

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 31-7-2019****Pronounced on 13-8-2019****CRIMINAL APPEAL No.2728/1999**

(Arising out of judgment of conviction and order of sentence dated 30.09.1999 passed by Additional Sessions Judge, Janjgir, Session Division, Bilaspur, Madhya Pradesh (now State of CG) in ST No. 329/1995.

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1. Panchamlal age about 34 years, S/o. Malha
- 2. Rambha Bai (died, appeal abated)**
3. Chhotey age about 34 years, S/o. Malha Ram
4. Roop ram age about 29 years

Appellants No. 1, 3 and 4 R/o. Village Darri, P.O. Pamgarh, Tehsil Janjgir, Distt. Champa

---Appellants**-VERSUS-**

State of Madhya Pradesh (now Chhattisgarh)

---Respondent

For Appellants : Ms. Richa Dwivedi, Adv. on behalf of Mr.
Pushpendra Kumar Patel, Adv.

For State : Mr. Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 30.09.1999 passed by Additional Sessions Judge, Janjgir, Sessions Division, Bilaspur, Madhya Pradesh (now CG) in ST No. 329/1995 whereby and whereunder he convicted the appellants for offence punishable under Section 306 of the Indian Penal Code (in brevity 'IPC') and sentenced each of them to

undergo RI for 5 years and to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo additional RI for 2 months.

2. This is admitted by the appellants that marriage of the deceased Dilip Kumari was solemnized with appellant No.1-Pancham Lal, 2-3 years prior to the date of incident.

3. In brief, the prosecution story is that appellant No.3-Chhote Lal, appellant No.4-Roop Ram are the brother-in-laws of deceased. After the marriage appellants used to harass her that she does not do domestic work. On account of harassment, deceased consumed insecticide on 29.05.1994. She was admitted in hospital P.H.C. Janjgir Champa. Her dying declaration was recorded. On 30.05.1994 she died. A mere intimation was registered in police station Janjgir. After the inquiry, an FIR was registered in police station Janjgir. After completion of investigation, a charge sheet was filed against them under Section 306, 498-A read with 34 of IPC. The trial Court framed the charge against them under Section 306/34 of the IPC. To bring home the charge, prosecution examined as many as 14 witnesses. They did not examine any witness on their defence. After completion of trial, trial Court convicted and sentenced them as aforesaid.

4. Being aggrieved, the appellants have preferred this appeal. During the pendency of this appeal, appeal was abated against appellant No.2- Smt. Rambha Bai due to her death.

5. Counsel for the appellants No.1, 3 & 4 argued that trial Court has not appreciated the evidence in proper perspective. Prosecution failed to establish the essential elements of Section 306 of the IPC. Thus, the conviction and sentence of appellants No.1,3 & 4 are bad in eyes of law. Hence, they may be acquitted of the aforesaid charge.

6. Counsel for the State argued that the conviction and sentence of the appellants No.1, 3 & 4 are based on clinching evidence. The conviction and sentence of the appellants No.1, 3 & 4 do not call for any interference by this Court.

7. As per the alleged MLC report Ex.P-11, P.W.-11 Dr. U.C. Sharma had examined deceased who was brought before him in serious condition. He had found that she consumed organophosphorus. In his opinion she had consumed organophosphorus.

8. There is no such evidence on record on the strength of which it can be said that Ex. P-11 is not believable. Thus, this Court believes on Ex. P-11.

9. As per the alleged postmortem report Ex. P-13 P.W.-11 Dr. U.C. Sharma had conducted the autopsy on dead body of deceased and found that mucus with froth was coming out from her nose and mouth. Mucus with froth was present in her larynx and trachea, bad smell of insecticide organophosphorous was coming from her stomach. He opined that her death was caused 2-4 hrs prior. The cause of death was asphyxia as a result of suspected organophosphorous poisoning.

10. There is no such evidence on record on the strength of which it can be said that Ex.P-13 is not believable. Thus, this Court believes on Ex.P-13.

11. P.W.-1 Devi Ram, who is the brother of deceased, P.W.-2 Savitri Bai, who is the sister-in-law of deceased say in para -2, P.W.-3 Badku, who is the maternal uncle of deceased says in para-3, P.W.-5 Smt. Balmati says in para-1, P.W.-7 Bharat Lal says in para-4, P.W.-9 Madan says in para -4, P.W.-13 Feku Lal says in para-1 of their statements given on oath that husband of deceased and her brother-in-laws (Devar) used to harass her.

12. As per the alleged dying declaration Ex. P-1 deceased had committed suicide by consuming sulfas on account of harassment of her husband, her brother-in-laws.

13. It would be pertinent to extract the provisions of Section 306 of IPC :

“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.”

14. The provisions of Section 107 of the IPC are noticeable which reads as under :-

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

15. Hon'ble Supreme Court in the matter of **S.S. Chheena -v- Vijay Kumar Mahajan and another** [(2010) 12 SCC 190] wherein suicide note did not even remotely connect accused with the offence of abetment, in Para 25 of the judgment observed that :-

“**25.** Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

16. In the matter of **State of WB -v- Orilal Jaiswal** [(1994) 1 SCC 73], Hon'ble Supreme Court has held in para 17 that :-

“..... the Court 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 the 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.....”

17. In the matter of **Mahendra Singh -v- State of MP** [1995 Suppl. (3) SCC 731], in para 1 of judgment of Hon'ble Supreme Court has quoted the dying declaration of deceased which reads thus :-

“ My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has

illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

The Supreme Court in **S.S. Chheena** (supra) observed that in the case of **Mahendra Singh** (supra), that bench came to a definite conclusion that by no stretch of **imagination**, the ingredients of abetment are attracted on the aforesaid statement of the deceased.

18. In the matter of **Ramesh Kumar -v- State of Chhattisgarh** [(2001) 9 SCC 618], Hon'ble Supreme Court had an occasion to deal with a case of a dispute between the husband and wife, the appellant/ husband uttered “you are free to do whatever you wish and go wherever you like’ thereafter the wife of the appellant committed suicide. Para 20 of the judgment is extracted below :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

19. In the matter of **Chitresh Kumar Chopra -v- State (Govt. of NCT of Delhi)** [(2009) 16 SCC 605], Hon'ble Supreme Court has held that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidiability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.”

20. In the matter of **Mangat Ram -v- State of Haryana** [AIR 2014 SC 1782], Hon'ble Supreme Court has held that :-

“A woman may attempt to commit suicide due to various reasons, such as depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment.”

21. P.W.-1 Devi Ram in para-10, P.W.-2 Savitri Bai in para-7, P.W.-3 Badku in para-5, P.W.-4 Dharmin Bai in para-3, P.W.-5 Smt. Balmati Bai

in para-4, P.W.-7 Bharat Lal in para-5, P.W.-13 Feku Lal in para-3 say that one year prior from date of incident, deceased was living in the house of P.W.-1 Devi Ram, during this period deceased had made no relation with appellants No.1, 3 & 4. Moreover, P.W.-8 Kamaru says in para-6 of his statement given on oath that deceased had no trouble in her matrimonial house. In these circumstances, it cannot be said that appellants No.1, 3 & 4 had allegedly harassed or tortured deceased in such manner, to such extent, from which it may be inferred that she was left with no other options except to commit suicide, she had in fact induced to end life by committing suicide, there was a clear *mens rea* on part of the appellants No.1, 3 & 4 that she should commit suicide.

22. Ordinary petulance, discord and differences in marital life are quite common to the society and no inference can be drawn that intention was that someone commits suicide.

23. Looking to the above mentioned facts and circumstances of the case, looking to the above mentioned judicial precedents laid down in **S.S. Chheena** (supra), **State of WB** (supra), **Mahendra Singh** (supra), **Ramesh Kumar** (supra), **Chitresh Kumar Chopra** (supra) and **Mangat Ram** (supra), this Court finds that aforesaid statements of para-2 of P.W.-1 Devi Ram, P.W.-2 Savitri Bai, para-3 of P.W.-3 Badku, para-1 of P.W.-5 Balmati, para-4 of P.W.-7 Bharat Lal and para-4 of P.W.-9 Madan, para -1 of P.W.-13 Feku Lal, the aforesaid content of Ex. P-1, do not amount as instigation, engagement in conspiracy, intentionally aid, for committing suicide by deceased. Alleged harassment may be a cause for committing suicide by deceased but it cannot equated to abetment.

24. After the appreciation of the evidence discussed herebefore, this Court finds that prosecution has failed to prove charge punishable under Section 306 of the IPC beyond reasonable doubt against the appellants No.1,3 & 4. Thus, the aforesaid judgment of conviction and order of sentence of appellants No.1,3 & 4 are set aside.

25. Hence, the appeal is allowed and the appellant No.1-Pancham Lal, appellant No.3- Chhote Lal and appellant No.4- Roop Ram are acquitted of the charge punishable under 306 of the IPC extending them benefit of doubt.

26. The fine amount if deposited by the appellants No.1, 3 & 4 be returned to them after expiration of the prescribed period for legal action available to the parties.

27. The appellants No.1, 3 & 4 are reported to be on bail. Their bail and bonds stand discharged subject to provision contained in Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge