

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.571 of 2003**

Padu Nagesiya S/o. Savna Nagesiya, age 30 years, Occupation Agriculture R/o. Village Hanspur, Dongipani, Police Station Kusmi, Police District Balrampur Distt. Surguja (CG)

---- Appellant**Versus**

State of Chhattisgarh through Police Station Kusmi, Distt. Surguja (CG)

---- Respondent

 For the appellant : Shri Manoj Mishra, Advocate
 For the Respondent/State: Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****04.12.2019**

1. The appeal is preferred against judgment dated 26.4.2003 passed by First Additional Sessions Judge, Surguja (Ambikapur) (CG) in Session Trial No.473/2002 wherein the said Court convicted the appellant for the commission of offence under Section 306 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/- with default stipulation.

2. In the present case, name of the deceased is Rijhayin Bai who was married to the appellant since five years of the incident. It is alleged that the appellant harassed the deceased after two years of the marriage and one day prior to the date of incident, he assaulted the deceased and on the next day she committed

suicide. The matter was reported and investigated and the appellant was convicted and sentenced as mentioned above.

3. Bhavayin Bai (PW-1) is the mother of the deceased. As per the version of this witness, the appellant used to quarrel with the deceased but from the statement of this witness it is not clear as to what really happened on the date of incident or prior to the date of incident which was sarcastic for the deceased to end her life. Bhukhan (PW-2) deposed that one year since the date of incident, the appellant assaulted the deceased. Dhansai (PW-3) deposed that the appellant and the deceased had quarrel with each other and on the next day, the deceased committed suicide.

4. From the entire evidence, the only thing that is established by the prosecution is that there was quarrel between the appellant and the deceased on the previous day of the incident. Now the point for consideration before this Court is whether the quarrel on previous day is equivalent to abetment of suicide.

5. For establishing charges under Section 306 IPC, the prosecution is under obligation to establish the ingredients of Section 107 IPC which relates to abetment 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.

6. 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".

7. 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."

8. For establishing the charge under Section 306 IPC, there should be a live link between the act of the appellant and the

death of the deceased. Even if it is presumed that the appellant assaulted the deceased or made quarrel with her on the previous day of the incident, the same is not equivalent to abetment. It may be a case of voluntarily causing simple injury which is punishable under Section 323 IPC but the same is not sufficient to establish the charges under Section 306 IPC. Therefore, finding arrived at by the trial Court is not sustainable.

9. Resultantly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellant is hereby set aside and he is acquitted of the charges under Sections 306 IPC. The appellant is reported to be in jail. He be released forthwith if not required in any other case. The fine amount, if paid, shall be refunded to him.

Sd/-
(Ram Prasanna Sharma)
JUDGE