

(2009) 01 SC CK 0087

In the Supreme Court Of India

Case No : Criminal Appeal No. 169 of 2009 (Arising out of SLP (Criminal) No. 2227 of 2008)

Kishangiri Mangalgiri Goswami

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209
Dowry Prohibition Act, 1961 — Section 3, 7
Penal Code, 1860 (IPC) — Section 107, 109, 306, 498A

Citation : AIR 2009 SC 1808 : (2010) AIRSCW 468 : (2009) AIRSCW 1399 : (2009) 1 ALD(Cri) 924 : (2009) CLT 633 : (2009) CriLJ 1720 : (2009) 2 GLR 1074 : (2009) 2 JT 84 : (2009) 4 PLJR 9 : (2009) 1 RLW 350 : (2009) 1 SCALE 31 : (2009) 4 SCC 52 : (2009) 1 SCR 672 : (20

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : H. Ahmadi, Ejaz Maqbool, Vikas Singh, Taruna Singh and P. Gohil, for the Appellant; Hemantika Wahi, Pinky, K. Enotoli Sema and Somonath Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Gujarat High Court upholding the conviction of the appellant for offences punishable under Sections 306 and 498A of the Indian Penal Code, 1860 (in short the `IPC') and Section 3 of the Dowry Prohibition Act, 1961 (in short `DP Act'). Learned Additional Sessions Judge, Court No. 9, Ahmedabad City imposed sentences of 3 years, 10 years and 5 years respectively for the aforesaid offences and fine of Rs. 5,000/-, Rs. 20,000/- and Rs. 20,000/- with default stipulations.

3. Prosecution version in a nutshell is as follows:

The accused married Kantaben (hereinafter referred to as the `deceased') in

1989. Soon after two years of his marriage, the accused started inflicting mental and physical torture on her and she was taunted by the accused for not bringing sufficient dowry in the marriage. He also demanded from the victim an amount of Rs. 40,000/- for the purpose of purchasing a house. He even wrote letters to the in-laws and demanded Rs. 40,000/- for purchasing the house. The demand was persistent. Even threats were administered to the deceased and her family members. Thus, the accused inflicted mental and physical torture on the victim which prompted her to commit suicide by burning herself on 23-03-1999 after pouring kerosene on her body. Thus, as per the prosecution case, the appellant has committed the offence punishable u/s 498A and 306 IPC read with Sections 3 and 7 of DP Act.

The complaint was given by Dhulagiri Gumangiri Goswami on 17.5.1999. On the strength of the complaint given by the complainant investigation was carried out. The place where the suicide was committed by the victim was visited and the panchnama of the place of incident was prepared in the presence of the panch-witnesses. Statements of the witnesses from the neighbourhood were recorded. The injured was immediately rushed to the hospital for providing necessary treatment. Muddamal seized was sent to Forensic Science Laboratory for the purpose of detailed analysis. On the death of the victim, the inquest panchnama was prepared and the dead body was sent for autopsy. The appellant was arrested during the course of investigation. On receipt of the report from FSL, the post-mortem report along with other material, the appellant was charge-sheeted for the offences punishable under Sections 498A and 306 of IPC as well as Sections 3 and 7 of the DP Act. He was produced before the Metropolitan Magistrate, Ahmedabad, who in turn committed the case to the Sessions Court u/s 209 of the Code of Criminal Procedure, 1973 (in short the 'Code') as the case was exclusively triable by the Sessions Court.

As the accused persons pleaded innocence trial was held. Seventeen witnesses were examined to further the prosecution version. The trial court found that the letters written by the accused clearly established the demand of dowry and further the suicide was clearly abetted by the acts and conduct of the appellant. Accordingly, the conviction was recorded and sentences were imposed as aforesaid.

In appeal, the High court concurred with the views of the trial Court.

4. In support of the appeal, it was submitted that the letters whereby the alleged demand of dowry was made has not been signed by the appellant and even has not been addressed to anyone. There was no material to show that the appellant had subjected the deceased to such cruelty and harassment as to instigate her to commit suicide. The evidence on record shows that the appellant had purchased valuable silver ornaments for the deceased and in his insurance policy, the deceased was shown to be his nominee. Their relation was otherwise cordial. Since the substratum of the allegations of dowry and harassment were letters, their authenticity having not been established the trial Court and the High Court

should not have relied upon the same.

5. It is pointed out that the accused himself had taken the deceased to the hospital and from his conduct it clearly shows that the accused was not guilty. In essence, it is submitted that the commission of alleged offences has not been established by the prosecution.

6. In response, learned Counsel for the respondent-State supported the judgment.

7. We shall first deal with the plea relating to applicability of Section 306 IPC.

8. Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

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.

9. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence u/s 306 of IPC.

10. In State of West Bengal Vs. Orilal Jaiswal and another, this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive 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 should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

11. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act

abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence

12. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. [See Mahinder Singh v. State of M.P. 1995 AIR SCW 4570].

13. The aforesaid aspects were highlighted in Kishori Lal Vs. State of M.P., , Randhir Singh and Another Vs. State of Punjab, and Criminal Appeal No. 1464 of 2007 (Sohan Raj Sharma Vs. State of Haryana, disposed of on April 7, 2008).

14. The conviction so far as it relates to Section 306 IPC, therefore, cannot be sustained in view of the background facts and is set aside. But the materials on record particularly the letters on which specific emphasis has been led by the trial Court and the High Court amply demonstrate the commission of offences punishable u/s 498A IPC and Section 3 of DP Act. The convictions are sustained. But the sentence in respect of Section 3 of DP Act is reduced to three years.

15. The appeal is allowed to the aforesaid extent.