

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 126 of 2011**

Upendra S/o Kedarnath Patel, 36 years R/o Sargipal Para, P.S. Kondagaon,
Distt. Bastar (C.G.).

----Appellant

Versus

State of Chhattisgarh Through District Magistrate, Jagdalpur (C.G.).

---- Respondent

For Appellant	:	Mr. Keshav Dewangan, Advocate
For Respondent	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

02/09/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 20/01/2011 passed in Sessions Case No. 10/2008 by the Additional Sessions Judge, Fast Track Court, Kondagaon, Bastar (C.G.) convicting the Appellant under Section 306 of the Indian Penal Code and sentenced him to undergo RI for 7 years and to pay fine of Rs. 100/- with default stipulation.
2. In this case the name of the Deceased is Usha Thakur, a bachelor girl who committed suicide on 08/12/2007. It is alleged that the Appellant and the Deceased were in love and were likely to marry. It is also alleged that the Appellant used to suspect the character of the Deceased. Due to this, the Deceased consumed poisonous substance on 08/12/2007 in her room, resultantly she died. Merg intimation was lodged by Smt. Urvashi Thakur (PW3) vide Ex.P.-1. Inquest proceeding was done vide Ex.P-2. Postmortem was conducted by Dr. Mrs. Mukund

Kunwar (PW4). Her report is Ex.P-2. After merging inquiry, on the basis of information collected by the Prosecution, FIR has been lodged vide Ex.P-1. Statement of the witnesses have been recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charge under Section 306 of the IPC. As many as 5 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After completion of trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the trial Court has wrongly convicted the Appellant without there being any clinching evidence available on record. It is further submitted that the trial Court ought to have seen and held that the Prosecution has utterly failed to bring home the charge of Section 306 of the IPC as the basic ingredient-abatement is missing from the case. It is further submitted that Smt. Ganesiya (PW1), Smt. Nirmila (PW2) and Smt. Urvashi (PW3) have stated in their Court statement that the Appellant used to suspect the character of the Deceased and for these reasons the Deceased committed suicide, this fact was not stated by them while recording their statement under Section 161 of the Cr.P.C.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial

Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. There is no dispute on the point that there was love relation between the Deceased and the Appellant and they were likely to marry. In her Court statement, Ganesiya Bai (PW1), friend of the Deceased stated that the Deceased used to tell her that the Appellant suspects the character of the Deceased. It is also stated by this witness that on the date of incident also at about 5:00 pm, the Deceased and the Appellant were present in the room of the Deceased and after some time, the Appellant came out from her room and told this witness that the Deceased has taken sleeping pills. Thereafter, the Deceased died.
8. Nirmala (PW2), mother of the Deceased also stated that at the time of incident, the Deceased and the Appellant were sitting in the room. The Deceased called her, then the Appellant came out from the room by saying that the Deceased has taken sleeping pills. Thereafter, the Deceased died. This witness has also stated that why the Deceased had taken the sleeping pills and what they discussed in the room, she doesn't know. This witness has also stated that the Appellant used to suspect the character of the Deceased and also used to harass her.
9. Urvashi Thakur (PW3), Babhi of the Deceased also stated that while taking the Deceased to the hospital, the Deceased told her that the Appellant has suspected her character by saying that she has love relation with other boy, therefore, she had taken the sleeping pills.

10. Dr. Smt. Mukund Kunwar (PW4) is the witness who conducted the postmortem. As opined by this witness, the cause of death was poison.
11. Harinandan Singh (PW5) is witness who investigated this case. During investigation, this witness had prepared inquest vide Ex.P-4 and also seized one note-book and other substance from the spot vide Ex.P.-7.
12. On minute examination of the above evidence, it is clear that there was love relation between the Appellant and the Deceased and they were likely to marry. It is also clear that on the date of incident, the Deceased was present with the Appellant in her room and in presence of the Appellant, she consumed poisonous substance. Apart from this there is no evidence available on record which shows that what they talked before the incident. Though Ganesiya Bai (PW1) and Nirmala (PW2) in their Court statement have stated that the Deceased used to tell them that the Appellant suspects her character and harass him, this fact is not mentioned in their statements recorded under Section 161 of the Cr.P.C. Apart from this, Urvashi Thakur (PW3) has stated that while taking the Deceased to the hospital, the Deceased told her that the Appellant suspects her character by saying that she has love affair with others, therefore, she has consumed poisonous substance, but this fact is not mentioned in her statement recorded under Section 161 of the Cr.P.C. Thus, it is clear that Ganesiya Bai (PW1), Nirmala (PW2) and Urvashi Thakur (PW3) have developed their statement during recording their evidence.
13. From the evidence available on record, it is established that due to some dispute/talking happened in a close room, the Deceased had taken

poisonous substance and as a result of which she died. There is no evidence available on record on the basis of which it can be said that the Appellant, as provided under Section 107 of the IPC, instigated the Deceased for committing the suicide. Therefore, in my considered opinion, the finding of the trial Court is not in accordance with law as no offence under Section 306 of the IPC is proved against the Appellant beyond all reasonable doubts. Thus, the impugned order dated 20/01/2011 passed in Sessions Case No. 10/2008 by the Additional Sessions Judge (FTC), Kondagaon, Distt. Bastar is quashed.

14. Accordingly, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. He is on bail. His bail bonds is discharged.
15. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge