

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 347 of 2009**

Rajesh, S/o Ramhansingh Rajak, aged about 24 years, R/o Village Kewachi, Chowki Khandsara, Police Station- Bemetara, District-Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: The Police Station- Bemetara, District- Durg (C.G.)

---- Respondent

For Appellant : None.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

16/11/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 17.04.2009 passed by Additional Sessions Judge, Bemetara, District-Durg (C.G.) in Session Trial No. 09/2009, wherein the said court convicted the appellant for commission of offence under Section 306 of IPC, 1980 and sentenced to undergo R.I. for 5 years and fine of Rs. 100/- with further default stipulations.
2. In the present case, name of the deceased is Purnima @ Mongrabai. The appellant married to the deceased and they were living at village- Kewachi after marriage. It is alleged that on 29.12.2008 at about 2:30 a.m., deceased committed suicide by hanging herself. As per the prosecution, the appellant harassed the deceased that is why she committed suicide.

3. This appeal is preferred on the following grounds:-

(i) Nirmla Bai (PW-7), who is mother of the deceased, had not made any allegation against the appellant to constitute the offence.

(ii) Dwarika (PW-8) stated before the court below that the deceased did not make any complaint about the appellant which shows the false application and his conviction is not sustainable.

(iii) Though, Nirmla Bai (PW-7), mother of the deceased, deposed that she has seen injury mark on back of the deceased, but the same is not supported by version of medical expert namely Dr. A.M. Shrivastava (PW-9), therefore, finding recorded by the trial court on the basis of statement of mother of the deceased, is not sustainable and the same is liable to be reversed.

4. Learned State counsel supporting the impugned order passed by the trial court, submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. To substantiate the charge, the prosecution examined as many as 15 witnesses. Pradeep (PW-6) deposed that it was informed by the deceased that the appellant and his mother & father harassed her for not following their directions and father-in-law of the deceased was keeping close watch on her.

Nirmla Bai (PW-7) and Dwarika (PW-8) deposed on the same line. All the three witnesses are resident of village- Mohgaon which is not the village where the incident took place. As the deceased was living with the appellant in village- Kewachi, these witnesses had no occasion to see as to what was really happening with the deceased on the date of incident or prior to the date of incident, therefore, version of these witnesses is hearsay in nature. In the matter of **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.”

6. When second hand evidence is inadmissible then it is difficult to hold that any demand for dowry was made or any physical or mental harassment was done by the appellant.
7. Though, Nirmla Bai (PW-7) deposed that she has seen injury mark on back of the deceased, but version of this witness is not supported by version of medical expert Dr. A.M. Shrivastava (PW-9) who conducted autopsy of the deceased.

As per report of the medical expert, he did not find any injury mark on back of the deceased.

8. Looking to the entire evidence on record, it is not established that the deceased was harassed by appellant on the date of incident or prior to the date of incident which was sarcastic on her that is why she ended her life.
9. In order to substantiate the charge under Section 306 of IPC, it is compulsory that the case should fall within the ambit of Section 107 of 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.
10. Therefore, a person said to have abetted, doing of a thing when he or she instigates 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.
11. As has been held by Hon'ble the Supreme Court in the matter of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in **2010 (1) SCC 750**, 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 under Section 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.

12. From the entire evidence, it is established that there is no live link between the act of the appellant and the act of the deceased, therefore, charge under Section 306 of IPC is not established. Finding of the trial Court is not sustainable looking to the entire evidence on record.
13. Accordingly, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him under Section 306 of IPC. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge