

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20-12-2019

Delivered on 30-01-2020

CRA No. 410 of 2001

1. Manboth s/o. Sahu Kar Sahu, aged about 62 years.
2. Ramshila Bhia w/o. Manboth Sahu aged about 57 years.
3. Deendayal s/o. Manboth aged about 23 years.

All residents of village Jevartala, P.S. Gurur, Dist. Durg.

---- Appellants.

Versus

- The State of Chhattisgarh through Police Station Gurur, Dist. Durg.

---- Respondent

For Appellants : Mr. Manoj Mishra, Advocate appears
as Amicus Curiae.

For respondent/State : Mrs. Smita Jha, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated passed by the Additional Sessions Judge, Baloda (CG) in Sessions Trial No. 254 of 2000 wherein the said Court has convicted the appellants for commission of offence under Section 306 of IPC, 1860 and sentenced them to undergo rigorous imprisonment for three years and to pay fine of Rs.1000/- each with default stipulations.

2. In the name of the deceased is Tileswari Bai. The marriage between the appellant No.3 Deendayal and said Tileswari Bai took place a year ago from the date of incident. It is alleged that after marriage all the appellants harassed her by taunting that she does not know any work, she is unable to cook food and they assaulted the victim and abused her that is why she consumed poisonous substance on 19-4-2000 and died during treatment. The matter was reported and investigated. After completion of trial, appellants were charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellants would submit as under:

- i) PW/2 Santram being father of the deceased is interested witness and he has made number of incorrect statements before the trial court. Barring statement of father of the deceased, there is no evidence available on record for basing conviction.
- ii If the entire evidence is taken as it is, ingredients of Section 306 of IPC are not established.
- lii) 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 supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. To substantiate the charge, prosecution examined as many as ten witnesses. The only person who deposed before the trial Court is Santram (PW/2) who is father of the victim and resident of village Potiyakala. The incident took place at village Jevartala on 9-4-2000. It is the appellant Deendayal who gave information regarding incident to the Police as per Ex.P/10 that deceased may have consumed poisonous substance.

7. Dr. J.S. Sahu (PW/9) who conducted autopsy of the deceased also opined that death of the deceased is probably due to consuming of poisonous substance. Santram (PW/2) deposed before the trial court that when deceased came after marriage, she informed him that appellants harassed her that she is not knowing house-hold works and she is also not knowing the work of cooking. She also informed him that appellants used abusive language against her and her husband used to beat her. The statement made

by this witness is bald and general in nature. From his evidence, it is not clear as to what really happened on the date of incident i.e., on 19-4-2000 or prior to the date of incident which was sarcastic for her and same is due to act of any of the appellants.

8. For establishing charge under Section 306 of IPC, prosecution is under obligation to establish the ingredients of Section 107 of 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 instigates 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 cooperation.

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. For establishing the charge under Section 306 IPC, there should be a live link between the act of the appellants and the death of the deceased. In the present case, there is no link with death of the deceased and act of the appellants. The incident took place at village Jevvertala and no one was examined from the village Jevvertala. The only person is Santram (PW/2) who is examined is resident of village Potiykala and he has also not deposed before the trial court that as to what really happened with deceased prior to the

date of incident or on the date of incident. Prosecution is under obligation to prove by evidence that death of the deceased has nexus with the act of any of the appellants, but no connecting piece of evidence is available on record. In absence of direct act or active act on the part of the appellants, charge under Section 306 of IPC is not established, therefore, finding arrived at by the trial Court is not sustainable.

12. Resultantly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellants is hereby set aside and they are acquitted of the charges under Sections 306 of IPC framed against them. The fine amount, if paid, shall be refunded to them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view, of Section 437-A of Cr.P.C.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**

Raju