

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 725 of 2009

Judgment Reserved on 09.05.2019

Judgment Delivered on 14.11.2019

Rajesh S/o Motilal Chandel, aged about 35 years, Occupation Agriculture, R/o Village and Post Devari, P.S. Dhamdha, District Durg (C.G.)

---- **Appellant**

Versus

State of Chhattisgarh through Police Station Dhamdha District Durg (C.G.)

---- **Respondent**

For Appellant : Mrs. Smita Jha, Advocate.

For Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

On the basis of Merg intimation (Ex.P-9), FIR (Ex.P-12) was registered against the present appellant and his sister-in-law (acquitted by the trial Court) under Section 306/34 IPC. It is alleged that as the present appellant was having illicit relations with his sister-in-law (wife of his elder brother) and when the deceased objected to it, he used to threaten her to leave his house but by giving divorce to him. After postmortem examination, charge-sheet was filed followed by framing of charge under Sections 498-A and 306 IPC.

2. Learned Court below by the judgment impugned dated 23.09.2009 passed in Sessions trial No.168/2008 acquitted the accused Kajla Bai of the charges levelled against her but convicted the accused/appellant herein under Section 498-A and 306 IPC imposing sentence of one year RI with fine of Rs.1000 under Section 498-A and RI for 3 years with fine of Rs.3000 under Section 306 IPC. Hence this appeal.

3. Counsel for the accused/appellant submits that even if the entire material is taken into consideration, no case under Section 306 IPC is made out against him as none of the witnesses has stated that the accused/appellant ever instigated or goaded the deceased to commit suicide by his overt or covert gesture. She further submits that in the present case the ingredients of abetment contained in Section 107 IPC are not attracted to the case in hand and therefore, the conviction of the accused/appellant under Section 306 IPC is bad in law. He also holds the conviction of the accused/appellant under Section 498-A IPC to be unjust and therefore, liable to be set aside.

4. State counsel however supports the judgment impugned and submits that there is sufficient evidence to show that on account of the illicit relations between the accused/appellant and his sister-in-law the deceased felt embarrassed and chose to take an extreme step of ending her life by way of commission of suicide and, therefore, the approach of the Court below in slapping the conviction and sentence detailed above is fully justified.

5. Undoubtedly, there is ample evidence to show that on account of the accused/appellant having illicit relations with the wife of his elder brother the deceased was feeling uncomfortable and used to object to

the same. The record also goes to show that on objection being raised by her the accused/appellant straightaway used to tell her of divorcing him and then leaving his house. The mental agony experienced by the deceased has been painted by her in the diary so maintained by her which is marked as Article A-1 and A-2, according to which she was in the mental turbulence after sensing the extramarital relations between her husband and the wife of his elder brother and because of which she was compelled to take away her life by hanging. However, all these facts duly corroborated by the evidence of the witnesses are not sufficient to hold the accused/appellant guilty under Section 306 IPC for abetting the deceased to commit suicide. The elements of abetment detailed in Section 107 IPC are completely missing in the case in hand. The mere fact that by having illicit relations with the wife of his elder brother the accused/appellant harassed her mentally, would not be a constituent of an offence under Section 306 IPC. In the case of abetment there must be a proof of direct or indirect acts of incitement by the accused leading to the commission of suicide which, sorry to say, is missing in the case in hand. Being so, conviction of the accused/appellant under Section 306 IPC is hereby set aside as the prosecution has utterly failed to make the same out.

6. As regards conviction of the accused/appellant under Section 498-A IPC, there is enough evidence against him to establish cruelty and being so this Court does not find any scope worth interference with the said part of the judgment impugned. It is hereby maintained. In lieu of this, the appellant however, would be required to pay an enhanced sum of fine of Rs. 3000/- from that of Rs. 1000/-. Let this amount be deposited

by the accused/appellant in the trial Court within a period of four months from today. Order accordingly.

7. However, looking to the facts and circumstances of the case and the fact that the accused/appellant has already been in detention for more than 3 and half month, this Court does not see any reason in again lodging him in jail and thereby imperiling his life. Accordingly, the sentence imposed on him is reduced to the period already undergone.

8. The net result of this appeal is setting aside conviction of the accused/appellant under Section 306 IPC but approving the one under Section 498-A IPC and reducing the sentence to the period already undergone.

9. Appeal thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE