

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 25-10-2018****Delivered on 29-11-2018****CRIMINAL APPEAL No. 196/2001**

(Arising out of judgment of conviction and order of sentence dated 15-2-2001 passed by the Additional Sessions Judge, Balod Distt. Durg, CG in ST No. 279/2000)

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Sant Ram son of Banwali Ram aged 29 years, R/o village Parsada, PS Balod, Distt. Durg (CG)

----Appellant**-Versus-**

State of Chhattisgarh through P.S Balod, Distt. Durg (CG)

----Respondent

For appellant : Mr. Adil Minhaj, Adv.
For State : Mr. S. K. Mishra, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 15-2-2001 passed by the Additional Sessions Judge, Balod Distt. Durg, CG in ST No. 279/2000 whereby and whereunder he convicted the appellant for offence punishable under Section 306, of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo RI for 3 years, and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo RI for 1 month.

2. This is admitted by the appellant that he was married with his wife- deceased Durga Bai two years prior to her death, 5 – 6 months prior to 9-2-2001, deceased Durga Bai died.

3. In brief the prosecution story is that deceased Durga Bai was residing in village Parsada. On 12-5-2000, P.W. 3 Jeevrakhan came to

know that deceased Durga Bai has died due to consuming poisonous substance, she herself stated appellant that she consumed some poisonous substance. P.W. 3 Jeevrakhan intimated police station Balod where merger intimation was lodged. After the inquiry, on 11-6-2000 an FIR was lodged in police station Balod against the appellant. After completing the investigation a charge sheet was filed against him. Trial Court framed charge against him under Section 306 of the IPC. To bring home the charge against him, prosecution examined as many as 12 witnesses. Appellant did not examine any witness in his defence. After conclusion of the trial, trial Court convicted and sentenced him as aforesaid.

4. Hence this appeal.

5. Mr. Adil Minhaj, counsel for the appellant strenuously argued that trial Court has not appreciated the evidence in its proper perspective. Prosecution failed to prove that death of the deceased was suicidal in nature which is essential ingredient for the offence punishable under Section 306, IPC. There is no cogent evidence regarding cruelty, thus no presumption can be drawn under Section 113-A of the Indian Evidence Act. Thus, aforesaid conviction and sentence are bad in the eyes of law and not sustainable. Thus, aforesaid conviction and sentence may be set aside and the appellant may be acquitted of the aforesaid charge.

6. Shri S.K. Mishra, Panel Lawyer for the State submitted that aforesaid conviction and sentence are based on clinching evidence led by the prosecution. He supported the aforesaid conviction and sentence and submitted that no interference is called for by this Court.

7. It would be pertinent in this case to extract the provision of

Section 113-A of the Indian Evidence Act which reads as under :-

“[113A. Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)].

8. Counsel for the appellant also placed reliance on judgment of Hon'ble Supreme Court in **Satvir Singh and others -v- State of Punjab and another** (AIR 2001 SC 2828) wherein Hon'ble Supreme court has laid down the following judicial precedent :-

“Section 306, IPC renders person who abets commission of suicide punishable for which condition precedent is suicide should necessarily have been committed.”

9. Counsel for the appellant Shri Adil Minhaj placed reliance on judgment of Hon'ble Supreme Court in **Mangat Ram -v- State of Haryana** (AIR 2014 SC 1782) wherein Hon'ble Supreme court has laid down the following judicial precedent :-

“No evidence showing whether the deceased had committed suicide or it was an accidental death possibility of an accidental death since she was suffering from epilepsy cannot be ruled out. Offence under Section 498 and 306 not established against the accused.”

10. Counsel for the appellant further placed reliance on judgment of Division Bench of Hon'ble Himanchal Pradesh High Court in **State of**

Himachal Pradesh -v- Mohar Singh and others [2017 CRI. LJ 3077]

where following judicial precedent has been laid down :-

“Death by strangulation- only vague assertions against accused-
-no cogent evidence disclosing that accused subjected deceased
with cruelty in respect of demand of dowry. Nothing on record to
establish that accused restricted deceased from moving
anywhere or using telephone etc. accused not instigating
deceased in any manner to commit suicide- No nexus between
conduct of the accused and suicide committed by deceased.”

11. As per the post mortem report Ex. P-14, P.W. 8 Dr. Smt. P. Baghel and Dr. G.D. Baghel had conducted the autopsy, they opined that death of the deceased was asphyxia due to suspected poisoning.

12. P.W. 8 Dr. Smt. P. Baghel says in para 7 during her cross-examination that she could not say whether cause of death is poisoning.

13. There is no such evidence on record on strength of which it can be said that Ex. P-14 is not believable. Thus this Court believes on Ex. P-14.

14. Looking to the aforesaid facts and circumstances of the case, judicial precedents laid down by Hon'ble Supreme Court in **Satvir Singh** (supra) and **Mangatram** (supra), this Court finds that commission of suicide is one of the essential ingredients of the offence of abetment to commit suicide which is punishable under Section 306, IPC, which prosecution failed to prove beyond reasonable doubt in the case in hand.

15. P.W. 11 Hajarilal Sahu who is the father of the deceased says in para 2, 3 and 6 of his statement given on oath that one month after the marriage deceased had come and told him that appellant used to

harass her on account of bringing insufficient dowry, there is a loan due account of marriage, she would come along with Rs. 10,000/-. He gave Rs. 10,000/- to his daughter and sent her to her in-laws' house. Two months thereafter, when he himself went to her in-law's house, she told him that appellant harassed her on doubt that she has illicit relation with some Ramdas and demanding Rs. 10,000/-. One month thereafter she again came to his house and told that appellant is making allegation upon her that she has illicit relation with Ramdas. Five-six days prior to the death of the deceased he had again gone to her in-laws' house where she had again told that appellant is harassing her on account of demand of dowry and states that she has illicit relation with Ramdas.

16. In letter Ex. P-10 it has been mentioned that appellant has stopped talking with prosecutrix. He is making quarrel with her. He is making so many allegations upon her.

17. In the greeting Ex. P-11 it has been mentioned that “संतराम तुमने मुझे कभी भी समझने की कोशिश नहीं की हमेशा तुमने मुझे अपने से अलग करना चाहा कभी अपना नहीं समझा। मैं तुम्हें हमेशा याद आउंगी मगर तुम मुझे छू भी न पाओगे ”.

18. In the letter Ex. P-8 it has been mentioned that those people have made her life a living hail. Just above to it, it has been mentioned that her younger Jeth, younger Jethani, eldest Jethani, have quarreled a lot with her. Thus, it is manifest from first part of the aforesaid assertion that, later part is concerned with younger Jeth, younger Jethani, eldest jethani. Hence prosecution does not get any help to fasten the appellant with aforesaid charge from Ex. P-8.

19. In the letters Ex. P-6, P-8, P-10, Ex. P-11, letter Ex. P-17, it has not been mentioned that appellant used to harass the deceased making the allegation that she has illicit relation with Ramdas, and also on

account of bringing insufficient dowry, demand of cash Rs. 10,000/- as dowry.

20. Deceased, her parents, have not lodged any report in any police station as soon as alleged incidents. They have also not called any meeting of their community regarding alleged said facts. For not doing so, prosecution failed to give any plausible explanation.

21. P.W. 11 Hajarilal Sahu says in para 16 and 17 during his cross-examination that it is true that on the same day when deceased died, eldest brother of the appellant had sent a jeep to bring her family members, his family members reached in her in-laws' house. He had not told to his any relative that appellant used to harass her, on 10th day ceremony, he and his relatives had gone to her in-laws' house, he had not made any complaint against the appellant before the people present there. P.W. 6 Ramprasad who is the paternal grand father of the deceased says in para 2 and 3 during his cross-examination that he, his two brothers, were present in her in-laws' house before cremation and they had not made any complaint against the appellant to the police.

22. There are omissions in police statement of P.W. 11 Hajarilal Sahu i.e. Ex. D-1 that, when one month after the marriage deceased had come, she told him that appellant used to harass her on account of bringing insufficient dowry, there is loan due on account of marriage, she would come along with Rs. 10,000/-. He gave Rs. 10,000/- to his daughter and sent her to her in-law's house, two months thereafter, when he himself went to her in-laws house, she had told him that appellant harassing her making doubt that she has illicit relation with some Ramdas and demanding Rs. 10,000/-. One month thereafter she again came to his house and told that appellant is making allegation

upon her that she has illicit relation with Ramdas. Five-six days prior to the death of the deceased he had again gone to her in-laws' house she had again told that appellant is harassing her on account of demand of dowry and states that she has illicit relation with Ramdas. These omissions are material, important and adversely affect the credibility of aforesaid statements of para 2, 3 and 6 of P.W. 11 Hajarilal Sahu.

23. P.W. 1 Jethuram, P.W. 2 Anjor Singh say in para 3 and 4 during their cross-examination that deceased and appellant had good relation, they had not seen any quarrel happening between them. P.W. 3 Jeevrakhan says in para 2 during his cross-examination that they had good relation.

24. Looking to the above-mentioned facts and circumstances, this Court finds that aforesaid statements of para 2, 3 and 6 of P.W. 11 Hajarilal Sahu do not appear simple, natural and normal. Thus, this Court disbelieves on aforesaid statements of para 2, 3 and 6 of P.W. 11 Hajarilal Sahu.

25. Counsel for the appellant further placed reliance on judgment of Hon'ble Sikkim High Court in **Thutob Namgyal Bhutia -v- State of Sikkim** (2017 CRI.L.J. 3604) wherein following judicial precedent has been laid down :-

“Evidence of prosecution only indicating frequent quarrel between spouses verbal duel between spouses cannot be equated with cruelty meted out by husband only, as wife also share equal responsibility,.....”

26. Hon'ble Supreme Court in **Mangat Ram** (supra) has laid down the following judicial precedent :-

“deceased – wife died of burn injury after few months of marriage at her matrimonial home. Letters written by the deceased not

mentioning about any harassment or dowry demand by accused but stating that she was unhappy and upset over behavior of the accused having left her in company of his parents. Said letters only expose that the deceased was extremely home sick and wanted company of her maternal grand father.”

27. Looking to the judicial precedent laid down by Hon'ble Sikkim High Court in **Thutob Namgyal Bhutia** (supra), by Hon'ble Supreme Court in **Mangatram** (supra), this Court finds that aforesaid assertions made in Ex. P-10 and Ex. P-11 cannot be equated with cruelty. In other words on the basis of aforesaid assertions of Ex. P-10 and Ex. P-11, it cannot be said that appellant had subjected deceased with cruelty.

28. After the appreciation of the evidence this Court finds that prosecution failed to prove beyond reasonable doubt that allegedly appellant had treated deceased with cruelty.

29. Looking to the above mentioned facts and circumstances of the case, this Court finds that prosecution does not get any help from the aforesaid provision of Section 113-A of the Indian Evidence Act and no presumption can be drawn in the case in hand under the provision of Section 113-A of the Indian Evidence Act.

30. After the appreciation of the evidence discussed herebefore and looking to the judicial precedent laid down by Hon'ble Supreme Court in **Mangatram** (supra), this Court finds that prosecution miserably failed to prove beyond reasonable doubt the charge punishable under Section 306 of the IPC. Thus, the trial Court has committed illegality in convicting and sentencing the appellant as aforesaid.

31. Thus, the appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charge punishable under section 306 of the IPC.

32. The appellant is reported to be on bail. His bail and bonds are cancelled subject to the provisions of Section 437-A of the Cr.P.C.

33. The fine amount if deposited by the appellant be returned to him after expiry of the prescribed period for further legal action available to parties.

Sd/-
(Sharad Kumar Gupta)
Judge