

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 537 of 2011

- Manoj S/o Kaliram, aged about 25 years, R/o Village- Lakhagarh, Thana – Pithora, District Mahasamund (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through the District Magistrate, Mahasamund (C.G.)

---- Respondent/State

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondent/State	:	Shri Rahul Jha, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

05.11.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 13.04.2011 passed by the First Additional Sessions Judge, Mahasamund (C.G.) in Sessions Case No. 48 of 2010, whereby the Appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of Indian Penal Code (for short 'IPC')	R.I. for three years and pay a fine of Rs.100/-, in default of payment to further undergo R.I. for seven days

3. The brief facts of the case are that the marriage between deceased Kavita Mehar and appellant Manoj was solemnized prior to four years of her death. The allegation against present appellant Manoj and co-accused Kaliram (father of Manoj) is that they were suspecting the character of deceased Kavita Mehar, they used to harass the deceased over domestic matter and the present appellant used to beat her. Both appellant and co-accused told the deceased to go from their house and die. Due to this reason, on 03.05.2010, deceased Kavita Mehar committed suicide by hanging herself. Further allegation against the present appellant and co-accused is that

because of the abetment committed by them, the deceased committed suicide. Merg was registered on 03.05.2010 at about 15:15 hours vide Ex.-P/1. After inquest (Ex.-P/3) was prepared, the dead body of the deceased was sent for postmortem examination to Community Health Center, Pithora vide Ex.-8/A, where the postmortem was conducted by PW-6 Dr. Smt. Taara Agrawal and gave her report Ex.-P/8. As per postmortem report (Ex.-P/8), Doctor PW-6 opined that cause of death of the deceased was asphyxia due to hanging. Duration of death was within 12-24 hours and death seems to be suicidal in nature.

4. During investigation, spot map (Ex.-P/4) was prepared. Saree of the deceased was seized from the place of occurrence vide Ex.-P/6. After merg inquiry, F.I.R. (Ex.-P/9) was registered on 11.05.2010 under Section 306 of IPC against the present appellant and co-accused by PW-9 Lal Bahaddur, Assistant Sub-Inspector. The case diary statements of Beniram, Dhansingh, Pavitra Satnami, Jamuna Bai, Anil, Rajesh, Ku. Lalita, Kevra Bai & others were recorded. After completion of investigation, charge-sheet was filed against the present appellant & co-accused under Section 306 read with Section 34 of IPC. However, while framing charge, the trial Court framed charge against the present appellant and co-accused under Section 306 of IPC.
5. So as to hold the accused persons guilty, the prosecution examined 09 witnesses namely PW-1 Beniram, PW-2 Rajesh, PW-3 Pavitra Satnami, PW-4 Jamuna Bai, PW-5 Dhansingh, PW-6 Dr. Smt. Taara Agrawal, PW-7 Amritlal Pathak, PW-8 J.L. Sahu and PW-9 Lal Bahaddur in support of its case. Statements of the present appellant and co-accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case. Present appellant Manoj has stated that he has two children, he has not harassed his wife (deceased) for dowry or any other matter, he pleaded innocence and

false implication. No defence witness has been examined by the accused persons in support of their case.

6. After appreciation of the evidence available on record, the learned First Additional Sessions Judge, Mahasamund by the impugned judgment, while acquitting co-accused Kaliram of the charge under Section 306 of IPC, convicted and sentenced the present appellant as mentioned in para- 2 of this judgment, hence this appeal.
7. Learned counsel for the appellant submits that in this case, parents and relatives of the deceased have not supported the prosecution case. He further submits that only on the ground that appellant Manoj used to suspect the character of the deceased and due to this reason he used to beat her, the trial Court has wrongly convicted and sentenced appellant Manoj under Section 306 of IPC.
8. Learned counsel for the appellant submits that PW-1 Beniram has stated in his deposition that he never stated that the accused persons were harassing the deceased and he denied his case diary statement (Ex.-P/5) and has not supported the prosecution case. Likewise, PW-2 Rajesh, PW-3 Pavitra Satnami, PW-4 Jamuna Bai and PW-5 Dhansingh have also not supported the prosecution case. He also submits that nor any external or internal injury was caused by appellant Manoj and therefore, no any injury was found on the body of the deceased in postmortem examination. The trial Court has mis-appreciated the entire evidence on record and the findings are bad in law and perverse, therefore, the impugned judgment convicting and sentencing the appellant is liable to be set aside.
9. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the law and as such there is no illegality or infirmity in it warranting interference by this Court.

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

11. It is not disputed by both the parties that the deceased committed suicide at her matrimonial home by hanging herself within four years of her marriage with appellant Manoj. As per postmortem report (Ex.-P/8) which is duly proved by PW-6 Dr. Smt. Taara Agrawal, the cause of death of the deceased was asphyxia due to hanging, duration of death was within 12-24 hours and death was suicidal in nature. Inquest report (Ex.-P/3) was prepared by Amritlal Pathak, SDM and spot map (Ex.-P/4) was prepared by PW-9 Lal Bahaddur, A.S.I. in the presence of PW-1 Beniram and he (PW-1) duly proved Ex.-P/3 & Ex.-P/4. Therefore, it stands proved that the death of the deceased was suicidal in nature.

12. Now this Court has to see whether the harassment meted out by the appellant to the deceased was of such a nature tantamounting to abetment as defined under Section 107 of IPC leaving the deceased with no other option except to put an end to her life by committing suicide.

13. 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.”

14. 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.”

15.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.”

16.PW-1 Beniram has stated that the mother of the deceased told him that the deceased was complaining of pain in her stomach and the treatment was going on and he has no knowledge about dispute between the appellant and the deceased. PW-1 admitted in para-8 that deceased never complained against the appellant regarding any dispute with her in her lifetime.

17.PW-2 Rajesh has admitted in para-5 that he had never seen any dispute

between the appellant and the deceased, nor the deceased had complained that the appellant and co-accused were harassing or beating her.

18. PW-3 Pavitra Satnami and PW-4 Jamuna Bai, father and mother of the deceased, have stated that appellant Manoj was having a good relation with the deceased and both were living very well and happily. PW-3 has admitted in para-7 that the deceased had never complained against the appellant.

19. PW-5 Dhansingh has admitted in para-6 that the deceased had never stated that she was upset on account of quarrel committed by her husband (appellant) and co-accused (father-in-law) with her.

20. PW-7 Artilal Pathak, SDM, has only prepared the inquest report in presence of witnesses and he has stated in his deposition that when he asked about the death of the deceased from the witnesses, they stated that husband and father-in-law of the deceased were habitual to liquor and both of them used to quarrel with each other. Whenever the deceased intervened in the dispute between the appellant and his father (co-accused), they used to quarrel with the deceased and that the appellant used to beat the deceased. Both appellant and co-accused were suspecting the character of the deceased.

21. Therefore, in view of the above evidence, it is clear that PW-1, PW-2, PW-3, PW-4 and PW-5 have not supported the prosecution case and they have been declared hostile by the prosecution and the evidence of PW-7 has no value at this stage.

22. In the instant case, the death of deceased Kavita Mehar admittedly took place within four years of her marriage, but there is no direct evidence against the appellant that he was treating the deceased with cruelty except that the appellant was habitual to consume liquor, he used to quarrel with the deceased and suspect her character. Therefore, it cannot be said that the appellant had treated his wife (deceased) with cruelty and abetted her to commit suicide. 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 are 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.

23. On the basis of aforesaid discussions, keeping in view 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.

24. 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. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437 of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge