

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 419 of 2002**

1. Jitendra S/o Late Rameshwar, aged about 32 Years, R/o Village Khodari, P.O. Salka, Police Station Udaypur, District Surguja Chhattisgarh.
2. Amit Kumar S/o Late Rameshwar, aged about 28 Years, R/o Village Khodari, P.O. Salka, Police Station Udaypur, District Surguja Chhattisgarh.
3. Gangawati D/o Late Rameshwar W/o Lallu R/o Village Tanakhar, Tah. Katghora, District Korba Chhattisgarh.
4. Smt. Vimla Singh W/o Late Rameshwar, aged about 50 Years, R/o Village Khodari, P.O. Salka, Police Station Udaypur, District Surguja Chhattisgarh.

---Appellants

Versus

- The State of C.G.

---- Respondent

For Appellants
For Respondent/State

Shri Sushil Dubey, Advocate.
Shri Pawan Kesharwani, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****01/10/2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 05.03.2002 passed by the 1st Additional Sessions Judge, Ambikapur, District Surguja, C.G. in S.T. No.391/1996 convicting the accused/ Rameshwar (dead) under Section 306 of the Indian Penal code (for short 'the IPC') and sentencing him to undergo R.I. for 10 years and fine of Rs.1,000/-, in default to undergo additional R.I. for 06 months.

2. Case of the prosecution in brief is that on 23.01.1996, at 9:05 pm, merg intimation Ex.P-6 was lodged by the appellant with the police stating therein that his friend Shiv Prasad Kanwar has kept the sister of deceased Kadam Bai as his wife and visits his house frequently and that the sister of the deceased also being known to the appellant used to visit his house. It was further stated that on 21.01.1996 at around 6 pm, the deceased came to his house along with her niece and after taking dinner they slept in the house of the appellant with his wife and other family members whereas the appellant left for his guard duties at 9:00 pm. According to the appellant, when he returned in the morning at 5:00 am, he found the deceased Kadam Bai vomiting and, therefore, he immediately took her to hospital for treatment, however, after examination the Doctor found her dead.
3. During merg inquiry, it was found that the appellant had illicit relation with the deceased Kadam Bai and he had kept her as a keep in his house and when the wife of the appellant came to his house, the deceased being aggrieved consumed some poisonous substance and committed suicide.
4. During investigation, the inquest was prepared vide Ex.P-3 and thereafter the dead body was sent for postmortem which was conducted by PW-15 Dr. Sharad Girewal and Smt. Shobha Girewal vide Ex.P-11. FIR Ex.P-18 was registered against the appellant and his wife Smt. Bimla Bai under Section 306/34 of IPC. Statements of the witnesses were recorded. Viscera of the deceased was sent for chemical examination to FSL, Sagar. After completion of investigation, charge sheet was filed against the appellant under

Section 306 of IPC. The Trial Court framed the charge under Section 306 of IPC against the appellant which was denied by him and he prayed for trial.

5. So as to hold the accused/Rameshwar guilty, the prosecution examined as many as 22 witnesses i.e. PW-1 Fadku Das, PW-2 Badil, PW-3 Jaddu Ram, PW-4 Chandrika Prasad Soni, PW-5 Gendaram, PW-6 Shri B.N. Singh, PW-7 Vishwanath Tiwari, PW-8 Ramkishun, PW-9 Mohar Das, PW10 Shiv Kumari, PW-11 Bhadar, PW-12 Jankia Bai, PW-13 Thakur Ram, PW-14 Ranjeet Ram, PW-15 Dr. Sharad Girewal, PW-16 Ishwar Prasad, PW-17 Ramadhar Rai, PW-18 Shyamli, PW-19 Dr. K. Chandrakar, PW-20 Lodha Ram, PW-21 Devsai and PW-22 Dilip Pandey. Statement of the accused/Rameshwar was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him in his defence.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced him as mentioned in para-1 of this judgment.
7. Learned counsel for the appellant submits that the trial Court without properly appreciating the oral and documentary evidence on record has wrongly convicted the appellant merely on the ground that the deceased Kadam Bai committed suicide by consuming some poisonous substance. He submits that as per the evidence of PW-11, PW-12 and PW-13, who are father, mother and brother of the deceased respectively, it is quite evident that there is no

element of abetment as defined under Section 107 of IPC on the part of the appellant compelling the deceased to commit suicide and as such conviction of the appellant under Section 306 of IPC is not sustainable in law.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/Rameshwar is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. I have learned counsel for the parties and perused the material available on record.
10. It is not in dispute that the deceased died on account of consuming some poisonous substance and the nature of her death was suicide vide Ex.P-11 (Postmortem Report) which has been duly proved by the Autopsy Surgeon, (PW-15) Dr. Sharad Girewal. The death of the deceased due to poisoning has also been proved by the query report Ex.P-12 which has been proved by PW-15 Dr. Sharad Girewal.
11. The prosecution has examined as many as 22 witnesses including Bhadar, Jankia Bai and Thakur Ram, who are father, mother and brother of the deceased as PW-11, PW-12 and PW-13 respectively.
12. PW-11 Bhadar, father of the deceased has stated that the accused/appellant had kept his daughter/deceased as a keep in his house and that Kadam Bai died in the house of the appellant. In cross-examination, he has stated that he did not disclose to the police that the appellant had kept the deceased as a keep. He clarifies that the police was already aware of the said fact.

13. PW-12 Jankia Bai, Mother of the deceased has also stated that the deceased was living with the appellant as his keep for about 1-1 ½ months and thereafter she died in the house of the appellant. She has also stated that her daughter/deceased has been poisoned to death. In cross-examination, she has stated she did not disclose to the police that the appellant had kept the deceased as his keep for the last 1 ½ months.

14. PW-13 Thakur Ram, Brother of the deceased has stated that at the time of incident he was in Bario. He states that the accused/appellant used to come to his house and, therefore, he got acquainted with his sister Kadam Bai. He also admits that the appellant had kept his sister as his keep in his house. He further states that when they objected to the same since the appellant was of Gond community and they were of Kunwar community, the deceased Kadam Bai told that the appellant had promised to marry her. He also states that on the date of incident the deceased was in the house of appellant where she died due to poisoning. In cross-examination, he had stated that though he has disclosed to the police that the appellant had kept the deceased as his keep in his house for 20-25 days and if the said fact is not mentioned in his police statement, he cannot tell the reason. He has also stated that he had disclosed to the police that the appellant and his wife killed the deceased by giving her poison and if the same is not recored in his statement, he cannot tell the reason.

15. From close scrutiny of the evidence of PW-11 Bhadar, PW-12 Jankia Bai & PW-13 Thakur Ram, it is found that the deceased having illicit relation with the appellant and on the date of incident,

the deceased had come to the house of the appellant where due to consumption of some poisonous substance she died. The evidence on record also goes to show that the fact of appellant being already married was very well known to the deceased and that the family members of the deceased (PW-11 Bhadar, PW-12 Jankia Bai & PW-13 Thakur Ram) were also aware of the illicit relation of the deceased with the appellant.

16. In order to bring home the charge under Section 306 against the accused, the prosecution is first required to prove that there was abetment on the part of the accused as defined under Section 107 of IPC which compelled the deceased to commit suicide. Section 107 of IPC 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 any 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.”

17. Considering the facts and circumstances of the case, the manner in which the incident occurred, the evidence of PW-11, PW-12 and PW-13, who are father, mother and brother of the deceased respectively where they have not made any allegation against the appellant regarding any cruelty or commission of any act which amounts to abetment as defined under Section 107 of IPC, this Court is of the opinion that the prosecution has not been able to prove offence under Section 306 of IPC against the appellant

beyond all reasonable doubt. Being so, the appellant is entitled to be acquitted of the charge under Section 306 by extending him benefit of doubt.

18. In the result, the appeal is allowed. The impugned judgment is hereby set aside, acquitting the appellant of the charge under Section 306 of IPC. Since, the appellant has already died during the pendency of this appeal and it is being prosecuted by his legal heirs, there is no need to pass any further order.

Sd/-
Gautam Chourdiya
Judge