

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2211 of 2000****Judgment Reserved on 02/12/2019****Judgment delivered on 27/02/2020**

Sudarshan, aged about 37 years S/o Bhagwat Mallah R/o Village Bhaspura,
P.S. Marwahi, District Bilaspur (C.G.)

--- Appellant**Versus**

State of M.P., through Police Station Marwahi, District Bilaspur (C.G.)

---- Respondent

For Appellant	:	Mr. Barun Kumar Chakrabarty, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**CAV Judgment**

1. This appeal is directed against the judgment dated 11/08/2000 passed in S.T. No. 314/1998 by the Fourth Additional Sessions Judge, Link Pendra Road, Bilaspur, whereby the Appellant has been convicted under Section 306 of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that the name of the Deceased is Geeta Bai. She is wife of the Appellant. Their marriage were solemnized prior to 15-20 years back from the date of incident i.e. 30/05/1998. Out of their wedlock, four children got birth. On 30/05/1998 at about 7:00 am, the Deceased committed suicide on railway track by a train. Merg intimation was lodged vide Ex.P-1 by Bheem Sen (PW10), brother of the Deceased. Inquest

proceeding was conducted vide Ex.P-3. Postmortem of the Deceased was conducted by Dr. A.R. Karoriya (PW5). His report is Ex.P-8. During Merg inquiry, statement of witnesses were recorded. It was found that the Appellant was having illicit relation with one Kaushlya Bai, due to which the Appellant used to quarrel and harass the Deceased. Prior to one day from the date of incident as also on the date of incident, the Appellant quarreled with the Deceased, and thereafter the Deceased committed suicide. On the basis of Merg inquiry, FIR was registered vide Ex.P-6. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 10 witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter. Two defence witnesses namely Mithla (DW1) and Kaushlya (DW2) were examined.

3. After completion of trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Trial Court has wrongly convicted the Appellant without there being any clinching evidence available on record. It is further submitted that from the statement of the witnesses, it appears that the Deceased was suffering ear problem and she was unable to listen properly. At the time of incident, she had gone to attend the call of nature at railway track and due to non-

listening of voice of the train, she got accident with the train and died accidentally, thus the death of the Deceased is accidental not suicidal. It is further submitted that there is no evidence on record which establishes that the Appellant was having illicit relation with Kaushlya. Even, Kaushlya (DW2) has categorically stated that she was not having cordial relation with her husband and her husband had kept another women with him. The Appellant and other villagers had tried to convince him and since then her husband started enmity with the Appellant. Kuashlya has also stated that she is not having illicit relation with the Appellant, but ignoring this fact the trial Court has wrongly arrived to the conclusion that the Appellant is having illicit relation with Kaushlya, therefore, the finding of the trial Court is not in accordance with the evidence available on record and is not sustainable. It is further submitted that for the shake of argument if it is admitted that the Deceased had committed suicide yet there is no evidence which establishes that the Appellant had instigated the Deceased to commit suicide as defined in Section 107 of the IPC.

5. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
6. I have heard learned counsel for the parties and perused the record minutely.
7. There is no dispute on the point that the Deceased was the wife of the Appellant and their marriage was solemnized prior to 15-20 years from the date of incident. There is also no dispute on the point that the Deceased died on a railway track through a train.

8. According to the prosecution case, the Appellant was having illicit relation with one Kaushlaya due to which he used to beat the Deceased and treated her cruel and as a result of which the Deceased committed suicide. In this regard, Rambati (PW1) mother of the Deceased not stated anything. She only deposed that before 1 ½ years of the incident, the Deceased came to her house and told her that her husband is likely to bring second wife. She further deposed that when her daughter returned to the house of the Appellant, the Appellant beaten her. During cross-examination, she admitted that firstly she came to know from the villagers that the Appellant was talking to bring second wife. Samaru Ram (PW3) is neighbor of the Appellant who deposed that prior to one day of the incident in the morning, the Appellant had beaten the deceased by a Lathi, at that time he told the Appellant not to do, but on what matter they were quarreling, he does not know the reason. During cross-examination, he admitted that he had never seen any quarrel between the Appellant and the Deceased before. Ramkhilaban (PW4) is also a neighbor of the Appellant, who deposed that prior to one day of the incident in the night, the Appellant had beaten the Deceased. He further deposed that on the next day also, the Appellant had beaten her. According to this witness, the Appellant had kept a second wife and for not giving ornament to her second wife, he always used to beat the Deceased. But this fact is not mentioned in his case diary statement Ex.D-1. Jagdev (PW7) is the husband of Kaushlya Bai (DW2). He deposed that he had gone to the house of the Appellant to bring his wife, but his wife had refused to go with him. However, this witness has admitted that the Appellant is his brother. He had taken a loan of Rs. 5000/- from the Appellant by mortgaging his field. This witness has denied

the suggestion that due to this, the Appellant and he is having some dispute. Ramadhar (PW8), brother of the Deceased has deposed that prior to two months of the incident, the Deceased came to his house and told him that the Appellant had kept one Kaushlya as his wife and he always used to harass her. Bheem Sen (PW10) has deposed that on the date of incident, he had gone towards the field and saw that the Deceased was crossing the railway track and at that time, the train came and she got accident with the train. During cross-examination, this witness has admitted that the Deceased was suffering from ear problem and she was not able to listen properly. This witness has further admitted that Kaushlya wife of Jagdev is residing with him.

9. Mithila (DW1) is the son of the Appellant, aged about 11 years. He deposed that there is no dispute happened between the Appellant and the Deceased. According to this witness also, the Deceased was suffering from ear problem and she was not able listen. On the date of the incident also, he had gone with her mother to attend the call of nature. Her mother was ahead of him at that time the train came and due to non-listening of sound of the train, she met with an accident by a train and died. During cross-examination, he admitted the fact that the Appellant used to go to the house of Kaushlya due to which, the Deceased used to quarrel with him.
10. Kaushlya (DW2) has deposed that she was having some dispute with her husband and her husband had kept his second wife with him. She further deposed that her husband used to not give her money. The Appellant and some villagers had gone to the house of her husband and tried to convince him. Since then there were no cordial relation between the Appellant and

her husband. She has categorically stated that she is not having illicit relation with the Appellant.

11. On minute examination of the above evidence, it is clear that Rambati (PW1), mother of the Deceased had not deposed anything specific against the Appellant. From her statement, it is only established that before 1 ½ years of the incident, the Appellant had beaten the Deceased which was told by the Deceased to her. From the statement of Samaru Ram (PW3), it is only established that only one time the quarrel took place between the Appellant and the Deceased. Though Ramkhilaban (PW4) had deposed that the Appellant had brought second wife and therefore, he used to beat the Deceased, this fact is not mentioned in his case diary statement. Thus, his above statement does not help the case of the prosecution. Jagdev (PW7) and Ramadhar (PW8) have deposed that the Appellant had kept Kaushlya as his second wife, but Kaushlya (DW2) has categorically stated that she is not having such type relation with the Appellant. According to Kaushlya, there was dispute between the Appellant and her husband. Apart from this, there is no evidence available on record on the basis of which, it can be established that the Appellant had kept Kaushlya as his second wife and due to which he used to beat the Deceased. From the statement of witnesses, it appears that the Deceased was having ears problem, therefore, it cannot be ruled out that due to non-listening the sound of train she got accident with the train. Looking to the above facts and evidence available on record, in my considered opinion, the Appellant is entitled to get benefit of doubt.

12. Consequently, the appeal is allowed. The judgment of the trial Court is

quashed and the Appellant is acquitted from the charge framed against him. His bail bond be discharged forthwith.

13. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul