

HIGH COURT OF CHHATTISGARH, BILASPUR
ACQA No. 140 of 2010

State of Chhattisgarh, Through the District Magistrate District
 Bilaspur (C.G.) **---- Appellant**

Versus

1. Jamuna Prasad Kenwat, S/o. Budhailal Kenwat, Aged about 23 years, R/o. Bagrar, P.S. Marvahi, District Bilaspur (C.G.)
2. Shanti Bai Kenwat, Wd/o. Budhu Lal @ Budhailal, Aged about 55 years, R/o. Bagrar, P.S. Marvahi, District Bilaspur (C.G.)
3. Parwati Bai, W/o. Shambhu Kenwat, Aged about 23 years, R/o. Bagrar, P.S. Marwahi, District Bilaspur (C.G.)

----Respondents

For Appellant/State	:-	Mr. Rajendra Tripathi, Panel Lawyer
For Respondents	:-	Mr. Rakesh Pandey, Advocate.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment

Per Ram Prasanna Sharma, J

06.02.2018

1. This acquittal appeal is directed against the judgment dated 14.04.2009 passed by the Additional Sessions judge, Fast Track Court, Pendra Road, Session Division, Bilaspur, in Session Trial No. 32 of 2008, wherein the said Court has acquitted the respondents for commission of offence punishable under Sections 498(A), 304 (B) and 306 of the IPC 1860.

2. In the present case, name of deceased is Revtibai, who was married to respondent Jamuna Prasad Kenwat, about five years prior to the incident. Deceased Revtibai committed suicide on 28-04-2008 at village Bagrar. As per autopsy report of Dr. Sheela Shaha (PW-10) cause of death was suicidal in nature due to hanging, caused since 5-6 hours of the examination. It is alleged that respondents Jamuna Prasad (Husband), Shantibai Kenwat (Mother-in-law) and Parwatibai (Sister-in-law) younger sister of Jamuna Prasad had harassed the deceased on account of demand of dowry and due to harassment she committed suicide. Bhagwan Das (PW-1) is father of the deceased, who lodged merger intimation at Police Station Marwahi on 28-04-2008. After inquiry, the police authorities registered the case against the respondents and the matter was investigated. After completion of investigation, charge sheet was filed against the respondents. Respondents pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statements of the respondents were recorded under Section 313 of the CrPC. After hearing the parties, the trial Court acquitted the respondents as aforementioned.

3. Learned counsel for the State submits as under;-

- (i) That the statements of Bhagwan Das (PW-1), Terasiya Bai (PW-2), Ramavtar (PW-3), Sajroop Singh (PW-4), Heeralal Kenwat (PW-5) and Chhanugulal (PW-6) would prove that the deceased was harassed by the respondents and alleged offences were committed by the respondents.
- (ii) That there was quarrel between the deceased and her husband and the same is substantiated by the evidence but the

trial Court erred in not considering the material on record in its proper perspective.

(iii) That looking to the nature of crime as established by the prosecution it is a case of conviction.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed while invoking jurisdiction of the appeal.
5. To substantiate the charge prosecution has examined as many as 11 witnesses in their support. Respondents had examined Ramprasad (DW-1) in their defence.
6. We have heard learned counsel for both parties and perused the record of the trial Court.
7. Bhagwan Das (PW-1) is father of the deceased. As per version of this witness marriage of the deceased was solemnized about four years ago and she was living with the respondent Jamuna Prasad at Village Bagrar. He further deposed that on 25.08.2006 he sent his nephew Heeralal to bring the deceased and after returning Heeralal informed him that respondent Jamuna Prasad had some quarrel with the deceased. After listening to Heeralal, this witness went to the house of respondent Jamuna Prasad along with Sajroop Singh (PW-4), Chhanugulal (PW-6), Heeralal Kenwat (PW-5) and Ramavtar (PW-3), there Jamuna Prasad used some hot words. As per version of this witness he went to police station to lodge the report against Jamuna Prasad but at the same time Jamuna Prasad

reached there and tendered his apology and thereafter no report was made. As per version of this witness Shantibai and Jamuna Prasad used to tell Revtibai that fan, cooler and Iron box were not given during the marriage but he admits that such things have not been reported by him. Terasiya Bai (PW-2) is mother of the deceased. She deposed on the same line that of Bhagwan Das (PW-1). Ramavtar (PW-3) brother of the deceased also deposed on the same line. Sajroop Singh (PW-4), Heeralal Kenwat (PW-5) Chhangulal (PW-6) and Jannulal (PW-8) have also deposed on the same line.

8. These witnesses are not the resident of village Bagrar where the incident took place on 24.08.2008. No one from village Bagrar has been examined to show as to what happened on the date of incident or prior to the date of incident. All the witnesses of the prosecution as mentioned above are resident of Village Bartarai and they deposed on the basis of information given by deceased Revtibai or they have gathered information from each other. There is no dying declaration of the deceased and no suicidal note to show that the respondents harassed or abetted the deceased to commit suicide.
9. Now, the point for consideration is whether hearsay evidence is admissible evidence and whether the findings can be recorded on the basis of hearsay evidence. In 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 circumstances, 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.

As hearsay evidence of this witness inadmissible the same is not to be used against the respondents.

15. For establishing the offence under Section 304 (B) of the IPC. It is compulsory for the prosecution to establish that harassment or cruelty is done soon before the incident on account of demand of dowry. 'Dowry' has been defined in Section 2 of Dowry Prohibition Act, 1961; as 'any property or valuable security given or agreed to be given either directly or indirectly'

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties.

16. In the present case there is nothing on record that any demand

was made at the time of marriage. It is also not a case that any demand was made after marriage with the family members of the deceased. Again, there is no evidence that any harassment is caused to the deceased on account of demand of dowry. Witnesses of the prosecution deposed about the quarrel between the deceased and respondent Jamuna Prasad, since two years back of the incident in question. It is not a case that any act of harassment was done by any of the respondents which disturbed mental equilibrium of the deceased and there is no live link of harassment and death.

17. The respondents have also been charged for commission of offence punishable under Section 498A of the IPC. Section 498A of IPC reads as under:-

Section 498 A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. As earlier stated that there is nothing on record to show as to what happened on the date of incident or prior to the date of incident. There is no legal evidence to show any physical assault against the deceased. It is also not established as to what prompted the deceased to take extreme step to end her life. In absence of any cogent evidence, charges under Section 498 A is not substantiated against the respondents.

19. So far as the charge under Section 306 of the IPC is concerned, 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 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.

20. 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.

21. Again, in the matter of **Rajendra Das Vs. State of C.G., reported in 2013 (2) CGLJ 387**, 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 evidence 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.”

22. In the present case, it is not proved that any of the respondents have instigated deceased Revtibai on the date of incident or on a previous date to commit suicide or they have intention to aid to commit suicide.

23. Looking to the facts and circumstances of the case, we are of the considered view that the judgment of acquittal is not liable to be reversed or modified. Accordingly, the appeal fails and is hereby dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Ram Prasanna Sharma)