

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 810 of 2000**

Rikhi Ram Satnami, S/o. Tilakram Satnami, Aged 25 years, R/o.  
Village Sahda, P.S. Palari, District Raipur (C.G.)

---- Appellant

**Versus**

State of Madhya Pradesh, Through Police Station Palari District  
Raipur (now Chhattisgarh)

---- Respondent

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For Appellant : None for the Appellant  
For Respondent : Mr. Wasim Miyan, Panel Lawyer  
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**Hon'ble Shri Justice Ram Prasanna Sharma**

**Judgement on Board**

**31.03.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.02.2000 passed by the Second Additional Sessions Judge, Balodabazar, Session Division Raipur (C.G.) in Sessions Trial No. 161/1998, wherein the trial Court convicted the accused/appellant under Section 306 of the IPC, 1860 and sentenced him to undergo R.I. for 7 years and to pay fine of Rs. 1000/- with default stipulation.
2. In the present case, name of deceased Mamta @ Kalabai, who was wife of the appellant. On 02.03.1998 at about 4.30 PM, the deceased committed suicide by consuming poisonous substance organo phosphorus. It is alleged that the marriage was solemnized

three years prior to the date of incident. After the marriage, the appellant harassed the deceased and beat her, that is why she committed suicide by consuming poisonous substance.

3. The matter was investigated by the Police and after investigation, charge sheet was filed, the trial Court framed the charge against the appellant in which the appellant pleaded innocent and thereafter the trial was conducted, after examination of the prosecution witnesses statement of the accused/appellant under section 313 of the Cr.P.C. was recorded. After hearing the parties, the trial Court convicted and sentence the appellant as mentioned above.

4. In order to hold the person guilty under Section 306 of the IPC, it is necessary that the case should fall within the ambit of Section 107 of the IPC, which should comprise :

- (i) instigating a person to commit an offence.
- (ii) engaging in a conspiracy to commit an offence
- (iii) intentionally aiding a person to commit an offence.

Therefore, a person said to have abetted, doing of a thing when he or she instigate any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.

5. As has been held by **Hon'ble the Supreme Court in 2010 (1) SCC 750 – Gangula Mohan Reddy Vs. State of Andhra Pradesh** the abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of accused to instigate or aid in committing

suicide, conviction can not be sustained. The Hon'ble Supreme Court has further held that in order to convict a person U/s.306, there has to be a clear mens-rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide.

6. Learned counsel for the appellant has relied on a decision of this Court in case of **Rajendra Das Vs. State of C.G., reported in 2013 (2) CGLJ** in which it has been held in paras 7, 8 and 11 thus:

“7. For offence u/s. 306, the offence by the appellant by instigation depends upon the intention of a person who abets and not upon the act which is done by the person who is abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 I.P.C. However, the words uttered in a fit of anger or omission without any intention can not be termed as instigation. Instigation has to be gathered from circumstances of a particular case. In a particular case, there may not be direct offence in regard to instigation which may have direct nexus to suicide. Therefore, in such case, an inference has to be drawn from the circumstances and it has to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

8. In **Gangula Mohan Reddy Vs. State of Andhra Pradesh (2010) 1 SCC 750**, Hon'ble the Supreme Court while interpreting Section 306 IPC held that “Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid

in committing suicide, there can not be any conviction. It was further held that to attract Section 306 IPC, there has to be a clear mens rea to commit the offence.”

11. In M. Mohan Vs. State represented by the Deputy Superintendent of Police, AIR 2011 SC 1238 Hon'ble the Supreme Court observed thus:

“17.....while interpreting Section 306 IPC held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC, there has to be a clear mens-rea to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry related harassment and that the witnesses have improved upon their earlier statements is ignored, then also Section 306 IPC, is not attracted in the facts of the present case.”

7. In the present case, the prosecution examined Gajjuram (PW-2) who is father of the deceased, Shetbai (PW-4) who is mother of the deceased and Shiv Kumar (PW-6) who is paternal uncle of the deceased. All the three witnesses deposed that the appellant was in habit of consuming liquor and used to beat the deceased after consuming liquor. Version of all the witnesses is based on what is stated to them by the deceased. The incident took place at Village Sahda but the witnesses are resident of village Thelki and they are not the resident of village of the deceased. The statement made by all the witnesses is hearsay evidence. In **Kalyan Kumar Gagoi vs.**

**Ashutosh Agnihotri reported in (2011) 2 SCC 532, Hon'ble the Supreme Court has held as under:**

(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is concerned, he has a line of escape by saying " I do not know, but so and so told me.

(b) truth is diluted and diminished with each repetition

and

(c) If permitted, gives ample scope for playing fraud by saying" someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus, statement of witnesses based on information received from other is inadmissible.

8) There is no suicidal note indicating real cause of death of the deceased. There is no dying declaration made by the deceased. The case of the prosecution based on hearsay evidence of witness who are not neighbours of the appellant, therefore, there is no legally admissible evidence against the appellant for harassing the deceased prior to her death.

9) True it is that as per evidence, death of the deceased is caused within 7 years from the date of her marriage, but the question is whether section 113-B of the Indian Evidence Act, 1872 is applicable which reads as follows:

**" 113-B. Presumption as to dowry death.** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death."

From the evidence, it is not established that the appellant who is husband of the deceased subjected the deceased to cruelty, therefore, presumption under Section 113 -B of the Evidence Act cannot be raised against the appellant.

10) For offence under Section 306 IPC there should be a clear mens rea to commit the offence and there should be a direct or active act by the accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abetment, but from the record it cannot be inferred that the respondent instigated or intentionally aided the deceased to commit suicide.

11) For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is set aside. The appellant is acquitted of the charge under Section 306 of the IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-  
(Ram Prasanna Sharma)  
JUDGE

Santosh