

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2029 of 2000

Judgment Reserved on : 26.2.2020

Judgment Delivered on : 19.5.2020

Ramadhin Lodhi, son of Bhauram, aged about 43 years, by occupation agriculturist, resident of Village Bundela, Chowki – Maro, P.S. Nadghat, District Durg, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Shri Arvind Dubey, Advocate
For Respondent	:	Shri Ajay Kumrani, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 29.7.2000 passed by the Additional Sessions Judge, Bemetara, District Durg in Sessions Trial No.352 of 1997, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306/34 of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that deceased Kunwariyabai, a married woman was residing with her parents after leaving her husband and used to work at the house of the Appellant. Illicit relationship developed between the Appellant and the deceased

and as a result thereof the deceased got pregnant. The Appellant took her to Delhi. Out of their relationship, one son Karan took birth. Thereafter, they returned to the village. The Appellant was already married. Therefore, the deceased started living with him at his house as his second wife. She again got pregnant. Then the Appellant and his family members started pressurising her for abortion. She told them that she will get herself sterilised after delivery of the second child. Then the Appellant and his family members tortured and harassed her and they also beat her. Due to that, on 21.4.1997, the deceased hanged her son Karan and killed him and she also committed suicide by hanging herself. Morgue was lodged. Thereafter, on the basis of morgue inquiry, First Information Report was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant and his father Bhauram and younger brother Hem Prasad. Charges were framed.

3. In support of its case, the prosecution examined as many as 8 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. 2 witnesses, namely, Krishna Kumar (DW1) and Komal Singh (DW2) have been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted Bhauram and Hem Prasad of the charges framed against them, but convicted and sentenced the present Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that without there being any sufficient evidence on record against the Appellant, the Trial Court has wrongly convicted him. It was further submitted that the conviction is only based upon the statements of Kumaribai (PW1), *bhabhi* (sister-in-law) of the deceased, Gajeram (PW5), father of the deceased and Mordhwaj Tiwari (PW6), neighbour of the deceased, but all these 3 witnesses have made contradictory statements. Even if the entire evidence adduced by the prosecution is taken as it is then also it is not established that the Appellant instigated or abetted the deceased to commit suicide as defined under Section 107 of the Indian Penal Code. Therefore, the finding of the Trial Court is not sustainable.
6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. From the evidence adduced by the prosecution, it is well established that the deceased was already married and the Appellant was also already married and his wife and children were also living with him. The deceased had also 2 children to whom she had left with her first husband. From the evidence, it is also established that the deceased was living with the Appellant as her kept. No legal or social marriage was performed between them.
9. Kumaribai (PW1), *bhabhi* of the deceased has deposed that 8 days prior to the incident, the deceased had come to her and told her that the Appellant and his family members were asking her for

abortion and on not getting ready for abortion, they had threatened her that they will kill her and they tortured her.

10. Gajeram (PW5), father of the deceased has deposed that 1 day prior to the incident the deceased had come to his house. At that time, he was cooking food. The deceased sat near him. At that time, the Appellant came there and beating her took her back with him. This witness has not disclosed that on what issue the beating took place.
11. Mordhwaj Tiwari (PW6), neighbour of the deceased has deposed that 1 day prior to the incident, weeping, the deceased had come to him at about 7 – 7:30 p.m. On being asked, she told him that the Appellant and his family members were asking her to get the land of her father sold and bring the amount of sale consideration to them then they will keep her with them. This witness has further deposed that the deceased asked him to keep her with him in his house, but he refused her. Then she returned. He has further deposed that after ½ hour, the deceased again came to his house and told him that the Appellant and his family members had ousted her after beating. Again she asked him for her shelter in his house, but he refused. Then she returned. Next day, he came to know that the deceased had committed suicide. This witness, during cross-examination, has categorically admitted that prior to that, the deceased had never come to him and made any complaint.
12. On a minute examination of the statements of the above 3 witnesses, it reveals that Kumaribai (PW1) has deposed that 8 days prior to the incident, the deceased had come to her and complained that the Appellant and his family members were

harassing her for abortion. Apart from this incident, the deceased had ever made her any complaint in this regard, this witness has not stated in this regard.

13. There is no statement made by Gajeram (PW5), father for the deceased that the deceased was being harassed for abortion. As stated by Gajeram, 1 day prior to the incident, the deceased had come to his house. At that time, the Appellant had come there and beating the deceased he had taken back her with him. This witness has not disclosed that for what issue the beating took place between the deceased and the Appellant and he has also not stated anything about any other incident taken place between the Appellant and the deceased.
14. Mordhwaj Tiwari (PW6), neighbour of the deceased tells another story. According to this witness, 1 day prior to the incident, the deceased had come to him and asked him for her shelter telling him that the Appellant and his family members were asking to get the land of her father sold and bring the amount of sale consideration to them and, therefore, they were harassing her. But, Gajeram (PW5), father of the deceased has not stated anything in this regard. Had it been so, naturally the deceased would have first made complaint to her father nor to a neighbour. From the entire evidence available on record, it is well established that all the above 3 witnesses have contradicted their statements and they have stated entirely contradictory stories. Even if the statements of the 3 witnesses are taken as it is, they were told by the deceased about the harassment taken place with her only once. These 3 witnesses have nowhere stated about any prior

incident taken place with the deceased. If any quarrel or beating takes place between a husband and his wife and thereafter the wife commits suicide then it cannot be held an instigation or abetment to commit suicide as defined under Section 107 of the Indian Penal Code. Thus, in my considered view, the offence of Section 306/34 of the Indian Penal Code is not duly proved against the Appellant.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
16. Record of the Court below be sent back along with a copy of this judgment for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE