

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 81 of 2005

Order reserved on 11.08.2020

Judgment pronounced on 09.11.2020

Vijay Kumar Patel, son of Shri Mansha Ram, aged about 28 years,
resident of Village Sarna, PS Ramkola, Chowki Raghunath Nagar,
District Surguja (CG) --- **Appellant**

Versus

State of Chhattisgarh, through Police Station Ramkola, Chowki
Raghunath Nagar, District Surguja (CG) --- **Respondent**

For Appellant : Mr. V.K. Pandey, Advocate

For State/Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

The marriage of the deceased and the accused was solemnized in the year 1997 and out of their wedlock 2 issues were also born to them. It is alleged that on 10.05.2003 there was a little dispute between the husband and wife over the medical treatment of their children, and in furtherance of that dispute the appellant is said to have slapped the deceased. This small dispute coupled with slapping made the deceased leave the house. When the deceased did not return home, a search was made and on the next day the body was found floating in the nearby well. The body was first seen floating in the well by Subhdra (PW-9) and Baspati (PW-3) when they had gone to the well for fetching water. Merg (Ex.P-2) was recorded, inquest (Ex.P-4) was drawn by the police in presence of the Panch witnesses and thereafter the dead body was sent for postmortem examination. After completion of investigation charge-sheet was filed against the accused under Sections 306 and 498-A IPC followed by framing of charge under the said sections.

2. Learned Court below vide judgment impugned dated 18.01.2005 passed in Sessions Trial No.234/2003 found the charges under these two sections of the Indian Penal Code proved and thus convicted the accused/appellant accordingly imposing the sentence of 3 years RI with fine of Rs.2000/- under Section 306 IPC and one year RI with fine of Rs.1000 under Section 498-A IPC, plus default stipulations.

3. Counsel for the accused/appellant submits that the allegation of demand of dowry and resultant abetment to commit suicide is merely an afterthought by the parents of the deceased. He submits that none of the witnesses has stated regarding the sour relation between the accused and the deceased and they lived happy married life all throughout. He submits that even if the entire case of the prosecution is taken in its entirety, no case under Section 306 or 498-A IPC is made out. He submits that barring some dispute on the date of incident over the medical treatment of their children, nothing has come out from the record to establish the case under Section 498-A or 306 IPC. Lastly, it has been argued that in view of the clear cut evidence favouring the accused, the judgment impugned has to be set aside and the accused/appellant should be acquitted of the charges levelled against him.

4. State counsel however supported the judgment impugned and submits that there is ample evidence to show that after being slapped by the accused the deceased left the house and threw herself into the well by embracing death leaving her two minor kids behind. He submits that had the act of the accused/appellant not been apathetic, the deceased would not have ended her life that too by

leaving 2 small children. Being a well reasoned judgment, as argued by the State counsel, no interference is required to be made therewith.

5. Kapil Dev (PW-2) who happens to be the brother of the accused in relation is the witness who informed the police about the incident. He has stated that he never came across anything ill between the accused and the deceased. He has stated that he came to know about the body of the deceased floating in the nearby well when Subdhadra (PW-9) and Baspati (PW-3) had gone to fetch water. After being informed, this witness is also said to have reached the spot and seen the body in the well. Next day the police arrived in the village, took out the body from the well but no injury was visible thereon. Except stating that, he was informed by the accused/appellant about the minor dispute between him and the deceased over the medical treatment of their children, the accused/appellant had not told him anything else. In his cross-examination this witness has stated that the accused and the deceased lived in his house as tenant for number of years but he did not come to know anything bad between them. He has stated that the accused/appellant never made any demand of dowry either from the deceased or from her parents. PW-9 and PW-3 who had first seen the body of the deceased in well have also not stated about any dispute between the accused and the deceased. The evidence of PW-2, PW-3 and PW-9 on the other hand suggests that the deceased herself was a short tempered woman and many a time she used to plunge into the dispute in the family and even in the neighbourhood. PW-9 has been declared hostile. However, in the cross-examination she has clarified that the relationship between the accused and the deceased was

never reported to be bad nor any demand was ever made by the accused either from the deceased or her parents. PW-4 has also stated in the same tone and tenor that he never heard about any dispute between the deceased and the accused. PW-6 has not stated anything specific. PW-7 – the witness to inquest has admitted his signature in the inquest Panchnama. PW-8 is the Investigating Officer who has supported the case of the prosecution. PW-10 is the father of the deceased and he has made number of allegations about demand of dowry and resultant harassment put by the accused/appellant to the deceased and this thing was informed by his daughter whenever she used to visit his house. Of course, the perplexed father is bound to state such things against the accused after losing his beloved daughter, however, the fact remains that when the deceased was consistently apprising him about the misdeeds of the accused right from the beginning, he should not have sat idle but must have made the report to the police in that regard so that the wrong if any must have been nipped at the bud itself, but unfortunately he did not do that and waited for this unfortunate moment which is not acceptable in the eye of law. Mere small bickering and stamping of slaps in furtherance thereof cannot be said to be abetment to the deceased wife to commit suicide. Such stray instances are common in the households. The abetment as defined in Section 107 IPC, for ready reference, is reproduced as under:-

“Section 107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes

place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

6. If entire evidence adduced by the prosecution is taken as it is, this Court has no hesitation to say that the prosecution has not made out its case under Section 306 IPC much less 498-A IPC as not even a single ingredient of abetment is attracted to the case in hand. In the identical matters the same view has been taken in the matter of **Kishori Lal Vs. State of MP** in 2007 (10) SCC 797, **Kuvaria Bai Vs. State of MP (Now CG)** in 2018 (1) CGLJ 102, **K.V. Prakash Babu Vs. State of Karnataka** in 2016 (4) Crimes 184 (SC) and **Pinakin Mahipatry Rawal Vs. State of Gujrat** in 2013 (10) SCC 48.

7. In this view of the factual and legal position, the accused/appellant cannot be said to have abetted the deceased to end her precious life in any manner whatsoever. Conviction of the accused/appellant under Section 306 and 498-A IPC is therefore, set aside and the accused/appellant is acquitted of the charges levelled against him. Appellant is reported to be on bail and therefore, the bail bonds furnished by him stand discharged.

8. Appeal is thus allowed.

Sd/-

(Vimla Singh Kapoor)

Judge