

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03/12/2019

Delivered on 06/01/2020

CRA No. 815 of 2009

Udhav Lal, S/o Hemsagar Sahu, Aged about-35 years, R/o-
Gudeli P.S. Sarangarh, Raigarh (C.G.) ---- **Appellant**

Versus

State of Chhattisgarh, Through- Police Station Sarangarh,
District- Raigarh (C.G.) ---- **Respondent**

For appellants : Mr. Rajeev Kumar Dubey, Advocate
For State : Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 9th November, 2009 passed by Additional Sessions Judge, Sarangarh, District- Raigarh (C.G.), in Sessions Trial No.16/2009 wherein the said Court convicted the appellant for charge under Section 306 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 5 years with fine Rs. 5000/- respectively with default stipulations.
2. In the present case, name of the deceased is Anagatmati who was wife of the appellant. The said Anagatmati committed suicide by hanging on 18th May, 2009 at about 7 PM at village Gunderi. As per version of prosecution, marriage between appellant and deceased took place since 13 years of the incident. It is alleged that appellant earlier demanded Rs. 30,000/- from father of the deceased namely Jaylal(PW-1)

which was given to the appellant by the father of deceased and thereafter the appellant purchased a Tractor. After some time again the said appellant demanded Rs. 20,000/- for preparation of Trolley of the said Tractor, but that demand was not full filled that is why the appellant harassed the deceased who committed suicided on his instigation. Matter was reported, investigated, charge-sheeted and convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

- (i) In the present case report was lodged by the father of the deceased who is resident of Village Madhopali.
- (ii) The incident took place in village Gunderi and complainant had no knowledge as to what is going on in matrimonial house of the deceased.
- (iii) Complainant has not come with clean hand and investigation is also not fair.
- (iv) The trial Court has recorded finding on the basis of evidence which is not admissible in evidence.
- (v) The ingredients under Section 306 of IPC have not been established but the trial Court wrongly appreciated the evidence adduced by the prosecution.
- (vi) Finding of the trial Court is perverse, therefore, same is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the

evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. In the present case, Jaylal (PW-1) is father of the deceased ,as per version of this witness, the deceased informed her regarding demand of money of Rs. 20,000/- by the appellant and as per version of this witness the deceased informed on 3rd May, 2009 but he is unable to state as to what really happened on 3rd May, 2009 with the deceased. Devlal (PW-2), Deepak Sahu(PW-4), Angad Singh (PW-7) and Mani Ram (PW-8) deposed on same line regarding demand of Rs. 20,000/- by the appellant.
6. Deveshwar Patel (PW-9) deposed before the trial Court from different angle. As per version of this witness, the deceased was in depression because she cannot conceive even after passing of 13 years of her marriage. As per version of this witness when deceased informed him regarding her problem of being issueless. He asked her to get advice from any Gynecologist. This witness, who deposed regarding demand of Rs.20,000/- by the appellant is resident of Gunderi and no demand was made in presence of above witnesses by the appellant, they have deposed on the basis of information given by the deceased, but they are unable to state as to what really happened after such demand.

7. For establishing the charge under Section 306 of IPC, the ingredient of Section 107 of IPC has to be established which may be mentioned 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 abatement besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

8. As has been held by **Hon'ble the Supreme Court in 2010 (1) SCC 750- Gangula Mohan Reddy Vs. State of Andhra Pradesh** the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s. 306, there has to be a clear mens-Rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

9. In the present case, the statement made by the witness is hearsay in nature. In the matter of **Kalyan Kumar Gogoi 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 circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, 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 and

(c) if permitted, gives ample scope for playing 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 others is inadmissible." In view of the above, hearsay evidence is second hand evidence and is inadmissible in evidence, therefore, second hand evidence cannot be acted upon to record any findings.

10. There is no suicidal note indicating real cause of death of the deceased. There is no dying declaration made by the deceased. The case of the prosecution is based on hearsay evidence of witnesses who are not neighbours of the appellant, therefore, there is no legally admissible evidence against the appellant for harassing the deceased prior to her death.

11. In the present case, death of the deceased is caused after 13 years of marriage, therefore, presumption under Section 113(A) of the Evidence Act, 1872 is not available to the prosecution.

12. For offence under Section 306 of IPC there should be a clear mens-rea to commit the offence and there should be a direct or active act by the accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abetment, but from the record, it cannot be inferred that the respondent instigated or intentionally aided the deceased to commit suicide.

13. For the foregoing reasons finding arrived by the trial Court is not sustainable and same is hereby set aside. The appellant is acquitted of the charge under Section 306 of IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

14. Accordingly, the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
Judge