

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1380 of 2015**

- Abhimanyu S/o Ramo Aged About 45 Years, Occup. Agriculturist, R/o Village Vijna, P.S. - Tamnar, District - Raigarh, Civil And Revenue District - Raigarh Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, P. S. - Tamnar, District - Raigarh Chhattisgarh., Chhattisgarh

-----Respondent

For Appellant	: Mr. Sanjay Agrawal, Advocate
For Respondent/State	: Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****19/09/2018**

1. This appeal has been preferred against judgment dated 15-10-2015 passed in Special S.T. No.77/2011 by First Additional Sessions Judge, Raigarh, C.G. convicting the appellant under Section 306 of the IPC and sentencing him with R.I. for 7 years along with fine Rs.2000/- with default stipulation.
2. The case of the prosecution, in brief, is this that soon after the marriage of deceased Hastini Bai an attempt was made by the appellant to rape her. The deceased objected and opposed. When the deceased tried to give this information to her husband and in-laws, her husband abused and thrashed her. The deceased on 01-01-2011 with intention to commit suicide immolated herself. She was admitted in the hospital where she gave the dying declaration

(Ex.-P/16) to the Executive Magistrate on 03-01-2011, in which, she stated that because of the sexual assault made by the appellant she got frustrated and has immolated herself to commit suicide. The deceased died on 09-01-2011. Subsequent to merg enquiry, the FIR was lodged against this appellant and co-accused Jaylal, husband of the deceased, registering the offence under Section 306, 34 of the IPC. After completion of the investigation, charge sheet was filed before the concerned Court. The trial Court charged the appellant and co-accused Jaylal Mehar with offence under Section 306, 34 of the IPC. The appellant and the co-accused denied the charges and prayed for trial.

3. On completion of the evidence for prosecution, the appellant and the co-accused were examined under Section 313 of the CrPC in which they have denied all the incriminating evidence against them, pleaded innocence and false implication. No witness was examined in defence. On completion of the trial, the impugned judgment was passed in which, co-accused Jaylal Mehar has been acquitted from the charges framed against him and this appellant has been convicted and sentenced as aforementioned.
4. It is submitted by the counsel for the appellant that no case of abetment to commit suicide is made out according to the evidence present in this case. There is no evidence to show that the abetment as defined under Section 107 of the IPC is made out. The deceased has committed suicide because of her own frustration, although there is some allegation against this appellant, but he has not been prosecuted for the same. Hence, it was a case of acquittal, in which the trial Court has committed error in convicting the

appellant for the offence which he has not committed. Therefore, it is prayed that the appellant may be acquitted of the charge.

5. Per contra, learned counsel for the State opposing the appellant's submission submits that the prosecution has proved its case beyond reasonable doubt and there is no case made out in favour of the appellant. Hence, the appeal may be dismissed.
6. Heard learned counsel for the parties and perused the record of the trial Court.
7. The judgment of conviction against the appellant is based only on the basis of dying declaration, which was recorded by the Executive Magistrate, Amit Kumar Shrivastava (PW-11) who has proved recording the dying declaration Ex.-P/16 given by the deceased. On perusal of Ex.-P/16, it appears that the deceased made statement, that the appellant attempted to rape her 2 to 3 times. On the date of incident, i.e., 01-01-2011 again he attempted to rape her and when the appellant again approached her indecently, to which she opposed, because of which she was abused by him. She stated that because of this frustration she poured kerosene oil over her and then immolated herself.

This is the only statement on record to show that the deceased had committed suicide and there is no other statement given by any of other witnesses to support the version of the deceased that has given in the dying declaration.

8. The question is, whether it amounts to abetment to commit the offence as it is provided under Section 107 of the IPC or not.
9. Section 107 of the IPC clearly provides, firstly a person has to be

instigated to do a thing, secondly, one or more other persons may engage in a conspiracy to motivate the person for doing that thing which may result in commission of offence, and thirdly, act of the accused person should be of such nature that would amount to intentionally aiding the person to commit the offence.

No such act is attributed on the part of the appellant. According to the evidence present in this case, his act may be a cause or reason, because of which, the deceased got frustrated and committed suicide, but he has not acted in such a manner which can be regarded as abetment given to the deceased to commit suicide as provided under Section 107 of the IPC.

10. Hence, after due consideration on all the material present on record, it is found that no case is made out for abetment to commit suicide against the appellant. Therefore, conviction of appellant under Section 306 of the IPC is bad in law.
11. Resultantly, the appeal filed by the appellant is allowed. Conviction of the appellant is set aside. He is acquitted of the charge under Section 306 of the IPC. He be set at liberty forthwith, if not required in any case.
12. The appeal stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge