

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 21-9-2021****Pronounced on 7-10-2021****ACQ. A. No. 145 of 2021**

State of Chhattisgarh through - District Magistrate, District -
Balrampur - Ramanujganj Civil District - Surguja (Ambikapur) CG

---- Appellant**Versus**

1. Babulal, S/o Balam Gond, Aged About 30 Years
2. Smt. Bhagmaniya Bai, W/o Balam Gond Aged About 50 Years
3. Smt. Prem Kumari, W/o Amar Singh Gond, Aged About 26 Years

All R/o Village Rewatpur, Police Station - Navapara, Police
Station - Rajpur, District - Balrampur - Ramanujganj (CG)

---- Respondents

For appellant	:	Mr. Dinesh Tiwari, Dy. Govt. Adv.
For respondents	:	Mr. Jitendra Shrivastava, Adv.

Hon'ble Shri N.K. Chandravanshi, J**C.A.V. JUDGMENT**

1. This appeal has been preferred against the judgment dated 22-6-2017 passed by the 1st Addl. Judge, Ramanujganj, Distt. Sarguja (Ambikapur) to the Court of Upper Sessions Judge, Ramanujganj, in Sessions Case – R – 19/2014, whereby respondents have been acquitted from the charge under Section 306/34 of the Indian Penal Code, 1860 (in short 'IPC') by giving them benefit of doubt.

2. Brief facts of the case are that on 2-1-2014 at 22.45 hrs. respondent No. 1 Babulal lodged merger intimation that on 28-12-2013 in the night at about 7.00 pm, he came to his house and asked meal from his wife Jagmania, who was sleeping at that time. She asked him that he moves here and there, troubles her, take meal on your own. He abused her and she also abused him, and then slept. On 29-12-2013, he went to Ambikapur for treatment. When he returned home at about 4.30 pm, he did not find his wife. When he inquired from his mother Bhagmania, she told that she (Jagmania) had hauled wood, would have gone somewhere. On 30-12-2013, 31-12-2013, 1-1-2014 and 2-1-2014, he searched for her to his relatives and other villages, but he did not find her. On 2-1-2014 at about 5.00 O'clock, his Bhabhi went to well to

clean utensils and to fetch water, then she found that dead body of Juagmania was floating in the water of the well. She informed others. The respondent No. 1 Babulal lodged merged report Ex. P-16 at PS Rajpur, Distt. Balrampur. Police rushed to the place of incident. Inquest report Ex. P-11 was prepared by the Executive Magistrate. Post mortem report Ex. P-15 was prepared by Dr. A.P. Gupta, in which, he opined that cause of death seems to be drowning, but for confirmation, he suggested for diatom test by preserving Tibia bone of Smt. Jagmania (since deceased). On inquiry, it was found that respondents who are husband, mother-in-law and Jethani of the deceased, used to quarrel with her and they did not like her. About one year ago, her husband left her to her parental home and after execution of compromise deed Ex. D-1, he brought her back to his house. Before 20-25 days of the incident also, when she fell ill, then her father came and took her for treatment. After some days, she came back to her matrimonial home. One day before when she gave water to her Jethani Prem Kumari (respondent No. 3), then Jethani said her to eat, she (Jethani) will eat by grinding chatney, on this, quarrel took place between deceased and respondents, thus due to harassment done by respondents, she committed suicide. Thereafter, FIR under Section 306/34 of the IPC was lodged on 17-1-2014 vide Ex. P-18. During investigation, police examined various witnesses, prepared site map Ex. P-12, seized water from the well in a plastic bottle vide Ex. P-13, got prepared spot map Ex. P-14 from Patvari. Tibia bone preserved by the doctor was seized vide Ex. P-19. Police arrested the respondents and after investigation, charge sheet under Section 306/34 of the IPC was filed before the Judicial Magistrate First Class, Rajpur. After committal, charge under Section 306/34 of IPC was framed against the respondents, which they denied.

3. To prove the guilt, prosecution examined 16 witnesses in all. Statements of accused were recorded under Section 313 of the Cr.P.C., in which they denied the circumstances appearing against them. They have not examined any witness in their defence.

4. Learned counsel for the appellant/State submits that P.W. 1 Gopal who is father of the deceased, P.W. 2 Bua- Munnibai, P.W. 3 Mama- Rajaram and P.W. 4 Luran have stated in their deposition that

respondents/ accused used to quarrel with the deceased, because they did not like her. They also did not give her cloths and washing items and many times, respondents left her in her parental house. Before one day of the incident also, they quarreled with her and due to mental harassment made by them with her, she committed suicide. Despite that, learned Court below has discarded their testimony. Even dispute between them was also proved from evidence of witnesses and compromise deed Ex. P-1 executed between the deceased and respondent No. 1 Babulal. Therefore, learned trial Court ought to have convicted the respondents/ accused, but by giving unnecessarily too much weightage to the minor omissions and contradictions, the trial Court acquitted them by giving them benefit of doubt, which is erroneous and not sustainable.

5. Per contra, learned counsel for the respondents supported the impugned judgment submitting that there is nothing in the evidence adduced by the prosecution, which could prove the act of abetment made by respondents/ accused to commit suicide by the deceased. Therefore, the impugned judgment does not call for any interference of this Court.

6. I have heard learned counsel for both the parties, perused the record of the Court below with utmost circumspection.

7. At the outset, from the evidence of prosecution witnesses including evidence of P.W. 14 Dr. A.P. Gupta, P.W. 16 I.O. - J.R. Kurre and statements of other witnesses and also the inquest report Ex. P-11, Post mortem report Ex. P-15, it is proved that the dead body of deceased was found on 2-1-2014 floating in water of the well. P.W. 14 Dr. A.P. Gupta, who has prepared post mortem report Ex. P-15, has opined that on examination, it was seemed that cause of death was due to drowning. For confirmation, he had suggested for diatom test by preserving Tibia bone, but such report has not been filed and proved by the prosecution. Therefore, as per available evidence, it is proved that cause of death of the deceased was drowning.

8. P.W. 1 Gopal is father of the deceased. He has deposed in his deposition that respondents/accused persons did not like the deceased and used to scold her. Respondent No. 1/husband Babulal left her to her parental house. In this regard, compromise deed Ex. P-1 was

executed between them, but this had happened about 8 months before the incident. He has also deposed that when deceased fell ill, then she was got treated by him and from his home, her husband Babulal had taken her to his village.

9. P.W. 2 Munnibai is Bua of the deceased. She has deposed in her deposition that after birth of girl child of the deceased, respondent No. 1 Babulal did not talk with her. They also did not give her clothes and washing items. The respondents/accused also did not like her. When deceased came to her house, she told about ill behavior of respondents/ accused. But in cross-examination, she has accepted many suggestions of defence counsel, which discards the testimony made by her in the examination-in-chief.

10. P.W. 3 Rajaram is Mama of the deceased. He has also supported statement made by P.W. 2 Munnibai in her examination-in-chief regarding ill behavior of respondents/accused with the deceased.

11. P.W. 4 Luran, P.W. 5 Motilal, P.W. 6 Chamru Ram, P.W. 7 Ramsai, P.W. 8 Manohar have also stated that Panchayat was held with regard to the dispute between deceased and her husband Babulal, in which deceased had stated about ill behavior and quarrel with her by respondents/accused, but such facts are not mentioned in compromise deed Ex. P-1.

12. From deposition of aforesaid witnesses, it appears that at times quarrel happened between deceased and her husband Babulal and husband left her to her parental house, but it is also found that he himself brought her back to his home. Quarrel between them seems to be like which happens in many houses of their surrounding vicinity.

13. Section 107 of the IPC defines abetment, which provides that “*a person abets the doing of a thing, if he 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.*”

14. In the case of **Ramesh Kumar -v- State of CG** [2001(9) SCC 618], Hon'ble Supreme Court considering the charge framed and the

conviction for offence under Section 306 of the IPC on the basis of dying declaration by Executive Magistrate in which she (deceased) had stated that previously there had been quarrel between the deceased and her husband and on the date of occurrence, she had a quarrel with her husband, who said that she could go wherever she wanted to go, and thereafter she had poured kerosene on her and had set herself at fire, acquitted the accused and Hon'ble Supreme Court observed that *"A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. 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."*

15. Earlier, in the case of **State of WB -v- Orilal Jaiswal and others** [1994 (1) SCC 73], Hon'ble Supreme Court has also made similar observation.

16. Hon'ble Supreme Court in the case of **Ramesh Kumar** (supra) has held in para 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."

17. In the present case, from the evidence of relatives of the

deceased and other witnesses, it is found that there occurred some dispute between deceased and respondents and also that sometimes her husband Babulal had left her to her parental house. As has been stated above, he took her back. Even father of the deceased P.W. 1 Gopal and P.W. 2 Bua Munnibai have accepted various suggestions of defence counsel, which shows that relation between husband and wife was not such that they were not ready to tolerate each other at any cost. P.W. 1 Gopal has admitted in cross-examination that whenever he used to come to the house of respondents, they always respect him and her daughter never complained about them, although, she had complained about them before 2 – 3 years of the incident. P.W. 2 Munnibai has also admitted the suggestion in her cross-examination that both of them were living happily, although she had stated that after birth of girl child, respondent Babulal did not talk with the deceased. But she has admitted that after 4-5 months of delivery of girl child, the respondents / accused had organized function of 'Annaprashan' and 'Chhatthi', which were held happily. If they were not happy with the birth of girl child, then there would have been no reason to organize such family function. Therefore, aforesaid statement of P.W. 2 Munnibai is not reliable. P.W. 2 Munnibai has admitted in her cross-examination that deceased was suffering from disease epilepsy and when she got admitted in District Hospital, Ambikapur for her treatment, then she used to take care of her in the hospital, as also in her matrimonial house. P.W. 1 Gopal has denied in his cross-examination that deceased was suffering from aforesaid disease but he has stated that after marriage, she was suffering from disease of dental stiffness, breathlessness, stiffness of hand and leg, and when such disease happened to her, then her mouth was opened by putting spoon on her mouth and drink her water, and then she regained consciousness. These facts show that deceased was suffering from some disease, which might have also put her on trouble.

18. Considering the evidence adduced by the prosecution in this case, I find that there is no evidence and material available on record from which, an inference could be drawn that respondents/accused had created such situation which left her with no other option except to commit suicide and thereby abetted commission of suicide by the deceased, whereas evidence available on record shows that the

dispute between the deceased and respondents/accused had happened at times, which is common to the society to which they belong.

19. Therefore, I do not find any substance in this appeal which calls for any interference in the impugned judgment passed by the trial Court.

20. The appeal fails and is dismissed.

Sd/-

(N.K. Chandravanshi)
Judge