

**Ramo Devi Vs. State**

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**Court :** Delhi

**Decided On :** Jun-02-2016

**Judge :** The Honourable Ms. Justice Mukta Gupta

**Appeal No. :** CRL.A. No. 827 of 2015

**Appellant :** Ramo Devi

**Respondent :** State

**Judgement :**

1. By the present appeal the appellant challenges the impugned judgment dated 9th April, 2015 convicting her for the offence punishable under Sections 306/34 IPC in FIR No.226/2013 registered at PS Sangam Vihar and the order on sentence dated 16th April, 2015 directing her to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 5,000/-; in default whereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 306 IPC.

2. The case of the prosecution is that DD No.7A was received on 27th May, 2013 at 1:30 AM informing that one girl has hanged herself at house No.J-II/527, Gali No.8, Gupta Colony, Sangam Vihar which was assigned to SI Vikram, PW-23. SI Vikram along with Constable Madan Mohan, PW-15 reached the spot and noticed that one piece of chunni was lying on the floor and rest part of the chunni was attached to the iron pipe on the roof. The neighbours informed that the injured had

already been removed by her in-laws. After deputing Constable Madan Mohan, PW-15 at the spot, SI Vikram Singh, went to the HAH Hospital. In the hospital he came to know that the deceased was declared brought dead. He collected the MLC and informed about the incident to Inspector K.L.Meena who in turn informed the SHO Inspector Shahid Khan, PW-25. Dead body of the deceased was sent to the mortuary of AIIMS for post-mortem examination and preservation as the HAH hospital was not equipped to preserve the dead body. In the meantime, SHO Inspector Shahid Khan, PW-25 reached the spot and crime team was also called there. On inspecting the place of incident, PW-25 found a suicide note in a notebook which was lying on the bed in the room. PW-25 seized the suicide note and two pieces of chunni. Tehsildar Ajeet Kumar Chaudhary, who visited the spot on the directions of the SDM, recorded the statement of the parents of the deceased.

3. The father of the deceased Anil, PW-2 stated that he was a labourer and had six children. Deceased Gudiya was his eldest daughter. He married his daughter to Amit @ Neetu in May, 2010. In marriage he gave gifts and dowry beyond his financial capacity. After some time of the marriage, Amit @ Neetu used to make the demand of motorcycle and because of this he used to abuse and beat the deceased. On several occasions, the deceased had told him about the harassment and beatings by Amit @ Neetu, husband of the deceased, Shiv Saloni, father in-law and Ramo Devi, mother-in-law. However, he used to console her. He also stated that Amit @ Neetu was in the habit of drinking and after consuming liquor he used to beat and abuse the deceased. He further stated that the mother-in-law Ramo Devi also used to harass and beat the deceased on trivial issues. The in-laws also used to taunt the deceased for not bearing a child even after three years of marriage. On 14th May, 2013 the deceased returned to her matrimonial home and after which the parents of the deceased had no word with her. On 27th May, 2013 around 2:00 AM his brother Mahesh informed him to come to Delhi because the deceased was not well. When they reached Delhi, they got to know that the deceased had committed suicide. He suspected Amit @ Neetu and the in-laws of the deceased in the death of his daughter and prayed for legal action. Statement of Savitri, PW-1, mother of the deceased was also got recorded which was in conformity with the statement of PW-2.

4. On the basis of this statement of Anil, PW-2, FIR was registered under Sections 498A/304B/34 IPC. Pursuant to a charge sheet being filed charges for offences punishable under Sections 498A/304B/34 IPC were framed against Amit @ Neetu, Shiv Saloni and Ramo Devi. Shiv Saloni, the father-in-law of the deceased was acquitted of the charges. Amit @ Neetu and Ramo Devi were convicted for offences punishable under Section 306/34 IPC. Since Amit @ Neetu has not filed any appeal, this Court is only concerned with the appeal of Ramo Devi.

5. Learned counsel for the appellant contends that there was no evidence to bring home the charge for offence punishable under Section 306 IPC against Ramo Devi. The onus was on the prosecution to prove that the so called taunts given by Ramo Devi abetted the deceased to commit suicide. There was no live and proximate link between the so called abetment and the suicide as no time and place of the taunts has been specified. Primary allegations were in relation to demand of dowry, which have been disbelieved and Ramo Devi has already been acquitted for the charges under Section 304B/498A IPC. On the same evidence Shiv Saloni has been acquitted whereas Ramo Devi and Amit @ Neetu have been convicted. It is further contended that since no alternative charge for offence punishable under Section 306/34 IPC was framed against Ramo Devi by the learned Trial Court she could not have been convicted for the said offence.

6. Learned APP for the State contends that as per the deposition of the witness there was continuous abetment to suicide for the reason the deceased was not able to bear children having been married for three years and thus there was a proximate and live link and due to the taunts given the deceased was abetted to commit suicide.

7. PW-2 Anil, father of the deceased deposed in sync with his statement made before the Tehsildar. He further deposed that Amit and Ramo Devi used to say loha lakkar layi hai motor cycle kyun nahi layi to the deceased. He further stated that the handwriting in the suicide note (Ex.PW-2/E) was not of his deceased daughter and same was a false suicide note.

8. PW-1 Savitri, the mother of the deceased also deposed in sync with her statement made before Tehsildar and corroborated the testimony of PW-2. During

her cross-examination, PW-1 stated that the deceased told her that Ramo Devi used to say naa to tu dahej lai aur naa hi humay potey poti ki khushi de paa rahi hai isasey acha hai ki mar hi jaaye hum apne ladke ki doosri shadi ker lenge jisase humay jaada dahej milega aur poti poton ka sukh bhi milega. Savitri further stated during the cross-examination that she cannot say whether the deceased committed suicide as there was miscarriage on three occasions.

9. PW-5, Mukesh, cousin of the deceased, also corroborated the testimony of PW-1 and PW-2. He stated that after about one or two months of the marriage, Amit @ Neetu told him that he was expecting a motorcycle in the marriage. However, during cross-examination, PW-5 stated that Amit @ Neetu was having a second hand motorcycle before the marriage and he bought a new motorcycle on the next day of marriage.

10. Vishnu, PW-11 who knew Shiv Saloni and his family for the last 8-9 years did not support the prosecution case and stated that Amit @ Neetu was not addicted to liquor and did not give beatings to the deceased. He further denied the suggestion that Ramo Devi used to harass the deceased for demand of dowry or that all the three accused persons used to taunt the deceased for demand of dowry and used to give beatings.

11. PW-14 Mahesh, uncle (tau of the deceased) was the mediator in the marriage. He corroborated the version with respect to beatings and harassment with regard to dowry demand by Amit @ Neetu and Ramo Devi. However, during his cross-examination he denied the suggestion that Amit @ Neetu raised demand of motorcycle from his brother Anil PW-2. He also denied the suggestion that Amit @ Neetu and Ramo Devi used to give beatings, abuse and harass the deceased upon non-fulfilment of the demand of motorcycle as dowry. He denied the suggestion that the deceased committed suicide due to miscarriages. Although he stated that the deceased used to be tense as she could not deliver the child.

12. PW-17 Dr. Deepak Prakash, Junior Resident, Department of Forensic Medicine, AIIMS conducted the post-mortem on the body of the deceased on 27th May, 2013. The post-mortem report is Ex.PW-17/A. On external examination only one injury was noticed. The injury was described as a dark reddish brown

parchmentised ligature mark of width 1 cm is present at the middle one third of neck. The ligature mark is running obliquely, upwards and backwards, merging with posterior hairline at nape of neck, incompletely encircling the neck. The cause of death was opined as asphyxia due to ante-mortem hanging. Time since death was about half day. In the subsequent opinion sought regarding the possibility of death by the chunni, it was opined:

1. The hanging could be produced by the above mentioned ligature material.
2. The ligature mark as mentioned in the post-mortem report could be caused by the ligature material (chunni) submitted.

13. From the statement of Savitri, a continuous course of harassment by taunts is evident. Specific allegations are attributed to Ramo Devi wherein she taunted the deceased for not bearing the children. Thus it cannot be held that the prosecution failed to show that soon before the death the deceased was subjected to such taunts which abetted her to commit suicide.

14. The moot question would however be whether in the absence of an alternative charge under Section 306 IPC whether Ramo Devi could have been convicted for offence punishable under Section 306/34 IPC when during trial charge for offences punishable under Sections 304B/498A/34 IPC only was framed. The Supreme Court in the decision reported as 2001 (2) SCC 577 Shamnsaheb M.Muldtani vs. State of Karnataka held that since the ingredients for offence punishable under Section 304B IPC and 302 IPC were different, offence punishable under Section 304B IPC could not be held to be a minor offence and thus separate charges were required to be framed. The other reasoning given was in relation to presumption available under Section 113B of the Indian Evidence Act for offence punishable under Section 304B IPC whereas for offence punishable under Section 302 IPC no such presumption was available. Dealing with the issue of presumption that is required to be raised Supreme Court held:

25. We have now to examine whether, on the evidence now on record the appellant can be convicted under Section 304-B IPC without the same being included as a count in the charge framed. Section 304-B has been brought on the

statute-book on 9-11-1986 as a package along with Section 113-B of the Evidence Act. Section 304-B(1) IPC reads thus:

304-B. Dowry death. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death , and such husband or relative shall be deemed to have caused her death .

26. In the explanation to the section it is said that the word dowry shall be understood as defined in the Dowry Prohibition Act, 1961.

27. The postulates needed to establish the said offence are: (1) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading Section 113-B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances the court shall presume that such person had caused the dowry death .

28. Under Section 4 of the Evidence Act whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved . So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can persuade the court against drawing a presumption adverse to him.

30. But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it.

15. Dealing with the issue whether an accused can be convicted for offence punishable under Section 306 IPC though charge for offence punishable under Section 304B IPC only was framed, Supreme Court in the decision reported as 2014 (12) SCC 595 Mangat Ram vs. State of Haryana held:

28. We have already indicated that the trial court has found that no offence under Section 304-B IPC has been made out against the accused, but it convicted the accused under Section 306 IPC, even though no charge had been framed on that section against the accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. Section 306 IPC reads as under:

306. Abetment of suicide. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.

29. In the instant case, of course, the wife died few months after the marriage and the presumption under Section 113-A of the Evidence Act could be raised. Section 113-A of the Evidence Act reads as follows:

113-A. 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.

30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term the Court may

presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.

31. In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana* [(2004) 12 SCC 257: 2004 SCC (Cri) 217], wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word cruelty in Section 498-A IPC.

32. We are of the view that the circumstances of the case pointed out by the prosecution are totally insufficient to hold that the accused had abetted his wife to commit suicide and the circumstances enumerated under Section 113-A of the Evidence Act have also not been satisfied.

33. In *Pinakin Mahipatray Rawal v. State of Gujarat* [(2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801], this Court has examined the scope of Section 113-A of the Evidence Act, wherein this Court has reiterated the legal position that the legislative mandate of Section 113-A of the Evidence Act is that if 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 presumption defined in Section 498-A IPC, the court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by the husband or such person. The court held that, 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. The court held that the burden is on the prosecution to establish the fact that the deceased committed suicide and the accused abetted the suicide. In the instant case, there is no evidence to show whether it was an accidental death or whether the deceased had committed suicide.

16. In view of the discussion aforesaid since Section 306 IPC is not a minor offence of Section 304B IPC and the ingredients of the two offences being different, in the absence of a charge under Section 306 IPC, the appellant could not be convicted for the said offence. Accordingly the impugned judgment of conviction and order on sentence is set aside. The appellant, who is in custody, be released forthwith, if not required in any other case. Appeal is disposed of.

17. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

18. TCR be returned.

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