

(2013) 10 SHI CK 0028

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 36 of 2013-B

State of Himachal Pradesh

APPELLANT

Vs

Bhagal Chand

RESPONDENT

Date of Decision : 17-10-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1622

Hon'ble Judges : Sanjay Karol, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Shrawan Dogra, A.G., Mr. R.S. Verma, A.A.G. and Mr. J.S. Guleria, Assistant A.G, for the Appellant; Sanjay Jaswal, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Karol, J.—State has appealed against the judgment dated 6.10.2012 of the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, passed in S.T. No. 13/2012, titled as State versus Bhagal Chand, challenging the acquittal of respondent Bhagal Chand (hereinafter referred to as the accused), who stands charged for having committed offences, punishable under the provisions of Sections 498A and 306 of the Indian Penal Code. It is the case of prosecution that accused Bhagal Chand was married to Lambi Devi (deceased). Through the wedlock, they also had a son named Suresh Kumar. Since 9.4.2011, Lambi Devi was not traceable. On 10.4.2011, her husband (accused) alongwith her brother Shashi (PW-2), lodged a missing report at Police Station Shahpur, District Kangra, H.P. On 11.4.2011, Lambi Devi called up her brother Shashi and informed him that she had run away from the matrimonial house as accused used to beat her. She disclosed that she was at Jawalamukhi (Jawalaji). Soon thereafter, Shashi (PW-2), his brother Ravi Kumar (PW-4) and accused went to Jawalaji, from where they brought her back. Ravi Kumar and the accused, first took her to Police Station Shahpur and thereafter to her matrimonial house.

2. In the morning of 12.4.2011, Ravi Kumar received information that Lambi Devi had committed suicide by pouring kerosene oil on her body. He informed

the Police. Same day, preliminary investigation was carried out. Police got the postmortem conducted through Dr. Rattan Sagar, who prepared report (Ex. PW-10/D). On the basis of statement made by brothers of the deceased, police registered FIR No. 46, dated 15.4.2011 (Ex. PW-1/A), against the accused, under Sections 498A & 306 of the Indian Penal Code, at Police Station Shahpur. From the spot, one can containing kerosene oil, match box and other incriminating articles were recovered. They were sent to the Forensic Science Laboratory and report (Ex. PW-10/G) obtained by the police. Investigation revealed that deceased Lambi Devi was subjected to cruelty by the accused and as such challan was presented in the Court for trial.

3. Accused was charged for having committed offences punishable under the provisions of Sections 498A and 306 of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as ten witnesses and statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which he pleaded false implication.

5. Appreciating the testimonies of the witnesses, the Court below acquitted the accused, on both the counts. Hence, the present appeal filed by the State of Himachal Pradesh.

6. Having heard learned counsel for the parties and perused the record, we are of the considered view that in the instant case no ground for interference is made out.

7. The fact that Lambi Devi was married to accused Bhagal Chand, 13 years prior to the date of incident is not in dispute. Suresh Kumar (not examined), aged 14 years, born through the wedlock, used to reside with his parents, is also not in dispute. Deceased was Ward Member of the Panchayat of the area also stands established on record. That deceased died on account of burn injuries sustained by her is also not in dispute. Postmortem report (Ex. PW10/D) prepared by the doctor stands proved on record.

8. It is a settled position of law that there should be reasonable nexus between cruelty and suicide. It has to be substantiated, established and proved on record. Cruelty by itself would not amount to having committed an offence punishable u/s 498A IPC. A reasonable nexus has to be established between cruelty and the suicide in order to make good the offence of cruelty under the penal laws. Cruelty has to be of such a gravity as is likely to drive a woman to commit suicide. Suicide alone would not establish that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide. Mere assumption or demand of dowry by itself in given circumstances may not amount to cruelty. The harassment has to be with a definite object i.e. to meet any unlawful demand. Every act of cruelty is not punishable. There must be evidence to show that soon before the death the victim was subjected to cruelty or harassment. Prosecution has to rule

out the possibility of natural or accidental death so as to prove that the death had occurred otherwise than in normal circumstances. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

9. In *Girdhar Shankar Tawade Vs. State of Maharashtra*, the Apex Court has held that "the basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto. In order to ascribe a meaning to the word "cruelty" as is expressed by the Legislatures: Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the Legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of section 498A." ...

Section 498A is attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial court as regards the death negated suicide with a positive finding of accidental death. If suicide is left out, then in that event question of applicability of explanation (a) would not arise - neither the second limb to cause injury and danger to life or limb or health would be attracted in any event the willful act or conduct ought to be the proximate cause in order to bring home the charge u/s 498A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge u/s 498A.

Explanation (b) of Section 498A in no uncertain terms records harassment of the woman and the statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce 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 - there is total absence of any of the requirements of the statute in terms of section 498A. ...

...Charges under sections 306 and 498A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other.

To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge u/s 498A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b)

The letters by itself though may depict a reprehensible conduct, would not however, bring home the charge of section 498A against the accused. Acquittal of a charge u/s 306, as noticed hereinbefore, though not by itself a ground for acquittal u/s 498A, but some cogent evidence is required to bring home the charge of section 498A as well, without which the charge cannot be said to be maintained.

10. In Ramesh Kumar Vs. State of Chhattisgarh, the Apex Court has also held that "Sections 498A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence u/s 498A and may also, if a course of conduct, amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished u/s 498A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned."

11. In Sushil Kumar Sharma Vs. Union of India (UOI) and Others, , the Apex Court has held as under:

10. The object for which Section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "CrPC") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

11. One other provision which is relevant to be noted is Section 306 IPC. The basic difference between the two sections i.e. Section 306 and Section 498A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.

19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be

taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf is made too often as a prank, assistance and protection may not be available when the actual "wolf appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

12. In State of West Bengal Vs. Orilal Jaiswal and another, the Apex Court has held as under:

In a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of S. 498A, I.P.C. and S. 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

[Emphasis supplied]

13. The Apex Court further 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 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.

14. In *Arun Vyas and Another Vs. Anita Vyas*, the Apex Court has held that the essence of offence in Section 498A is cruelty. It is a continuing offence and on each occasion on which the wife is subjected to cruelty, she would have a new starting point of limitation.

15. In *Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh*, the Apex Court has held as under:-

The role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunae in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.

16. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not. *Mohd. Hoshan and*

Another Vs. State of A.P.,

17. In State of Andhra Pradesh Vs. M. Madhusudhan Rao, , the Apex Court has held as under:

It is plain that as per clause (b) of the Explanation, which, according to learned counsel for the State, is attracted in the instant case, every harassment does not amount to "cruelty" within the meaning of Section 498A I.P.C. The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In other words, for the purpose of Section 498A I.P.C. harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to "cruelty" punishable u/s 498A I.P.C.

18. In Balram Prasad Agrawal Vs. State of Bihar and others, , the Apex Court has held cruelty to mean torture to be so unbearable in the common course of human conduct that a young lady having commitments to life could take a drastic steps to end her life leaving behind her infant children in the lurch and at the mercy of the accused husband who was found to be in contemplation of remarrying.

19. In Arvind Singh Vs. State of Bihar, the Apex Court has held as under:-

The word "cruelty" in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent in Section 498A is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing. The same would be within the meaning of the section. Torture is a question of fact. There must be a proper effort to prove it.

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". 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 accused must by his acts or omission or by a continued course of conduct create such circumstances that the deceased is 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. Ramesh Kumar Vs. State of Chhattisgarh,

21. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to

cruelty and harassment in a given case. Gananath Pattnaik Vs. State of Orissa,

22. Prosecution evidence has to be appreciated in the backdrop of the stated legal position.

23. The fact that without informing anyone, Lambi Devi remained away from home, from 9.4.2011 till 11.4.2011 stands proved on record. As has come in the testimony of Shashi (PW-2), Ravi Kumar (PW-4) and ASI Dalip Singh (PW-10), on 10.4.2010, accused had lodged a missing report of his wife at Police Station Shahpur. These witnesses, also have unequivocally deposed that attempt was also made by the accused to search for her, but was not traceable.

24. It stands established on record that on 11.4.2011, deceased alongwith her husband (accused) and brother did go to Police Station, Shahpur, where report (Ex. PW-8/B) was recorded by the police. HHC Sudershan Kumar (PW-8) admits that contents of this report were recorded on the basis of statement of Lambi Devi. Now in this report, there is no reference about any beatings given by the accused to the deceased. There is nothing in the report to even remotely suggest the reason of the deceased remaining away from her matrimonial house for more than three days.

25. Undisputedly, deceased was recovered from Jawalamukhi. According to Shashi (PW-2), deceased had telephonically informed him about her whereabouts and the cause of her remaining away from house. She had been beaten up by the accused.

26. Now significantly, Ravi Kumar (PW-4) admits that Lambi Devi was carrying a telephone with her. She never informed him about the cause of her remaining away from the house. He further states that ".....It is correct that on Jawalamukhi when we were coming back to P.S. Shahpur I had asked Lambi Devi about the reasons of her missing and she had not replied, thereafter I had slapped her. I cannot say that reason of missing of Lambi Devi was not the accused...." He admits that accused never maltreated the deceased in his presence nor had Lambi Devi ever informed him about any such maltreatment suffered at the hands of the accused. In fact, this witness was present at the time when report (Ex. PW-8/B) was lodged with the police. He further admits that Lambi Devi was Ward Member of her Gram Panchayat and she had a telephone of her own. When he tried to contact her, the phone was coming switched off. It is not the case of prosecution that relations between this witness and deceased were not cordial or that she did not confide in him. Also, why did she not call anyone, more so the police, if her husband had caused cruelty has not been explained. After all, she was aware of law and its procedure.

27. Smt. Santo Devi (PW-1), who is mother of the deceased, has categorically deposed that few days prior to occurrence of the incident, deceased accompanied her to village Boh. A relative had died there. They were together alone, for quite some time. From there Lambi Devi went to her matrimonial house. She received a call from the accused that Lambi Devi had not reached home and was missing.

Thereafter, accused lodged missing report at Police Station Shahpur. She states that deceased "might" have committed suicide by pouring kerosene oil due to harassment caused by the accused. But then she is not certain about the same. She further clarifies that Lambi Devi never complained about any of the alleged acts of cruelty/maltreatment on the part of the accused to her. Lambi Devi remained with her mother for quite some time. Her version does not help the prosecution at all. In fact, it only probabilises the defence of false implication. After all, mother and daughter enjoyed a good relationship. Deceased had ample time to spend with her mother. They were alone for quite some time. Deceased never made any grievance of alleged acts of cruelty/harassment to her mother.

28. When we come to the testimony of Shashi (PW-2), we find that no doubt, in his examination-in-chief, he has deposed that Lambi Devi had informed him that she had fled away from her house on account of beating given by the accused, but however, we find this part of his statement not to be convincing and inspiring confidence, for the reason that Lambi Devi never made such a grievance either to her mother or to her other brother Ravi Kumar, who in fact had slapped her when she remained quiet and did not disclose the reason of her staying away from her home for three days, as also for the reason that this witness admits that he did not enquire from Lambi Devi as to why she had not contacted him between 4.4.2011 and 12.4.2011. Not only that, this witness did not take any steps for searching his missing sister. He admits not to have informed the police, about Lambi Devi having any grievance against her husband. Most significantly, he states that "..... During her marriage period Lambi Devi had never told me that the accused used to give beatings to her. Volunteered that she occasionally used to say that the accused used to take liquor and he was in the habit of gambling. I had not reported the matter to the police regarding this fact that Lambi Devi had told about the beatings given by the accused to her....." It is not the case of prosecution that despite efforts made by the deceased, accused did not give up liquor or gambling, which prompted her to commit suicide. His testimony also does not prove the prosecution case.

29. At this juncture, it be observed that initially police did not suspect hand of the accused in the crime. Incident took place in the morning of 12.4.2011. Same day, police took cognizance of the incident. Postmortem was also got conducted. Till 15.4.2011, none of the family members of Lambi Devi made any grievance against the accused about the alleged acts of maltreatment/cruelty. It was only on 15.4.2011 that the witnesses came forward and lodged report with the police, when FIR was registered against the accused. It is not the case of prosecution or for the matter of the complainants, that they were prevented from reporting the matter to the police. It is also not the case of prosecution that deliberations and parleys were going on between the two families. It is also not the case of prosecution that initially complaint was not lodged, keeping in view interest of the children born out of the wedlock. Delay in the instant case, in getting the matter reported, renders the prosecution case to be extremely doubtful. What needs to be observed is that on 11.4.2011, Lambi Devi had not made any

grievance about the alleged maltreatment/cruelty meted out to her by her husband, which fact is evident from report (Ex. PW-8/B).

30. Significantly, prosecution has not examined Suresh Kumar, son of the deceased, who would have thrown light as to what prompted the deceased to take away her life. It is not the case of prosecution that accused had murdered her.

31. ASI Dalip Singh (PW-10) admits it to be correct that before 15.4.2011, no witness had given statement that accused used to maltreat deceased Lambi Devi nor did Lambi Devi, who was a Ward Member, ever made such a grievance. He admits that despite the fact that relatives of deceased were in constant touch with him, no such grievance was made out.

32. We find that there is another witness, i.e. Samungla Devi (PW-3), sister of the deceased. In her examination-in-chief, she states that 2-3 months prior to the incident, she had visited the house of the deceased and in her presence quarrel took place between the deceased and her husband when deceased became unconscious. However, she does not state the reason for the deceased to have taken away her life. Be that as it may, we find her testimony with regard to quarrel to be absolutely uninspiring in confidence. This we say so, for the reason that neither on 10.4.2011 nor on 11.4.2011, either of the brothers of the deceased disclosed such fact to the police. The deceased did not disclose such fact to her mother, who had an occasion to interact alone and for long period with her daughter. In fact, Lambi Devi never made any grievance about this fact with any one of these persons. Further this witness did not call up anyone of her relatives, informing them either about the quarrel or the factum of Lambi Devi having become unconscious. Why so? Has not been explained by her. In fact, this witness admits that Lambi Devi used to make calls from her mobile to unknown persons and whenever accused asked for their identity, she would lose temper and quarrel with him. This witness, in cross-examination, could not state with certainty as to whether Lambi Devi committed suicide on account of harassment caused by the accused or not.

33. In view of the aforesaid discussion, it cannot be said that prosecution has been able to prove the guilt of the accused, beyond reasonable doubt. Essential ingredients, so as to constitute an offence under the provisions of Section 498A and 306 of the Indian Penal Code, cannot be said to have been proved on record. Abetment in law has to be more than drinking and gambling, which in any event is not the cause of discord, prompting the deceased to take away her life.

34. Thus, it cannot be said that prosecution has been able to prove its case, beyond reasonable doubt by leading clear, cogent, convincing and reliable piece of evidence so as to prove the charged offence, in view of the settled principles of law mentioned supra.

35. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the

evidence placed on record by the parties. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in Mohammed Ankoos and others versus Public Prosecutor, High Court of Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

With the aforesaid observations, appeal stands disposed of, so also pending application(s), if any.