

(4) (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

Singh's Death

Criminal Appeal No. 28 of 2007

APPELLANTS:
(Accused)
(In jail)

1. Dasrath Prasad,
S/o Ramsharan,
Aged about 51 years.

2. Manoj Kumar,
S/o Dasrath Prasad
Rathore,
Aged about 30 years.

3. Triveni Bai,
W/o Dasrath Prasad
Rathore,
Aged about 50 years.

Resident of Village: Saragaon,
Police Station: Saragaon,
District: Janjgir-Champa,
Chhattisgarh.

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through the Station House
Officer,
Police Station: Saragaon,
District: Janjgir-Champa,
Chhattisgarh.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE



24/12/13

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 28 of 2007

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Appellants

- : 1. Dasrath Prasad
2. Manoj Kumar
3. Triveni Bai

VERSUS

Respondent

: State of Chhattisgarh

Post for pronouncement of judgment on 23rd day of December,
2013.

Sd/-
Goutam Bhaduri
Judge

23/12/2013

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 28 of 2007

Appellants : 1. Dasrath Prasad
2. Manoj Kumar
3. Triveni Bai

VERSUS

Respondent : State of Chhattisgarh

Criminal Appeal U/s. 374(2) of the Criminal Procedure Code

SB: Hon'ble Shri Goutam Bhaduri, J.

Present: Shri Rajeev Shrivastava, Advocate for the appellants.
Shri Neeraj Pradhan, Panel Lawyer for the State.

J U D G M E N T

(Delivered on 23 day of December, 2013)

1. This is an appeal against the judgment and order of conviction dated 5th January, 2007, passed by the Additional Sessions Judge, Janjgir, in Sessions Trial No. 95/2006, whereby, the appellants have been convicted under Section 306 of IPC and sentenced 7 years R.I. and fine of Rs.1000/- each, in absence of payment of fine, 3 months R.I. was further ordered.
2. During pendency of the appeal as the record reveals that the appellant No.2 (Manoj Kumar) has breathed his last on 03.08.2007. The death certificate and the affidavit is filed which is on record and the application is also filed to this effect. The same is not disputed by the parties as also the State. Therefore, the appeal abates against the said appellant No.2 - Manoj Kumar.
3. The brief facts of the prosecution case is that the deceased Anjani Kumari whose maternal home is at village Afrid was married to Manoj, the deceased, (A-2) on 10th May, 2003. After the marriage, Gauna was held after 3-4 months and both of them started living at

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Saragaon. Thereafter, due to some family problem, Manoj along with his wife Anjani started living at his in-laws place at Afrid. On 20.02.2005, she committed suicide by hanging, which was reported to the police. After such report was made, the crime was registered and subsequently, father of the deceased made a written report. Thereafter, statements were recorded and on the basis of the statements, charge sheet was filed under Section 498-A, 304-B and in alternate 306 of IPC read with Section 4 of the Dowry Prohibition Act, 1961 (*for short "the Act, 1961"*).

4. After filing of the charge sheet, the accused denied the charges and claimed to be tried. Subsequently, the trial was commenced and during the course of trial, the prosecution had examined as many as twenty witnesses and the defence had examined one witness.
5. The learned Court below after examination of the evidence adduced, acquitted the appellants under Section 498-A, 304-B of IPC and Section 4 of the Act, 1961, however, convicted the accused under Section 306 of IPC, as aforesaid.
6. I have heard the learned counsel for the parties at length and examined the document.
7. The learned counsel for the appellants submits that considering the statement of the father and mother as also other relations, the case under Section 306 of IPC is not made out. He would submit that there is no abetment, as is required under Section 107 of IPC, which leads to commit suicide. He further submits that without prejudice, even if, all the evidence are admitted, it will not establish the ingredients of Section 306 of IPC. He vehemently argued that, in the instant case, the acquittal has been made under Section 498-A and 304-B and Section 4 of the Act, 1961 and the State has not filed

any appeal against such finding. Therefore, it has reached to its finality for the purpose of Section 498-A & 304-B and Section 4 of the Act, 1961. He therefore, submits that now the entire evaluation of the evidence has to be seen in the touch-stone of Section 306 of IPC as to whether the evidence is available for Section 306 of IPC. He further submits that in the facts and circumstances of the case and the evidence which is existing, the presumption of abetment cannot be drawn.

8. On the other hand, learned State counsel submits that since the deceased committed suicide within 7 years of the marriage, therefore, it has to be presumed that she had committed suicide on abetment. He further submits that the order passed by the learned Court below is well merited, which do not call for any interference.
9. In order to ascertain the fact of evidence, I have gone through the statement of the witnesses and have perused the entire records.
10. The Doctor in this case namely Dr. H.S.Chandel is examined as PW-2. He has stated that he has conducted the post mortem along with other Doctors and he gave his report by Ex.P-2. According to such opinion, the death of deceased was caused due to asphyxia as a result of hanging, which was proved by Ex.P-2. This fact is not in dispute. Now coming to the question as to whether the accused has aided or instigated the deceased to commit suicide or not ? The relevant evidence was examined.
11. Smt. Ganga Bai, who is mother of the deceased, is examined as PW-3. She states that her daughter Anjani was married to Manoj Kumar and after the marriage Anjani went to her matrimonial home. She further states that after the marriage Anjani came to her maternal home and thereafter, after 1 ½ months, she went to her in-laws. She

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stated when the deceased used to visit then she said that she was subjected to torture for the reason that since brother of deceased was given a Car, Chain, Washing Machine etc. in his marriage and he has not been given so, she was subjected to cruelty. She has stated that during Dushera, the deceased was with her and her husband Manoj came to take her back. Subsequently, after 3 months, again the deceased Anjani came to her maternal home and, at that time, she disclosed that she was subjected to torture in her in-laws place. She further stated that thereafter, for 2 ½ months, her daughter stayed at Bhilai. The witness has further stated that thereafter, her son had been to Saragaon along with her deceased daughter, at that time, she was subjected to abuse by mother-in-law and father-in-law. Narrating further the incident, the witness has stated that Ashok had went to Saragaon to bring Anjani, at that time, her father-in-law tried to assault his son and, as such, the son of this witness Ashok came back. Subsequently, on the next day, other son of this witness had brought Anjani back to her maternal home wherein she stayed for 2 ½ months. The witness has further stated again when Mohanlal father of Anjani went along with Anjani to leave her at matrimonial home, at that time, her father-in-law had abused and refused to keep her in their house. Thereafter, she has stated that her daughter stayed at her in-laws place for 25 days. Subsequently, Manoj had come to Afrid and stayed there. Subsequently, her daughter, the deceased Anjani, told her that now they will stay at the Afrid only. The witness in para 5 has stated that Manoj, the husband of the deceased, used to ask her wife for her part of share by partition on the account that dowry was not given to him. Therefore, share by way of partition was being claimed by

accused on behalf of her daughter and on this issue, her daughter was being tortured.

12. This witness was cross-examined in detail. She in para 10 of the cross-examination has admitted that prior to her death from last 5 months, the deceased was staying with her at her maternal home. The witness has further stated that she had advised Manoj and her daughter that if they don't want to go Saragaon and stay there then they should live separately here only at Afrid. The witness also deposed that she had told her daughter and her son-in-law not to stay at their (witness) residence, but Manoj and her daughter Anjani had said that they wanted to stay here only and will take their share. The witness has said that therefore she had said that they i.e. deceased and her husband Manoj should go back to Saragaon. This witness was confronted with the police statement made under Section 161 of Cr.P.C. which was marked as Ex.D-1. In such statements, omissions were recorded. In para 18, she has stated that after the death of her daughter, she had consulted along with her husband, son-in-law and sons as to what report was to be made and against whom ? She has stated that before her husband had made a report, she had disclosed that the in-laws had demanded Car and money from the girl. She further admitted the fact that during the life time of her daughter Anjani they have not made any report and explained that in their society the small things happens like this. She had further stated that she had advised her son-in-law Manoj to stay at Saragaon but her son-in-law Manoj used to say that he will stay here only.
13. The father of the deceased Mohan Lal Rathore has been examined as PW-4. He has stated that after Rathyatra, the accused asked Anjani that her brother has received Car in marriage, therefore, they

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should also get a Car. He has further stated that Anjani when came along with Manoj, son-in-law, at that time, Anjani has said that she is being tortured by her in-laws. The finger ring, jeep-car and Rs.50,000/- were being demanded. Narrating the incident, the witness has stated that on 13.02.2005, he along with her daughter Anjani went to her in-laws at Saragaon, at that time, father-in-law had put on a lock over the room of Anjani and asked them to go away. He has further stated that she was given to stay in the Kotha. He has stated further that subsequently Manoj and Anjani came to Afrid. At that time, Manoj wanted a glass of water and when the wife deceased Anjani went to fetch it, Manoj fled away from the place and on hearing so the deceased Anjani followed her. Thereafter, while both of them were coming back, the witness has stated that the in-laws had closed the door of their house. Subsequently, the deceased Anjani and Manoj stayed in the house of one Chandrashekhar.

14. In para 18, referring to one meeting, the witness has stated that in order to make them understand, they had a social meeting which was not informed to either Manoj or deceased Anjani. He has further stated that in that meeting his wife had advised that either Manoj the son-in-law should stay at Saragaon along with Anjani or should return the gift which was given during the marriage to them. In response to it, this witness has admitted that fact and stated that the deceased Anjani has said that she wanted to stay with her husband only.
15. The other witness Ajay Kumar Rathore is examined as PW-5. He has stated that when he met Anjani after 4-6 months of the marriage, at that time, Anjani was being told her that she is being tortured at the in-laws place. This witness has also stated that Anjani has disclosed that Manoj had asked the deceased to take her share by partition.

Narrating one incident also, this witness has stated that when the doors of house were closed by the in-laws of Anjani, at that time, the deceased Anjani, had requested this witness to make a request to her mother and father to open the doors but he did not make any effort for that.

16. The witness Chandrashekhar Singh Rathod is examined as PW-6. He has stated that after marriage Anjani stayed at her in-laws place for few days, thereafter, she came back to her maternal home. It has also been stated that mother of Anjani had told that Manoj is not taking back her wife Anjani and therefore, on February, 2005, this witness along with others had tried to intervene. During such meeting, the witness has stated that they impressed upon Manoj that why he is not taking his wife and if any problem exist requested him to disclose it so that it can be sorted out, but it was not replied by Manoj. The witness has further stated that Manoj did not answered at that time. In order to create pressure, mother and father of Anjani asked that if Manoj do not want to take their girl namely deceased then in such condition he should return all the gift which was given to him. The witness further stated that when it was so said, Manoj had said that he will return all the goods and amount and thereafter all the people went back.

17. Subsequently, the witness has stated that on 13th February, the brother of Anjani, Krishna Kumar had told this witness that he had left Anjani in her in-laws place at Saragon as a compromise has been effected in between them and in-laws have agreed to keep her. He has further stated on 14th, Manoj had come along with Anjani to Afrid and went to her mother's place. Thereafter, after leaving Anjani, Manoj came out and wanted to go away, which was followed by her wife Anjani. Thereafter both of them come back. The witness further

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states that when they came back, the door of the house of Anjani's mother was locked. Thereafter, both the husband and wife stayed at the place of this witness. The witness has further deposed that thereafter, he left Manoj and Anjani at Saragaon i.e. in in-laws place of Anjani. Narrating the incident, further the witness has said that when he went to the place of Dashrath, the accused, at that time, he saw him furious and said to Manoj and Anjani that they should not come here and should have died by hanging. He further states that then Dashrath said that since they had come therefore, he wanted to die, which was stopped by him.

18. The prosecution has also examined the witness Ravindradhar Diwan as PW-11 who was present during the meeting in between the deceased family and the family of the accused. He has stated that he knows the accused as also wife of Manoj i.e. deceased Anjani. He has stated that on 5th February, 2005, Anjani was at his mother's place. Few of the people from the village went to their house at that time Manoj had also come and was present. During such gathering, at that time, mother of Anjani had told Manoj was not taking away her wife, the deceased. The witness had further stated that thereafter the people who had gathered told Manoj to take her wife Anjani along with him but Manoj expressed inability to take her wife with him. The witness has further said that, at that time, Anjani told that she wanted to live with Manoj only, however, the accused did not agree to this. This witness has further stated that in Panchayat along with Manoj two-three friends were there, but no one from his family was present. Ultimately, it was decided that when Manoj is not going to take back his wife Anjani, in such case, up-till 20th February all the goods which were given during the marriage should be returned to them and thereafter, it will be deemed that Manoj & Anjani had separated. This



proposal was accepted by the mother of Anjani and Manoj also agreed to such proposal that up-till 28th February all the goods and money shall be returned.

19. Therefore, if the evidence of the PW-3, PW-4, PW-5, PW-6 & PW-11 are read together, it do not reflect a direct evidence that the accused/husband and the other mother-in-law and father-in-law had either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. The closed scrutiny of the statement of witnesses which goes to show that there had been a differences in between the family members mainly because of the relation of husband and wife was not so smooth. The evidence has come on record that the deceased Anjani out of her two years of matrimonial life lived for a considerable period of time at her maternal home. Further, the evidence has also come on record that the husband Manoj and the deceased Anjani wanted to live at her maternal home as Manoj never wanted to go back his mother and father. Certain incident has also been narrated by the witnesses that at different point of time in the intervening periods, the husband of deceased Anjani namely Manoj used to keep her at her mother's place. The said issue for keeping Anjani at her mother's place had inflated so much that the villagers of the Panchayat were also consulted. One of the incident has also come in evidence that when Manoj had left the deceased Anjani at her maternal home and tried to leave her there, the deceased chased him as she wanted to stay with her husband. However, when they came back, the doors of Anjani's mother was locked and they were not allowed to enter, so much so they had to took shelter in some one others house.
20. The issue as to why Anjani was being kept at her maternal home flared up to the extent that led to meeting of the Panchayat. PW-11



has stated this fact which is admitted by the father of deceased that in such meeting, pressure was created on Manoj to take her wife with him within a certain stipulated period, as otherwise, he should return the gifted articles of the marriage. On the other hand, at the same time, the witness has said that the deceased Anjani never wanted to leave her husband. The witness PW-11 has further narrated that when Manoj was cornered to take back his wife, he showed his inability and when he asked to return the amount, he agreed to it. Consequently, it was agreed by the Panchayat that by certain dates till 20th February, if the amount is not returned, there will be deemed separation in between Manoj & Anjani. The same was also accepted by the mother of Anjani too.

21. The fact cannot be ignored in this case that the accused have been acquitted under Section 498-A, 304-B of IPC and Section 4 of the Act, 1961, therefore, in order to convict the accused under Section 306 & 107 of IPC, there has to be positive evidence against the accused that the deceased had committed suicide out of the direct aiding and instigation. Merely on account of a quarrel or difference of opinion, the inference of ingredients of Section 306 of IPC cannot be inferred.
22. The High Court of Chhattisgarh in *Anant Kumar Denial v. State of C.G. & Others*¹ has held as under :

"To establish an offence under Section 306 IPC the prosecution has to prove that the abetment was caused by the accused persons – There must be an element of instigation, urge forward or provocation, incitement or encouragement to do 'an act' due to which the deceased was left with no other alternative but to commit suicide."

¹2003(1) C.G.L.J. 248

23. Further, the Hon'ble Supreme Court in *Hans Raj v. State of Haryana*² has held that the presumption in a case of suicide by a married woman, the presumption of abatement under Section 113-A cannot be drawn in a straight jacket formula. It does not automatically give rise to the presumption that suicide had been abetted by the husband, the Court has to look into the other circumstances of the case and the nature of cruelty, if meted out having regard to the meaning of the word cruelty under Section 498-A of IPC.
24. Here applying such analogy in the instant case, the appellants have been acquitted under Section 498-A, 304-B of IPC and Section 4 of the Act, 1961. This cannot be led to an inference that abetment was existing. On the other hand, the examination of evidence goes to show that for the differences, reasons best known to the prosecution witness, Anjani the deceased and her husband who used to stay at maternal place of deceased which was being objected by the parents of the deceased. The parents of the deceased wanted and pressurised Manoj, the husband of the deceased, to take Anjani back other than their house. This led to Panchayat and a decision was arrived at that by a particular date, if the husband Manoj do not take away the deceased Anjani in such case he was ordered to return the goods which were given during marriage and further there will be deemed separation in between deceased Anjani and Manoj. Therefore, the deceased committed suicide.
25. Therefore, after the closed scrutiny of the entire case, I do not find that sufficient ingredients were present so as to inculcate the appellants to hold them guilty for abetment of suicide and instigating suicide to the deceased Anjani. This fact also cannot be ignored at this stage, that the husband of the deceased has breathed his last. Now

²(2004) 12 SCC 257

for the surviving mother-in-law and father-in-law, the evidence to convict them under Section 306 of IPC, according to my considered opinion, do not exist and therefore, the order of the learned trial Court cannot be allowed to sustain.

26. In a result, the judgment and order of conviction dated 5th January, 2007 is set aside and accordingly, the appeal is allowed. The appellants are acquitted of the charges under Section 306 of IPC.

Sd/
Goutam Eaduri
Jud

Aks