

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20-12-2019

Delivered on 30-01-2020

CRA No. 634 of 2009

- Lallu Chouhan S/o Dasrath Chouhan aged about 27 years R/o Bawapara Nawagarh, Police Station Nawagarh, Dist. Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Nawagarh, Dist. Durg (CG).

---- Respondent

For Appellant : Mr. Bhupendra Singh, 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, Bemetara (CG) in Sessions Trial No. 97 of 2006 wherein the said Court has convicted the appellant for commission of offence under Section 306 of IPC, 1860 and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.5000/- with default stipulations.
2. As per version of prosecution, name of the deceased is Gayatri Chouhan who was married to appellant Lallu Chouhan. It is

alleged that the appellant and other co-accused being husband and relatives of the husband harassed the deceased on account of dowry which was sarcastic for her that is why she poured kerosene on her body and set her ablaze on 23-10-2005 at 11.00 pm. The matter was reported and investigated. After completion of trial, appellant along with other co-accused was charge-sheeted and convicted as mentioned above.

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

- i) The trial court failed to appreciate the circumstances upon which the incident happened i.e., as per dying declaration (Ex.P/1) deceased clearly stated that she poured kerosene on herself just to afraid her husband which indicates that the suicide of the deceased was not on account of cruelty, but it was an accidental death.
- ii The incident took place after seven years of the marriage, therefore, presumption under Section 113 of the Evidence Act is not available in the present case.
- lii) The trial court recorded finding on the

basis of inadmissible evidence,
therefore, same 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 18 witnesses. Sushil Kumar (PW/2) deposed before the trial court that there was a meeting in the matter of appellant and deceased in which the appellant made a written statement that he will not harass his wife. PW/3 Baharin Bai, Neetu Balmik (PW/4), Rajkumar (PW/7), Nutan (PW/8) and Ku. Renu Balmik (PW/9) deposed regarding compromise between both sides. All the witnesses have deposed before the trial court that deceased informed them regarding beating by the appellant, but from their evidence, it is not clear as to what really happened on the date of incident or prior to the date of incident which was sarcastic for the deceased to end her life.

7. In the present case, Sub Inspector Hemraj Sidar (PW/15) recorded dying declaration of the deceased as per Ex.P/1. In the

said dying declaration deceased made declaration that to make the appellant afraid she poured kerosene on her body and set her ablaze. It means, burn injuries on the body of the deceased sustained by the act of the deceased. Though it is mentioned in the said document that husband made quarrel on that date but the fact remains that wear and tear of the family life cannot be equivalent with abetment of suicide.

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 appellant and the death of the deceased. In the present case, from the dying declaration of the deceased, it is not clear as to what was the act of the appellant which was sarcastic for her to end her life. If she herself poured kerosene on her body just to make afraid her husband, it is not an

active act of the appellant which led to death of the deceased, therefore, offence under Section 306 read with Section 34 of IPC is not established. Finding arrived at by the trial Court is not sustainable.

12. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court against the appellant is hereby set aside and he is acquitted of the charges under Section 306 of IPC framed against him. The fine amount, if paid, shall be refunded to him. 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