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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment Reserved on 22.04.2024**

**Judgment Delivered on 24.04.2024**

**Criminal Appeal No. 1234 of 2002**

Labho Ram, son of Sudha Ram, aged about 36 years, resident of village Kadamharwar, Manikpur, Police Station Korba, District Korba (C.G.).

---- Appellant

**Versus**

State of Chhattisgarh, through its District Magistrate, Korba, District Korba (C.G.).

---- Respondent

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For Appellant : Mr. Vivek Tripathi, Advocate

For Respondent/State : Mr. Mayank Khandelwal, P.L.

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**Hon'ble Shri Justice Sanjay Kumar Jaiswal**

**CAV Judgment**

1. This criminal appeal filed by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") is directed against the impugned judgment of conviction and order of sentence dated 28.11.2002 passed by 3<sup>rd</sup> Additional Sessions Judge (F.T.C.), Korba, District Korba (C.G.) in Sessions Trial No.335 of 99, whereby the appellant has been convicted under Section 306 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.500/-, in

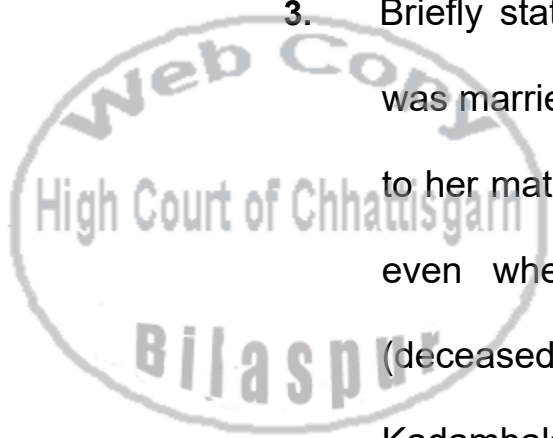




default of payment of fine, additional rigorous imprisonment for one month.

2. It is an important fact of the case is that co-accused Ramkishun, brother of Labho Ram has been died during trial. Co-accused Smt. Sahodara Bai is the first wife of appellant Labho Ram and co-accused Smt. Maina Bai is the mother of appellant Labho Ram. Under the impugned judgment, Smt. Sahodara Bai and Smt. Meena Bai were acquitted of the offence punishable under Section 306 of the IPC by the trial Court.

3. Briefly stated facts of the case, are that appellant Labho Ram was married to Smt. Sahodara Bai. Smt. Sahodara Bai had gone to her maternal home and started living there, who did not come even when called then Labho Ram married to Sita Bai (deceased) as per *Chudi* tradition and brought her to his village Kadamhakhar, Manikpur. After 6-7 months, Smt. Sahodara Bai (first wife of appellant) came back to her matrimonial home and started living with appellant Labho Ram. Thereafter Labho Ram started torturing and assaulting Sita Bai by saying that because Sahodara Bai has come, he will not keep her. Upon such torture, in the intervening night of 11-12.05.1999, Sita Bai committed suicide by hanging herself in her in-laws house. Then, on the information of appellant Labho Ram, Police registered the case and prepared panchnama of dead body of deceased. The dead body was sent for postmortem examination, which was





conducted by Dr. B.P. Kanwar (PW-9) and as per postmortem report (Ex.P/7), it was opined that death of Sita Bai could be suicidal. After completion of the investigation, chage-sheet was filed against the appellant.

4. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 16 witnesses and exhibited 11 documents. Statement of the appellant was recorded under Section 313 of Cr.P.C., in which, he denied the circumstances appearing against him in the evidence brought on record by the prosecution, pleaded innocence and false implication. In defence, appellant has not examined any witness.

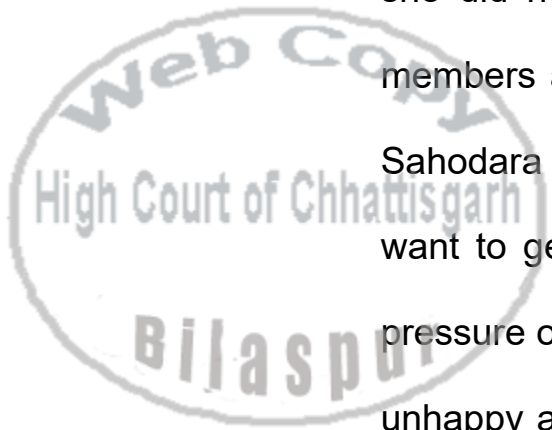
5. After conclusion of the trial, the trial Court has appreciated the statements of Dujram (PW-1) brother of deceased, Veena Nand (PW-2) relative, Dhankunwar (PW-3) sister-in-law of deceased, Gaya Ram (PW-4) father of deceased, Samay Lal (PW -5) brother of deceased as well as Kaushal Prasad (PW-6) nephew of deceased and concluded that after return of first wife Smt. Sahodara Bai, appellant has stated Sita Bai that she was no longer needed and go away. Upon such torture, Sita Bai committed suicide by hanging herself and on the basis of which, appellant Labho Ram has been convicted and sentenced for abetment of suicide under Section 306 of the IPC, against which, the present appeal has been filed by the appellant calling in question the legality, validity and correctness of the impugned





judgment of conviction and order of sentence.

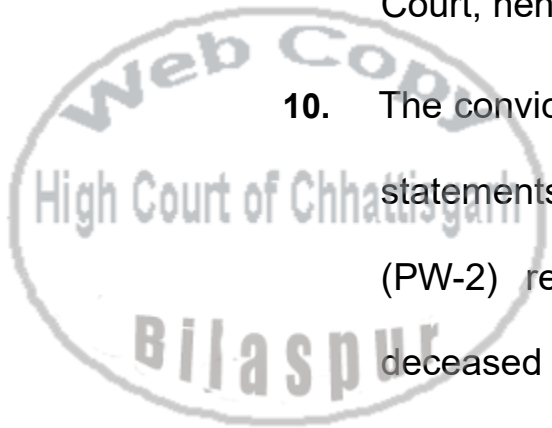
6. Learned counsel for the appellant submits that amongst PW-1 to PW-6 relied upon by the trial Court, Samay Lal (PW-5) and Kaushal Prasad (PW-6) are hearsay witnesses, who have neither seen nor heard anything regarding torture. The remaining witnesses are close relatives of deceased and their Police statements and Court statements are contradictory to each other. He further submits that the fact has come in their evidence that first marriage of Sita Bai was solemnized with Narmada, but she did not go to her in-laws' house. Sita Bai and her family members also knew that first wife of appellant Labho Ram was Sahodara Bai and after knowing the said fact, Sita Bai did not want to get married, but marriage of Sita Bai was done under pressure of her family members, due to which, Sita Bai remained unhappy and disappointed. It is contended that Sita Bai has not been harassed or instigation by the appellant in any manner and the prosecution has failed to prove its case beyond reasonable doubt. It has been further contended that conviction of the appellant is not based on valid and clear evidence, therefore, appeal may be allowed and judgment of conviction and order of sentenced passed by the trial Court be set aside.
7. On the other hand, learned counsel for the respondent/State has supported the impugned judgment of conviction and order of sentence passed by the trial Court and submits that the





conclusion of the trial Court is based on valid and reliable evidence, which does not require any interference. Therefore, the appeal should be dismissed.

8. I have heard learned counsel appearing for the parties and perused the record of the case with utmost circumspection.
9. The trial Court has concluded on the basis of postmortem report (Ex.P/7), which was conducted by Dr. BP Kanwar (PW-9) that nature of death of Sita Bai was suicidal. There is no fact or evidence on record contrary to the said conclusion of the trial Court, hence, said conclusion is found to be correct.
10. The conviction of appellant Labho Ram is basically based on the statements of Dujram (PW-1) brother of deceased, Veena Nand (PW-2) relative of deceased, Gaya Ram (PW-4) father of deceased and Dhan Kunwar (PW-3) sister-in-law of deceased. The main fact which has come out in the statements of these witnesses is that when Smt. Sahodara Bai had left the appellant, he had come to deceased's father Gaya Ram (PW-4) and stated that he wants to take Sahodara Bai again and again, but she did not come and on being such, Gaya Ram (PW-4) had agreed to marry his daughter Sita Bai with appellant, then as per *Chudi* tradition, Sita Bai was married to the appellant. Thereafter about 7-8 months, appellant started torturing Sita Bai and Smt. Sahodara Bai came back and started living with the appellant,





then appellant started persuading Sita Bai that she was no longer needed, she should go to her home, due to which, Sita Bai committed suicide by hanging herself.

11. In the matter of **Naresh Kumar v. State of Haryana** reported in **2024 SCC OnLine SC 202**, Hon'ble Supreme Court has been principally laid down the factum of abetment of suicide and held that there should be clear and reliable evidence for abetment, which shows that after abetment, there was no other option left for suicide. Hon'ble Supreme Court has held in paragraphs 12 to 34, which is as follows :

“12. Section 306 of the IPC reads as under :-

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

13. Thus, the basic ingredients to constitute an offence under Section 306 of the IPC are suicidal death and abetment thereof. Abetment of a thing is defined under Section 107 IPC 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 facilitate the commission thereof, is said to aid the doing of that act.”

14. This Court in **Geo Varghese v. State of Rajasthan, (2021) 19 SCC 144**, has considered the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC observed as under:-

“14 Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

.....

15. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in **Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618**, has defined the word ‘instigate’ as under:-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”.”

16. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of **S.S. Cheena Vs. Vijay Kumar Mahajan (2010) 12 SCC 190**, it was observed as under:-

25. 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. The intention of the legislature and the ratio of the cases decided by the Supreme 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

15. This Court in **M. Arjunan v. State, represented by its Inspector of Police, (2019) 3 SCC 315**, while explaining the necessary ingredients of Section 306 IPC in detail, observed as under:-

7. The essential ingredients of the offence under Section 306 I.P.C. 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 IPC.”

16. This Court in **Ude Singh v. State of Haryana, (2019) 17 SCC 301**, held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice







unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while





taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

17. This Court in **Mariano Anto Bruno v. The Inspector of Police, 2022 SCC OnLine SC 1387**, Criminal Appeal No. 1628 of 2022 decided on 12th October, 2022, after referring to the above referred decisions rendered in context of culpability under Section 306 IPC observed as under:-

44. . . . It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

18. This Court in **Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200**, observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

19. This Court in **Kashibai v. The State of Karnataka, 2023 SCC Online SC 575**, Criminal Appeal No. 627 of 2023 (arising out of SLP (Crl.) No. 8584/2022) decided on 28th February, 2023, observed that to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

20. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to





her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).

21. For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:

“A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”

22. Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

23. It is now well settled 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. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

24. We take notice of the fact that the High Court has laid much emphasis on Section 113A of the Evidence Act.

25. Section 113A of the Evidence Act reads thus:-

“113A. Presumption as to abetment of suicide by





a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

*Explanation.*—For the purposes of this section, “cruelty” shall have the same meaning as in Section 498A of the Penal Code, 1860 (45 of 1860).”

26. This Section was introduced by the Criminal Law (Second Amendment) Act 46 of 1983. The Penal Code, 1860, the Criminal Procedure Code, 1973 and the Evidence Act were amended keeping in view the dowry death problems in India.

27. The Section requires proof (1) that her husband or relatives subjected her to cruelty and (2) that the married woman committed suicide within a period of seven years from the date of her marriage.

28. Although, it is not necessary for us to refer to Section 113B of the Evidence Act which raises presumption as to dowry death yet with a view to indicate the fine distinction between the two presumptions we are referring to Section 113B. In Section 113A the legislature has used the word ‘may’, whereas in Section 113B the word used is ‘shall’.

29. In this appeal, we are concerned with Section 113A of the Evidence Act. The mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the presumption under Section 113A of the Evidence Act may be raised,





having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

30. What is important to note is that the term 'the Court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband' would indicate that the presumption is discretionary, unlike the presumption under Section 113B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

31. The court should be extremely careful in assessing evidence under section 113A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hyper sensitive 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 would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

32. Section 113A has been interpreted by this Court in **Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173**, **Pawan Kumar v. State of Haryana, (1998) 3 SCC 309**, and **Smt. Shanti v. State of Haryana, (1991) 1 SCC 371**.

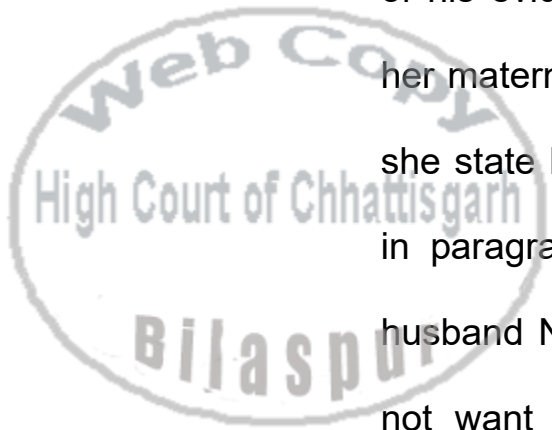
33. This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words 'may presume'. It must take into account all the circumstances of the case which is an additional safeguard.

34. In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306 of IPC by raising presumption under Section 113A."





12. Reverting to the facts of the present case in the light of aforementioned judicial precedent, it is clear from the evidence of PW-1 to PW-6 that first husband of Sita Bai (deceased) was Narmada. who left Sita Bai and Sita Bai never went back to Narmada. It is also clear that first wife of appellant Labho Ram was Sahodara Bai and this fact was known not only to Sita Bai but also to all the family members and relatives of Sita Bai, who have examined in this case.
13. Gaya Ram (PW-4) father of deceased has stated in paragraph-5 of his evidence that his daughter Sita Bai has neither come to her maternal home after her marriage with the appellant nor did she state him anything at her maternal home. He further stated in paragraph-15 that Sita Bai was abandoned by her former husband Narmada. He stated in paragraph-17 that Sita Bai did not want to marry previously married Labho Ram. Similarly, Veena Nand (PW-2) relative of deceased stated in paragraph-15 of her cross-examination that when she had gone to Sita Bai's house, she had not seen Sita Bai being tortured in some form. She further stated in paragraph-17 that Labho Ram was previously married and had a child. Knowing this fact, Sita Bai did not want to marry him. Likewise, Dhankunwar (PW-3), sister-in-law of deceased has stated in paragraph-20 that Sita Bai did not want to marry previously married appellant Labho Ram. Kaushal Prasad (PW-6) nephew of deceased has stated in

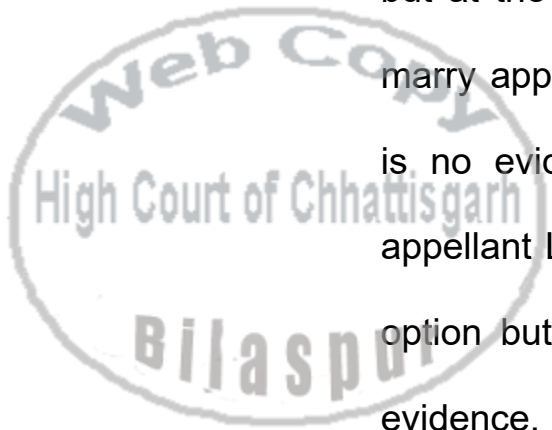






paragraph-20 that when he had gone to the house of appellant, he had seen the appellant taking care of Sita Bai with love and affection.

- 14.** For the foregoing reasons, if I consider the statements of aforementioned witnesses, it becomes clear that Sita Bai was already married to Narmada, but Narmada had left her, due to which, it was natural for her to be disappointed. Besides, Sita Bai also knew that appellant Labho Ram was already married and for this reason, she did not want to marry appellant Labho Ram, but at the insistence of her family members, she was ready to marry appellant Labho Ram. In the above circumstances, there is no evidence of harassment being caused on the part of appellant Labho Ram, which would leave Sita Bai with no other option but to commit suicide. In absence of clear and cogent evidence, it does not appear that appellant has instigated her in any manner to commit suicide. It has also been notable in the instant case that no report has ever been made to the Police by the relatives of the deceased.
- 15.** Under these circumstances, the prosecution has failed to establish its case beyond all reasonable doubts and therefore, the appellant is entitled for acquittal from the offence punishable under Section 306 of the IPC on the basis of benefit of doubt.
- 16.** Accordingly, the impugned judgment of conviction and order of







sentence dated 28.11.2002 is set aside. The appellant is acquitted of the charge under Section 306 of the IPC. The appellant has been stated to be on bail, he need not surrender before the trial Court. However, bail bonds of the appellant shall remain in force for a period of six months in view of the provisions contained in Section 437-A of Cr.P.C. If there is no need to appear in the superior Court, appellant will be deemed free from bail bonds.

17. Resultantly, the criminal appeal is **allowed**.
18. Record of the trial Court be sent back along with a copy of this judgment forthwith for information and necessary compliance.



Sd/-  
(Sanjay Kumar Jaiswal)  
Judge