
(2017) 03 MP CK 0170
In the Madhya Pradesh High Court
Case No : 1352 of 2016

Lallu @ Lalta @ Lalta Prasad

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Indian Penal Code, 1860, Section 498A, Section 107, Section 306 -
Husband or relative of husband of a woman subjecting her to cruelty - Abetment of a
thing - Abetment of

Citation : (2017) 03 MP CK 0170

Hon'ble Judges : Alok Verma

Bench : Division Bench

Advocate : Manish Yadav, Milind Phadke

Judgement

1. This criminal revision is directed against the order dated 05.10.2016 passed by the learned 3rd Additional Sessions Judge, Indore in Session Trial No.603/2016 whereby the learned Sessions Judge framed charges against the present applicant under Sections 306, 498A of IPC.

2. The deceased is wife of the present applicant. According to the prosecution story, their marriage took place on 26.01.2012. A daughter Astha was born to them, who was about 3 years old when the incident took place. It is alleged that the present applicant used to doubt character of the deceased and due to this doubt in his mind, he used to beat the deceased and also commit cruelty on her and driven by such cruelty, she committed suicide on 10.05.2016 by pouring kerosene on herself and putting herself on fire. She succumbed to her burn injury on 22.05.2016. This revision is filed on the ground that (i) No suicide note was left by the deceased and also no dying declaration was recorded before her death. (ii) There was no instigation of abetment of suicide on part of the present applicant, and therefore, it is prayed that the charges framed against the present applicant should be quashed.

3. Learned counsel for the State opposes the application on the ground that the death occurred due to suicide within 7 years of her marriage, and therefore, there is a presumption against the present applicant and prima-facie charges are made out.

4. The applicant placed reliance on the judgment delivered by Hon"ble the Supreme Court in the case of Sanju @ Sanjay Singh Sengar Vs. state of MP reported in 2002 SCC (Cri) 1141 in which, it was held that ingredients of section 107 of IPC should present for taking the act as abetment of the suicide. "Instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea is the necessary concomitant for instigation. Words uttered in a quarrel or on the spur of moment, such as "to go and die", cannot be taken to the uttered with mens rea.

5. Placing reliance on this judgment of Hon"ble the Supreme Court, learned counsel for the applicant argues that in the present case, the present applicant was not present when the deceased committed suicide. He was living separately, therefore, it cannot be taken as abetment on his part, due to which the deceased committed suicide.

6. To see whether, the deceased committed suicide on being abetted by the present applicant, there should present one of the ingredients as stated in section 107 of IPC. Section 107 of IPC requires either of three overt acts on behalf of the persons said to have abetted the suicide:

"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."

7. Apart from the above judgment of Hon"ble the Supreme Court, learned counsel also placed reliance on the judgment of Hon"ble the Supreme Court in the case of Pinakin Mahipatray Rawal Vs. State of Gujarat reported at 2013 Cr.L.R. (SC) 955 whereby the Hon"ble Supreme Court observed in paragraph 26 of the judgment as under :- "26. Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide."

8. This apart, there is a presumption against the present applicant in Section 113A of Evidence Act, which is as follows: "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".

9. If we read Sections 107, 306 of IPC and Section 113A of Evidence Act in the present case, there is a presumption against the present applicant and the burden on him to prove that there was no abetment of suicide on his part, and therefore, taking into consideration the material available on record, no case is made out for any interference in this case. The revision is accordingly dismissed.