

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 18-11-2019

Delivered on 17-12-2019

CRA No. 133 of 2011

- Choubey Lal Yadav s/o. Baldev Yadav aged about 32 years, r/o. Village Kalartarai, Thana Arjuni, Dist. Dhamtari CG

---- Appellant.**Versus**

- State of Chhattisgarh through the District Magistrate, Dhamtari, District Dhamtari (CG).

---- Respondent

 For Appellant : Mr. Sunil Sahu, Advocate

For respondent/State : Mr. Ishwar Jaiswal, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against judgment dated 24-1-2011 passed by Additional Sessions Judge (FTC), Dhamtari, (CG), in Sessions Case No. 71 of 2010 wherein the said court convicted the appellant for commission of offence under Section 306 of the IPC and sentenced him to undergo RI for five years and fine of Rs.1000/- with default stipulations.
2. In the present case, name of the deceased is Tameshwari Yadav who married with the appellant ten years ago. One male child and one female child were born out of their

wedlock. As per version of prosecution, the marriage was subsisted peacefully for first four years and thereafter appellant harassed the deceased after consuming liquor. Prosecutrix went to her parental house due to cruel treatment of the appellant and thereafter one panchayat meeting was convened and she started to reside with the appellant. It is also alleged that due to harassment of the appellant she consumed poison on 14-10-2010 and died. The matter was reported and investigated. The appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant would submit that ingredient of abetment as defined in Section 107 of IPC is not available in the present case because there is nothing on record to say that the appellant instigated her to commit suicide. The dispute was settled two years ago of the incident as alleged by the prosecution, therefore, same has no bearing with death of the deceased, but the trial court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.
4. On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshaling of the evidence which is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the trial court in which impugned judgment is passed.
6. In the present case, date of incident is 14-10-2010. Dr.J.S. Khalsa (PW/8) who conducted autopsy of the deceased opined that the deceased might have died by consuming poison and it may be a case of suicide. PW/2 Baldev Yadav, PW/3 Beersingh, and PW/9 Udaylal Yadav have deposed before the trial court that the deceased informed them about assault by the appellant in some occasions. PW/10 Narayan Yadav who is father of the deceased deposed before the trial court that appellant gave maltreatment to the deceased two years ago. He further deposed that the appellant did not allow the deceased to go her parental house at the time of Teeja festival. PW/11 - Phool Bai who is mother of the deceased deposed before the trial court on the basis of information given by the deceased regarding beating by the appellant.
7. From the entire evidence of the prosecution witness, it is not established that what really happened on the date of the incident or prior to the date of incident. For establishing the charge under Section 306 of IPC, the ingredient of Section 107 of IPC has to be established which may be mentioned 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.

8. As has been held by Honorable the Supreme Court, reported in 2010(1) SCC 750, in the matter of **Gangula Mohan Reddy vs. State of Andhra Pradesh**, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The Honorable the Supreme court further held that in order to convict a person under [section 306](#) IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.
9. For establishing charge under Section 306 of the IPC ,there should be live link between the act of the appellant and death of the deceased, but in absence of evidence at the time of commission of offence or prior to the date of offence, the same is no established. On overall assessment, abetment on the part of the appellant is not established.

10. Accordingly, the appeal is allowed. Conviction and sentence of the appellant is hereby set aside. He is acquitted of the charge levelled against him. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in-view of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju