

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.152 of 2009**

Kamta Prasad, S/o. Chandulal Satnami, Aged about 30 years, R/o. Village Teela, PS Palari, Distt. Raipur (CG)

---- Appellant

Versus

State Of Chhattisgarh Through P.S. Palari, Distt. Raipur (CG)

---- Respondent

For the appellant : Shri Adil Minhaz, Advocate

For the State/respondent : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**25.3.2019.**

1. The appeal is directed against judgment dated 09.02.2009 passed by Second Additional Sessions Judge, Baloda Bazar, Distt. Raipur (CG) in Session Trial No.307/2006 wherein the said Court convicted the appellant for commission of offence under Section 306 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for three years and to pay fine of 3,000/- with default stipulation.

2. In the present case name of the deceased is Hemin Bai who is the wife of the appellant and their marriage took place in the month of November 2005. The deceased died due to burn injuries on 08.4.2006.

3. Case of the prosecution is based on the statement of Markandey (PW-2), who is the father of the deceased, Manmati (PW-3), who is the mother of the deceased and Bhuneshwar (PW-

7), who is the brother of the deceased. Though Markandey (PW-2) deposed (para 2) that his son informed him that the appellant assaulted the deceased on the date of incident and prior to the date of incident, but this version is not supported by his son Bhuneshwar (PW-7). As per the version of Bhuneshwar (PW-7), Hemin Bai informed him that mother-in-law of the deceased harassed her by not providing food for her and pouring hot water on her body. This witness again deposed that Hemin Bai informed him that the appellant and his mother poured kerosene on her body and set her ablaze, but version of this witness is not supported from any angle. No dying declaration was recorded in the present case and no suicidal note was seized during the course of investigation. Manmati (PW-3) is mother of the deceased and version of this witness is based on what is informed to her by the deceased. No one is eyewitness account of any incident of assault or harassing the deceased by not providing food or some other way. Therefore, statement made by this witness is bald and general which is not substantiated by incriminating piece of evidence.

4. For establishing charges under Section 306 IPC, the prosecution is under obligation to establish the ingredients of Section 107 IPC which relates to abettment which may be read 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.

Therefore, a person said to have abetted, doing of a thing when he or she instigate any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

5. For establishing offence under Section 306 IPC, there should be live link between the death of the deceased and the act of the culprit, but in the present case, there is nothing to connect the appellant directly with death of the deceased. The trial Court recorded finding of imagination that seems that the appellant was present on the date of incident, therefore, there is scope of presumption against him. There is nothing on record that what really happened on the date of incident or prior to the date of incident which was sarcastic and that too was instigated or aided by the appellant. Looking to the entire evidence, finding arrived at by the trial Court is not sustainable, because the same is not based on legally admissible evidence.

6. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges framed against him. He is reported to be on bail. His bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**