

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.840 of 2001**

Tulsiraam, aged about 25 years, S/o. Roopsingh, Occupation – Agriculture, R/o. Village Madabharri, PS Narharpur Tahsil Narharpur Distt. Kanker (CG)

---- Appellant**Versus**

The State of Chhattisgarh, Through OIC of PS Narharpur, Tahsil Narharpur Distt. Kanker (CG)

---- Respondent

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

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****11.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 10.8.2001 passed by Additional Sessions Judge, Kanker, Session Division Bastar (CG) in Sessions Trial No.99/2000, wherein the said Court convicted the appellant under Section 306 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- with default stipulations for abetting Durpati Bai to commit suicide.

2. In the present case, name of the deceased is Durpati Bai, who was the wife of the appellant. Dead body of the deceased was found in the well on 14.11.1999. It is alleged that the appellant harassed the deceased before the incident that is why she committed suicide by jumping into the well.

3. 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.

4. 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.

5. 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.”

6. In the present case, the prosecution has adduced 12 witnesses to substantiate the charges. Sahbati (PW-1) has not stated anything against the appellant. Sonbati (PW-2) deposed that on one occasion, she found that the appellant was beating the deceased in the kitchen garden after putting cloth in her mouth. Ramu (PW-4), Amman Bai (PW-7) and Mitdin (PW-8) have deposed on the same line, but it is not clear from their evidence on which date the appellant assaulted the deceased. For commission of offence under Section 306 IPC, date has to be established that the culprit did such act before the incident that was sarcastic and unbearable for the deceased which compelled her to end her life. But evidence adduced by the prosecution is vague in this point. There is nothing on record as to what had happened on 13.11.1999 or prior to the date of incident which was unbearable for the deceased. *Mens rea* on the part of the appellant, requiring direct act and active act which led the deceased to commit suicide, is lacking. Evidence of intentionally

aiding the deceased to end her life is also lacking. 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 that is why the deceased took the extreme step. In the present case, 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 the record.

7. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Section 306 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 437A of the CrPC.

Sd/-

(Ram Prasanna Sharma)

JUDGE