

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1954 of 1999**

- Lalji Mallah alias Kanthi, S/o- Ganga Mallah, Aged about- 30 years, R/o- Mallahpara, Gandai, District- Rajnandgaon (M.P) (Now C.G.)

---- Appellant**Versus**

- State of Madhya Pradesh, through P.S.- Gandai, District- Rajnandgaon (M.P.) (Now C.G.)

---- Respondent

For Appellant : Shri Tarun Dansena & Smt. Avit Lakra, Advocates.
For State/Respondent : Shri Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****04/12/2019**

1. This appeal is preferred against the judgment dated 3rd July, 1999 passed by Additional Sessions Judge, Khairagarh, Sessions Division- Rajnandgaon (M.P) (Now C.G.) in Sessions Trial No. 178/1998 wherein the said Court convicted the appellant for commission of offence under Section 306 of IPC, 1860 and sentenced him to undergo R.I. for 10 years and fine of Rs. 1000/- with default stipulations.
2. In the present case, name of the deceased is Silochana Bai who died on 26th September, 1998 at Mallahpara, village- Gandai because she committed suicide by hanging. It is alleged that the appellant questioned the character of the deceased that is why she committed suicide.
3. To substantiate the charge, the prosecution examined as many as 6 witnesses. Sheru (PW-1) did not depose anything against

the appellant regarding commission of offence. From his entire cross examination, it is not clear as to what is really happened on the date of incident or prior to the date of incident. He is made witness to the prosecution because he informed about death of the deceased at Police Station- Gandai. This witness has deposed various facts in his cross examination, but from his entire statement, it is not clear as to what was sarcastic for the deceased to end her life on the date of incident.

4. Ganesh (PW-3) and Jhadu Ram (PW-4) deposed regarding previous conflict between the deceased and the appellant, but they are also not able to state as to what really happened on the date of incident or prior to the date of incident which may be instigation or intentionally aiding for commission of suicide.
5. Ram Ji (PW-5) is father of the deceased and his entire statement is based on information given to him by the deceased. He is resident of village- Pandatarai while the incident took place at village- Gandai. This witness has no knowledge as to what was really going on at village- Gandai between the appellant and the deceased. Though he deposed that there was settlement of issues between the appellant and the deceased, but the fact remains that from his entire statement the real cause of death of deceased is not clarified. From the version of this witness when the deceased left to village- Gandai the incident took place after two months. This witness is not able to state that as to what happened in these two months.
6. For commission of offence under Section 306 of IPC ingredients mentioned in Section 107 of IPC has to be established which may be mentioned as under:-

- (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.

7. In the present case, the entire evidence is based on information given by deceased which is hearsay in nature. In **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 circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is concerned, 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 rumor flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible."

8. For establishing the charge under Section 306 of IPC there should be link between the death of the deceased and act of the appellant, but that link is totally missing in the present case. Previous history is not bearing with abetment of suicide and, therefore, charge under Section 306 of IPC is not established against the appellant. Finding arrived by the trial Court on the basis of hearsay evidence is not sustainable.

9. Accordingly, appeal is allowed. Conviction and sentence imposed on the appellant is hereby set aside. The appellant is

acquitted from charge under Section 306 of IPC, 1860. The appellant is reported to be in jail. He be released forthwith if not required in any other case. Fine amount, if paid, shall be refunded to the appellant.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant