

(2018) 03 CHH CK 0297

In the Chhattisgarh High Court

Case No : Criminal Appeal No.2842 of 1999

SHYAM LALVs THE STATE OF MADHYA PRADESH

Date of Decision : 27-03-2018

Acts Referred:

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

Citation : (2018) 03 CHH CK 0297

Hon'ble Judges : ARVIND SINGH CHANDEL

Bench : Single Bench

Advocate : R.S. Patel, Neeraj Kumar Sharma

Final Decision : Allowed

Judgement

Conviction,Sentence

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

Under Section 498A of the Indian Penal Code,Rigorous Imprisonment for 3 years

14. Shivnarayan (PW9) has not supported the case of the prosecution and has been declared hostile.,

15. Jitu Kumar (PW1), a ward boy of the Christian Hospital, Dhamtari has stated that on 27.5.1997, he had given intimation of death of Premvati in",

Police Station Dhamtari.,

16. Station House Officer B.B.S. Rajput (PW10) has stated that on the intimation of the ward boy, he had recorded morgue intimation (Ex.P1).",

Constable Vishwajeet (PW11) has stated that he had taken the morgue intimation (Ex.P1) to Police Station Gurur, District Durg, where, on the basis",

of Ex.P1, morgue (Ex.P12) was registered.",

17. Assistant Sub-Inspector S.K. Sarkar (PW12) has stated that vide Ex.P2 he had seized from the spot on being given by the Appellant a canister,

filled with about 50 grams liquid and words Triazophos and Hostathion and the word poison were printed thereon. Shekhar (PW2) has supported the,

above seizure. Inspector B.L. Paul (PW13) is the witness who investigated into the offence in question.,

18. Daulal (DW1), brother of the deceased has stated that the deceased was suffering from stomach pain. She was being treated at Dhamtari",

hospital. Relationship between the Appellant and the deceased was cordial. The deceased had never made him any complaint against the Appellant.,

19. In (2001) 9 SCC 618 (Ramesh Kumar v. State of Chhattisgarh), it has been observed by the Supreme Court as under:",

â??20. Instigation is to goad, urge forward, provoke, incite or encourage to do an actâ?. To satisfy the requirement of instigation though it is not",

necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the,

consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the,

accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option,

except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the,

consequences to actually follow cannot be said to be instigation.,

21. In State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73, this Court has cautioned that 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 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.â??.

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

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.",

21. 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 IPC there has to be a clear mens rea to commit the offence:",

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.",

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

23. There is no dispute that the death of Premvati was suicidal in nature and the same took place after 20 years from her marriage. The present also, does not appear to be a case of dowry demand.,

As per the prosecution story, the Appellant was having an illicit relationship with Hemlata due to which disputes were arising between the Appellant",

and his wife Premvati (the deceased) and in which the Appellant used to beat Premvati. Due to all these, Premvati committed suicide.",

24. Bhuneshwari (PW3), daughter of the deceased and Daulal (DW1), brother of the deceased are the close relatives of the deceased and the",

Appellant as well. Both the witnesses have not stated anything about the illicit relationship between the Appellant and Hemlata. As per the statement,

of Bhuneshwari (PW3), the whole family was visiting the house of Hemlata and no quarrel took place between her father (the Appellant) and mother",

(the deceased) in the name of Hemlata. Daulal (DW1), brother of the deceased has also stated that the deceased was visiting his house and he was",

also visiting her house, but the deceased never made him any complaint against the Appellant about his alleged illicit relationship with Hemlata.",

25. From the statement of Amrikabai (PW6), it is further clear that the Appellant is Kaka-Sasur (father-in-law) of Hemlata. Bhuneshwari (PW3),",

daughter of the deceased has also stated that the deceased was suffering from the disease of T.B. for the last 2-4 years and she was under,

treatment. This fact is also admitted by Daulal (DW1), brother of the deceased.",

26. Dr. Bina Chatterjee (PW4) has also stated that the deceased had visited her hospital on 6.7.1995 and 26.7.1995. From the above also, it is clear",

that the deceased was ill and she was under treatment. Except the alleged illicit relationship between the Appellant and Hemlata, there is nothing on",

record to show that the Appellant committed any cruelty with the deceased. The so called alleged illicit relationship is also not established.,

27. In (2009) 6 SCC 757 (U. Suvetha v. State By Inspector of Police), it was observed by the Supreme Court that living with another woman may be",

an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage, but the same would not attract the worth",

of Section 498A of the Indian Penal Code.,

28. In the light of above discussion, no case is made out against the Appellant under Section 306 of the Indian Penal Code.",

29. In the result, the appeal is allowed. The conviction and sentence imposed upon the Appellant is set aside. The Appellant is acquitted of the charges",

framed against him.,

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