

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26/11/2019

Delivered on 06/01/2020

CRA No. 322 of 2011

Rajbhan Sahu, S/o- Hemraj Sahu, Aged about- 24 years, R/o-
Daukapa, Police Station Mungeli, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the Police Station Mungeli,
District- Bilaspur (C.G.)

---- Respondent

For appellant : Mr.Amit Kumar Sahu, Advocate
For State : Mrs. Smita Jha, P.L.

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

1. This appeal is preferred against judgment dated 15th April, 2011 passed by the Additional Sessions Judge Mungeli (C.G.) in Sessions Trial No.42/2010 wherein the said Court convicted the appellant for commission of offence punishable under Section 306 of the Indian Penal Code, 1860 and sentenced him to undergo R.I. for 7 years and fine of Rs. 2000/- respectively with default stipulations.
2. In the present case, name of the deceased is Lalita Sahu. Marriage between deceased and appellant took-place on 29th June, 2009. The matrimonial house of the deceased was Daupara Mungeli and her parental house was Chantidih, Bilaspur. After marriage, deceased came to her parental house and informed her parents that appellant

harassed her after consumption of liquor and demanded motor-cycle. The matter was reported and charge-sheeted and convicted the appellant as mentioned above.

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

(I) Even if the entire prosecution story is accepted as it is then also the offence not covered under Section 306 of IPC.

(ii) The trial Court has not evaluated the evidence properly and there is no evidence to connect the appellant with crime in question but same was ignored by the trial Court.

(iii) Finding of the trial Court is not proper therefore order passed by the trial Court is liable to be set aside.

4. 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.

5. Mohit Ram (PW-4) is father of the deceased. As per version of this witness, her daughter informed him after marriage that appellant used to beat her after consumption of liquor and demands motor-cycle. Khorbaharin Bai (PW-5) is mother of the deceased and she also deposed on same line. Ashok Sahu (PW-6) is brother of the deceased who also deposed on same line on the basis of information given by the deceased. All the three prosecution witnesses are resident of Chantidih, Bilaspur while incident took-place at Daupara, Mungeli. These witnesses had no occasion to see

what is really going on in matrimonial house of the deceased. No report was lodged regarding harassment by the deceased during her lifetime. No medical report was submitted to establish that appellant assaulted the deceased after marriage.

6. 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 co-operation.

7. 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.

8. In the present case, the statement made by the witness is hearsay in nature. In the matter of **Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri** reported in **(2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

"(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible." In view of the above, hearsay evidence is second hand evidence and is inadmissible in evidence, therefore, second hand evidence cannot be acted upon to record any findings.

9. There is no suicidal note indicating real cause of death of the deceased. There is no dying declaration made by the deceased. The case of the prosecution is based on hearsay evidence of the witnesses who are not neighbours of the appellant, therefore, there is no legally admissible evidence

against the appellant for harassing the deceased prior to her death.

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 accused 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.

11. For the foregoing reasons finding arrived by the trial Court is not sustainable and same is hereby set aside. The appellant is acquitted of the charge under Section 306 of IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

12. Accordingly, the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE