

Aman Singh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-14-2005

Reported in : II(2005)DMC207; 2005(2)MPHT32; 2005(2)MPLJ282

Judge : A.K. Gohil, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 306 and 498A

Appeal No. : Criminal Appeal No. 340/2003

Appellant : Aman Singh

Respondent : State of Madhya Pradesh

Advocate for Def. : Ami Prabal, Govt. Adv.

Advocate for Pet/Ap. : K.M. Mishra, Adv.

Judgement :

A.K. Gohil, J.

1. Appellant has filed this appeal under Section 374 of the Code of Criminal Procedure, against his conviction under Section 306 and under Section 498A of Indian Penal Code and sentenced to undergo 10 years' R.I. and three years' R.I. respectively and fine of Rs. 100/- under each section and in default of payment of fine, to further undergo one month's R.I. retrospectively, by judgment dated 5-5-

2003 in Sessions Trial No. 180/2002 by Additional Sessions Judge, Ganj Basoda, District Vidisha.

2. The appellant is the husband of deceased Ram Bai. According to the prosecution case, the incident took place in the intervening night of 24th and 25th of June, 2002 at about 2 a.m. and at about 17.30 hours (5.30 p.m.) the appellant lodged a report to the Police Station, Ganj Basoda that in the night he was sleeping in the room alongwith his children after taking meals, at 2 o'clock in the night he heard the voice of his wife, she was shouting. When he came outside, he found his wife ablazed. He called his brothers Babulal and Mardan. They extinguished the fire by putting water on her body. She had died. He informed Chowkidar and thereafter informed the incident to the police. On the basis of mere intimation 'Dehati Nalishi' was recorded. Police reached at the spot and investigated the matter. Deadbody was referred for post-mortem. During investigation, statements of father Bhujjilal, mother Ram Kunwar, sister Sonabai, Babulal brother of the appellant and Atar Bai wife of Babulal were recorded. In the investigation and also from the statements of the witnesses it was found that the deceased was subjected to cruelty and harassment by her husband. It was found that the appellant used to beat her and was not giving food. It was also alleged that the appellant was not doing any work and regularly used to ask Rambai to bring money from her father. Many a times the demand was fulfilled by the parents of the deceased and money was given. Lastly 15 days before her death deceased Rambai went to her father's place and asked for money but due to destruction of the crops her father was not in a position to help her, therefore, the help was denied to her. The prosecution case was that on account of cruelty and maltreatment meted out with Rambai by her husband she has committed suicide. After investigation charge-sheet was filed. During trial charge was framed under Section 306, IPC and in alternate, for the offence punishable under Section 302 and also for the offence punishable under Section 498A, IPC.

3. During trial, appellant abjured his guilt and has taken the defence that he is a patient of epilepsy and, therefore, Rambai was denying to live with him. On the date of incident he was sleeping in his room, Rambai came out from the room, closed the doors from outside and has committed suicide.

4. After considering the prosecution evidence, Trial Court found that the prosecution has failed to prove the charge under Section 302, IPC beyond reasonable doubt and acquitted the appellant from the aforesaid charge but found that the prosecution has proved the charges under Sections 306 and 498A of IPC and convicted and sentenced the appellant as aforesaid. Against which the appellant has filed this appeal.

5. I have heard Shri K.M. Mishra, learned Counsel for the appellant and Smt. Ami Prabal, learned Government Advocate, for the respondent-State and perused the evidence on record.

6. In the trial, prosecution examined Bhujji (P.W. 1), who is the father of the deceased, Sonabai (P.W. 2), elder sister of the deceased, Ramkunwar Bai (P.W. 8), who is the mother of the deceased. Babulal (P.W. 5), brother of the appellant, Atar Bai (P.W. 6), wife of Babulal and Brijesh Kushwaha (P.W. 9), nephew of the appellant, have not supported the prosecution and were declared hostile. Bhujjilal (P.W. 1), Sonabai (P.W. 2) and Ramkunwar Bai (P.W. 8) have deposed that after the marriage appellant was continuously harassing the deceased. He was always compelling her to go to her parents and to demand for the money. They have stated that the appellant was not doing any work and he was compelling Rambai to labour and earn money for their livelihood and also to ask for money from her parents. Parents had given her sufficient money after selling their cattles and they had also given cattles to him. They have stated that the cause of death was regularly practising cruelty with her. Though they have admitted that the marriage of Rambai took place 15-16 years back and they are having two children; one aged about 8-10 years and another aged about 5-7 years. Both the boys were also present in the house at the time of incident but prosecution has not examined them. Cause of her death was regular cruelty practiced by the appellant but they have not stated any immediate cause for the abetment of committing suicide by the deceased. Therefore, on the basis of prosecution evidence, it can be held that the appellant was demanding dowry and money regularly and was also practising cruelty towards the deceased, but it can not be held that there was abetment for committing suicide.

7. Shri K.M. Mishra, learned Counsel for the appellant vehemently submitted that though some evidence of demand for dowry is available on record but no evidence of abetment is available on record, therefore, the conviction of the appellant under Section 306, IPC is bad in law.

8. To appreciate the contention of the learned Counsel for the appellant that what is abetment and what should be the evidence of abetment for convicting a person for the offence, it is necessary to consider the provisions of Section 306, IPC, which reads as under :--

'306. 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 10 years, and shall also be liable to fine.'

9. Section 107 of Indian Penal Code defines what is abetment which reads as under :--

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

First.-- 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 1.-- A person who, by willful misrepresentation, or by willful 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 the commission of an act, does 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.'

Provisions of Section 113A of the Evidence Act about raising a presumption as to abetment of suicide by a married woman are not applicable in this case because the marriage took place 15-16 years before but the same is applicable when suicide is committed within a period of seven years from the date of marriage.

10. From a bare reading of Section 107 of Indian Penal Code and explanations, it is clear that to charge a person for abetment of commission of such suicide there must be evidence of instigation by a person to do that thing. Now it is to be seen whether the evidence of abetment is available in this case and whether continuous cruelty and mal-practice by the husband against his wife comes within the definition of 'abetment'.

11. Firstly, it is necessary that there must be instigation by any person to do that thing and if somebody intentionally aids, by any act or illegal omission, the doing of that thing and as per the Explanation 2, whoever either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

12. Undoubtedly, in this case Rambai did commit suicide but there is no evidence of any kind of instigation. The evidence has come that 15 days before her death she was beaten by her husband but whether that incident of beating or the continuous harassment, mal-practice and cruelty by her husband after marriage can be treated to be an abetment.

13. In the case of State of West Bengal v. Orilal Jaiswal and Anr., (1994) 1 SCC 73, the Supreme Court has considered the question and has held as under:--

'We may add here 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 circumstance individual in as 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. But in the facts and circumstances of the case, there is no material worthy of credence to hold that Usha was hypersensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence adduced in the case has clearly established that Usha was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Within a few days after the marriage when a newly married bride would reasonably expect love and affection from the in-laws, she was abused by the mother-in-law, accused 2 by saying that the deceased was a woman of evil luck only because an elderly member in the family had died after her marriage.'

14. In the case of Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, Supreme Court has dealt the question elaborately and has held as under:--

'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 present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow can not be said to be instigation.'

The Court further observed as under :--

'22. 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 under Section 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, amounting to

abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 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.'

In this case, Supreme Court has also referred the passage from case of Orilal Jaiswal (supra).

15. In the case of Sanju alias Sanjay Singh Sengar v. State of M.P., (2002) 5 SCC 371, Supreme Court has further considered the following judgments :--

'8. In Swamy Prahaladdas v. State of M.P. [1995 SCC (Cri.) 943], the appellant was charged for an offence under Section 306, IPC on the ground that the appellant during the quarrel is-said to have remarked to the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

9. In Mahendra Singh v. State of M.P. [1995 SCC (Cri) 1157], the appellant was charged for an offence under Section 306, IPC basically based upon the dying declaration of the deceased, which reads as under :--

'My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.'

11. In Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, this Court was considering the charge framed and the conviction for an offence under Section 306, IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire.'

and considering the scope, Supreme Court has held as under :--

'Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment can not be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it can not be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998.'

16. Recently, in the case of Hans Raj v. State of Haryana [2004 (16) AIC 87 (SC)], again Supreme Court has considered all the previous cases and the facts of the prosecution case that the wife of the appellant committed suicide on account of the cruelty and harassment meted out to her by the appellant therein. Considering the earlier judgments in the cases of Ramesh Kumar v. State of Chhattisgarh; State of West Bengal v. Orilal Jaiswal (supra), the Court held that the allegation that the appellant did not like to keep the deceased with him because he was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parent and others, or that the appellant intended to re-marry and had told his wife about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation and under the aforesaid circumstances the Court has found that the prosecution has failed to establish the offence under Section 306, IPC and set aside the conviction.

17. Thus, considering the aforesaid law laid down by the Supreme Court and the scope of Section 107 of IPC, it is necessary that a reasonable certainty to incite the consequence must be capable of being spelt out. In this case there is no

allegation available on record against the appellant for abetting the deceased to commit suicide. Merely practising cruelty or beating 15 days before her death does not constitute offence of abetment. Moreso, in this case the accused had not by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which as an instigation may have been inferred. Even by the Apex Court in case of Swamy Prahaladdas (supra) the mere words uttered by the accused to the deceased 'to go and die' have not been considered enough to instigate the deceased. Therefore, the conviction of the appellant under Section 306, IPC is not liable to be maintained, Therefore, it is set aside. But, looking to the evidence available on record the conviction under Section 498A, IPC against the appellant is affirmed.

18. Learned Counsel for the appellant submitted that the appellant is in jail. The defence evidence is available on record that the appellant is a patient of epilepsy and having two minor sons and there is nobody in the family to lookafter them. He is also ill in the jail and receiving treatment. He has already suffered jail sentence of more than two and half years as against the jail sentence awarded by the Trial Court of three years. Considering the submission of the learned Counsel for the appellant that the appellant has already suffered jail sentence of more than two and half years as against the jail sentence of three years awarded under Section 498A, IPC, his prayer appears to be reasonable and is accepted.

20. Thus, the appeal is allowed in part. The conviction of the appellant under Section 306, IPC is set aside, but the conviction under Section 498A, IPC is maintained. However, he is sentenced to the already undergone jail sentence. Appellant is in jail. He be released forthwith if not required in any other criminal case.