

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2486 of 1999**

1. Vishram Son of Janta Suryawanshi, aged about 52 years,
2. Smt. Asmat Bai, Wife of Vishram Suryawanshi, aged about 50 years,

Both are R/o. Village Shukulkari Police Chowki Pachpede,
Police Station Mastoori Distt. Bilaspur (MP) (Now CG)

---- Appellants**Versus**

State of MP, Through Police Station Mastoori, Distt.
Bilaspur (MP) (Now CG)

---- Respondent

For the appellants : Shri Rajkumar Gupta, Advocate
For the Respondent/State: Smt. Smita Jha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****21.10.2019**

1. The appeal is preferred against judgment dated 27.8.1999 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989, Bilaspur in Session Trial No.247/1997 wherein the said Court convicted both the appellants for commission of offence under Section 306 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay fine of Rs. 1000/- with default stipulations.

2. In the present case name of the deceased is Grahana Bai who was residing with the appellants. It is alleged that appellant Vishram married to Grahana Bai by way of bangle form during the

lifetime of his first wife Asmat Bai. As per the version of the prosecution, the appellants harassed her and appellant Vishram assaulted her and stopped talking terms with her that is why she committed suicide on 03.6.1997 at about 5.00 pm at village Sukulkari. The appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) There is no cogent evidence regarding harassment by any of the appellants to the deceased, therefore, their case does not fall within the definition of abetment as defined under Section 107 IPC.

(ii) The trial Court recorded conviction on the basis of dying declaration but that dying declaration is not sufficient to bring home the guilt.

(iii) The trial Court has not evaluated the entire evidence in its true perspective and recorded a wrong finding for commission of offence under Section 306 which is liable to be set aside.

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.

6. To substantiate the charges, the prosecution has examined as many as 16 witnesses. But from the entire evidence, there is no connecting piece of evidence regarding instigation or intentionally aiding the deceased for commission of suicide. Asst. Sub Inspector Shiv Shankar Singh, (PW-13) recorded dying declaration of the deceased as per Ex-P/6. In the said document it is mentioned that Asmat Bai harassed her and appellant Vishram used to beat her and stopped talking terms with her. These statements are general and bald statements. From this dying declaration, it is not clear as to what was the nature of harassment by appellant Asmit and when she was assaulted by appellant Vishram. No medical report is submitted regarding any physical violence on the part of appellants Vishram. Stopping of talking terms is not equivalent to instigation to commit suicide or intentionally aiding for the same.

7. Now the point for consideration is whether the appellants abetted the deceased to commit suicide.

8. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise :

- (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.

9. As has been held by **Hon'ble the Supreme Court in 2010 (1) SCC 750 – Gangula Mohan Reddy Vs. State of Andhra Pradesh** the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s.306, there has to be a clear mens-rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

10. In the present case, there is no one who had occasion to see as to what was really going on in the house of the deceased. The dying declaration is also not establishing any instigation or intentionally aiding on the part of any of the appellants.

11. For offence under Section 306 IPC there should be clear *mens-rea* to commit the offence and there should be a direct or active act by the accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abatement, but from the record it cannot be inferred that the

respondent instigated or intentionally aided the deceased to commit suicide.

12. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is not sustainable and the same is hereby set aside. Accordingly, the appeal is allowed and the appellants are acquitted of the charges under Section 306 of the IPC. The appellants are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.

Sd/-

(Ram Prasanna Sharma)
JUDGE