

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 984 of 2002**

- Shyamlal, Son of Dhelaram, aged about 41 years, R/o Pendri Pani, Police Station Pendra, Police Station Bilaspur, District Bilaspur, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through Arakshi Kendra, Pendra, District Bilaspur, C.G.

---- Respondent

For Appellant	Ms. Pragya Pandey, Advocate.
For Respondent/State	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****17/10/2019**

1. No one appeared on behalf of the appellant, when the matter is called. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee on behalf of the appellant.
2. Ms. Pragya Pandey, Advocate, present in the Court, empanelled Lawyer of High Court Legal Services Committee, on being asked by this Court, is ready to argue the matter. Therefore, this Court has appointed Ms. Pragya Pandey, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform the High Court Legal Aid Services Committee in this regard for doing the needful.

3. This appeal arises out of the judgment of conviction and order of sentence dated 03.09.2002 passed by the 4th Additional Sessions Judge, FTC, Janjgir C.G. in S.T. No.427/2001 convicting the accused/appellant under Section 306 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 5 years and fine of Rs.2,000/-, in default to undergo additional R.I. for 03 months.
4. Case of the prosecution in brief is that Bindu Bai (deceased) was married with the appellant Shyamlal about 24 years back and three children were born out of the wedlock of the deceased and the Appellant. After the marriage, appellant had committed cruelty to his wife and was not keeping her with him against which she filed a maintenance case in which a Judicial Magistrate First Class, Janjgir vide order dated 21st March, 1986 granted maintenance @ of Rs.100/- per month in favour of applicant No.3 Guddu, aged about 5 years but denied the claim of maintenance on behalf of applicant No.1 Bindu Bai, wife of the appellant on the ground that she is living separately without any sufficient and reasonable cause and also denied maintenance in respect of applicant No.2 Krishna Kumar, aged about 3 years, on the ground that he is living with the appellant. After the said decision, a Panchayat meeting was convened and she was taken back to her matrimonial home by the appellant. In the meanwhile, appellant/accused got job and he started living in Pendri Pani. Meanwhile, his daughter fell ill and he went to see his daughter. After sometime, he ousted her/deceased from the house and

remained with his daughter. Thereafter, appellant Shyamlal performed second marriage with Rajkumari and after that he again brought back Bindu Bai (deceased). On 28.02.2001, appellant's son Krishna Kumar left his mother (deceased) in her parental house and on being enquired by her father PW-8 Goverdhan, she told that the appellant withdrew a sum of Rs.50,000/- which was deposited in her name by obtaining her signature forcibly. She also stated that appellant and her second wife Rajkumari committed cruelty to her and did not give food to her. On 02.03.2001, PW-8 Goverdhan, father of the deceased, after bathing returned to his house at about 1:30 pm where he found the door was locked from inside, smoke and smell of kerosene oil were coming out. On entering the house, he found Bindu Bai lying on the floor in burnt condition and after that many people went to the spot where Sarparch of village asked the reason for burning where she stated that her husband and Rajkumari (सौत) committed cruelty and harassment with her, therefore, she set herself on fire. Thereafter, she was shifted to hospital for treatment. During treatment at Bilaspur, she succumbed to burn injuries on 08.03.2001.

5. During investigation, merger intimation Ex.P-6 was lodged. After merger inquiry FIR Ex.P-17 was recorded. In presence of Panch, inquest report Ex.P-2 was prepared. The dead body was sent for postmortem. One plastic Jerrican from which smell of Kerosene was coming out and one matchstick was also seized vide Ex.P-3. Copy of the order dated 21.03.86 passed by Judicial Magistrate

First Class Janjgir was seized under Ex.P-5. Spot map was prepared by Patwari vide Ex.P-10. During investigation, statements of the witnesses were recorded where PW-1 Meena Bai (Mother), PW-8 Goverdhan (Father), PW-3 Ramphal (Brother) and PW-2 Kumari Bilopma (Sister) made allegation against the appellant regarding cruelty and harassment to the deceased. After completion of investigation, charge sheet was filed against the appellant Shyamlal and his second wife Rajkumari under Section 306/34 of IPC. The trial Court framed the charge under Section 306 of IPC against the appellant Shyamlal and Rajkumari which was denied by them and they prayed for trial.

6. So as to hold the accused persons guilty, the prosecution examined as many as 21 witnesses i.e. PW-1 Meena Bai, PW-2 Kumari Bilopma, PW-3 Ramphal, PW-4 Shivkumar, PW-5 Devprasad, PW-6 Dauram, PW-7 Vijay Kumar Tiwari, PW-8 Goverdhan, PW-9 Dr. C.P. Singh, PW-10 Bisahu Ram, PW-11 Rajkumar, PW-12 Deepchand, PW-13 Dhanesh Kumar Sahu, PW-14 Mahaveer Prasad, PW-15 Lalan Pandey, PW-16 N.L. Drithlehre, PW-17 Milau Ram, PW-18 Dr. K.K. Rao, PW-19 Narendra Singh Thakur, PW-20 Badri Prasad Kausik and PW-21 Rathram Patel. In defence, appellant Shyamlal examined himself as DW-1 and Krishna Kumar Kashyup, elder son of Shyamlal as DW-2.

7. The trial Court after hearing counsel for the respective parties

and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment. While acquitting accused Rajkumari of the charge under Section 306 of IPC.

8. 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 Bindu committed suicide because of harassment and cruelty. He also submits that Bindu Bai (deceased) was married with the appellant Shyamlal about 24 years back and three children were born out of the wedlock of the deceased and appellant. He further submits that as per the statement of appellant's elder son DW-2 Krishna Kumar Kashyup, deceased was living in her parental home due to some mental illness and nobody was there in her matrimonial home to take care of her and her minor child. He also states that no physical cruelty or assault was committed by appellant with her. He further submits that as per Ex.P-2 inquest and Ex.P-13 PM report, no injury was found on the body of the deceased. The allegation made by the parents of the deceased is false. As per Ex.P-19 document which was produced by the prosecution, only Rs.3,000/- was in the account of Bindu and the allegation that after her death that amount was withdrawn by appellant is totally false. He also submits that looking to the statement of DW-2 Krishna Kumar Kashyup, 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.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/Shyamlal is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

10. I have heard learned counsel for the parties and perused the material available on record.

11. PW-1 Meena Bai, mother of the deceased, has specifically stated in para 10 of her cross-examination that her daughter/deceased cannot speak Hindi and she speaks only in Chhattisgarhia language. Ex.P-9 is the dying declaration of the deceased which has been recorded in Hindi language. The said dying declaration has not been recorded in question and answer form as is normally done. In the dying declaration Ex.P-9, the deceased is said to have alleged the appellant used to beat her and did not provide her anything and drop her at her parental house. She has further stated that on 02.03.2001 at around 12:30 pm she set fire on her Saari and thereafter she was taken to hospital for treatment. But as per the statement of DW-2 Krishna Kumar Kashyup, elder son of the deceased, at the time of incident deceased Bindu was mentally ill and that fact was admitted by the PW-16 N.L. Drithlehre (Sub-Inspector) in para 16

of his statement where he stated that deceased was mentally ill and her treatment was also going on and her treatment document was also seized as per seizure memo Ex.P-18 and that treatment was given by Dr. Prakash Narayan Shukla, Raipur. As per para 17 of the deposition of PW-16 N.L. Drithlehre (IO) he also admitted this fact that deceased was treated for mental illness from 1992 to 1994. Similarly, as per the statement of PW-17 Bhilau Ram, he also admitted in his para 5 that deceased was not mentally fit and her behaviour was like mad.

12. From perusal of the document of article A-1 i.e. order dated 21st March, 1986 passed by the Judicial Magistrate First Class, Janjgir, it is evident that an application under Section 125 of Cr.P.C. for maintenance being filed by the deceased and her children, the learned Magistrate granted maintenance @ of Rs.100/- per month in favour of applicant No.3 Guddu, aged about 5 years only but denied maintenance in favour of applicant No.1/deceased on the ground that she is living separately without any sufficient and reasonable cause as also denied in respect of applicant No.2 Krishna Kumar, aged about 3 years, on the ground that he is living with his father/appellant. Thus, considering the over all facts and circumstances of the case, the manner in which the incident occurred and the dying declaration was recorded, the fact that the mental condition of the deceased was not good as has been proved by the above witnesses, no injury was found on the body of the deceased to show that she was subjected to any physical assault, the dying declaration

Ex.P-9 appears to be doubtful and, therefore, cannot be relied upon.

13. 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.”

14. Considering the provisions contained in Sections 107 & 306 of the IPC, as quoted above, the Supreme Court in **Randhir Singh and another v. State of Punjab** reported in **(2004) 13 SCC 129**, has held that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also, it would involve that mental process of entering into conspiracy for the doing of that thing.

15. Reiterating the principle, the Supreme Court in **Kishori Lal v. State of M.P.** reported in **(2007) 10 SCC 797**, has held, thus, in para 6:

“6. Section 107, IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

16. It is, thus, consistently held by the Supreme Court that before holding an accused guilty of an offence under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of each case and assess the evidence adduced before it in order to find out whether the treatment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement or provocation to the commission of suicide. Merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide, the conviction in terms of Section 306 of IPC is not sustainable.

17. The Supreme Court in **K.V. Prakash Babu v. State of Karnataka** reported in **2016 (4) Crimes 184 (SC)**, relying on its earlier decision in the matter of **Pinakin Mahipatray Rawal v. State of**

Gujarat reported in **2013 (10) SCC 48**, has held that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498-A of the IPC.

18. The Supreme Court, thereafter, again quoted **Pinakin Mahipatray Rawal** (supra) and reproduced the observation made in the said case that to constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

19. In the present case, as per the evidence available on record and dying declaration Ex.P-9, it is true that relation between the deceased and appellant was not good. She had been living separately from the accused on many occasions and she had also filed application under Section 125 for maintenance as per article A-1 produced before the Court. If the entire evidence are taken together it do not suggest that there was willful conduct on

the part of the appellant of such a nature which drove the deceased to commit suicide or caused grave injury or danger to her life, limb or health as given in the definition of 498-A of IPC. It has nowhere come in the evidence of the prosecution witnesses that within 24 years of her matrimonial life with the appellant, she was ever subjected to such cruelty or harassment by the appellant as defined under Section 498A of IPC. No any specific allegation made against the appellant regarding any cruelty except that he married Rajkumari (Second wife) and because of that reason deceased was living separately from the appellant. Accused Shyamlal only married Rajkumari for the purpose of taking care of his minor child and that relation with Rajkumari and accused cannot be said to be abetment to the deceased.

20. Considering the facts and circumstances of the case, the manner in which the incident occurred, the dying declaration Ex.P-9 of the deceased, in particular the evidence of PW-16 N.L. Drithlehre, PW-17 Milau Ram and the medical treatment document Ex.P-18 seized by the IO regarding mental illness of the deceased, the fact that during the long period of 24 years of her matrimonial life the deceased was blessed with three children, the allegation made by parents of the deceased that the appellant wanted to withdraw Rs.50,000/- from the account of her wife being found false because as per Ex.P-19 only Rs.3,000/- was there in the account of the deceased, the nature of allegations levelled against the appellant, keeping in view the definition of abetment under Section 107 of IPC and the law laid down in the cited

judgments, 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.

21. 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. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge