

Ram Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-04-2001

Reported in : 2002(1)WLN595

Judge : Sunil Kumar Garg, J.

Acts : Indian Penal Code (IPC) - Sections 306

Appeal No. : S.B. Criminal Appeal No. 265 of 2001

Appellant : Ram Singh

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : Deepika Vyas, Adv.

Disposition : Appeal allowed

Judgement :

Garg, J.

1. This appeal has been filed by the accused appellant against the judgment and order dated 23.4.2001 passed by the learned Addl. Sessions Judge, Anupgarh District Sri Ganganagar in Sessions Case No. 9/2000 by which he convicted the accused appellant for the offence under Section 306 1PC and sentenced him to

under go five years rigorous imprisonment and to pay fine of Rs. 1000/-, in default of payment of fine, to further undergo R1 for two months.

(2). The facts giving rise to this appeal, in short, are as follows:-

On 12.10.1999 at about 4.45 PM, PW 1 Hardayal lodged a written report Ex. P/1 before PW 10 Pramod Swami, who was at the relevant lime SHO Police Station Rawla District Sri Ganganagar stating inter-alia that his daughter Shanti (hereinafter referred to as the deceased) was married with the accused appellant 10-12 years back and this wedlock produced four children. It was further stated in the report that in between the night of 11.10.1999 and 12.10.1999, her in-laws' consisting of Harlal, father-in-law of deceased, wife of Harlal & Mother-in-law of deceased, accused appellant Ram Singh, husband of deceased, Rani Chandra, another son of Harlal and their one daughter hanged the deceased and he had received the information at about 9.00 AM on 12.10.1999. It was further stated in the report that previous to that incident, injustice was being done to his daughter deceased and in this respect, a Panchayat was also called for an there was a demand of fridge & motor-cycle from her in-laws' and they used to tell that these articles be given otherwise they would kill his daughter (deceased) and that is why, they killed his daughter (deceased).

On this report, the police registered the case for the offence under Section 302 and 147 IPC and chalked out regular FIR Ex.P/2 and started investigation.

During investigation, the post mortem of the dead body of the deceased was got conducted by PW 9 Dr. Narendra Singh and the post mortem report is Ex.P/13. The accused appellant was arrested through arrest memo Ex.P/20 on 16.11.1999.

After usual investigation, the police submitted challan against the accused appellant only for the offence under Section 306 IPC in the Court of Magistrate, from where the case was committed to the Court of Session.

Ort 22.8.2000, the learned Addl. Sessions Judge, Anupgarh framed charge for the offence under Section 306 IPC against the accused appellant. The charge was read over and explained to the accused appellant. The accused appellant denied

the charge and claimed trial.

During trial, the prosecution in support of its case examined as many as 11 witnesses and got exhibited several documents. Therefore, statement of the accused appellant under Section 313 Cr.P.C. was recorded. In defence, no evidence was led by the accused appellant.

After conclusion of trial, the learned Addl. Sessions Judge, Anupgarh through his judgment and order dated 23.4.2001 convicted the accused appellant for the offence Under Section 306 IPC and sentenced him in the manner as indicated above holding inter- alia:-

1. That there was a constant demand of motor-cycle, cooler and fridge by the accused appellant and for that deceased was being tortured and harassed by the accused appellant.

2. That deceased died in the abnormal circumstances in the house of the accused appellant for which no jurisdiction was rendered by the accused appellant and thus, accused appellant abetted the deceased to commit suicide.

3. That the prosecution has proved its case beyond all reasonable doubts against the accused appellant for the offence Under Section 306 1PC. Aggrieved from the said judgment and order dated 23.4.2001 passed by the learned Addl. Sessions Judge, Anupgarh, this appeal has been filed by the accused appellant.

3. In this appeal, the following submissions have been made by the learned counsel for the accused appellant:-

1. That in the present case, there is no evidence of instigation or abetment on the part of the accused appellant,

2. That there is also no evidence that deceased was subjected to harassment for and in connection with the demand of dowry which has resulted in committing suicide by deceased.

3. That there are material contradictions in the statements of the prosecution witnesses.

4. That dispute of Battal, which arose 5-6 years back from the date of fateful incident, was between deceased and her Devar and not with the present accused appellant. Therefore, from that dispute, to say that accused appellant abetted the commission of suicide by deceased, is wrong.

Hence, it was prayed that this appeal be allowed and the accused appellant be acquitted of the charge framed against him.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Addl. Sessions Judge, Anupgarh.

5. I have heard the learned counsel for the accused appellant and the learned Public Prosecutor and perused the record of the case.

6. To prove the charge of the offence under Section 306 IPC, the prosecution has to prove the following two facts:-

1. The commission of suicide by a person; and
2. The accused abetted the commission thereof.

Point No.

7. To prove the first point, the medical evidence has to be looked into, which is found in the statement of PW 9 Dr. Narendra Singh.

8. PW 9 Dr. Narendra Singh states in his statement that on 12.10.1999 he was working as Medical Officer in the Government Hospital 365 R.D., Sri Ganganagar and on that day, he conducted the post mortem of the dead body of the deceased and he found only one ligature mark on the neck, situated at upper portion of neck, just below chin, 11' long started left side of neck upto right side absent on back of neck. He has further stated that the cause of death of the deceased was asphyxia due to hanging means antimortem hanging and there was no signs of violence or poisoning. He has proved the post mortem report Ex.P/13.

9. Thus, from the statement of PW9 Dr. Narendra Singh, the fact that death of the deceased was unnatural one is well proved.

10. So far as the fact that deceased committed suicide is also not in dispute in the present case and therefore, it can be said that death of the deceased was unnatural one in the shape of suicide.

(11). Hence, the point No. 1 stands proved.

Point No. 2 with regard to abetment

12. Now, the most important question that arises for consideration in the present case is whether by his acts and deeds, the accused appellant has made that situation which resulted in the commission of suicide by deceased or not or in other words, whether accused appellant abetted the commission of suicide by deceased or not.

13. What is abetment, it has been defined in Section 107 IPC, which reads as under:-

'107. Abetment of a thing. 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 of the doing of that thing; or

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

14. The intention to aid the commission of the crime, is the gist of the offence of abetment by aid. In case of demand of dowry or ill-treatment and beating, the case would be covered in first category i.e. instigating any person to do that thing.

15. In order to constitute abetment, the abettor must be shown to have 'intentionally aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor, is not enough compliance with the requirements of Section 107 IPC.

16. Before proceeding further and appreciating the evidence and findings of the learned trial Judge, something should be said about suicide.

On suicide

17. Normally one would not commit suicide unless there are strong and compelling reasons for it. Thus, ordinarily there has to be a very pressing motive behind every case of suicide. That is why emphasis should be made as to why a person commits suicide and in this case, it has also to be probed why deceased has committed the suicide.

18. The constant fact of wailing and weeping is one of the important symptoms of an intention to commit suicide as mentioned by George W. Brown and Tirril Harris in their book 'Social Origins of Depression' thus:-

'Symptom data

Depressed mood-

1. Crying
2. Feeling miserable/looking miserable, unable to smile or laugh.
3. Feelings of hopelessness about the future.
4. Suicidal thoughts
5. Suicidal attempts Fear/anxiety/worry
6. Psychosomatic accompaniments
7. Tenseness/anxiety
8. Specific worry
9. Panic attacks
10. Phobias

Thinking

11. Feelings of self-depreciation/nihilistic delusions

12. Delusions or ideas of reverence

13. Delusions of persecution/jealously

14. Delusions of grandeur

15. Delusions of control/influence

16. Other delusions, e.g. hypochondriacal worry

17. Auditory hallucinations

18. Visual hallucinations.'

19. In Encyclopaedia of Crime and Justice (Vol.4) by Sanford H. Kadish, the author mentions, thus:-

'Other psychologically oriented theories have viewed suicide as a means of handling aggressive impulses engendered by frustration.'

20. Suicide is intentionally taking of one's life. In other words, suicide is the initiation of an act leading to one's own death. Conventional wisdom decrees that suicide is the escape route for the abnormal. A person who commits suicide; can adopt different methods in committing suicide; for example, use of fire arms, poisoning specially by drugs, over drugs, hanging, inhalation of gas etc.

21. Hon'ble Supreme Court took the occasion to deal with the point in question in *Shard Birdhichand Sarda v. State of maharashtra* (1), and in that case quoted some passages of an eminent psychiatrist Robert J. Kastenbaum from his book 'Death, Society and Human Experience'. Hon'ble Supreme Court enumerated the causes of suicide in the following manner in that judgment:-

1. The fact is that some people who commit suicide can be classified as psychotic or severely disturbed.

2. If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder is a relevant variable to consider.

3. And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness.
 4. Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the jungle-like struggle.
 5. The individual does not destroy himself in hope of thereby achieving a noble post mortem reputation or a place among the eternally blessed. Instead he wishes to substract himself from a life whose equality seems a worse evil than death.
 6. The newly awakened spirit of hope and progress soon shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow.
 7. Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress.
 8. People who attempt suicide for reasons other than revenue may also on the assumption that, in a sense, they will survive the death to benefit by its effect.
22. Psychologists have viewed suicide as a means of handling aggressive impulses engendered by frustration. The Hon'ble Supreme Court again dealt with this aspect in *P. Ralhinam v. Union of India* (2), and there enumerated the cause responsible for committing suicide in the following manner:-
- 'Various social forces like the economy religion and socio-economic status are responsible for suicides. There are various theories of suicide, to wit, sociological, psychological, bio-chemical and environmental.'
- 'The causes of suicides are many and varying inasmuch as some owe their origin to sentiments or exasperation, frustration and revolution, some are the result of feeling of burden, torture and sadness. Some are caused by loss of employment, reverse of fortune, misery due to illness, family trouble and thwarted love. Sometimes killing is in opposition to society and sometimes in opposition to particular persons. This happens when the person committed suicide nurses a felling of unjust treatment, maltreatment and cruelty.'

23. The words 'suicide' has two facets in Indian Penal Code. One is an attempt to commit suicide which is punishable under Section 309 IPC and the second is abetment of suicide which is punishable under Section 306 IPC.

24. As to what would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore, in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case.

25. Now oral evidence has to be seen.

26. PW 1 Hardayal, who is the father of the deceased, lodged the report Ex.P/1 and from perusing the report Ex.P/1, it appears that from her in-laws, a demand for fridge and motor cycle was made, but in that report, no time was mentioned when this demand was made.

27. PW 1 Hardayal in his statement recorded in Court has stated in examination-in-chief:-

1. That for 5-6 years after marriage relations were cordial.

2. That after 5-6 years of the marriage, a dispute arose between deceased and her Devar over Battal and her devar beat her and, thereafter, a Panchayat was held and compromise took place.

3. That deceased used to say that accused appellant was demanding motor cycle and cooler and for that, accused appellant used to torture and harass deceased.

4. That some days back before the alleged incident, accused appellant left the deceased in his house, but after 2-3 days a telephone came and his son Kalu again left the deceased in the house of accused appellant.

5. That on the fateful day, he was informed by the son of his Mama and Devar of the deceased that deceased was hanged.

6. That thereafter, he alongwith his brother Lalchand, his sister, Jagdish and his wife PW 5 Badhu Devi went to her in-laws' house and then he lodged the report

Ex.P/1.

7. That the cause of handing deceased is non-fulfilment of demand of motor cycle and cooler.

In cross examination, this witness admits the following facts:-

1. That accused appellant left the deceased to his house 2-3 days earlier to the alleged incident.
2. That his son Kalu left the deceased to her in-laws' house and the alleged incident took place after 15 days.
3. That it is correct to say that during the period of 15 days, he had not met with the deceased.
4. That it is also correct to say that when his son Kalu left the deceased in her in-laws' house, he did not tell him that her husband or father-in-law or mother-in-law said something to him.
5. That it is correct to say that prior to 5-6 years of the fateful day, a dispute took place between deceased and her Devar over Battal.
6. That it is also correct to say that Panchayat also took place over the matter of battal and, thereafter, no Panchayat took place.
7. That it is also correct to say that accused appellant did not make any demand of motor cycle and cooler from him directly, but this demand was made by his daughter (deceased).

28. PW 2 Banshilal is the brother of PW 1 Hardayal and he states in examination-in-chief that deceased told him that accused appellant used to quarrel with her and therefore, Fridge be given otherwise accused appellant would quarrel with her.

In cross examination, this witness admits the following facts:-

1. That when the demand of motor cycle was made, he went to Panchayat, which took place after 5 years of the marriage.

2. That it is correct to say that since then he did not met with the deceased.

29. Before discussing the other evidence, it may be very pertinent to mention here that PW 1 Hardayal, father of the deceased states that 5-6 years back from the fateful day, a dispute arose between the deceased and Devar of deceased over the matter of Battat and for that a Panchayat took place, but PW 2 Banshilal, brother of PW 1 Hardayal, states that Panchayat took place over the demand of motor cycle.

30. Thus, there is a material contradiction between the statement of PW 1 Hardayal and PW 2 Banshilal on the point whether Panchayat took place over the matter of Battal or motor- cycle. But, one thing is clear that Panchayat took place prior to 5-6 years from the fateful day.

31. PW 3 Sugnaram is the neighbour of PW 1 Hardayal. He states in his statement that two years back, PW 1 Hardayal took him that a dispute had arisen between deceased and her Devar and, thereafter, 4-5 persons went there and they pacified the matter and the dispute was over the matter of Battal. He further states that PW 1 Hardayal told him before 2-4 months from the fateful day that her in-laws' were demanding motor cycle and cooler.

In cross examination, this witness admits that he attended the Panchayat, which took place four years back and in that Panchayat, except the matter of Battal, nothing was discussed.

32. Thus, from the statement of PW. 3 Sugnaram, it is very much clear that Panchayat took place 4-5 years back from the date of fateful incident and in that Panchayat, the dispute, which took place between deceased and her Devar over the matter of Battal, was discussed and demand of Fridge, Cooler, Motor-cycle etc. was not discussed in that Panchayat.

33. PW 4 Taruram is another brother of PW 1 Hardayal and he also admits that he met the deceased about 2-2 1/2 years back at the time of marriage of his son.

34. PW 5 Badhu Devi is the mother of the deceased. She also admits the following facts in cross-examination:-

1. That there was a demand of motor-cycle and cooler, just after the marriage of deceased, but accused appellant never directly demanded motor cycle and cooler from her, but he used to demand from the deceased.

2. That accused appellant came to her house alongwith the deceased about one and half month back from the alleged incident and thereafter, deceased was sent to her in-laws' house and thereafter, no talk took place between her and deceased.

3. That it is correct to say that on telephone of accused appellant, deceased was sent to her in-laws' house happily.

35. Thus, the statement of PW 5 Badhu Devi stands contradicted with the statement of PW 1 Hardayal, father of the deceased on the point that PW 1 Hardayal says that for 4-5 years after marriage, there was no demand, but PW 5 Badhu Devi says that demand of motor cycle and cooler was being made since marriage. Therefore, this is a material contradiction between the statement of PW 1 Hardayal and PW 5 Badhu Devi.

36. PW 7 Nanuram says that about 3-4 years back, Panchayat took place over the matter of demand of dowry. But, this statement stands further contradicted with the statement of PW Hardayal, father of the deceased. This witness further admits in cross examination that he had not met the deceased since 4-5 years.

37. PW 11 Om Prakash, who has also investigated the matter in this case, has come to the conclusion that accused appellant told his in-laws' that land was not given to him in dowry and the other dispute was that deceased got conducted DNC and because of that, there was a dispute between the deceased and the accused appellant.

38. So far as these findings of PW 11 Om Prakash are concerned, they are not found in the statements of material witnesses, namely, PW 1 Hardayal, PW. 2 Banshilal, PW. 4 Taruram and PW 5 Badhu Devi, who are close relatives of the deceased and apart from this, these are such things which can be described as trivialities and cannot be said to be grave and weighty incidents.

39. The Hon'ble Supreme Court in *State of Bengal v. Orilal Jaiswal* (3), has held 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 hyper-sensitive 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.

40. Looking to the above authority and from the discussion made above, it can be concluded:-

1. That whatever dispute took place between the deceased and her Devar, that took place 4-5 years back from the date of alleged incident and for that Panchayat also took place.
2. That is there was any dispute, that was over the matter of Battal, but that took place 5-6 years back from the fateful day and for that dispute, commission of suicide by the deceased has no relevancy and apart from this, that dispute did not take place with the accused appellant, but with her Devar, who is not accused before this Court.
3. That it does not appear that by his conduct, the accused appellant in any manner created the situation which he knows would derive the deceased to commit suicide.
4. That there is no dependable evidence in regard to the actual abetment by the accused appellant for the deceased to commit suicide.
5. That there is no evidence in the present case which shows that soon before the death of the deceased, some thing of serious nature happened, which resulted in commission of suicide by deceased.

6. That there is also no evidence which shows that there was an proximate cause for the deceased to attempt to end her life on the fateful day.

7. That so far as the demand of cooler, fridge, motor cycle etc. is concerned, that demand was not made by the accused appellant directly, as PW 1 Hardayal, father of deceased, has clearly admitted this fact and thus, the findings of the learned Addl. Sessions Judge that there was a constant demand of fridge, cooler, motor cycle etc. are wrong and cannot be sustained. Apart from this, evidence of prosecution witnesses is self- contradictory over this demand.

8. That there appears no reasonable nexus between the demand of dowry as alleged and suicide committed by the deceased.

41. For the reasons stated above, it is held mat the prosecution has failed to prove that the accused appellant abetted the commission of suicide by the deceased on the fateful day and thus, the findings of the learned Addl. Sessions Judge convicting the accused appellant for the offence under Section 306 IPC are liable to be set aside and this appeal deserves to be allowed and the accused appellant is entitled to acquittal.

Accordingly, the appeal filed by the accused appellant Ram Singh is allowed and the judgment and order dated 23.4.2001 passed by the learned Addl. Sessions Judge, Anupgarh are set aside and the accused appellant is acquitted of the charge for the offence under Section 306 IPC. Since he is in jail, he be released forthwith, if not required in any other case.