

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.365 of 2002**

Chunnilal alias Manna, age 30 years, son of Baishakhu Sahu, R/o Village Sendh, Police Station Mandir Hasaud, District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Mandir Hasaud, District Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Mirza Kaiser Baeg, Advocate
For Respondent	:	Shri Amit Kumar Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

2.1.2020

- The instant appeal has been preferred against the judgment dated 4.3.2002 passed by the 4th Additional Sessions Judge, Raipur in Sessions Trial No.387 of 2001, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.300/- with default stipulation

- Prosecution case, in brief, is that the Appellant is husband of deceased Dulesia alias Duleshwari. She was his second wife. He had married her by *churi* custom 3 years prior to the incident. On 26.8.2001, a quarrel had taken place between the deceased and the Appellant regarding bulging and fixation of an additional door in their house. A social meeting had also taken place in this regard

where the Appellant denied to build the additional door. It is further alleged that earlier also, the Appellant used to beat the deceased after consuming liquor. He did not give her food also. In the social meeting, when he denied for building and fixation of an additional door in the house, the deceased committed suicide in the house by pouring kerosene over her and setting her on fire. The Appellant took her to the hospital in burnt condition. On the next day, i.e., 27.8.2001, she died in the hospital. Post mortem examination was conducted over her dead body by Dr. Arvind Nerulwar (PW3). He gave post mortem report (Ex.P4) in which he found 90% anti mortem burn injuries over her dead body. On the basis of morgue inquiry, First Information Report (Ex.P8) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. A charge under Section 306 of the Indian Penal Code was framed against him.

3. In support of its case, the prosecution examined as many as 13 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that without there being any clinching evidence on record, the Trial Court has wrongly convicted the Appellant. From the statements of the witnesses, it reveals that on the date of incident, a social meeting

had taken place on the issue of building and fixation of an additional door in the house of the Appellant and the deceased and the Appellant had agreed for building and fixation of the additional door within a period of 8 days, but after the social meeting, the deceased committed suicide in the house by pouring kerosene over her and setting her on fire. Thus, from this, it is not established that the Appellant abetted the deceased in any way to commit suicide. Though some allegations are made by Manrakhan (PW4), father of the deceased, all the allegations are general and omnibus allegations and from these allegations also, no offence is made out.

6. Learned Counsel appearing for the State opposes the above submission and supporting the impugned judgment of conviction and sentence submits that from the statement of Manrakhan (PW4), it is well established that the Appellant used to consume liquor daily and commit *marpeet* with the deceased. He also did not give food to her. Therefore, the deceased committed suicide. Thus, the offence is duly proved against the Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that the deceased was second wife of the Appellant. Their marriage took place 3 years prior to the incident. It is also not in dispute that on 26.8.2001, i.e., the date of incident, the deceased committed suicide in the house by pouring kerosene over her and setting her on fire and she died in the hospital during the course of treatment on 27.8.2001. Dr. Arvind Nerulwar (PW3) conducted post mortem examination over her dead body and gave

his report Ex.P4 in which he found 90% ante mortem burn injuries. He did not find any other injury over her dead body. He has opined that the death occurred due to burn injuries.

9. From the statements of Udairam (PW6), Narayan (PW8), Barnuram (PW9), Arjun Sahu (PW10) and Kalluram (PW11), it also reveals that on 26.8.2001, i.e., the date of incident, the deceased and the Appellant had called a social meeting in which the deceased had asked for building and fixation of an additional door in their house. In the said meeting, the Appellant had agreed for doing so in their house within a period of 7-8 days. Thereafter, the deceased went to her room and poured kerosene over her and set her on fire.
10. Manrakhan (PW4), father of the deceased has deposed that the deceased used to visit his house and on her visiting she had been telling him that the Appellant used to consume liquor and beat her thereafter and he also did not give her food. She had also told him that the Appellant used to earn a small amount and spend that whole amount in consuming liquor. He used to visit the house of his parents and take meals there, but he did not give her food. This witness has further deposed that a few days prior to the incident, the deceased had run away from her matrimonial house for these reasons and come to his house. Thereafter, the Appellant and his father had come to him to take her back. At that time, this witness had told them that they harass the deceased and, therefore, he will not send her back. He has further deposed that he had called a social meeting. Thereafter, he inculcated the Appellant and the deceased and sent the deceased back to her matrimonial house.

The entire statement of this witness has not been rebutted during his cross-examination. In his cross-examination also, this witness has further deposed that whenever he visited the deceased at her matrimonial house, at that time, the villagers told him that the Appellant used to consume liquor and commit *marpeet* with the deceased.

11. Kuleshwar (PW12) has also deposed that the deceased had returned to her village from the house of the Appellant. At that time, she had told him that the Appellant used to consume liquor and commit *marpeet* with her. A social meeting had taken place in this regard in which the Appellant had agreed to keep the deceased happy and thereafter he had taken her back with him. The above statement of this witness has also not been rebutted during his cross-examination.

12. On a minute examination of the evidence available on record, it is clear that on 26.8.2001 a dispute had taken place between the Appellant and the deceased on building and fixing of an additional door in their house. A social meeting had also taken place in this regard and thereafter the deceased committed suicide. Manrakhan (PW4), father of the deceased has categorically stated that the Appellant used to consume liquor and commit *marpeet* with the deceased and he was also not giving her food. The Appellant used to go to the house of his parents and take meals there, but he was not taking care of the deceased. Kuleshwar (PW12) has also supported this statement of Manrakhan (PW4) and has stated that the deceased had told him that the Appellant used to consume liquor and commit *marpeet* with her and in this regard a social

meeting had also taken place. From the above statements of Manrakhan (PW4) and Kuleshwar (PW12), it is established that the Appellant used to consume liquor and commit *marpeet* with the deceased and as a result thereof she committed suicide. A presumption under Section 113A of the Indian Evidence Act (henceforth 'the Act') also goes against the Appellant. Section 113A of the Act runs thus:

“113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).”

13. Since in this regard there is sufficient evidence available on record against the Appellant, the Trial Court has rightly convicted him. Thus, his conviction under Section 306 of the Indian Penal Code is affirmed.
14. So far as sentence part is concerned, the Appellant has a daughter from the deceased and she was residing with him. Probably, she would have been married by now. Presently, the Appellant would be about 50 years old. He is facing the *lis* since 2001. Therefore, considering these facts and circumstances, it would not be in the interest of justice to send him jail for 7 years and, therefore, his

sentence is reduced to rigorous imprisonment for 3 years. The sentence of fine is affirmed.

- 15.** Consequently, the appeal is allowed in part to the extent indicated above. The Appellant is reported to be on bail. His bail bonds are cancelled. He is directed to surrender before the Trial Court forthwith or he shall be taken into custody by police to undergo remaining period of jail sentence, if any.
- 16.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge