

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 08/07/2021****Order Delivered on 20/07/2021****CRA No. 231 of 2002**

1. Khol Bahara S/o Jagdish gond aged about 22 years, R/o Village Jetha, Thana Baradwar, At present Kotaliya, Railway Station, Thana Chakradhar Nagar, Raigarh, Chhattisgarh.
2. Champa Bai W/o Jagdish Gond aged about 50 years, R/o Village Jetha, Thana Baradwar, At present Kotaliya, Railway Station, Thana Chakradhar Nagar, Raigarh, Chhattisgarh.

---- Appellants**Versus**

- State of Chhattisgarh, Through : The District Magistrate, Bilaspur, Chhattisgarh.

---- Respondent

For Appellants	:	Mr. Anuroop Panda, Adv.
For State/Respondent	:	Ms. Ishwari Ghritlahre, PL.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****Date : 20/07/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 22.02.2002 passed by the learned Upper Sessions Judge, Sakti, District-Bilaspur, in S.T. No. 357/2001 whereby, the learned Upper Sessions, Judge convicted the appellants and sentenced them as under :-

S. No.	Conviction	Sentence
1.	U/s 306 of IPC	R.I. for 7 years and fine of Rs. 1000/- in default of fine additional imprisonment for on year to each accused.
2.	U/s 498-A of IPC	R. I. for 3 years and fine of Rs. 1000/- in default of fine additional imprisonment for 6 months to each accused.

2. Brief facts of the case are that deceased Rama Bai was

married with appellant Khol Bahara about 6 months prior to the date of incident. On 13.10.2000 between 7:30-10:30 am. deceased Rama Bai committed suicide at village Jetha by hanging herself with a rope meant for fetching water from the well. During merger inquiry it was found that the deceased was tortured on petty matters and was also assaulted by the appellants, therefore, she committed suicide. FIR was lodged against the accused persons and after completion of investigation charge-sheet was filed and charges were framed under Sections 306 and 498-A of IPC against the appellants/accused persons.

3. So as to hold the accused/appellants guilty, the prosecution has examined as many as 10 witnesses. In their support one defence witness has examined and statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case.

4. Upon consideration of oral and documentary evidence the trial Court held that the prosecution has established the guilt of the accused persons under Sections 306 and 498-A of IPC and sentenced them as described in the above mentioned column before para-2.

5. Learned counsel for the appellants submits that impugned judgment of conviction and sentence is contrary to law and facts available on record. Learned trial Court erred in holding that the accused persons have abetted the deceased to commit suicide and thus the prosecution has failed to prove abetment on the part of the appellants, as defined under Section 107 of IPC. He next submits that the prosecution has failed to prove the ingredients of the offence under Sections 306 and 498-A of IPC. The statement of prosecution witnesses are full of contradictions and omissions on important aspects and the prosecution has failed to prove its case beyond all reasonable doubts, therefore, the appeal is liable to be set aside. He placed reliance in the matters of **M. Arjunan**

Vs. The State reported in (2019) 3 SCC 31, **Ramesh Kumar vs. State of Chhattisgarh** reported in (2001) 9 SCC 618 and **Nepal Singh Vs. State of Haryana** reported in (2009) 12 SCC 351.

6. On the other hand State counsel supported the impugned judgment of conviction and order of sentence.

7. Heard counsel for both the parties and perused the material available on record including the impugned judgment.

8. Learned trial Court framed charges against appellants under Sections 306 and 498-A of IPC. Ramkunwar Bai (PW-1) stated in her statement that Ramabai was married to Kholbahra in village Jetha. Ramabai had come to village Markamgodi during *Rakshabandhan* and *Navratri*. She stated that when Ramabai meet her friends, they asked about her well-being she started crying. On being asked as to why she is crying, she told that her mother-in-law, father-in-law, husband and brother-in-law are giving a lot of troubles. Her in-laws used to say she did not bring TV, fan in dowry and therefore, her in-laws used to abuse and beat her, due to which she had vomitted blood. Baharta (PW-4) has stated in his statement that merger intimation report (Ex.P-4) was lodged by him. He has also stated that the accused is his brother, Champa Bai is his mother and the deceased Ramabai was his sister-in-law. Chhirobai (PW-5) has stated in his statement that when Ramabai had come to her maternal home, she had told that her in-laws committed *maar-peet* with her, she had also told that her in-laws gave her the leftover food of her sister-in-law's, and on not eating, they have used to assault her. Paharu (PW-6), father of the deceased, stated in his statement that he took Ramabai to her in-laws' house on Monday and came back home on Tuesday and on the third day a man came to pick him up and told that his daughter was very ill, then he went to Ramabai and saw that his daughter died by hanging. PW-6 has also stated in his statement that the police had given him a notice to appear, which is Ex.-P-5, he has also stated that the deceased did not tell him anything

about the problems. However, he has been declared hostile in his cross-examination he has denied all allegations as alleged against him. Kirtan Singh (PW-7) has stated that he went and saw that the deceased was found hanging with a rope tied to peg, the police had given Ex.P-7 rope, the map of the corpse was made according to Panchayatnama Ex.P-8. Mohan Lal (PW-8) has stated that he saw a rope around the neck of the deceased, the map of Panchayatnama (Ex. P-8) was prepared in front of him by the police. According to Ex. P-3, the rope and peg were also confiscated from the spot.

9. It is clear from the statement of prosecution witnesses that deceased has not stated anything to his father Paharu (PW-6) and the prosecution case has not been supported by him before trial Court. Chhirobai (PW-5) friend of the deceased has stated that the deceased told her about the misbehaviors by her husband and in-laws but the allegations are general allegations.

10. Section 306 IPC provides that if any person commits suicide whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 of IPC which reads as under :

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

First.- Instigate 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 thin; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.”

11. In the present case, it has to be decided as to whether the accused/appellants abetted or instigated the deceased to commit suicide. It is not disputed that the deceased committed suicide but what had happened on the date of incident is very important material for the purpose of recording a finding on a question of

abetment. In the case of **Ramesh Kumar Vs. State of Chhattisgarh** reported in **2001 9SCC 618** Hon'ble the Apex Court held in para 23 and 24 which reads thus :-

23. "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."

24. "In **State of West Bengal vs. Orilal Jaiswal and Anr.**-MANU/SC/0321/1994 : 1994CriLJ2104 , this Court has cautioned that 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 difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstances 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."

In the case of **M. Arjunan Vs. The State** reported in **2019 3SCC 315** Hon'ble the Apex Court held in para 8 which reads thus :-

8. "The essential ingredients of the offence Under Section 306 Indian Penal Code are: (i) the abetment; (ii) the intention of the Accused to aid or instigate or abet the deceased to commit suicide. The act of the Accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the Accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, Accused cannot be convicted under Section 306 Indian Penal Code."

12. Father of the deceased Paharu (PW-6) has admitted in his cross-examination that his daughter did not tell anything about the trouble and demand of dowry. It is clear from the evidence of all important witnesses that there was no evidence towards the

claim regarding any demand of dowry and evidence of prosecution witness would not be sufficient to establish that the suicide by the deceased was directly linking to the instigation or abetment by the appellants. Appellants might have uttered some abusive words but that by itself is not sufficient to constitute the offence under Section 306 of IPC. From the evidence brought on record and in the facts and circumstance of the case, the ingredients of Section 306 and 498-A of IPC are not established and the conviction of appellants/accused persons under Section 306 and 498-A of IPC cannot be sustained.

13. In the result, the impugned judgment of conviction and order of sentence dated 22.02.2002 is set aside. The appeal is allowed and the accused/appellants are acquitted of the charges levelled against them. As the appellants are on bail, they need not surrender and their bail bonds and sureties stand discharged.

14. Accordingly, the appeal is allowed.

**Sd/-
(Rajani Dubey)
JUDGE**