
(2014) 08 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 321 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Shyam Lal

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 378
Penal Code, 1860 (IPC) — Section 306, 34, 498(A), 498A, 498-A

Citation : (2014) 08 SHI CK 0003

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Ashok Chaudhary, Addl. A.G., Vikram Thakur, Dy. A.G. and J.S. Guleria, Asstt. A.G, Advocate for the Appellant; N.K. Thakur, Sr. Advocate and Ishita Bhandari, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Assailing the judgment dated 30.4.2007, passed by learned Sessions Judge, Una, H.P., in Sessions Case No. 13 of 2003/Sessions Trial No. 16 of 2003, titled as State of Himachal Pradesh vs. Shyam Lal & others, whereby respondents-accused stand acquitted, the State has filed the present appeal under the provisions of Section 378 of the Code of Criminal Procedure, 1973.

2. It is the case of prosecution that Smt. Rajni (deceased) was married to accused Shyam Lal on 22nd October, 2000. Allegedly for having brought insufficient dowry, deceased was subjected to maltreatment by her husband and his entire family i.e. accused Rajesh Kumar, Raj Kumar @ Bittu and Kamla Devi, which fact she brought to the notice of her parents i.e. Smt. Suman Bali (PW-11) and Sh. Narinder Sagar Bali (PW-12). After the marriage accused Shyam Lal went to Kuwait for work. He did not take the deceased with him and she was made to stay in the joint family of her husband. In the matrimonial home she was repeatedly maltreated for having brought insufficient dowry. Sometime in the month of September, 2002, Shyam Lal returned when again deceased was

maltreated by the entire family. On 11.10.2002, Smt. Suman Bali (PW-11) telephonically inquired about the welfare of her daughter, when Shyam Lal asked her to meet him as he had to discuss certain matters with her. She suggested of meeting her later after her return from Jalandhar. Same evening she was telephonically informed that the deceased died after consuming poison. Parents of the deceased rushed to the house of Shyam Lal where they were informed that the deceased was taken to Primary Health Centre Amb and from there to Zonal Hospital at Una. The matter was immediately brought to the notice of police and on the basis of statement of Smt. Suman Bali (PW-11) recorded u/s 154 Cr.P.C. (Ext. PJ), F.I.R. No. 218/2002 (Ext. PK) dated 12.10.2002, was registered at Police Station Amb, Distt. Una, H.P. under the provisions of Sections 498-A and 306 both read with Section 34 of the Indian Penal Code against all the accused persons. Inquest report (Ext. PO) was prepared and post mortem of dead body was got conducted through Dr. C.S. Chauhan (PW-9) who confirmed the deceased to have died on account of poisoning. Post mortem report (Ext. PM) is on record to this effect. Police collected incriminating material against the accused, including letters (Ext. P-5 to P-9) and the suicide note (Ext. P-4) written by the deceased. With the completion of investigation, which was conducted by ASI-Mohinder Singh (PW-17), challan was presented in the Court for trial.

3. Accused were charged for having committed offences punishable under the provisions of Sections 498-A and 306 both read with Section 34 of the Indian Penal Code to which they did not plead guilty and claimed trial.

4. In order to prove its case, in all, prosecution examined seventeen witnesses and statements of the accused u/s 313 Cr.P.C. were also recorded, in which they pleaded false implication. In defence, accused examined Shyam Lal (DW-1).

5. Appreciating the testimonies of prosecution witnesses, trial Court acquitted the accused of the charged offences. Hence the present appeal.

6. Having heard learned counsel for the parties as also perused the record, we are of the considered view that in the instant case no ground for interference is made out. The Court below has correctly and completely appreciated the testimonies of prosecution witnesses, as also other material placed on record.

7. That Smt. Rajni died after consuming poison is not in dispute. It is not the prosecution case that she was murdered by the accused. It is a case of suicide.

8. Dr. S.K. Verma (PW-5) first attended to the deceased on 11.10.2002 at about 9.00 p.m. He found the patient to be unconscious and froth coming out from her nostrils and mouth. Finding the condition of the patient to be serious, he referred her to the Zonal Hospital at Una. Dr. G.S. Chauhan (PW-9) posted at Zonal Hospital, Una conducted the post mortem on the dead body of the deceased and as per his version and report (Ext. PM), deceased died on account of poisoning. He categorically states that there were no signs of injury on the body of the deceased indicating that poison was administered by force.

9. Law with regard to cruelty as defined u/s 498-A of the Indian Penal Code and abetment to commit suicide, so as to fall within the scope of Section 306 of the Indian Penal Code is now well settled.

10. 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 498-A 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. 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 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.

11. In *Girdhar Shankar Tawade Vs. State of Maharashtra*, , the Apex Court has held that the basic purpose of statutory provision is to prevent "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 498(A).

12. In *Ramesh Kumar Vs. State of Chhattisgarh*, , the Apex Court has also held that Sections 498-A 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 498-A 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 498-A 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.

13. In *Sushil Kumar Sharma Vs. Union of India (UOI) and Others*, , the Apex Court has held that:

10. The object for which Section 498-A 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 498-A 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.

14. In *State of West Bengal Vs. Orilal Jaiswal and another*, , the Apex Court has held that:-

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]

15. In the very same decision 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.

16. In *Arun Vyas and Another Vs. Anita Vyas*, , the Apex Court has held that essence of offence in Section 498-A 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.

17. 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.*,].

18. In *State of Andhra Pradesh Vs. M. Madhusudhan Rao*, , the Apex Court has held that:

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 498-A 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 498-A 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 498-A I.P.C.

19. 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.

20. 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 498-A

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.

21. 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,]

22. 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,]

23. Prosecution evidence has to be appreciated in the backdrop of the aforesaid legal position.

24. As per opinion of Dr Meenakshi Mahajan (PW-6), suicide note (Ext. P-4) and other letters (Ext. P-5 to Ext. P-9) are in the hands of the very same person. They are written by the deceased. Ext. P-4 is the suicide note in which she absolutely absolves her husband of any maltreatment/cruelty/dowry demand. In fact, she states that of her own wish she is consuming poison and none is responsible for the same. She pleads forgiveness from her husband. For the reason she could not face her parents, she decided to commit suicide. She desired that the person who wronged her must be revenged. She states that "RAJU SE BADLA JAROOR LENA" (Take revenge from RAJU). Now who is this "RAJU" has not come on record. Accused Raj Kumar is brother of accused Shyam Lal. But then it is the case of prosecution that accused Raj Kumar is also known as Bittu and not RAJU. Having perused letters (Ext. P-5 to P-9), we do not find the deceased to have expressed any anguish, pain or made out any grievance of maltreatment/cruelty suffered at the hands of accused persons. Nowhere she has recorded any act of maltreatment emanating out of insufficient dowry.

25. Thus communications so placed on record by the prosecution do not advance the case of prosecution at all.

26. Having perused the testimonies of material prosecution witnesses i.e. relatives of the deceased i.e. mother Smt. Suman Bali (PW-11), father Sh.

Narinder Sagar Bali (PW-12), aunt Smt. Sudesh Kumari (PW-13), uncle Sh. Joginder Lal (PW-14) as also ward members Smt. Sarita Devi (PW-15) and Smt. Raj Kumari (PW-16), we do not find prosecution to have established the guilt of the accused beyond reasonable doubt.

27. According to PW-11, deceased was subjected to torture by the accused for having brought insufficient dowry and also not working as per their satisfaction. We find the allegations to be unspecific with regard to time, place, nature and manner. Significantly husband of the deceased was staying in Kuwait and there is nothing on record to establish that from there he was in touch with his family members and on his asking or goading, deceased was tortured.

28. According to the mother, dowry demand pertained to a washing machine which she purchased few months prior to the death. We find the witness to have contradicted herself by stating that the same was given prior to the marriage.

29. Similarly though Sh. Narinder Sagar Bali (PW-12) has tried to corroborate the testimony of his wife but then significantly he states that he only "suspected" the accused of having administered poison to his daughter. Testimonies of PW-13 and PW-14 are also to this effect.

30. Significantly, ward member Smt. Sarita Devi (PW-15) has assigned yet another reason for the atrocities and maltreatment. According to her, Shyam Lal had not accepted the deceased as his wife as she was of dark complexion, which, in fact, is not the case of her parents. We do not believe her version. But crucially she states that deceased had filed a complaint with the panchayat. Now police has not placed the same on record. In fact, we find this witness not to have deposed truthfully as she has resiled from her earlier statement (Ext. DE), on material points, with which she was confronted. Parents in fact admit that matter was not reported to anyone. Thus her statement stands belied. They admit that marriage was solemnized with the help of one Sh. Madan Lal and even his intervention was not sought in the matter.

31. In the instant case, there is no plausible evidence of the deceased having been beaten up or subjected to maltreatment/cruelty at the hands of the accused. It appears that she took her life of her own volition, reason for which only she was aware of. It has nowhere come on record that from the time of marriage, accused had ever assaulted the deceased. It is also not the case of prosecution that on account of alleged maltreatment and cruelties/dowry demands, deceased had ever left her matrimonial house. It is also not the case of prosecution that deceased was not allowed to meet, intermingle with or visit her relatives, friends or neighbours. None of her friends in whom she reposed confidence have come forward to depose against the accused. Testimony of PW-15 and PW-16, uninspiring in confidence already stands dealt with. Except for vague and unspecific allegations, which remain unsubstantiated, there is nothing on record to prove the prosecution case of dowry demands or maltreatment/abetment which instigated the deceased to commit suicide. Also there is nothing

incriminating against accused Shyam Lal since the time of his return from Kuwait.

32. According to the parents, alleged dowry demand of washing machine stood fulfilled. The same according to the father was so done 22 days prior to the date of the incident. We may not be misunderstood to have accepted the case of fulfillment of dowry demand, of which in any case there is no proof. Be that as it may, it is not the case of prosecution that after fulfillment of such demand any other demand was raised by the accused. It is also not the specific case of the witnesses that thereafter deceased was maltreated or subjected to cruelty which prompted her to take away her life.

33. Having perused the testimony of prosecution witnesses on record, it cannot be said that prosecution has been able to prove its case, beyond reasonable doubt, to the effect that accused persons in furtherance of their common intention, subjected the deceased to cruelty or abetted her to commit suicide, by leading clear, cogent, convincing and reliable material on record. It cannot be said that the findings returned by the court below are not borne out from record, perverse, illegal, erroneous or arisen out of incomplete appreciation of the prosecution evidence.

34. The accused have 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 Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., , since it cannot be said that the trial Court has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice, no interference is warranted in the instant case.

For all the aforesaid reasons, present appeal, devoid of merit, is dismissed, so also pending applications, if any Bail bonds, if any, furnished by the accused are discharged. Records of the Court below be immediately sent back.