

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.161 of 2009**

Ghanshyam Sahu aged about 22 years, s/o Shivprasad
Sahu R/o village Khera P.S. Hirri, District Bilaspur (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Civil Line,
District Raipur (CG)

---- Respondent

For Appellant : Shri Rahil Arun Kochar, Advocate
For Respondent/State : Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****06.12.2018**

1. This appeal is directed against the judgment of conviction and order of sentence dated 17.2.2009, passed by Sessions Judge, Raipur(CG) in Sessions Trial No.146/2008, wherein the said Court has convicted appellant for commission of offence under Section 306 of the IPC and sentenced to undergo R.I. for 5 years and fine of Rs.1000/- with default stipulation.
2. In the present case, name of the deceased is Smt. Hirondi Bai. As per version of the prosecution, she committed suicide on 30.5.2008 at her home situated at Kali Nagar, Raipur. It is alleged that the appellant who was husband of the deceased has physically and mentally harassed and that is why she

committed suicide. The matter was reported and the appellant was charge-sheeted. After completion of trial, the trial Court has convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under :
 - (i) The evidence led by the prosecution is not sufficient to establish abetment of suicide on the part of the appellant.
 - (ii) There is no evidence of harassment or cruelty on the part of the appellant therefore, charge under Section 306 IPC is not established.
 - (iii) The deceased suffered miscarriage on prior date of the incident and that might have a reason for ending her life.
 - (iv) Unless harassment is established by cogent evidence, Section 113-B of the Evidence Act cannot be invoked in the circumstances of the present case, therefore, finding arrived at by the trial Court is liable to be set aside.
4. On the other hand, learned counsel for the State supporting the impugned judgment submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. As per version of the prosecution, the incident took place at Kali Nagar, Raipur. Hemraj Sahu (PW1) is father of the deceased. He is resident of Yadav Nagar, Bilaspur. He had

no occasion to see as to what was really going on in the house of the deceased. As per version of this witness at one point of time, the appellant assaulted the deceased and she was ousted from her house, but version of this witness is not clear regarding point of time as to when this incident took place. Again, this witness deposed that the appellant demanded vehicle and money from her daughter, but this statement is also general in nature. It is not specifically stated as to when such demand was made and whether demand was made from him or it was made from his daughter. Looking to the bald statement of this witness, it is not established that the appellant has harassed his daughter prior to the date of incident which might have turned as instigation or intentionally aiding to commit suicide. Amrit Bai (PW2) is mother of the deceased. She is resident of Amardiha and she had also no occasion to see as to what was really going on in the house of her daughter. This witness has deposed that when the deceased came to her home at the time of Teeja Festival, she had informed her that the appellant harassed her for demand of dowry. Again, as per version of this witness, the deceased informed her that the appellant assaulted her. Version of this witness is based on information given to her by the deceased and statement of this witness is also general in nature. From the evidence of this witness, it is not established as to what was

really happening on the date of incident or prior to the date of incident.

6. Shobharam (PW3) is maternal uncle of the deceased and his version is based on information given to him by the deceased. As per version of this witness, the deceased informed him that the appellant demanded Rs.20,000/- and a vehicle. This witness further deposed that the deceased informed him that the appellant has assaulted her and ousted from house. Version of this witness is also based on the information given to him by the deceased and this witness had also no occasion to see as to what was really happening in the house of the appellant because this witness resident of village Kirna which is a different village from the place of incident. In view of this Court, hearsay evidence is not admissible in evidence.

7. In **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.”

8. For commission of offence under Section 306 I.P.C., it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise of :
 - (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.

9. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. There should be direct live link with the act of the appellant and death of the deceased (See ***Mahinder Singh Vs. State of M.P., 1995 AIR SCW 4570***). That part is missing in the present case because no one stated before the trial Court that anything has happened on the date of incident or prior to the date of incident which what sarcastic for the deceased.

10. On overall assessment of the evidence charge against the appellant is not established and the finding arrived at by the trial Court is not sustainable.
11. Accordingly, the appeal is allowed. Conviction and sentence awarded by the trial Court are set aside. The appellant is acquitted of the charge 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