

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.126 of 2015

Judgment Reserved on : 6.1.2021

Judgment Delivered on : 20.1.2021

Hameed Shah, son of Khursheed Shah, aged about 41 years, all resident of Jamat Para Ward No.7, Sahaspur Lohara, Police Station Sahaspur Lohara, Civil and Revenue District Kabirdham, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh acting through Officer-in-Charge, Police Station Lohara, Civil and Revenue District Kabirdham, Chhattisgarh

--- Respondent

For Appellant : Mr. K.A. Ansari, Senior Advocate with
Ms. Meera Ansari and Mr. Sangharsh
Pandey, Advocates
For Respondent/State : Mr. Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 2.12.2014 passed in Sessions Trial No.41 of 2014 by the Sessions Judge, Kawardha (Kabirdham) convicting and sentencing the Appellant 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.1,000/- with default stipulation

2. According to the case of prosecution, Rehana Begum (deceased) was wife of the Appellant. Their marriage was solemnised about 20

years back from the incident. Reshma Parveen (PW3) and Salman Shah (PW4) are their daughter and son, respectively. The Appellant was suffering from mental disorder and, therefore, he was unemployed. Therefore, his wife/deceased Rehana Begum was earning livelihood for the family by doing sewing work. Due to not being in a position to earn money, the Appellant used to make demand for money from his wife and, therefore, disputes had been taking place between them frequently. Allegedly, on the date of incident also, i.e., 22.6.2014, the Appellant badly assaulted the deceased as a result of which she committed suicide by hanging herself inside the house. Her son Salman Shah (PW4) reported the matter. Offence was registered. Statements of witnesses were recorded. On completion of the investigation, a charge-sheet was filed. The Trial Court framed charge against the Appellant.

3. To bring home the offence, the prosecution examined as many as 10 witnesses. Statement of the Appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Senior Counsel appearing for the Appellant submitted that without there being any clinching and sufficient evidence the Trial Court has wrongly convicted the appellant. It was further submitted

that the Trial Court has not taken into consideration the fact that the Appellant was suffering from mental disorder besides being in some sort of depression which might have lead to dispute between him and his wife and this could not have been held to be provocation for commission of suicide or abetment on the part of the Appellant. It was further submitted that the Trial Court has also not taken into consideration the statement of Reshma Parveen (PW3), daughter of the Appellant as contained in paragraph 5 of her statement that the mental condition of the Appellant deteriorated intermittently and he was taken to Mahasamund, the parental place of the deceased. Reshma Parveen (PW3) has also admitted the fact that because of his mental condition the Appellant was not in a position to do any work for earning livelihood. It was further submitted that the marriage of the Appellant and the deceased had taken place 18-20 years back and no allegation was levelled on the Appellant regarding misbehaviour with the deceased during the period of first 16 years after the marriage. Last 2 years before the incident, complaints started taking place against the Appellant because of his mental disorder. The Appellant, due to his mental disorder, was not in a position to earn money and the deceased was earning livelihood for the family by doing sewing work. Due to their severe poverty and mental disorder of the Appellant, the deceased herself was under mental depression and she had told about her desire of suicide. There is nothing on record on the basis of which it could be said that the deceased was instigated by the Appellant to commit suicide. Thus, it was submitted that the Trial Court has wrongly convicted the Appellant.

6. On the contrary, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellant and supported the impugned judgment. He submitted that the Appellant has rightly been convicted and sentenced by the Trial Court.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record with utmost circumspection.
8. It is not in dispute that the marriage between the Appellant and the deceased took place 18-20 years prior to the incident. It is also not in dispute that no dispute took place between them during the period of first 16 years after the marriage. It is also not in dispute that during the period of last 1½ and 2 years before the incident the Appellant fell mentally ill and he was undergoing treatment therefor and due to his mental disorder he was unable to earn livelihood and, therefore, his wife/the deceased was earning livelihood for the family by doing sewing work. The entire prosecution case is based upon the statements of Reshma Parveen (PW3), Salman Shah (PW4) and Sultan Ali (PW5), who are daughter, son and father of the deceased, respectively.
9. In her Court statement, Reshma Parveen (PW3), daughter of the deceased has deposed that for about 1 year before the incident her father/the Appellant was not doing anything for earning livelihood and her mother/deceased Rehana Begum was earning livelihood for the family by doing sewing work. This witness has further deposed that the Appellant used to quarrel every day with the

deceased and he also used to beat her by danda. He also used to make demand of money from the deceased. On the date of incident also, a quarrel had taken place between them for the same reason and during the quarrel the Appellant had spit on the face of the deceased. But, her this statement regarding spitting is not mentioned in her case diary statement (Ex.D1). This witness has admitted the fact that commission of *marpeet* by the Appellant with the deceased was not reported in the police station nor was anything complained in this regard in their society. She has further admitted that the Appellant had been suffering from mental disorder frequently and for which he had been getting a local treatment (*Jhaadphoonk*). Due to the mental disorder, he was unable to earn livelihood and, therefore, her mother/the deceased was earning livelihood for the family by doing sewing work. This witness has categorically admitted the fact that the deceased used to say that where she had been married to an insane person. In paragraphs 7 and 8 of her cross-examination, this witness has further admitted that due to lack of money the deceased was under depression and she also used to say that the expenses of the family has increased and she was unable to maintain the expenses of the family and, therefore, she used to express her desire to die. Salman Shah (PW4) and Sultan Ali (PW5), son and father of the deceased have also deposed in similar fashion.

10. Salman Shah (PW4) and Sultan Ali (PW5) have further admitted that during the first 16 years after the marriage no dispute took place between the Appellant and the deceased. During the period

of last about 2 years before the incident the Appellant fell mentally ill and suffered mental disorder and, therefore, he was unable to earn livelihood for the family and resultantly the deceased was earning livelihood for the family by doing sewing work. Both these witnesses have also admitted that no complaint was lodged in police station against the disputes taking place between the Appellant and the deceased nor was any complaint made in their society. Salman Shah (PW4) has categorically admitted that financial condition of the family was not sound and had their financial condition been better, the incident would not have taken place. Sultan Ali (PW5) has also admitted that due to the Appellant falling mentally ill, financial condition of the family had become poor and, therefore, the deceased was under mental depression.

11. Before discussing the evidence on record, it would be appropriate to refer to the provisions of Sections 107 and 498A of the Indian Penal Code, which read as under:

“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.

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 facilitates the commission thereof, is said to aid the doing of that act.

498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

12. Further, it has been observed by the Supreme Court in **AIR 2010 SC 327 (Gangula Mohan Reddy v. State of Andhra Pradesh)** as under:

“20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306, IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing

no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

13. In (2011) 3 SCC 626 (**M. Mohan v. State Represented By The Deputy Superintendent of Police**), the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 of the IPC there has to be a clear *mens rea* to commit the offence:

“**45.** The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

14. In (2013) 12 SCC 286 (**Atmaram v. State of Maharashtra**), It has been observed by the Supreme Court thus:

“**19.** From the discussion of the aforesaid evidence on record, we find that the prosecution has not been able to prove beyond reasonable doubt that the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive Purnabai to commit suicide. Rather, there appears to be some evidence in the depositions of PW 1 and PW 4 (father and sister of Purnabai) that Purnabai was sad due to a daughter being born to her and a son being born to the first wife of the appellant. These circumstances may have driven Purnabai to commit suicide by jumping into the well along with her daughter. Such a consequence from the mental state of Purnabai cannot be a ground for holding that the appellant was guilty of cruelty within the meaning of clause (a) of the Explanation to Section 498-A IPC. We, therefore, hold that the presumption under Section 113-A is not attracted and the appellant cannot also be held guilty of

abetting the suicide of Purnabai. We have to bear in mind this note of caution in *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73: (SCC p. 90, para 17)

“17. the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

20. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court and the judgment of the trial court holding the appellant guilty of the offences under Sections 306 and 498-A IPC and direct that the bail bonds executed by the appellant be discharged.”

15. In the light of aforesaid enunciation of law, the facts and the evidence of the present case are to be examined minutely.
16. On a minute examination of the evidence adduced by the prosecution, it is clear that the marriage between the Appellant and the deceased was solemnised 18-20 years prior to the incident. It is also established that during the period of first 16 years after the marriage no dispute took place between them. Thereafter, the Appellant fell mentally ill and he was undergoing treatment therefor and as a result of his mental illness he was unable to earn livelihood and, therefore, his wife/the deceased was earning

livelihood for the family by doing sewing work. According to the Court statements of Reshma Parveen (PW3), Salman Shah (PW4) and Sultan Ali (PW5), the Appellant had been quarreling and committing *marpeet* with the deceased daily and he was also making demand of money from her. As stated by Reshma Parveen (PW3) and Salman Shah (PW4), the Appellant had been beating the deceased with danda daily. As stated by Reshma Parveen (PW3), during a quarrel on the date of incident, the Appellant had spit on the face of the deceased, but her this statement regarding spitting is not mentioned in her case diary statement. From perusal of the *post mortem* report of the deceased, it also reveals that no bodily injury was found over any part of her body except a ligature mark. If the Appellant had been beating the deceased with danda daily, impressions thereof would have been found over her body, but no such impression was found. Therefore, the Appellant had been beating the deceased with danda daily is suspicious. Even if for the sake of argument it is considered that quarrels had been taking place between the Appellant and the deceased daily, from the evidence adduced by the prosecution it reveals that mental condition of the Appellant was not sound and he was not in a position to earn livelihood for the family and, therefore, financial condition of the family was very poor. In these circumstances, if the Appellant had been quarreling with his wife/the deceased, this does not amount to instigation or abetment to commit suicide. From the admissions made by the witnesses, it also appears that due to mental disorder of the Appellant and poor financial condition of the family, the deceased was under mental depression. That apart,

she was also unhappy with her marital life. She had also expressed her desire many times to commit suicide. Suicidal tendency had developed in her mind. On this background, even if she committed suicide, the Appellant cannot be held liable therefor. It cannot be said that the Appellant, in any way, instigated or abetted her to commit suicide. Therefore, in my considered view, the Trial Court has wrongly convicted the Appellant.

17. Consequently, the appeal is allowed. The judgment under challenge is set aside. The Appellant is acquitted of the charge framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE