

CRA No. 1284 of 2002

- Appellant

- State Of Chhattisgarh

---- Respondent

Post for pronouncement of the judgment on 24.09.2021

Sd/-

JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 13.07.2021****Judgment delivered on : 24.09.2021****CRA No. 1284 of 2002**

- Domar Singh, S/o. Punaram Dhankar, Aged about 27 years, R/o. Village Ravelidih, PO. Nandini Nagar, District Durg CG

---- Appellant**Versus**

- State Of Chhattisgarh , through PS Nandini 2Nagar, District Durg CG

---- Respondent

For Appellant	: Shri Vivek Sharma, Advocate
For Respondent/State	: Shri Sameer Sharma, Dy.GA

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment****24/09/2021**

This appeal arises out of judgment and order dated 30.11.2002 passed by the Special Judge and Additional Sessions Judge, Durg in S.T. No. 30/2001 convicting the accused/appellant under Section 306 IPC sentencing him to undergo RI for 3 years with fine of Rs. 1,000 plus default stipulation.

2. As per prosecution case, on 01.05.2000 at about 6.00 am FIR (Ex.P-10) was lodged by father of the deceased Indrani alleging that his daughter has been killed by the applicant and his family members

for demand of dowry. It is alleged that the deceased was subjected to cruelty by her in-laws and on the date of incident, i.e. 29.04.2000 he was informed by the appellant and his parents that Indrani was sick and when he reached the village, he saw that her daughter was put on pyre and her body was turned pale and black. He has stated that he was suspecting that her daughter might have been killed after administering some poisonous substance. Based on this, offence was registered against the accused/appellants under Sections 304-B and 201 IPC. After filing of the charge sheet, trial judge framed charge against the accused/appellants under Sections 304-B and 201/34 IPC.

3. So as to hold the accused/appellants guilty, prosecution has examined 11 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, trial Court has acquitted the accused/appellants of the charges levelled against them under Section 201/34 IPC. However, the parents (Punaram and Devantin Bai) of the appellant have also been acquitted of the charges under Section 304-B IPC but the conviction of present appellant has been altered to that under Section 306 IPC and sentenced him as mentioned in paragraph 1 of the judgment. Hence, the present appeal.

5. Counsel for the appellant submits that the conviction of the appellant under Section 306 IPC is unjust, unworthy and bad in the eye of law. The trial court, on the basis of same evidence, has

acquitted the co-accused persons i.e. father and mother of the appellant and therefore on the same set of evidence, the appellant cannot be convicted. The trial court has committed grave error in convicting the accused/appellant as the ingredients of Section 107 IPC as established by the prosecution are missing. He submits that even if the entire prosecution case is taken as it is, offence under Section 306 IPC is not made out because the basic ingredients of Section 306 IPC in particular Section 107 IPC are not attracted in the present case. He submits that at best the appellant can be convicted under Section 498-A IPC. Lastly, he submits that there is no evidence to show that the accused committed *maar-peeth* with the deceased for demand of dowry. It is clear from the prosecution story that the deceased was not interested to live with her husband but she was forced to go back by her parents therefore she committed suicide. This incident took place on account of the action taken by the society on his father by imposing penalty of Rs. 10,000/- as fine. Father of the deceased (PW-3) has clearly admitted in his cross-examination that he has not mentioned in the FIR that her daughter was ever harassed by her husband therefore the conviction of the appellant is liable to be set aside and cannot be sustained. The trial court ought to have held that there is major contradiction and omission in the evidence of the prosecution witnesses. Moreover, the statement of the prosecution witnesses are not reliable and as such the conviction of the appellant is liable to be set aside. Reliance has been placed by the counsel for the appellant in the matter of **State of West Bengal Vs. Indrajit Kundu & Others** reported in **Cr.A. NO. 2181 of 2009**.

6. On the other hand State counsel supports the impugned

judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

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

8. Learned trial court by the impugned judgment has acquitted the appellants ie. father and mother of the appellant namely Punaram and Devantin Bai of the offence under Section 304 (B) IPC. Omkar (PW-3) father of the deceased has stated that Indrani Bai was his daughter and she was married to the present appellant and that they used to demand gold and silver ornaments, TV, bike and refrigerator. He has stated that all the accused persons used to harass her for bringing less dowry. Arjun (PW-4) has stated in his evidence that the accused persons subjected her to cruelty for bringing less dowry. Similar statement has been given by Ankalhin (PW-8) grandmother of the deceased that the appellant subjected the deceased to cruelty. Other witnesses have stated that the deceased did not like her husband and therefore she usually left for her parent's house. Ganguram (PW-1) has stated in his examination-in-chief that Indrani Bai came to his house and told him that she was not feeling well and then he suggested her to consult a doctor. Panchuram (PW-6) uncle of the accused/appellant has stated in his examination-in-chief that the deceased did not like her husband and usually left to her parents house.

9. Close scrutiny of the evidence makes it clear that to convict the appellant/accused under Section 306 IPC, the prosecution is required to prove the basic ingredients of Section 107 IPC. Sections 306 and

107 of the Indian Penal Code reads as under:

“306. Abetment of suicide.— If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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 willful misrepresentation, or by willful 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.

Explanation 2.— Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

9. The Hon’ble Apex Court has held in the case of **Ramesh Kumar Vs. State of Chhattisgarh** reported in **(2001(9) Scc 618**, which reads as under:

12. In the judgment in the case of **Ramesh Kumar vs. State of Chhattisgarh**, this Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word “instigation”, it is held in paragraph 20 as under:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

Similarly, in the case of **Sanju @ Sanjay Sengar Vs. State of M.P.** reported in **2002 (5) SCC 371**, it has been held that ,

“when any quarrel which has taken place between husband and wife in which husband has stated to have told the deceased” to go and die”, this Court has held that the suicide committed two days thereafter was not proximate to the quarrel though the deceased was named in the suicide note and that the suicide was not the direct result of quarrel when the appellant used abusive language and told the deceased to go and die. Judgments

referred above support the case of respondents, except stating that on 05.03.2004 when the deceased went to the premises of first respondent, his parents who are respondent Nos. 2 and 3 addressed her as a call-girl. At the same time by applying the judgments referred above we are of the view that such material is not sufficient to proceed with the trial by framing charge of offence under Section 306/34 IPC. It is also clear from the material that there was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide.”

10. In the present case, it is clear from the statement of the father of the deceased it is clear that the appellant have never demanded dowry. He has admitted in his cross-examination in para 7 of his deposition that in their society neither there is any system of dowry nor the accused/appellants have ever demanded. Further he has stated that accused Domar was the only son of his parents and therefore he married his daughter to him. It is true that he was banished from the society for four months because her daughter used to leave her matrimonial house to her parents house. He has admitted that father of the accused once wrote a letter stating that his daughter usually leave to her parent's house and therefore action taken by the society on him by imposing penalty of Rs. 10,000/- as fine. Arjun (PW-4) has also stated in his examination-in-chief that there was mutual understanding between both the parties and after making her understand sent to her in-laws house. Omkar (PW-3) has stated this fact that the accused persons put the body of his daughter on pyre before they reached and the villagers have informed them that her body was turned pale and

black, due to which they felt suspicion and reported the matter in the police station.

11. Moreover, the postmortem examination has not been conducted but the learned trial court found that seizure of BSC powder (some pesticide) and statements of the witnesses prove that death of the deceased was unnatural and the appellant has also admitted in his statement that information of deceased being sick was given to her father. It is not disputed that the death was unnatural and suicidal but it is clear from the statement of the father of the deceased and other witnesses that there was no goading or solicitation or insinuation by any of the appellants to the victim to commit suicide. In the case of **Chitresh Kumar Chopra Vs. State (NCT) of Delhi** reported in **(2009)16 SCC 605**, the Apex Court has held that where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred.

12. Thus, in the present case, only general allegation for demand of dowry has been made against the appellant. The learned trial court has acquitted mother and father of the appellant on the same set of evidence but has convicted the appellant on the ground that to some extent, there was mental stress between the appellant and the deceased which constrained her to die. Trial court also found that this is not a case where the dowry was demanded and therefore the court below has ignored the provisions of Section 107 IPC to draw inference of instigation but it all depends on the facts and circumstances of the case, whether the act committed by the accused will constitute direct

or indirect act of incitement to the commission of suicide which is required to be considered in the facts and circumstances of each case but in the instant case, the ingredients of 'abetment' are totally absent for bringing home the offence under Section 306 IPC. There is no evidence and material available on record wherefrom an inference of the accused/appellant having abetted the commission of suicide by Indrani Bai may necessarily be drawn. For the aforesaid reasons, this court is of the opinion that the accused/appellant, deserves to be acquitted of the charge under Section 306 IPC. Appellant is reported to be on bail. His bail bonds stand discharged.

In the result, appeal is allowed.

Sd/-

(Rajani Dubey)
Judge