
(2018) 05 CHH CK 0034
In the Chhattisgarh High Court
Case No : Criminal Appeal No.2060 of 2000

Lakhanlal

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 107, 306, 498A
Code Of Criminal Procedure, 1973 — Section 161, 313

Citation : (2018) 05 CHH CK 0034

Hon'ble Judges : ARVIND SINGH CHANDEL, J

Bench : Single Bench

Advocate : ndira Tripathi, Sumit Jhanwar

Final Decision : Partly Allowed

Judgement

Conviction,Sentence

Under Section 306 of the Indian Penal Code,"Rigorous Imprisonment for 7 years and fine of

Rs.2,000/- with default stipulation

Under Section 498A of the Indian Penal Code,"Rigorous Imprisonment for 2 years and fine of

Rs.1,000/- with default stipulation

was visiting his house and had told him that her in-laws make demand for TV and motorcycle. But, these facts are not mentioned in his case diary",

statement (Ex.D2). In paragraph 8, he has admitted that the deceased had told him that when her nanad (sister-in-law) visits her in-laws house, at that",

time only, disputes take place. In paragraph 15, he has also admitted that the deceased was living separately from the in-laws' house along with the",

Appellant.,

14. Gitabai (PW3), mother of the deceased has stated that the deceased had told her that TV and Scooter were not being given, therefore, her",

husband/Appellant and in-laws used to beat her. She has further stated that the deceased had visited her house 8 days prior to her death. The,

deceased had stayed for 4 days. At that time, she had told her about her problems. She has further stated that 3 days prior to the death of the",

deceased, Naresh (PW4), cousin of the deceased had visited the house of the deceased and told her that the deceased was beaten. In para 11, she",

has stated that at the time of Gouna, the Appellant had quarreled with the deceased due to not giving TV and motorcycle, therefore, at that time, he",

was given cash of Rs.50/- and a Radio. She denied the fact that a coin of 25 paise made of gold was given to her by the deceased which was gifted to,

the deceased by her mother-in-law and for taking back the said coin the deceased and her husband had come to her house.,

15. Naresh (PW4), cousin of the deceased has stated that he had gone to the house of the deceased to give her invitation of his marriage. At that",

time, the deceased had met him out of the house and told him that her husband used to beat her severely. 3-4 days thereafter the deceased died.",

16. In Sessions Trial No.338 of 1997 (the Complaint Case), Complainant's Witness No.2, Jahid Ali has stated that on 14.4.1995, he had gone to Village",

Jagisar to purchase a goat. On not getting a goat there, he went to the village of the Appellant at about 9 p.m. There, he saw that the door of the",

house of the Appellant was open and the Appellant was beating his wife (the deceased). He tried to intervene, but the Appellant asked him to stay",

away saying that it was his domestic matter. He has further stated that at that time the parents (the acquitted accused) of the Appellant were present,

there and they saying that whatever will happen they will see asked the Appellant to beat the deceased. During cross-examination, he has stated that",

he had gone to the house of the Appellant for the first time. In paragraph 11, he has further stated that he did not know the house of the Appellant",

from before. Sitaram had sent his nephew along with him, then he knew about the house of the Appellant.",

17. Before discussing the evidence on record, it would be appropriate to refer to the provisions of Sections 107 and 498A of the Indian Penal Code,",

which read 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 facilitates the commission thereof, is said to aid the doing of that act.",

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 or valuable security or is on account of failure by her or any person related to her to meet such demand.",

18. In (2007) 11 SCC 205 (Bhagwan Das v. Kartar Singh), it has been observed by the Supreme Court as under:",

15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a,

wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section",

306 IPC read with Section 107 IPC.,

16. However, in our opinion mere harassment of wife by husband due to

differences per se does not attract Section 306 read with Section 107 IPC, if",
the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand",
of dowry soon before her death then Section 304ÂB IPC may be attracted, whether it is a case of homicide or suicide. (Vide Kans Raj v. State of",
Punjab, (2000) 5 SCC 207, Satvir Singh v. State of Punjab, (2001) 8 SCC 633 and Shanti v. State of Haryana, (1991) 1 SCC 371.)â??",

19. Further, it has been observed by the Supreme Court in AIR 2010 SC 327 (Gangula Mohan Reddy v. State of Andhra Pradesh) as under:",

â??20. 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.",

21. The intention of the Legislature and the ratio of the cases decided by this 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 this act must have been intended to push the deceased into such a position that he committed suicide.â??,

20. In (2011) 3 SCC 626 (M. Mohan v. State Represented By The Deputy Superintendent of Police), the Supreme Court, by the following",

observation, has clearly held 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:",

â??45. The intention of the legislature and the ratio of the cases decided by this Court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.â??,

21. In (2013) 12 SCC 286 (Atmaram v. State of Maharashtra), It has been observed by the Supreme Court thus:",

â??19. From the discussion of the aforesaid evidence on record, we find that the prosecution has not been able to prove beyond reasonable doubt that",

the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive Purnabai to commit suicide. Rather, there appears to",

be some evidence in the depositions of PW 1 and PW 4 (father and sister of Purnabai) that Purnabai was sad due to a daughter being born to her and,

a son being born to the first wife of the appellant. These circumstances may have driven Purnabai to commit suicide by jumping into the well along,

with her daughter. Such a consequence from the mental state of Purnabai cannot be a ground for holding that the appellant was guilty of cruelty within,

the meaning of clause (a) of the Explanation to Section 498A IPC. We, therefore, hold that the presumption under Section 113A is not attracted",

and the appellant cannot also be held guilty of abetting the suicide of Purnabai. We have to bear in mind this note of caution in State of W.B. v. Orilal,

Jaiswal, (1994) 1 SCC 73: (SCC p. 90, para 17)",

17. ... the Court 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 the 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.",

20. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court and the judgment of the trial court holding",

the appellant guilty of the offences under Sections 306 and 498A IPC and direct that the bail bonds executed by the appellant be discharged.",

22. In the light of aforesaid enunciation of law, the facts and the evidence of the present case are to be examined minutely.",

23. On minute examination of the evidence adduced by the prosecution, it is clear that the marriage between the Appellant and the deceased was",

solemnised in the year 1987, Gouna was performed in the year 1992 and out of their wedlock two children took birth. The deceased committed suicide",

in the year 1995. At the time of Gouna, the Appellant demanded TV and motorcycle. At that time, he was given cash of Rs.50/- and a Radio.",

Thereafter, the deceased was being subjected to cruelty for demand of TV and

motorcycle. There is no dispute that death of Durgabai was suicidal in",

nature and the same took place within 7 years of her Gouna. Ganga Prasad (PW1), father, Gitabai (PW3), mother and Jhaduram (PW2), nana of the",

deceased have stated that at the time of Gouna, the Appellant/husband had demanded for TV and Scooter. At that time, a Radio and cash of Rs.50/-",

were given to him. Though Ganga Prasad and Gitabai have stated that after the Gouna, the deceased went to her in-laws' house. Even thereafter, her",

in-laws and husband were harassing her for TV and Scooter. But, no panchayat meeting was called prior to the death of the deceased. From the",

admission of both the witnesses, it is also clear that after 1 year from the Gouna, the Appellant and the deceased had started living separately from the",

house of the in-laws. From the statements of both these witnesses, it is also clear that 7-8 days prior to the death of the deceased, the deceased had",

visited her maternal house. At that time, the deceased and the Appellant had demanded back the coin of 25 paise made of gold from the parents of the",

deceased and their allegation was that the parents of the deceased have misappropriated the said coin. When the deceased herself along with her,

husband/Appellant had demanded back the coin made of gold from her parents with the aforesaid allegation of misappropriation, in these",

circumstances, it is not reliable that the deceased was subjected to cruelty by her husband. Likewise, Jhaduram (PW2), nana of the deceased has",

stated that whenever the deceased had visited him, she had told him that she was being harassed at her in-laws' house. They make demand for TV",

and Scooter, but this fact is not mentioned in his case diary statement. Thus, his statement is also not reliable. From the statements of Naresh (PW4)",

and Complainant's Witness No.2, Jahid Ali, it is clear that 3-4 days prior to the death of the deceased, Naresh had visited the house of the deceased.",

At that time, the deceased had complained him that her husband used to beat her and on the date of incident itself, when Complainant's Witness No.2,",

Jahid Ali had gone to the house of the Appellant, he also had seen that the Appellant was beating the deceased. Thus, it is clear that the Appelalnt",

used to beat the deceased, but the same was being done for demand of dowry is not established.",

24. From the aforesaid discussion, the only offence alleged under Section 498A of the IPC is proved against the Appellant not the offence alleged",

under Section 306 of the IPC. Therefore, the",

Appellant is acquitted of the charge framed under Section 306 of the IPC, but the conviction imposed upon him under Section 498A of the IPC is",

affirmed.,

25. Considering the fact that during trial the Appellant remained in custody for 1 month and 19 days and after passing of the judgment of conviction,

and sentence, he remained in custody for about 6 months, i.e., total for about 7 months and 19 days, further considering the fact that the lis is pending",

since 1995 and now after passing of about 22 years, it would not be appropriate to send the Appellant back to jail, I am of the opinion that it would be",

in the interest of justice to sentence him with the period already undergone by him. Ordered accordingly. The sentence of fine imposed upon him is,

affirmed.,

26. Consequently, the appeal is allowed in part to the extent indicated above.",

27. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.,