

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1271 of 2002

Judgment reserved on 11.06.2020

Judgment pronounced on 11.08.2020

Dhananjai Dhanna, S/o Moti Ram Chandrakar, aged about 29 years, R/o Pinkapar, P.S. Gunderdehi, District Durg (CG)

Present address : Housing Board Kohaka : Qr: No. 276 P.S. Supela, District Durg, CG. **---Appellant**

Versus

State of Chhattisgarh

---Respondent

For Appellant	:	Mr. Praveen Dhurandhar, Advocate
For Respondent	:	Mr. Anand Verma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

This is an appeal preferred by the accused/appellant under Section 374 (2) of the Code of Criminal Procedure against the judgment impugned dated 04.12.2002 passed by Special Judge/Additional Session Judge, Durg in Sessions Trial No. 25/2001 acquitting him of the charge under Section 304-B, but holding him guilty under Section 306 of the Indian Penal Code and imposing the sentence of three years RI with fine of Rs.1,000/-, plus default stipulation.

2. The accused/appellant herein and the deceased namely Basan Bai had entered in marriage in the year 1984-85, but the deceased went to her matrimonial home in the year 1992-93 after observance of *Gauna* ceremony. During the stay of the deceased with the accused/appellant, certain altercation is stated to have

started between the two as the deceased had made an allegation against the accused/appellant regarding his having illicit relations with his sister-in-law Triveni Bai who was also made an accused in this case but subsequently acquitted by the Court below. Deceased also alleged that the accused/appellant was harassing her for the less dowry brought by her at the time of marriage, and also disliked her on account of her ugly complexion. The accused/appellant, allegedly also taunted her for not having proper skill in cooking food. Eventually on 08.11.1999, the deceased suffered 45% burn injuries in her matrimonial home and succumbed to the same while receiving treatment at Sector-9 Hospital Bhilai on 17.11.1999 i.e. after nine days of the incident. Written report (Ex-P/3) to this effect was made by father of the deceased namely Ramadhin (PW-4) against three accused persons i.e. the appellant herein, Rohit Kumar and Triveni Bai (both his brother and sister-in-law) on 25.11.1999. After written report being made FIR (Ex-P/10) was registered against all three under Section 304-B of Indian Penal Code. Victim was shifted to hospital and other investigation related formalities were carried out facilitating to the challan being filed under the same section followed by framing of charge accordingly.

3. Learned Court below vide judgment impugned dated 04.12.2002 acquitted all the accused of the charge under Section 304-B IPC. However, the accused/appellant herein has been held guilty under Section 306 IPC and sentenced to undergo three years R.I. with fine of Rs.1,000/-, in default, to further undergo R.I. for three months. Hence this appeal.

4. Counsel for the accused/appellant submits that the findings recorded by the Court below holding the accused/appellant guilty under Section 306 IPC are contrary to the material collected by the prosecution and therefore cannot be allowed to stand. He submits that there is no evidence to show that the accused/appellant herein, who happened to be the husband of the victim had abetted her to such an extent, which made her commits suicide by putting herself afire. PW-2 the neighbor of the accused/appellant has also not supported the case of the prosecution and has categorically stated that on hearing shrieks of the victim he rushed to her house, found her suffering burn injuries, accompanied her up to the hospital and that on the way when he asked her as to what impelled her to take such extreme step, she had apprised him of the fact that she suffered burn injuries on account of kerosene stove being burst. He further submits that though the prosecution has try to base its case on the letters seized by the prosecution under Ex-P/5, Ex-P/6 and Ex-P/7 purportedly containing the agonies undergone by her at the hands of accused/appellant to be conveyed to her parents but yet the prosecution has utterly failed to establish that those letters were really written by the victim. Even the mother, father, brothers or anyone related to the victim has not stated that any of the letters seized under Ex-P/5, Ex-P/6 and Ex-P/7 was in fact in the handwriting of the victim. Lastly, counsel for the accused/appellant submits that as other two accused persons have already been given a clean chit on the same set of evidence, the accused/appellant too was also to be treated similarly.

5. On the other hand, counsel for the respondent/state supports the judgment impugned and submits that there is ample material available on record to show the complicity of the accused/appellant in crime in question, where his wife put an end to her life by immolating herself. According to the State counsel, the letters seized under Ex-P/5, Ex-P/6 and Ex-P/7 are self eloquent painting the traumatic experience undergone by the victim at the hands of none else but her husband itself, who is supposed to protect her from all possible miseries. State counsel further submits that the case of other two accused persons rests on different footing and therefore the accused/appellant cannot claim for similar treatment because it is he who was the author of the crime in question forcing his wife to put an end to her precious life. He thus submits that, the prosecution has proved its case beyond all reasonable doubts and, therefore, the judgment impugned based thereon cannot call for an interference in this appeal.

6. Heard counsel for the parties and perused the material available on record.

7. The most important witness to the incident appears to be one Sudhakar Mahorkar (PW-2) – the neighbor of the accused/appellant. He has categorically stated that on the date of incident at about 10-11 AM he heard the cries emanating from the house of the accused/appellant and thereafter, he rushed towards the house of the accused/appellant. On reaching there, he saw the victim lying near the doorsteps with burn injuries on her body. He has stated that at that time, the present accused/appellant was not there and had

gone to the nearby grocery shop to buy household articles. He has further stated that smell of kerosene was coming out of the body of the victim. He has stated that at no point of time he had come across any untoward or quarrelsome activities between the accused/appellant and the victim. He however has feigned his ignorance about the actual cause of incident. He is also the witness to inquest Ex-P/2 on which he had put his signature. In the cross examination he has stated that on the way to hospital he had asked the victim about the reason forcing her to take such extreme steps, she had made a disclosure that all that had happened on account of bursting of kerosene stove while cooking. He is also stated to have seen the half cooked food lying scattered nearby and smell of kerosene was also coming out. He has stated that the victim asked for water on the way to hospital which was made available by him. This witness has reiterated that he never came across any altercation between the accused and the deceased and that they were leading a peaceful life by living together. It is this witness who had taken the victim to Sector-9 Hospital, Bhilai, where she breathed her last nine days thereafter while receiving treatment. PW-3 is the Nayab Tehsildar who prepared inquest Ex-P/2 on the body of the deceased. According to this witness, at the time of inquest brother of victim namely Hemlal was very much present there but he did not make any disclosure to him regarding the cause of incident. PW-4 Ramadhin is the father of the victim and has made number of general allegations against the accused persons regarding subjecting his daughter to cruelty for bringing less dowry in marriage. He has stated that the victim used to visit her maternal

home on every *Teeja* festival and inform about the tortuous act of the accused persons. It is relevant to note here that this witness has made vociferous allegations against the accused persons but he has not assigned any specific instance as to when, where and by whom, his daughter was subjected to cruelty. This witness has denied that his daughter complained to him about setting herself ablaze on account of abuses hurled by the accused persons though he had been with her in the hospital before death. He has also not stated about the letters seized under Ex-P/5, Ex-P/6 and Ex-P/7 to be in the handwriting of the deceased. PW-5 Anusuiya Bai – the sister of the deceased has not stated anything specifically except that the accused persons did not like her as she was not adequately educated. PW-6 Phulkunwar – the mother of the deceased has also not made any specific allegation regarding abatement of the deceased to commit suicide. She has just stated that during her visit to the maternal home on the occasion of *Teeja*, the victim had apprised her of the demand for more dowry and resultant torture at their hands. The present appellant is also said to have told the victim about marrying some other woman as she was not of his liking. One thing which emerges from the evidence of PW-4, PW-5 and PW-6 is that the deceased had some disease like sickling and it could also be one of the reasons to propel her to end her life by suicide. Evidence of PW-7 merely says that his sister (victim) died on account of harassment meted out to her at the hands of the accused persons for giving less dowry in marriage. He has also stated that accused/appellant was not taking much interest in the victim and his inclination was toward some other woman. Though, this witness has

referred to Ex-P/5 – one of the letters written by the deceased describing her woes but he has not explained as to whether it was in her handwriting or not. Specific instances as to when and in what manner the victim was put to cruelty has not been given by this witness. It is surprising that when these witnesses were aware of the accused/appellant's having an affair with the sister-in-law, why did they not take the matter to the police. Further, when they were receiving complaints from the victim regarding her harassment at the hands of accused persons, here also the report should have been lodged so that this tragic incident involving death of an innocent woman could have been averted. Even the letters seized by the prosecution under Ex-P/5, Ex-P/6 and Ex-P/7 have not been proved whether, they were in the handwriting of the victim herself. What is more astonishing here is that the deceased succumbed to the burn injuries nine days after the incident but, no effort seems to have been made by the prosecution to make known the actual cause of the incident. On the contrary evidence of PW-2, the neighbor of the accused/appellant goes to show that immediately after the shrieks emanating from the house of the accused persons fell in his ear, he rushed thereto, found the victim lying on the doorsteps with burn injuries on her body, took her to Sector- 9 Hospital, Bhilai, and on the way when he asked the victim as to how she suffered burn injuries on her body, he was told by her that it was as a result of bursting of kerosene stove while cooking food. This witness has clarified that half cooked food items were lying scattered and smell of kerosene was also emanating from the body of the deceased. PW-2 has also stated that he never noticed any quarrel or

altercation between the accused and the deceased and that they were living peacefully. PW-9 another brother of the victim has also not stated anything specifically as to how the accused/appellant abetted her to commit suicide except stating that she was taunted by him and other co-accused persons for having ugly looks. One more important aspect of the matter is that, whatever has been stated by the relatives of the deceased hailing from the maternal side, is on the basis of information provided to them by the others, but they themselves are not stated to have seen the incident from their own eyes. Doctor PW-1 who conducted the postmortem examination on the body of the deceased has stated that he noticed 45% burn injuries on her body. He has further stated that carbon soots were also found in the nose and wind pipe of the deceased, which is indicative of the fact that the burn injuries were ante mortem in nature, as has been disclosed by this witness. The report given by this witness is Ex-P/1. Cause of death according to this witness was shock and septicemia on account of excessive burns, and that they were in the duration of 24-72 hours prior thereto. PW-10 has stated that on being asked about the dispute, the deceased had told him that on account of illicit relations of the accused with his sister-in-law Triveni she was not feeling comfortable. He is also stated to have come to know about the dowry demand made by the accused/appellant. Investigating Officer though has supported the case of the prosecution yet this witness has not stated anything conclusive whether the letters seized under Ex-P/5, Ex-P/6 and Ex-P/7 were written by the deceased herself by telling her handwriting from her previous study material or notebooks.

8. While dealing with an identical matter reported in **AIR 2014 SC 1782 (Mangat Ram Vs. State of Haryana)** Hon'ble the Apex Court has held that death of wife in her matrimonial home by committing suicide may be due to various reasons and need not be always due to abatement alone. Relevant portion thereof is reproduced as under :-

“20. We find it difficult to comprehend the reasoning of the High Court that “no prudent man is to commit suicide unless abetted to do so.” A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.”

9. Further, in this case the material available on record particularly the evidence of PW-2 - the neighbor of the accused persons who had reached their house immediately after hearing the cries of the victim has stated that the incident as was disclosed to him by the victim herself was on account of sudden bursting of kerosene stove while cooking food, which is indicative of the fact that the injuries leading to the death of the deceased were accidental in nature. While dealing with an identical matter reported in **(2015) 10 SCC 390 (Bhanuben and anr. Vs. State of Gujrat)** acquittal has been awarded to the accused holding as under :-

“24. From the facts and circumstances of the present case and upon the examination of the body of the deceased, it is clear that her death was a result of an accident and she had mistakenly consumed the poisonous tablet as the same was kept with other medicines. Had the deceased wanted to implicate the accused, she would have revealed their names in the final moments before her death, as she had nothing to fear for and her antecedent showed that

she had previously filed a complaint against the accused when they harassed her. If the accused had any hand in her death, the same would have been revealed in the dying declaration of the deceased. Thus, the prosecution has failed to prove beyond all reasonable doubt that the accused had abetted the deceased in the commission of suicide as provided under the provision of [Section 306, I.P.C.](#)”

10. In another identical matter reported in **(2009) 2 SCC (CRI) 28 (Anand Kumar Vs. State of Madhya Pradesh)** where the letters purportedly written by deceased to her father were made basis for conviction of the accused, it has been held by the Hon'ble Apex Court as under :-

“ 9. We have heard the learned counsel for the parties and gone through the record. The fact that three of the accused have been acquitted and that no appeal against their acquittal has been filed is admitted on record. It is also clear from the impugned judgments that the courts have relied heavily on the letter Exhibit P-20 to support the finding of conviction against the appellant. This letter was sought to be proved in evidence by PW-11 Ram Prasad, the father of the deceased, to whom it had been addressed. This is what he had to say in his examination in chief by way of its proof :

"I had received letter of threat from accused Anand Kumar on 27.02.86 through Peon Achchhe Lal and that letter is exhibit P20. He had raised the demand for radio, watch, cycle and fan through that letter, at the time of gauna, I had given him watch, radio, cycle and fan as demanded in the letter."

We are of the opinion that this excerpt from his evidence cannot be said to be proof of the document as no statement was made that he recognized the handwriting or the signature of the appellant. Moreover, this letter had not been produced before the police during the course of the initial investigation and had been handed over to the police after several months. This fact, as also a reading of the letter, indicates that this was a concocted piece of evidence and the work of a legal mind, as no person would write such a letter meeting all legal requirements for implicating himself and his near relatives, in a claim for Dowry."

11. Thus, in view of the aforesaid factual and legal discussion this Court is of the view that the prosecution has utterly failed to prove its case beyond all reasonable doubt, that the accused/appellant abetted his wife in any manner whatsoever which made her embrace death by engulfing herself in flames. So also, the Court below has also fallen in error in forming its opinion based thereon, which is liable to be set aside. Thus, the judgment impugned convicting the accused/appellant under Section 306 IPC is hereby set aside by allowing this appeal and the accused/appellant is hereby acquitted of the charge leveled against him. Since, the accused appellant is already enjoying bail, no further order regarding his release or otherwise is required to be passed.

12. With the aforesaid observations, the appeal is allowed.

Sd/-

(Vimla Singh Kapoor)

Judge