
(1986) 06 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 85-SB of 1985

Balbir Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-06-1986

Acts Referred:

Citation : (1986) 2 RCR(Criminal) 255

Hon'ble Judges : Surinder Singh, J

Advocate : Kulwant Kaur, Sh. Kirpal Singh, Advocates for appearing Parties

Judgement

Surinder Singh, J.

1. This judgment will dispose of the present Appeal (Criminal Appeal No. 8558 of 1985) and the connected Criminal Revision No. 470 of 1985, as both emanate from the same judgment of the Sessions Judge, Jullunder.

2. Balbir Singh appellant was convicted by the Sessions Judge, Jullunder, under section 498A of the Indian Penal Code, and was sentenced to three years Rigorous Imprisonment and a fine of Rs. 1,000/, in default of payment of fine to undergo further Rigorous Imprisonment for six months. The appellant was, however, acquitted of the charge under section 306, Indian Penal code. The mother of Balbir Singh, namely, Pritam kaur was also tried along with him for the charge under section 306, Indian Penal code, but she was acquitted of the said charge. Criminal Appeal No. 85SB of 1985 has been filed by Balbir Singh with a view to impugn his conviction and sentence aforesaid. Criminal Revision No. 470 of 1985, on the other hand, has been preferred by Santokh Singh complainant, with a prayer that the acquittal of Balbir Singh under section 306, Indian Penal Code, be set aside, in other words he should be punished for the said offence. At the Motion Stage in the Revision Petition, notice was issued only in regard to compensation to be paid to the heirs of the deceased and the Revision Petition was ordered to be heard along with the Appeal filed by Balbir Singh.

2A. The prosecution version as depicted by Santokh Singh (PW2), deceased's

sister's husband, in the first information Report lodged by him is that the marriage between Balbir Singh appellant and Parminder Kaur alias Pammi deceased was solemnised three or four years before the occurrence. About four months prior to the occurrence, Parminder Kaur was beaten by the appellant and his mother as a result of which she suffered some fracture of the right wrist and the left ankle. Parminder Kaur went and complained about the maltreatment of the two accused to her sister's husband Santokh Singh PW, i.e. the informant. It was alleged that the said Santokh Singh made a verbal complaint to Gurcharan Singh Sarpanch of the village and after both the accused were called by the Panchayat, Parminder Kaur was asked to go to the house of her parents for a month and thereafter the appellant was to go there and bring her back. It is stated that the appellant did go to the house of his inlaws after about a month but he abused his inlaws and took away his minor son aged two years with him. Santokh Singh PW claims to have made another complaint to the village Panchayat in which the father of the appellant apologised. Thereafter, Parminder Kaur was brought from the house of her parents to that of the appellant. However, the allegation goes that both the accused again gave a beating to Parminder Kaur, but the matter was got settled by the Panchayat.

3. As regards the actual occurrence, it is alleged that on July 11, 1984 while Santokh Singh PW was present at his house, he learnt from some small children that Parminder Kaur had burnt herself. He went to the house of the accused and found Parminder Kaur laying on the floor with burns all over her body. According to Santokh Singh, he put out the fire with the help of gunny bag but Parminder Kaur died almost simultaneously. Santokh Singh then left for the Police Station to lodge a report. On the way, near the fountain crossing at Nakodar, he met Assistant Sub Inspector Harbhajan Singh before whom he made a statement Exhibit PD at 7 pm on that date. Formal first Information Report was registered at Police Station, Nakodar on the basis of the said statement at 7.05 pm. The Assistant Sub Inspector went to the place of occurrence and carried out the usual formalities of investigation. The appellant was said to have been arrested on July 17, 1984 by Assistant Sub Inspector Jagjit Singh. Two days later, i.e. on July 19, 1984, Asha Rani sister of the deceased produced a letter allegedly received by her from the deceased which was taken into possession. The appellant and his coaccused i.e. his mother were tried for the offence under section 306, Indian Penal Code, and in consequence thereof, they were acquitted of the said charge but the appellant was convicted and sentenced for the offence under section 498A, Indian Penal Code.

4. A legal contention has been raised by the learned counsel for the appellant, which requires consideration at the very threshold. The submission is that the conviction of the appellant under section 498A, Indian Penal Code, is legally unsustainable in the wake of his acquittal under section 306, Indian Penal Code, more so when there was no charge framed against the appellant under section 498A, Indian Penal Code. The determination of this point is crucial not only for the purpose of the appellant but from the point of view of the contention on

behalf of the complainant in the connected Revision Petition in which the line of arguments adopted is twofold, namely, (1) the appellant ought to have been convicted under section 306, Indian Penal Code (2) in any case the conviction under section 498A, Indian Penal Code, is in order as the offence under this section is a lesser offence than the one under section 306, Indian Penal Code. For a proper examination of the legal point raised on behalf of the complainant, it would be necessary to reproduce the relevant provisions of law, i.e. section 306 and 498A of the Indian Penal Code :

"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."

"498A. Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the "relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. for the purposes of this section, "cruelty" means :

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property of valuable security or is on account of failure by her or any person related to her to meet such demand."

5. A bare perusal of the two provisions reproduced above, would show that the ingredients and gravamen of the charge for the two offences are absolutely different, while section 306, Indian Penal Code, postulates abetment of the commission of suicide by a person, section 498A of the Code is limited to the allegation of commission of cruelty by the husband or relative of the husband of a woman. The Explanation to section 498A provides that cruelty referred to in the section would mean any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause etc. etc. Part (b) of the Explanation further provides that harassment of the woman with a view to coercing her to meet an unlawful demand for any property or valuable security or on account of failure by her to meet such demand, would also fall within the meaning of cruelty. It is therefore, obvious that it is not all and every type of cruelty by the husband or his relative which is sought to be covered by section 498A. On the other hand, the scope of the section has been limited to a particular type of cruelty referred to in the two subclauses of the Explanation. The contention that the offence under section 498A is a lesser offence to the one under section 306, Indian Penal Code, is not tenable. As already noticed, the two provisions are not such that it can be said that one is a continuation of the other.

Section 306, Indian Penal Code is general provision covering cases of abetment of suicide by anyone and not particularly a wife, whereas section 498A covers the limited aspect of certain types of cruelty if perpetrated upon wife by her husband or his relative. The ingredients of the two offences being quite different, before an accused person can be convicted for an offence under section 498A, a charge under the said section is necessary to be framed and in the absence of such a charge, it would be illegal for the Court to record a conviction for the said offence. In the present case admittedly, no charge under section 498A, Indian Penal Code, had been framed against the appellant. His conviction for the said offence is, therefore, illegal and has to be set aside on this score alone.

6. The learned counsel for the complainant Revision Petition has also tried to enlarge the scope of section 498A by reference to section 113A of the Indian Evidence Act, which may be reproduced for ready reference:

"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 purpose of this section "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code."

7. On the basis of the above provision, the argument advanced by the learned counsel for the complainant is that once it is established that the husband or his relative had subjected the deceased wife (in case of suicide) to cruelty, a presumption should be drawn that the suicide had been abetted by her husband or his relative. The contention is, however, not tenable. Even a bare reading of the above provision would show that there is no such absolute presumption contemplated by law. On the other hand, the said presumption has been hedged by various contingencies, some of them being, (a) the suicide must have been committed within a period of seven years from the date of the marriage, (b) the husband or a relative of her husband should have subjected her to cruelty, which cruelty, as prescribed in the Explanation to this section, has to be of the type as mentioned in section 498A of the Indian Penal Code, (c) the question of cruelty has to be determined having regard to all the other circumstances of the case, (d) the presumption is not a mandatory one but is subject to the judicial discretion of the Court dealing with the matter; and (e) any such presumption would be rebuttable. There is, thus, no warrant for the argument that a mere combined reading of section 498A, Indian Penal Code, and section 113A of the Indian Evidence Act would lead to an unrebuttable presumption that in the case of suicide by the wife within seven years of her marriage, the husband or his relative would be guilty of an offence under section 306, Indian Penal Code. Any

such presumption, if allowed to be drawn, as contended on behalf of the complainant would lead to utter chaos and disintegration of the very institution of matrimony. There is no gainsaying that with the ultimate aim of eradicating the evil of dowry, suitable legislation like the one noticed above has been enacted with a view to discourage this age old custom, but at the same time these salutary provisions cannot be allowed to be used by the parents or relatives of a psychopath wife who may have chosen to end her life for reasons which may be many, other than that of cruelty. The glaring reality cannot be ignored that the ugly trend of false implication with a view to harass and blackmail an innocent spouse and his relatives, is fast emerging. It is time to stop this unhealthy trend which results in unnecessary misery and torture to numerous affected persons. These observations are, however, not by way of an expression of opinion in regard to the merits of the present case which shall be examined hereinafter.

8. The learned counsel for the appellant has referred to various observations and findings recorded by the trial Court with a view to urge that these observations and findings are by themselves sufficient to condemn the case of prosecution. It appears that the learned trial Court has adopted a completely erroneous approach to the matter which is not warranted by law. For example, the learned Judge observed that the alleged incident in which the appellant is said to have given a severe beating to the deceased about four months prior to the present occurrence was referred to in the First Information Report and this circumstance appears to have been adopted as a ground for accepting the correctness of the said allegation. In fact, there was material discrepancy on the point in the statement of Munshi Ram PW qua his earlier statement made before the Police. Furthermore, the only independent witness, i.e. Gurcharan Singh Sarpanch did not support Santokh Singh complainant on this point. In fact, Gurcharan Singh had to be confronted with his alleged statement made before the police. The learned Sessions Judge chose to accept this latter statement of Santosh Singh merely on the ground that the same was recorded within a short interval of time. Again, the testimony of Gurmit Kaur (DW1), a Member of the Panchayat of the Village was erroneously not relied upon simply because she had taken interest in the proceedings in the case. This witness had clearly stated that the relations between the appellant and his wife were cordial and that the appellant had never maltreated the deceased. She further stated that Santokh Singh PW had never made any complaint in this regard before the Panchayat. About the actual occurrence, she deposed that she had reached the spot from her nearby house on hearing the alarm and the appellant and his mother had reached the spot later. Santokh Singh PW had arrived even after the arrival of the appellant and his mother. This untainted testimony of a responsible witness who is a Member of the Panchayat, should not have been lightly brushed aside as done by the learned Sessions Judge.

9. The learned Sessions Judge ruled out of consideration letter Exhibit PF said to have been written by the deceased to her sister Asha Rani about 16 months prior to the occurrence. Asha Rani had met Santokh Singh PW on July 13, 1984, but

bring home the guilt against the appellant beyond reasonable doubt, nor is there any respectable evidence on the basis of which a conviction under section 498A, Indian Penal Code, could be recorded against him.

12. Criminal Appeal No. 85SB of 1985 filed by Balbir Singh appellant is accepted and his conviction under section 498A, Indian Penal Code, and the sentence imposed upon him for the said offence by the Sessions Judge, Jullunder are set aside. He is acquitted of the charge framed against him. He is on bail and his bail bond stands discharged.

13. The connected Criminal Revision No. 470 of 1985 filed by Santokh Singh complainant has become infructuous and is, therefore, dismissed.