appellant.**Versus**

- State of Chhattisgarh

---- Respondent

For the appellant	: None
For the respondent/State	: Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****4-5-2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 7-9-2001 passed by the Additional Sessions judge, Korba, Sessions Division Bilaspur in Sessions Trial No. 522 of 1997 wherein the said Court has 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.5000/- with default stipulations.

2. In the present case, name of the deceased is Seema Bai who was the wife of the appellant. Their marriage took place 14 years ago since date of the incident. It is alleged

the wife of the appellant was subjected to by the appellant, therefore, she committed suicide by setting her ablaze. The matter was investigated and appellant was charge-sheeted and convicted as mentioned above.

3. To substantiate the charges, the prosecution has examined as many as nine witness. To nullify the same, defence side examined one witness.

4. PW/1 Mohan Bhojwani, PW/2 Smt. Shanti and PW/4 Dwarika Prasad Jaiswal have deposed against the appellant. Rest of the witnesses are either assisted during investigated after registration of the FIR or they investigated the matter after registration of the FIR. The place of incident is village Gadapali where the deceased committed suicide. Mohan Bhojwani (PW/1) is a resident of village Mungeli and as per version of this witness Dwarika Prasad who is father of the deceased informed him that the appellant demanded Rs.8000/- from the said Dwarika Prasad and he gave Rs.8000/- to Dwarika Prasad which was returned by him after one month.

5. PW/2 Smt. Shanti Bai is a resident of village Mungeli and as per version of this witness Seema Bai visited to her house and on being asked, Seema Bai informed her that appellant used to assault her. Dwarika Prasad Jaisal (PW/4),

is father of the deceased. As per version of this witness, on saying of her daughter Seema Bai, he provided Rs.8000/- to the appellant for advancing his business. He further deposed that he has seen some mark of injuries on the body of the deceased and she informed him that the appellant and inlaws had beaten her. He further deposed that on one occasion he provided Rs.8000/- to appellant on saying of her daughter Seema Bai. This witness is also hearsay witness because he is a resident of village Mungeli whereas the incident took place at village Gadapali. This witness has deposed before the trial Court whatever informed to him by his daughter. No complaint was made during life time of the deceased and no medical examination was done on her by regarding injuries.

6. True it is that the appellant is the husband of the deceased and there is serious doubt that he may have inflicted injuries upon his wife, but any suspicion however strong cannot take place of proof.

7 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.

8 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.

9. 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.”

10. In the present case, the witnesses adduced by the prosecution are hearsay witnesses and hearsay evidence is

inadmissible in evidence. There is no evidence on record to show as to what really happened on the date of incident or prior to the date of incident with the deceased which was sarcastic for her to drag her and end her life. In absence of any evidence, it is difficult to hold that the appellant instigated or aided in commission of suicide.

11. 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 continue for a period of six months in view of Section 437-A of IPC. The fine amount, if paid, shall be refunded to the appellant.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju