

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.405 of 2009**

Yaad Ram Nishad, S/o. Panchu Nishad, aged about 30 years,
Occupation Labour, R/o. Village Dhaneli, PS. Dharsiva, Tahsil
& Distt. Raipur (CG)

---- Appellant**Versus**

State Of Chhattisgarh through Police Station Dharsiva, Raipur
(Chhattisgarh)

---- Respondent

For the appellant : Shri BP Sharma and Ku. Trishna Das,
Advocates

For the State/respondent : Shri AN Bhakta, Dy. Advocate General

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****01.3.2019.**

1. The appeal is directed against judgment dated 29.4.2009 passed by Sessions Judge, Raipur Distt. Raipur (CG) in Session Trial No.152/2008 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 five years and to pay fine of 1,000/- with default stipulation.

2. In the present case name of the deceased is Dhaneshwari Bai, who was wife of the appellant. As per the autopsy of the deceased, she died due to burn injuries. From the evidence, it is established that the deceased committed suicide by pouring kerosene on her body and lit the match stick.

3. Learned counsel for the appellants submits as under:

(i) Ingredients of abetment as defined under Section 107 IPC is not established as per the evidence laid down by the prosecution and the trial Court has decided the issue in an arbitrary manner.

(ii) Without there being any clinching evidence the trial Court held that instigation has been committed by the appellant.

(iii) Prosecution witnesses especially, parents and brother of the deceased have not supported the version of the prosecution.

(iv) The trial Court has not evaluated the evidence on its right perspective and the same is liable to be reversed.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Case of the prosecution based on the evidence of Shobha Ram Sahu (PW-1), Sukhbantin Bai (PW-2) and Rajesh (PW-3). Shobha Ram Sahu (PW-1) did not depose anything regarding instigation on the part of the appellant against the deceased for commission of suicide. This witness is subjected to leading questions by the prosecution side and in the leading questions he deposed that he stated before the police authorities that the appellant had beaten the deceased on suspicion that she is having illicit relation with some other person. From the entire evidence, it

is not clear as to what really happened on the date of incident or prior to the date of incident. Version of this witness is not clear about the incident as to what was sarcastic for her to end her life. Sukhmantin Bai (PW-2) made general statement that the deceased told her that the appellant used to beat her on suspicion that she is having illicit relation with some other person. Version of this witness is also not clear as to what really happened on the date of incident or prior to the date of incident. Rajesh (PW-3) has not stated anything against the appellant in his examination-in-chief. This witness is subjected to leading questions by the prosecution side and in leading questions he deposed that the deceased told about beating by the appellant. From the entire evidence of all the above three witnesses it is not clear as to what really happened on the date of incident or prior to the date of incident.

7. To substantiate the charge, 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.

8. In **Gangula Mohan Reddy vs. State of Andhra Pradesh** reported in **(2010) 1 SCC 750**, Hon'ble the Supreme Court while interpreting Section 306 IPC held that “Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there can not be any conviction. It was further held that to attract Section 306 IPC, there has to be a clear *mens rea* to commit the offence”.

9. In **M. Mohan Vs. State represented by the Deputy Superintendent of Police**, reported in **(2011) 3 SCC 626**, Hon'ble Supreme Court observed thus:

“17. while interpreting Section 306 IPC held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. IT was further held that to attract Section 306 IPC, there has to be a clear *mens-rea* to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry related harassment and that the witnesses have improved upon their earlier statements is ignored, then also Section 306 IPC, is not attracted in the facts of the present case.”

10. In the present case, there is no eyewitness to the incident as to what really happened on the date of incident i.e. 12.3.2008. The incident took place at village Dhaneli but no one was examined before the trial Court who was present at the time of the incident or before the time of the incident. The witnesses namely Shobha Ram Sahu (PW-1), Sukhbantin Bai (PW-2) and Rajesh

(PW-3) reached to the hospital only when they have been informed that the deceased sustained burn injuries and admitted in the hospital. They have no occasion to see as to what was going on in the house of the deceased. Therefore, version of these witnesses is not incriminating piece of evidence against the appellant. Some bitter experience during marriage life is natural and the same is not sufficient to hold that since long back of the incident, there was quarrel between the parties that is why the incident took place. There should be a live link between the act of the suicide and act of harassment, but that is not the case here. The trial Court has not evaluated the evidence in its true perspective, therefore, the finding of the trial Court is not liable to be sustained and the same is hereby set aside.

11. Accordingly, the appeal is allowed. His conviction and sentence passed by the trial Court is set aside. He is acquitted of the charge 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