
(2019) 12 JH CK 0090

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 273, 303 Of 2006

Quraisha Khatoon And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 06-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 306, 498A
Evidence Act, 1872 — Section 113A

Citation : (2019) 12 JH CK 0090

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : B.K. Mishra, Niki Sinha, S.K. Pandey

Final Decision : Allowed

Judgement

1. Heard Mr. B.K. Mishra, learned counsel appearing for the appellants and Mrs. Niki Sinha and Mr. S.K. Pandey, learned A.P.Ps. appearing for the State.

2. This appeal is directed against the judgment of conviction dated 24.01.2006 and order of sentence dated 27.01.2006 passed by Sessions Judge,

Lohardaga in Sessions Trial No.58 of 2003, whereby and whereunder the appellants have been charged under Sections 498A and 306 of the I.P.C.

and convicted for the offence U/s 306 of the I.P.C. and sentenced Sayub Ansari (husband of the deceased) to undergo rigorous imprisonment for

seven (7) years; sentenced Amiruddin Ansari (father-in-law of the deceased) and Saheda Khatoon (mother-in-law of the deceased) to undergo

rigorous imprisonment for five (5) years and sentenced Quraisha Khatoon (sister-in-law of the deceased) to undergo rigorous imprisonment for three

(3) years.

3. The FIR has been lodged on the fardbeyan of Khuda Bux Ansari (P.W.11) i.e. father of the deceased. As per the fardbeyan given on 14.05.2003, the deceased namely Gulnaj Khatoon fall in love with a co-villager, namely, Sayub Ansari and the deceased out of love, contracted marriage and moved to the house of Sayub Ansari. This fact has been subsequently accepted by the family members of the deceased but they have not taken any attempt to bring back the deceased. The dead body of the deceased has been fetched out from the well on 13.05.2003. After seeing the dead body of the deceased, the present complaint has been lodged. It has been alleged that due to torture, daughter of the informant namely Gulnaj Khatoon had committed suicide. On the basis of above fardbeyan, Senha P.S. Case No.26 of 2003 has been registered.

4. After completion of investigation, charge-sheet has been submitted against the above appellants under Sections 498A and 306 of IPC. Thereafter, cognizance was taken and charge had been framed under above sections. The case was committed to the Court of Sessions to which the appellants pleaded not guilty and claimed to be tried.

5. To substantiate the prosecution story, the prosecution has examined altogether 13 witnesses.

P.W.1-Julfan Ansari, P.W.2-Sahabuddin Ansari, P.W.4-Mahfuj Ansari and P.W.5-Yashin Ansari are the co-villagers, have been declared hostile.

P.W.3-Marufa Khatoon (younger sister of the deceased) has supported the FIR. It has been deposed that the appellants used to torture and give ill-treatment to the deceased. She has witnessed the assault to her deceased sister. She has also deposed that in her presence, her sister has been

assaulted and the appellant-Sayub Ansari has asked the deceased to commit suicide and for this Rs.50/- has been offered, failing which she will be

killed. In her cross-examination she has testified that the incident of torture or ill-treatment has not been reported to anybody, neither the offer of

money for committing suicide has been reported to any family members. She has testified that the husband of the deceased namely Sayub Ansari was

present at the time of fetching out the dead body of the deceased from the well.

P.W.6-Kureshiya Begum (mother of the deceased) has given a different story. As per her version, the deceased has been killed and thrown in the

well. In her cross-examination she has deposed that the husband of the

deceased was present when the dead body of the deceased was pulled from the well. She has further deposed in Para-5 of her deposition that family members were having no relation with the deceased as she has contracted love marriage with Sayub Ansari (one of the co-villager). The distance between houses of Sayub Ansari and his in-laws is 100 yards.

P.W.7-Sharif Ansari, P.W.9-Kadir Ansari and P.W.10-Kayum Ansari are the witnesses on the same point. They have deposed that there was no written complaint regarding the ill-treatment to the deceased but oral complaint was there but there was no quarrel between the parties.

P.W.8-Gulam Ansari is a formal witness who has proved the inquest report.

P.W.11-Khuda Bux Ansari is the father of the deceased and informant of the case. He has also changed the version of the incident and has deposed

that the appellants have killed her daughter and thrown her dead body in the well. He had seen the dead body of the deceased and there were injuries

on the head, face, neck and leg of the deceased. In his cross-examination he has deposed that he has not witnessed the ill-treatment to the deceased

rather he has been informed. Further the deceased has never complained to the family members neither she has turned up to the parental house.

P.W.12 (Samshad Ansari) I.O. of the case and has proved the place of occurrence i.e. well which is in the field and having no fences. The Diameter

of the well is 15 feet in which the layer of the water is 10 feet.

P.W.13-Dr. Hemant Kumar is the Medical Officer who has conducted the post-mortem on the dead body of the deceased. As per post-mortem

report following injuries have been found:-

(1) Rigour mortis present in both lower limbs but absent in both upper limbs.

External Injuries

(1) Abrasion left upper eyelid size $\frac{1}{3}$ — $\frac{1}{4}$ caused by hard and blunt substance, simple in nature.

(2) Abrasion left foot just above fifth toe size $1\frac{1}{2}$ — $1\frac{1}{2}$ caused by hard and blunt substance, simple in nature.

Internal Injuries

(1) Larynx and Trachea congested and contained finewhite froth.

(2) Lungs:- Both lungs water logged, voluminous, pale gray colour. On cut section blood stained frothy fluid sprouted.

(3) Stomach " Contained water with Semi-digested food material.

(4) Liver-Congested.

(5) Spleen-Congested.

(6) Kidney-Congested.

(7) Small intestine contained water.

In the opinion of doctor, the cause of death is asphyxia due to drowning.

6. It has been argued by learned counsel for the appellants that although the appellants have been charged under Sections 498A and 306 of the IPC,

but they have not been found guilty under Section 498A of the IPC meaning thereby there was no element of cruelty. The learned court below has

committed manifest error by utilizing section 113A of the Indian Evidence Act and has convicted for the offence under Section 306 of the IPC.

7. To buttress the point counsel for the appellants has relied upon the judgment of Honâ??ble Apex Court reported in 2017(1) SCC, 433 in the case

of Gurcharan Singh Vs. State of Punjab. Relevant paras-25, 30 and 31 of the said judgment are quoted hereinbelow:-

â??25. This provision, as the quote hereinabove reveals, renders the husband of a woman or the relative of his, punishable thereby with

imprisonment for a term which may extend to three years and also fine, if they or any one of them subject her to cruelty. The Explanation

thereto defining "cruelty" enfold:

(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 it 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.

30. In Pinakin Mahipatray Rawal vs. State of Gujarat, this Court, with reference to Section 113A of the Indian Evidence Act, 1872, while

observing that the criminal law amendment bringing forth this provision was necessitated to meet the social challenge of saving the married

woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry, it was underlined that the

burden of proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That

the prosecution as well has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person

charged under Section 306 IPC, was emphasised.

31. The assessment of the evidence on record as above, in our considered opinion, does not demonstrate with unqualified clarity and

conviction, any role of the appellant or the other implicated in-laws of the deceased Surjit Kaur, as contemplated by the above provisions so

as to return an unassailable finding of their culpability under Section 306 IPC. The materials on record, to reiterate, do not suggest even

remotely any act of cruelty, oppression, harassment or inducement so as to persistently provoke or compel the deceased to resort to self-

extinction being left with no other alternative. No such continuous and proximate conduct of the appellant or his family members with the

required provocative culpability or lethal instigative content is discernible to even infer that the deceased Surjit Kaur and her daughters

had been pushed to such a distressed state, physical or mental that they elected to liquidate themselves as if to seek a practical alleviation

from their unbearable earthly miseries.â??

Further counsel for the appellants has relied upon Paras-12 and 13 of the judgment of Honâ??ble Apex Court reported in 2010 (1) SCC 707 in the

case of Amalendu Pal @ Jhantu Vs. State of West Bengal. Relevant Paras-12 and 13 of the said judgment are quoted hereinbelow:-

â??12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the

Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out

whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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.

13. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said

offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by

doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be

proved and established by the prosecution before he could be convicted under Section 306 IPC.â??

Further he has relied on Para-26 of the judgment of the Honâ??ble Apex Court reported in 2013 (10) SCC 48 in the case of Pinakin Mahipatray

Rawal vs. State of Gujrat. Relevant para-26 of the said judgment is quoted hereinbelow:-

â??26. Section 113-A only deals with a presumption which the Court may draw in a particular fact situation which may arise when

necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated

so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his

relatives, demanding dowry. Legislative mandate of the Section is that when 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 as per the terms defined in Section 498-A IPC,

the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such

person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused

under Section 498-A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A-

1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extra marital affair was of

such a degree which was likely to drive the wife to commit suicide.â??

8. On the strength above judgments the argument has been advanced that for taking benefit of 113A of the Indian Evidence Act, the necessary

ingredients has to be proved by the prosecution is the cruelty which has been

defined under Section 498A of the Indian Penal Code. Once the court has found the ingredients of Section 498A of the Indian Penal Code is not made out meaning thereby no cruelty has been proved as per requirement of 498A IPC and as such the presumption under Section 113A of the Indian Evidence Act is not available.

9. It has been further argued that the prosecution has cooked up the story as there was love marriage between the parties which was not of liking of the family members of the deceased.

Learned counsel for the appellant has relied upon the judgment reported in 2009 (13) SCC 330 in the case of Manju Ram Kalita Vs. State of Assam.

Relevant para-21 of the said judgment is quoted hereinbelow:-

21. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined / inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."

10. The nature of cruelty should be such that it has left with no other option but to commit suicide and further it should be proximate to the point of suicide. On the basis of above submission the prayer has been made that the appellants should be discharged as ingredients of 306 of the IPC has not been proved beyond all reasonable doubts by the prosecution.

11. Per contra, learned APP has supported the judgment of conviction, the argument has been advanced that the unnatural death has taken place within a year of marriage. The ill-treatment to the deceased has been evidenced by P.W.3, P.W.6, and P.W.10. P.W.3 i.e. younger sister of the deceased is the eye witness as she has witnessed the ill-treatment or assault to her deceased sister by the husband of the deceased namely Sayub

Ansari. Further Sayub Ansari has offered Rs.50/- for consuming poison otherwise she will be killed.

12. Heard the counsel for the parties. From perusal of the record, it appears that the deceased and Sayub Ansari having love affair and has got

married against the will of their family members. The deceased used to collect cow-dung and she also worked in the field. On fateful day she was

missing. There is no evidence that who has seen the body in the well but the dead body has been fetched out from the well by the husband and his

family members with help of other villagers.

13. From the report of the doctor who has conducted post-mortem on the dead body of the deceased, it appears that the cause of death is due to

drowning. There were two abrasion injuries have been found. One on the left upper eyelid and second on the left foot just above fifth toe. The well in

which the dead body has been found has no fences. Except the slipper of the deceased nothing has been found near the well. After considering the

evidence, court below has negated the element of cruelty as defined in Section 498A of the Indian Penal Code.

14. This has attained the finality. The appellants have been discharged from the offence of 498A of the IPC. Section 113A of the Indian Evidence Act

is a procedural law and it shifts onus upon the accused if a married woman commits suicide within 7 years of her marriage. For drawing such

presumption or shifting of the onus, the prosecution has to establish that the female has been subjected to cruelty as defined under Section 498A of the

Indian Penal Code.

15. In the present case such cruelty to the deceased has been negated by the court below and as such the presumption drawn under Section 113A of

the Indian Evidence Act by the court below is wholly unjustified and recording the finding of guilt on such presumption is not sustainable.

16. So far as Section 306 of Indian Penal Code is concerned, the necessary ingredients is "abatement" to the suicide. Abatement means

instigation or giving aid for doing any illegal act. In the present case the evidence available on record suggests family quarrel and some ill-treatment.

The evidence of P.W.3 regarding abatement by offering Rs.50/- for consuming poison, is out of context as neither the money has been given nor the

poison has been consumed. Further whether fall in the well was accidental or suicidal, neither any evidence has been produced on this point by the

prosecution nor has proved the suicide nor the ingredients of cruelty under

Section 498A of the Indian Penal Code.

17. In view of above discussion and considering the material available on record, this court finds that the conviction of the appellants under Section 306

IPC is not sustainable. Accordingly the appellants are discharged from the charge under section 306 of the Indian Penal Code

18. Accordingly, the judgment of conviction dated 24.01.2006 and order of sentence dated 27.01.2006 passed by Sessions Judge, Lohardaga in

Sessions Trial No.58 of 2003 is, hereby, set aside. Since the appellants are already on bail, they are discharged from the liability of their bail bonds.

19. In the result, both the appeals stand allowed.