

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 64 of 2005

1. Kalim Khan S/o. Imam Khan, Aged 22 years, Resident of village Khatkhati, Police Station Basana, District Mahasamund (C.G.)
2. Mumtaz Begum W/o. Imam Khan, Aged 50 years, Resident of village Khatkhati, Police Station Basana, District Mahasamund (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Basna, District Mahasamund (C.G.)

---- Respondent

For Appellants : Mr. B.D. Badgayan, Advocate
For Respondent : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

17.02.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24.06.2004 passed by the Second Additional Sessions Judge, Mahasamund, Session Division Raipur (C.G.) in Sessions Trial No. 39/2004, wherein the trial Court convicted the accused/appellants under Section 306 of the IPC and sentenced them to undergo R.I. for 7 years and to pay fine of Rs. 1,000/- with default stipulation.

2. As per the prosecution case the marriage between deceased Shama Bano and appellant Kalim Khan was solemnized as both were in affair. After marriage the deceased was residing with the appellant. She got one daughter and one son out of the said wedlock. It is alleged that both the appellants harassed the deceased and assaulted her therefore, she took extreme step to end her life. The deceased poured kerosene oil on her body and set herself ablaze and she succumbed to burn injury. The matter was reported to Police Station and investigated by the Police Officers. After completion of the investigation, charge sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Saraipali, who, in turn, committed the case to the trial Court to which the appellants did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellants as mentioned above.

4. Learned counsel appearing for the accused/appellants submits as under;-

(I) That the case of the prosecution is based on the statements of Sayyed Khan (PW-1), Kamrunnisha (PW-2) who are the father and mother of the deceased respectively. As per their version, after marriage of the deceased they were not in talking terms with the family members of the deceased, therefore, they are not

the real witnesses of what is happened in the house of the deceased.

(ii) That there is no suicidal note to connect the appellants with commission of offence.

(iii) That the story put-forth by these witnesses is not corroborated by the medical evidence, therefore, no finding can be arrived at that any of the appellants assaulted the deceased during her lifetime. That no report of assault/harassment was made by the deceased during lifetime.

5. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law, well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.

6. I have heard counsel for the parties and perused the material on record.

7. As per version of Sayyed Khan (PW-1) and Kamrunnisha (PW-2), the appellants were living in their locality and they harassed/assaulted the deceased. But their bald statements are not substantiated by any medical evidence regarding any injuries caused to the deceased. Both have admitted that they were not having talking terms with the appellants and they have never visited the house of the appellants. If they would have visited the house of the appellants they have had opportunity to see what has happened in the house of the appellants, therefore, they are

not real witnesses as to what was really happened on the date of incident or on the previous days of the incident. Statements of both these witnesses goes to show that they have not stated anything specific regarding the date and nature of any incident happened with the deceased.

8. The witnesses are hearsay witnesses and from their evidence it is not clear what really happened with the deceased for taking extreme step to end her life. The deceased never lodged any report against any of the appellants during her lifetime that any physical violence was committed against her and was harassed by the appellants. Appellant Kalimkhan entered into the witness box as DW-1 and he deposed that he is a poor man having no regular source of income and due to poverty the deceased ended her life.

9. 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 instigated any person to do so with any other means of abetement besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

10. 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.

11. Learned counsel for the appellant has relied on a decision of this Court in case of *Rajendra Das Vs. State of C.G., reported in 2013 (2) CGLJ* in which it has been held in paras 7, 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.

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.

12. In the present case, except the bald statements of mother and father of the deceased, there is no other evidence to establish that on the date of incident or on the previous dates any of the appellants has instigated the deceased to commit suicide.

13. In the opinion of this Court, benefit of doubt should be extended to the appellants and for the foregoing reasons judgment of conviction and order of sentence passed by the trial

Court is set aside. The appellants are acquitted of the charge under Section 306 of the IPC. The appellants are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh