

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 14.10.2019****Judgment delivered on 06.12.2019****Criminal Appeal No.1269 of 2017**

Sudhir Jagat, S/o. Shri Shankar Jagat, aged about 21 years, R/o. Dr. Rajendra Nagar, Street No.2, Raipur, Thana Civil Lines, Raipur Civil & Revenue Distt. Raipur (CG)

----Appellant**Versus**

State of Chhattisgarh through the District Magistrate, Raipur Distt. Raipur (CG)

---Respondent

For appellant	: Shri Sunil Sahu, Advocate
For respondent/State	: Shri Afroj Khan, Panel Lawyer

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

1. The appeal is directed against judgment dated 10.7.2017 passed by Special Judge/Additional Sessions Judge, under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989, Raipur (CG) in Session Trial No.108/2016 wherein the said Court convicted the appellant for commission of offence under Section 306 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of 2,000/- with default stipulation for commission of abetment of suicide against one Mamta Bagh.

2. In the present case, date of incident is 30.11.2015. Deceased Mamta Bagh married with the appellant before a year

of the incident in a temple and after some time of the marriage the appellant started harassing her and after some time the deceased left the house of the appellant and started living with her father. Again she went to the house of the appellant and after six days she committed suicide. The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) From the evidence of the prosecution witnesses, it is clear that the deceased was not happy with the appellant that is why she committed suicide.

(ii) No case of abetment is made out on the basis of the statement of the prosecution witnesses and there is nothing like instigation or intentionally aiding which is essential ingredients for commission of offence under Section 306 IPC.

(iii) The trial Court has not properly appreciated the evidence on record and recorded finding on the basis of old injury which was found on the body of the deceased.

(iv) The trial Court has overlooked the material omissions and contradictions, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Santosh Bagh (PW-1) is the father of the deceased. His version is based on the information given to him by the deceased. As per the version of this witness, the deceased informed him in his house that she is not willing to stay with the appellant because he used to assault her and did not go for any work. Sanchi Bagh (PW-2) is the mother of the deceased. As per the version of this witness, the deceased did not make any comment against the appellant and as per this witness, the deceased informed her that she is maintaining good relation with the appellant and the appellant is also maintaining good relation with her. This witness has been subjected to leading questions by the prosecution side but there is nothing on record against the the appellant in the statement of this witness. Version of Belo Bagh (PW-3) before the trial Court is what is informed to him by the deceased.

7. Now the question for consideration before this Court is whether the statement made by Santosh Bagh (PW-1) and Belo Bagh (PW-3) is sufficient to hold that it is a case of abetment of suicide on the part of the appellant.

8. 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.

9. 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”.

10. 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.”

11. The trial Court recorded finding on the basis of some injuries which was noticed by Dr. Snigdha Jain (PW-11) on the body of the deceased but the fact remains that there is no evidence to establish that the injuries were caused by the appellant. There is no person who (deposed before the trial Court) had any occasion to see what is going on in the house of the deceased. Therefore, finding on the basis of injury is without substance. Anything done in a fit of anger without any intention cannot be termed as instigation. Instigation has to be gathered from the entire circumstances of the case. The evidence adduced by the prosecution is hear-say in nature.

12. In **Kalyan Kumar Gagoi vs. Ashutosh Agnihotri** reported in **(2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is concerned, he has a line of escape by saying “ I do not know, but so and so told me.

(b) truth is diluted and diminished with each repetition

(c) If permitted, gives ample scope for paying fraud by saying “ someone told me that” It would be attaching importance to false rumour flying from one foul lip to another. Thus, statement of witnesses based on information received from other is inadmissible.”

13. As the evidence in the present case is hearsay in nature the same is inadmissible in evidence and no finding can be arrived at by the hearsay evidence.

14. There is no suicidal note indicating the real cause of death of the deceased and no dying declaration was made by the deceased. The entire case is based on hearsay evidence who have no occasion to see what is going on in the matrimonial house of the deceased. For Offence under Section 306 IPC, there should be clear mens-rea to commit the offence and there should be direct or active act by the accused which lead the deceased to commit suicide. But that is not the case here. Looking to the entire evidence, finding arrived at by the trial Court is not sustainable, because the same is not based on legally admissible evidence.

15. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges framed against him. He is in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

Sd/-

(Ram Prasanna Sharma)

JUDGE