

Jayram Rabidas Vs. State of Assam

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Court : Guwahati

Decided On : Aug-07-2007

Judge : B.D. Agarwal, J.

Appellant : Jayram Rabidas

Respondent : State of Assam

Prior history : B.D. Agarwal, J. 1. The appellant is the husband of the deceased. He has been convicted under Section 306 of the Indian Penal Code (IPC) as well as under Section 498(A) of the IPC vide judgment and order dated 8.1.2007 passed by Shri M. Ali, the learned Sessions Judge, Hailakandi in Sessions Case No. 7 of 2006. 2. While so convicting the appellant the learned Sessions Judge has awarded 5 (five) years of rigorous imprisonment and fine of Rs. 1,000/- for conviction under Section 306 IPC and 1 (o

Judgement :

B.D. Agarwal, J.

1. The appellant is the husband of the deceased. He has been convicted under Section 306 of the Indian Penal Code (IPC) as well as under Section 498(A) of the IPC vide judgment and order dated 8.1.2007 passed by Shri M. Ali, the learned Sessions Judge, Hailakandi in Sessions Case No. 7 of 2006.

2. While so convicting the appellant the learned Sessions Judge has awarded 5 (five) years of rigorous imprisonment and fine of Rs. 1,000/- for conviction under Section 306 IPC and 1 (one) year rigorous imprisonment with fine of Rs. 1,000/- has been awarded for conviction under Section 498(A) of the IPC, in default of payment of fine further rigorous imprisonment for 3 (three) months has been ordered on each count. Being aggrieved with the aforesaid conviction and sentence, the convict has preferred this appeal.

3. I have heard Shri H.R.A. Choudhury, learned Senior Counsel for the accused/appellant. Also heard Mr. B.S. Sinha, learned Public Prosecutor appearing on behalf of the State of Assam.

4. The prosecution case in short campus is that the deceased was married with the appellant only about 1 1/2 year prior to her unnatural death. In the evening of 19.8.2004 the deceased Sabitri Rabidas committed suicide by taking common poison. Immediately, it was reported to the parents of the victim woman since they were living adjacently. Getting the information of taking poison the mother and brother of the victim woman visited the house of the accused, but within a short time the woman died without giving any scope for medical treatment.

5. Thereafter, the father of the victim lodged an FIR, whereupon a case under Section 302 of the IPC was registered as Lala Police Station Case No. 143/2004. After investigation, the chargesheet was laid under Section 304(B) of the IPC. However, after going through the materials in the Case Diary the learned Sessions Judge tried the accused/ appellant under Section 498(A) and 306 of the IPC. It may be mentioned here that the remaining family members of the accused, who were the in-laws of the deceased were discharged at the threshold of the trial.

6. In order to establish the offence, the prosecution examined only 5 (five) witnesses. The witnesses are the father, Shri Sarju Rabidas (PW-1), the mother, Smt. Laxmi Rabidas (PW-2) and the minor brother of the deceased, Sri Munna Rabidas (PW-3), the Autopsy Doctor, Dr. K.Z. Choudhury (PW-4) and the Investigating Officer, Sri Harendra Chandra Das (PW-5). No independent witness was examined. The defence case was of total denial. Relying upon the prosecution, the sole accused has been convicted as noted above earlier.

7. Shri Choudhury, learned Senior Counsel for the accused/appellant has submitted that to bring the home offence within the parameters of Section 306 IPC, the prosecution has to establish that the accused had abetted the commitment of suicide with certain overt act. According to the learned Senior Counsel for the petitioner, in the present case the prosecution's evidence is totally lacking to indicate that there was any provocation from the side of the accused driving the woman to commit suicide. The learned Senior Counsel has also submitted that there was no demand of dowry from the accused and that the woman has committed suicide, being a short-tempered lady.

8. Section 306 IPC has not defined abetment of suicide. Hence, recourse has to be taken to Section 107 of the IPC for this purpose, which defines abetment. The offence of suicide and the definition of abetment as per Sections 306 and 107 are quoted below for ready reference:

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.

107. Abetment of a thing--A person abets the doing of a thing, who--

Firstly--Instigates any person to do that thing; or

Secondly--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly--Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation I--A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2--Whoever, either prior to or at the time of commission of any act, do anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

9. In the case of Mahendra Singh v. State of Madhya Pradesh reported in 1995 AIR (SCW)-0-4570, the Hon'ble Supreme Court has held that before convicting a person under Section 306 IPC, the prosecution is to prove the ingredients of abetment as described under Section 107 of the IPC.

10. Since the suicide was committed within a period of 11/2 year of marriage, there is also scope of drawing adverse presumption against the accused. Hence, it is also necessary to look at the provisions of Section 113-A of the Evidence Act, 1872, Section 113-A of the Evidence Act is reproduced below:

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.

Explanation--For the purposes of this Section, 'cruelty' shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860)

(Emphasis mine)

11. A bare reading of Section 113-A of the Evidence Act would go to show that before drawing adverse presumption against the accused it is to be established that the married woman had committed suicide within a period of 7 (seven) years and that the woman was subjected to cruelty by the husband or his in laws. Even after proof of these two ingredients the Court is still incumbent to take into consideration all other circumstances of the case. In other words adverse presumption cannot be drawn just on the establishing of the fact of death of the woman within 7 (seven) years of marriage and also on proof of cruelty. These

preconditions have to be read harmoniously with the third limb of the law. which has been termed as all other circumstances' in the section.

12. The learned Counsel for the appellant has pressed into service the Judgment of the Hon'ble Supreme Court rendered in the case of Randhir Singh v. State of Punjab reported in (2004) 13 SCC 129. This case has directly stemmed-out of an offence covered by Section 306 IPC. After discussion of various provisions of law Their Lordships have observed that the courts should be on guard and careful to analyze the requirements of law in the following words in Paragraphs 12 and 13 of the aforesaid case:

12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. Orilal Jaiswal this Court has observed that the Courts 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 circumstances 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.

13. Coming to the case at hand, I find that the prosecution's allegation of cruelty has not been supported by any independent witness. In fact no independent witness was at all examined. Both the parents of the victim woman have made casual allegation that their daughter was subjected to inhuman torture. The mother (PW-2) has been testified in the cross-examination that the marriage of their

daughter was the out-come of love affairs with the appellant. If that was so, the witnesses were expected to explain as to why their daughter was subjected to cruelty within a short period of 1 1/2 year. However, no such explanation is forthcoming. Only their son (PW-3) has given one instance of cruelty by deposing in the cross-examination that during Durga Puja festival his sister was not allowed to come home and an altercation had taken place between the husband and wife (PW-3's sister) and in that surcharged atmosphere, the accused had given a slap on the face of his sister. It is needless to mention here that the incident of suicide had taken place in the month of August 2004. Hence, the incident narrated by PW-3 can be related to the Durga Puja festival, which fell in the year 2003 (usually this festival falls in September/October).

14. Section 306 of the Indian Penal Code has also not defined the word cruelty. Hence, the court has to fall back to the definition of 'cruelty' given Under Section 498-A IPC. The definition of 'Cruelty' as per this provision can be found in the also quoted below for easy reference:

498-A. Husband or relative of husband of a woman subjecting her to cruelty--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation--For the purposes of this section, 'cruelty' means--(a) the woman to commit suicide or to cause grave injury or danger to life,

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.

15. Succinctly speaking none of the family persons have given any evidence that their daughter/sister was subjected to such degree of cruelty, which can lead/drive a woman of common prudence to commit suicide. Resultantly, it has to be held that the deceased must have committed suicide upon a trifle matter.

16. Under Section 107 IPC there must be either direct instigation or conspiracy or there should be some overt act or material omission on the part of the accused, which may compel a person to commit an illegal act. Explanation-2 to Section 107 also speaks about the omission of an act. However, in the case before me, the evidence is short of suggesting any such instigation, omission or facilitation for suicide by the deceased. However, the learned Sessions Judge has not addressed to these finer aspects of the case. Hence, I am not persuaded to confirm the conviction of the appellant under Section 306 of the IPC and the same is hereby set aside.

17. The learned Public Prosecutor has cited the Judgment of the Apex Court rendered in the case of AT. Prema S. Rao and Anr. v. Yadla Srinivasa Rao and Ors. reported in : 2003 CriLJ69 to support the conviction under Section 306. However, the Judgment is distinguishable on the facts and evidence of this case. In the cited authority, the woman was driven out by her husband with an oblique motive to grave her landed property, which was given to the deceased by her parents, as 'Stridhan'. However, in the instant case, there is no such pin-pointed allegation against the accused. Hence, the aforesaid authority is of no help to sustain the conviction.

18. Coming to the conviction under Section 498-A IPC, I find that the allegations made by the parents are enough to hold that the married woman was subjected to cruelty. I make it clear that the degree of proof of cruelty for the purpose of conviction under Section 498-A cannot be equated with the rigour of Section 306 IPC. It is said that higher and greater gravity of offence demands higher degree of evidence. In the case of Mohd. Hoshan v. State of Andhra Pradesh : 2002 CriLJ4124 the Hon'ble Supreme Court has held that even continuous taunting and teasing a woman, driving her to end her life, would also amount to cruelty. In the case before me there are evidence that the deceased was not permitted to go to her parent's home even during festivals and the woman was also subjected to frequent mental torture. Hence, conviction of the appellant Under Section 498-A cannot be said to be without evidence. In fact, the learned Counsel for the appellant also did not seriously assail the conviction of the appellant on this count. Accordingly, the conviction of the appellant under Section 498-A IPC as well as

the sentence awarded thereunder by the learned Sessions Judge is hereby upheld.

19. In the result, the appeal stands partly allowed. The conviction of the appellant under Section 306 is set aside. However, the conviction of the appellant under Section 498-A of the IPC is hereby upheld. Transmit a copy of this order along with the LCR to the Court of the learned Sessions Judge, Hailakandi, who shall issue a modified warrant of commitment to the concerned Jail Authority.

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