

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 13/12/2019

Delivered on 06/01/2020

CRA No. 3302 of 1999

1. Gouribai (dead), Aged about- 56 years, W/o- Keshari Chandra Agrawal.
2. Smt. Asha, d/o- Keshari Chandra Agarwal, Aged about- 27 years, Both R/o- Raipur (M.P.) Now (C.G.) ---- **Appellants**

VersusThe State of M.P. now State of Chhattisgarh ---- **Respondent**

For appellants : Mr. F.S. Khare, Advocate
For State : Mr. Ishwar Jaiswal, P.L.

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

1. This appeal is preferred against judgment dated 06th December, 1999 passed by Second Additional Sessions Judge Balodabazar (C.G.) in Sessions Case No. 169/1997 wherein the said Court convicted the appellants for commission of offences punishable under Section 306 and 498(A) of the Indian Penal Code, 1860 and sentenced them to undergo R.I. for 7 years and fine of Rs. 1000/-, R.I. for 2 years and fine of Rs. 500/- respectively with default stipulations.
2. In the present case, name of the deceased is Sarita Agarwal who died by burn injuries on 5th March, 1997 at Mekahara Hospital, Raipur. Gouribai who died during pendency of this appeal was mother-in-law of the deceased

and appellant No.2 Asha Agarwal was sister-in-law of the deceased. It is alleged that both have demanded dowry from the deceased and on not full filling of their demand they have harassed her and instigated her for suicide. Deceased committed suicide by setting her ablaze. Thereafter, Matter was reported, investigated, charge-sheeted and convicted the appellant as mentioned above.

3. During course of the appeal the appellant No. 1 Gouri Bai died and her appeal is finally abated. Now this appeal is being decided against the appellant namely Asha Agarwal.

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

(I) In the dying declaration name of the appellant Asha Agarwal is not mentioned.

(ii) the family of the appellant is joint hindu family and there are three sisters in laws namely Usha, Asha and Manisha.

(iii) Incident took-place after 13 years of the marriage.

(iv) There is no evidence regarding harassment, on the part of the appellant and there is no evidence that appellant physically hurted to the deceased.

(v) From the evidence, it is clear that appellant try to save the deceased but the trial Court recorded finding contrary to the evidence adduced by the prosecution. The trial Court is not

evaluated the evidence properly, therefore, the same is liable to be set aside.

5. 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.
6. Daulat Ram (PW-8) deposed before the trial Court that the deceased informed him about beating by the appellants and ousted her from house but he is admitted (Para-13) that this version is not mentioned in his earlier statement recorded under Section 161 of Cr.P.C. Therefore, what is deposed before the trial Court is exaggerated version of the witness which can be accepted only after explanation as to why the same is not stated before the investigating officer but no explanation was given, therefore, version of this witness is not dependable. Prahlad Kumar (PW-10) deposed before the trial Court that there was dispute between the appellants and deceased regarding share of the crop (paddy) but statement of this witness is vague and bald in nature. It is not clear as to when the dispute took-place and who was the real share holder of the paddy. Therefore, from the evidence of this witness, it is not clear as to what was really happened prior to the date of incident which was sarcastic to the deceased to end her life. Smt. Sandhya

(PW-11) also deposed regarding dispute of paddy but from her evidence it is not clear as to what really happened prior to the date of incident. Therefore, version of this witness is also not sufficient to establish cruelty or harassment on the part of the appellant against the deceased.

7. K.P. Pandey *Nayab Tahsildar* (PW-14) deposed before the trial Court that he recorded dying declaration of the deceased as per Ex.P-14 it is declared by the deceased that earlier there was dispute but now there is no dispute. Again, (PW-14) deposed that mother-in-law of the deceased prevented her from setting her ablaze. In this dying declaration name of the appellant Asha is not mentioned and her role of harassment is also not mentioned. Therefore, dying declaration is not incriminating piece of evidence against the present appellant Asha Agarwal.

8. 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 cooperation.

9. 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. Cruelty as defined in Section-498 A of IPC is also not established on the basis of evidence.

10. 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 accuse 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. Cruelty as defined in

Section 498A of IPC is also not established on the basis of evidence.

11. Looking to the entire evidence, there is no link with the act of the appellant and death of the deceased. Therefore, finding arrived by the trial Court is not sustainable and same is hereby set aside.

12. Accordingly, the appeal is allowed.

13. Appellant is acquitted of the charge under Section 306 and 498(A) of IPC and her conviction and sentence is set aside.

Sd/-
(Ram Prasanna Sharma)
JUDGE

N.Mohle