

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 798 of 2009**

- Ishwar @ Tedhu Son of Ramlal Turiya, aged about 25 years, Resident of Village Turiyabira, Police Station Lundra, District Surguja (C.G.)

**---- Appellant**

**Versus**

- State of Chhattisgarh, Through: The Police Station Lundra, District Surguja (C.G.)

**---- Respondent/State**

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|----------------------|---|---------------------------------------|
| For Appellant        | : | Shri Santosh Bharat, Advocate         |
| For Respondent/State | : | Shri Vikash Shrivastava, Panel Lawyer |

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**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment on Board**

**17.02.2020**

1. When the matter is called out twice, no one appears on behalf of the appellant in first round as well as in second round. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee.
2. Shri Santosh Bharat, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Santosh Bharat, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
3. This appeal arises out of the judgment of conviction and order of sentence dated 10.09.2009 passed by the Third Additional Sessions Judge (FTC) Surguja, Ambikapur (C.G.) in Sessions Trial No. 84 of 2009, whereby the Appellant stands convicted and sentence as under:-

| <b><u>Conviction</u></b>                                 | <b><u>Sentence</u></b>                                                                                                     |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Under Section 306 of Indian Penal Code (for short 'IPC') | R.I. for seven years and pay a fine of Rs.2,000/-, in default of payment to further undergo additional R.I. for one month. |

4. Facts of the case in brief are that on 29.10.2008 at about 05:00 pm, deceased Ku. Kiran and her friend Indramani were sitting in the home of Indramani, at that time accused Ishwar @ Tedhu came there, told the deceased to come with him. On this, the deceased and her friend got scared and entered in the home and tried to lock the door, but accused pulled the door, came inside the home and locked the door. The accused tried to catch hold of the deceased, then both the deceased and her friend fled away from there, the accused chasing them, caught hold of the deceased from behind and took her towards *rahar-badi* (pulse garden) and tried to outrage her modesty. Thereafter, the deceased escaped from the accused and came to her home from *rahar-badi* weeping and narrated the incident to her mother Mangli Bai (PW-2). Due to this reason the deceased committed suicide by hanging herself. The allegation against the appellant is that because of the abetment committed by the appellant, the deceased committed suicide. Merg was registered on 30.10.2008 at about 02:30 pm vide Ex.-P/3. On the basis of merg inquiry, F.I.R. (Ex.-P/4) was registered under Section 306 of IPC against the accused/appellant by the Inspector.
5. During investigation, inquest (Ex.-P/7) and spot map (Ex.-P/9) were prepared. Dead body of the deceased was sent for postmortem examination to Primary Health Centre, Lundra vide Ex.-P/10, where the postmortem examination was conducted by PW-5 Dr. Santosh Singh and he gave his report Ex.-P/1. According to his report Ex.-P/1, the mode of death of the deceased was cardio pulmonary arrest which could be due to hanging. Duration of death was found to be approximately about 30-35 hours and death seems to be suicidal in nature. The case diary statements of Mangli Bai, Patar Bai, Indramani, Kheruram, Deepak and Thutharam were recorded. After completion of investigation, charge-sheet was filed against the accused/appellant under Section 306 of IPC.

6. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses namely Indramani (PW-1), Mangli Bai (PW-2), Kheruram (PW-3), Patar Bai (PW-4), Dr. Santosh Singh (PW-5), Thutharam (PW-6), Krishna Pandey (PW-7) and Rammani Ram (PW-8) in support of its case. Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The accused denied the charge levelled against him and prayed for trial. Accused/appellant has examined five defence witnesses i.e. DW-1 Chhotelal Toppo, DW-2 Jugan Tirki, DW-3 Sorki, DW-4 Kunti and DW-5 Munna Yadav in support of his case.
7. After appreciation of the evidence available on record, the learned Third Additional Sessions Judge (FTC) Surguja, Ambikapur by the impugned judgment, convicted and sentenced the accused/Appellant as mentioned in para- 3 of this judgment, hence this appeal.
8. Learned counsel for the appellant submits that there is no any instigation or any act on the part of the appellant, nor any intention of the appellant constituting abetment to the deceased to commit suicide. He submits that PW-1 Indramani, PW-2 Mangli Bai and PW-4 Patar Bai have only stated that when the accused was chasing the deceased, the deceased came to her home and after 1 ½ hours she committed suicide, therefore, there is no any instigation by the appellant to the deceased to commit suicide. He also submits that as per postmortem report Ex.-P/1, no any sign of sexual assault was found on the body of the deceased or any external injury was found on her body, only it has come in the evidence that the accused was chasing the deceased. Therefore, the trial Court was not justified in convicting the accused/appellant even in absence of necessary ingredients to attract the offence under Section 306 of IPC.
9. On the other hand, learned counsel for the State opposes the contention

made by learned counsel for the appellant and submits that it is proved by the prosecution witnesses and defence witnesses that the accused was chasing the deceased for insulting and outraging her modesty and since the deceased was under fear and feeling insult, she committed suicide by hanging herself, which amounts to instigation to the deceased to commit suicide. Therefore, the learned trial Court has rightly convicted and sentenced the appellant for the offence under Section 306 of IPC which needs no interference by this Court.

**10.** Heard counsel for the parties and perused the material available on record.

**11.** PW-1 Indramani is the friend of the deceased. PW-1 stated in her deposition that on fateful day, she alongwith the deceased was sitting on the courtyard of the house, at that time the appellant came there, he told the deceased to come with him, then she (PW-1) and deceased got scared, entered in the home, but the appellant pushed the door and came inside the home and locked the door of the home, tried to catch hold of the deceased. PW-1 also stated that she and the deceased fled away from the place of occurrence, but the appellant was chasing them and caught hold of the deceased and took her towards *raharbadi*, then PW-1 fled away from there and came back to her home. PW-1 also stated that after sometime, she had gone to the home of the deceased and narrated the incident to the deceased's brother Deepak and she came back to her home. PW-1 further stated that after two hours, she came to know that the deceased has committed suicide by hanging herself.

**12.** PW-2 Mangli Bai is the mother of the deceased. PW-2 also stated that on the date of incident at about 05:00 pm, she was at her home and at that time the deceased came to her home weeping and informed that the appellant was chasing her with a bad intention and thereafter PW-2 had gone to house of Bulwa @ Thutha Ram. PW-2 stated that when she came back to her home, her daughter (deceased) had committed suicide by hanging herself.

- 13.** PW-3 Kheruram, the father of the deceased, and PW-4 Patar Bai have supported the version of the PW-2 Mangli Bai, mother of the deceased.
- 14.** PW-6 Thutharam has stated that the mother of the deceased (PW-2) told him that the accused/appellant has committed rape upon the deceased. Even mother of the deceased (PW-2) also stated in her deposition that the deceased herself informed her (PW-2) that the deceased was subjected to sexual intercourse by the appellant in *rahar-badi*. As per postmortem report (Ex.-P/1), no any external injury or internal injury was found on the body of the deceased, nor any sign of sexual intercourse was found on her body. PW-5 Dr. Santosh Singh has stated in his deposition that no any sign of rape was found on her private part. According to Doctor, rape was not committed upon the deceased, but he only stated that ligature mark was found on the neck of the deceased and death was suicidal in nature not homicidal. Even otherwise no charge under Section 376 of IPC was framed by the trial Court, nor is there any evidence to suggest that the deceased was subjected to forcible sexual intercourse prior to her death. It has only come in the evidence of prosecution witnesses that the accused/appellant was chasing the deceased toward *rahar-badi* and thereafter, the deceased immediately returned to her home and stated that the appellant has insulted her, then the deceased committed suicide by hanging herself in her home and this fact is also proved by DW-5 Munna Yadav.
- 15.** Accused/appellant has taken defence in his 313 Cr.P.C. statement that he had not committed any crime against the deceased, nor abetted her to commit suicide. He stated that the parents and family members of the deceased have committed murder of the deceased. But, there is no any evidence that the deceased was murdered or her death was homicidal.
- 16.** In order to bring home the charge under Section 306 of IPC against the accused, the prosecution is first required to prove that there was abetment on the part of the accused as defined under Section 107 of IPC which

compelled the deceased to commit suicide. Section 107 of IPC reads as under:-

**“107. Abetment of a thing.** - A person abets the doing of a thing, who-

*First.* – Instigates any person to do that thing; or

*Secondly.* – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

*Thirdly.* – Intentionally aids, by any act or illegal omission, the doing of that thing.”

17. It is observed by the Supreme Court in ***Gangula Mohan Reddy v. State of Andhra Pradesh, AIR 2010 SC 327*** as under:

“20. 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.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear 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.”

18. In ***M. Mohan v. State Represented By The Deputy Superintendent of Police, (2011) 3 SCC 626***, the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 IPC there has to be clear *mens rea* to commit the offence:

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear 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/she committed suicide.”

**19.**In the present case, only it has come in the evidence of the prosecution witnesses that the appellant was chasing the deceased with bad intention toward *rahar-badi* and thereafter, the deceased came to her home and narrated the incident to her mother PW-2 that the appellant insulted her. However, from close scrutiny of the entire evidence oral and documentary available on record, this Court finds that there was no instigation or intention or *mens rea* on the part of the accused/appellant constituting abetment as defined under 107 of IPC leaving the deceased with no other option but to embrace death. As such the ingredients necessary for attracting for the offence under Section 306 of IPC missing in this case. Though the manner in which the incident occurred raises suspicion against the appellant but it is well settled principle of law that graver the offence is, higher is the degree of proof and the suspicion howsoever strong, cannot take the place of proof. In this case, the prosecution has failed to prove guilt of the appellant beyond all reasonable doubt and being so, the benefit of doubt has to be credited to the appellant, thereby entitling him for acquittal of the charge.

**20.**On the basis of aforesaid discussions, keeping in view of the above cited judgments of the Hon'ble Supreme Court, the conviction of the appellant under Section 306 of IPC cannot be sustained in the absence of any evidence to show that the deceased committed suicide because of abetment given by the appellant. Hence, the conviction of the appellant under Section 306 of IPC is liable to be set aside and he is entitled to be acquitted of the said charge.

**21.**In the result, the appeal is allowed. Conviction and sentence imposed on the appellant under Section 306 of IPC are set aside and he is acquitted of the said charge.

**22.** In the present case, as per report dated 10.02.2020 received from Deputy Jail Superintendent, Central Jail Ambikapur (C.G.), the accused/appellant has completed his entire sentence and he has been released from jail on 07.02.2014 after extending benefit of remission provided by the State, therefore, there is no requirement for passing any order by this Court regarding his release.

Sd/-  
**(Gautam Chourdiya)**  
Judge

vatti