

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 528 of 2013**

- Daulatram S/o Daroga Patel Aged About 45 Years R/o Village Rohasi, Police Station Palari, Distt. Raipur C.G. Now (Baloda Bazar Bhatapara) C.G.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Palari, Distt. Raipur (Now Baloda Bazar Bhatapara) C.G.

---- Respondent

For Appellant	:	Ms. Uma Tiwari, Advocate
For Respondent-State	:	Ms. M. Asha, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10/03/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by learned 1st Additional Sessions Judge, Baloda Bazar, District Raipur in Sessions Trial No.164/11 dated 05.09.2012, whereby the appellant has been convicted under Section 306 IPC and sentenced to undergo R.I. for 10 years and to pay fine of Rs.500/- with usual default stipulation.
2. As per the prosecution case, that the deceased namely Mantora, who was married with the appellant 10-12 years back, died on 04.05.2011 by setting herself ablaze. At the time of death the accused and deceased had 5 children. It is the case of the prosecution that after the marriage till one year, the behavior of the appellant was well with the deceased but subsequently, the appellant after consuming liquor started to abuse and assault his wife. The general complaint existed that after the appellant

used to consume liquor daily and when it was objected, the appellant was in habit to beat his wife. As such, many times the deceased had to leave her matrimonial house and used to come back to her maternal home where she expressed her desire that she do not want to live with the appellant because of the torture meted out to her. In the year 2011 during the festival of Holi, the deceased was beaten brutally, thereafter, she went to the house of her uncle. Thereafter, the appellant went there, requested & apologized and promised that he will not repeat his activities and took his wife with him. On the date of incident i.e. on 04.05.2011 after consuming liquor, the appellant again abused and assaulted the deceased, consequently, she committed suicide by setting herself ablaze.

3. During the course of trial, the appellant abjured the guilt and claimed to be tried. The Trial Court after evaluating the entire evidence and facts convicted the appellant as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that the order of the trial Court is without any evidence as no evidence is on record to show that the appellant had beaten the deceased and because of that reason she committed suicide, therefore, the conviction under Section 306 IPC cannot be sustained.
5. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the appellant and submits that the order of the Court below is well merited which do not call for any interference.
6. I have heard learned counsel for the parties and perused the record.
7. The prosecution on its behalf has examined as many as 11 witnesses. Brother of the deceased namely Sarhu is examined as PW-4 and the

mother of the deceased Fagni Bai is examined as PW-5.

8. Sarhu (PW-4) has deposed that the deceased Mantora was married with the appellant 15 years back. He further stated that the appellant after consuming liquor used to beat his wife and till one year of the marriage she was kept fine, but subsequently, the behavior of the appellant was changed. Further narrating the incident it is stated that because of the beating before the incident, the deceased had to leave her matrimonial house to come to the house of her uncle Mohan Lal Patel. Thereafter, the appellant came to the village with the Sarpanch and other 3 – 4 persons and admitted that he will not repeat it again and thereafter, the deceased joined him. But subsequently, she committed suicide.
9. Likewise, the statement as has been given by Fagni Bai (PW-5), wherein she has stated that because of the torture, the deceased committed suicide by setting herself ablaze. Gayatri Bai (PW-6) has narrated the same incident that the appellant after consuming liquor used to beat his wife, therefore, she committed suicide.
10. It is not in dispute that the wife of the appellant died because she suffered burn injury on 04.05.2011. The Postmortem report (Ex. P-6), which is proved by Dr. Wasim Raza (PW-10), shows that the cause of death is asphyxia and shock due to burn injury. The query report (Ex. P-7) also corroborates this fact, which is proved by Dr. Wasim Raza (PW-10), who conducted the postmortem that the nature of death appears to be suicidal.
11. The Hon'ble Supreme Court, in Kishangiri Mangalgiri Goswami Vs. State of Gujrat (AIR 2009 Supreme Court 1808) has described the abetment of suicide. It interpreted that abetment involves a mental process of

instigating a person or intentionally aiding that person in doing of a thing. The Hon'ble Supreme Court, while interpreting the provisions of Section 306 IPC has reiterated the following dictum as under:

“8 Sec. 306 IPC deals with abetment of suicide. The said provision reads as follows

"306 ABETMENT OF SUICIDE.

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

9 Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under Sec. 306 of IPC.

10 In State of West Bengal n Orilal Jaiswal (AIR 1994 SC 1418) this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

12. Section 306 IPC deals with abetment of suicide. The abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. The statement of the witnesses would show that after consuming the liquor, the appellant used to beat the deceased to the extent that the deceased had to leave the house and take shelter in others house. Statement of Fagni Bai (PW-5) shows that the children were also live under fear and until & unless the appellant eats food,

nobody was allowed to eat food in the house. Statements of Sarhu (PW-4) and Fagni Bai (PW-5) would show that before the incident, the appellant had also committed similar offence that after consuming the liquor, the appellant had beaten the deceased, therefore, she had to leave the house. However, after confessing his crime with a promise not to repeat the same, the appellant took back the deceased but again repeated the same. It shows that the appellant by his act created an atmosphere in the house because of which it was not possible for deceased to live in the house and the deceased was compelled to commit suicide.

13. Considering the evidence on record, in the opinion of this Court, the conviction recorded by the Court below under Section 306 IPC appears to be just and legal, therefore, the circumstances would lead to show that the appellant has harassed and abetted the deceased to take such extreme step. Accordingly, the finding arrived at by the Court below cannot be held to be wrong.
14. Now with respect to the sentence, the appellant is in jail since 19.05.2011 and the record would show that five children were born out of the marriage. Considering, the facts & circumstances, in the opinion of this Court after evaluating the nature of allegations made, the ends of justice would be served if the jail sentence is reduced to that of already undergone by him. Appellant is in jail, he be released forthwith, if not required in any other case.
15. With such observation, the appeal is partly allowed.

Sd/-
Goutam Bhaduri
Judge