

Niharbala Banerjee and anr. Vs. State

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Court : Kolkata

Decided On : Sep-20-1988

Reported in : (1989)1CALLT307(HC)

Judge : A.C. Sen Gupta and ;J.N. Hore, JJ.

Acts : [Evidence Act, 1872](#) - Sections 32(1) and 113A; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 107 and 306

Appeal No. : Criminal Appeal No. 355 of 1987

Appellant : Niharbala Banerjee and anr.

Respondent : State

Advocate for Def. : Mukherjee and ;S. Ghosh, Adv.

Advocate for Pet/Ap. : P.K. Ghosh and ;Pranati Goswami, Adv.

Disposition : Application dismissed

Judgement :

J.N. Hore, J.

1. Smt. Niharbala Banerjee and her son Tapan Kumar Banerjee-the two appellants before us were convicted under Section 306, Indian Penal Code for abetment to suicide committed by Sikha Banerjee, wife of Tapan Banerjee, by a learned

Additional Sessions Judge, Alipore. For such conviction appellant No. 1 Smt. Niharbala Banerjee was sentenced to suffer simple imprisonment for 5 years and to pay a fine of Rs. 1,000 in default, to suffer simple imprisonment for 1 year more and appellant No. 2 Tapan Kumar Banerjee was sentenced to suffer rigorous imprisonment for 8 years and to pay a fine of Rs. 1,000 in default, to suffer rigorous imprisonment for 1 year more. The appellants seek to assail the said Order of conviction and sentence in this appeal.

2. Briefly stated, the prosecution case is as under:

Sikha Kundu, daughter of Renuka Kundu (PW1), resident of 87 Gourbabu Road, Kanchrapara was married to accused-appellant Tapan Kumar Banerjee of 28, Spolding Road, Kanchrapara within Police Station Bijpur, in the District of 24-Parganas (N). Before marriage Sikha (the deceased) and her mother had been working as maid servants in the house of Tapan Banerjee. Tapan and Sikha fell in love with each other and they got married without consent of their parents about 3 years before the occurrence. After marriage they started living somewhere at Halisahar and thereafter they came to live in the house of Tapan's father at 28 Spolding Road, Kanchrapara.

3. Since marriage Sikha had been subjected to systematic illtreatment and torture at her matrimonial home by her husband Tapan, mother-in-law Niharbala, brothers-in-law Swapan and Ashoka and others. As Sikha was daughter of a maid-servant and belonged to an inferior caste, she was insulted and made to suffer indignities. She was physically assaulted and was even driven out of her matrimonial home on a number of occasions. Sometime after the birth of her child she was driven away from her matrimonial home and was not allowed to take her suckling child with her. She had to have recourse to law for taking out a search warrant for the recovery of the child. After the child was recovered Sikha and Tapan come to a compromise and Sikha was taken to her husband's house sometime in May, 1983. Sikha committed suicide by setting fire to her body on 15.6.83 as she could no longer bear the ill-treatment and torture.

4. S.I. Mrinal Kanti Acharya (PW19), then attached to Bijpur Police Station, was on mobile patrol duty at 4.10 P.M. on 15.6.83. On receipt of an information from the

duty Officer of Bijpur Police Station, he went to the house of appellant Tapan Banerjee and found the deadbody of Sikha lying inside a kitchen with burns all over her body. A U.D. case was started at Bijpur Police Station and PW19 held inquest on the deadbody. At 7.30 P.M. Smt. Renuka Kundu, mother of the deceased lodged a written complaint with the Bijpur Police Station on the basis of which a case under Section 306, Indian Penal Code was registered against the appellants and others. After completion of investigation, the police submitted chargesheet which in usual course ended in the committal of the case to the Court of Session.

5. In defence, the appellants pleaded innocence.

6. It is not disputed before us that Sikha died of burn injuries on 15.6.83 and this is amply proved by the medical evidence. PW4 Dr. Dilip Kumar Basu, who conducted autopsy on the deadbody of Sikha on 16.6. 83 found the following injuries :

(i) First and second degree burn over scalp (scalp hair completely burnt) ;

(ii) Face-all aspects burnt;

(iii) All aspects of the whole chest-wall burnt ;

(iv) All aspects of the abdominal wall burnt;

(v) Whole perineum with vulva (public hair completely burnt) burnt ;

(vi) All aspects of both upper and lower limb burnt;

(vii) Whole body covered with charred skin and soot.

7. There was smell of kerosene in the body. According to the doctor, burns were accelerated by kerosene oil. The doctor also found bruises in deep tissues of both sides of trachea. Soot was present in the mucus membrane. Death, in the opinion of the doctor was due to the effects of burn injuries as stated above which were ante-mortem in nature. The deep bruise in the trachea, according to the doctor, indicated that some form of pressure was exerted in that region. According to the

doctor attempt of throttling was made before she received the burn injuries. He could not, however, stick to this opinion in the cross-examination where he has stated that the bruises in the deep tissues might not be due to an attempt of throttling.

8. PW4 is unable to give any opinion as to whether burns were accidental, homicidal or suicidal. It is nobody's case that the burn injuries were homicidal. Presence of kerosene in the body excludes the possibility that the burn injuries were accidental. The defence, as it appears from the suggestion put to PW1 in the cross-examination is that Sikha had been to the house of PW1 on the previous night and had a quarrel with her and she committed suicide after returning to her matrimonial home as a result of that quarrel. So, even according to the defence it was a case of suicide though the cause of suicide was different. So, there is no dispute that Sikha committed suicide by setting fire to her body.

9. The next question for our consideration.-and the crucial one-is whether the appellants or any of them abetted the commission of suicide by Sikha. The sole foundation of the prosecution case is the alleged systematic ill-treatment and torture-both physical and mental-amounting to inhuman cruelty which ultimately forced her to commit suicide. The evidence that has been adduced by the prosecution in support of the alleged cruelty mainly comprises the oral statements of Sikha made to her mother and others which, according to the prosecution, are admissible as dying declarations under Section 32(1) of the Evidence Act. There is, however, some direct evidence of cruelty which we propose to consider first.

10. PW1, Smt. Renuka Kundu, mother of Sikha proves some broad facts which are not disputed before us. It transpires from her evidence that her husband died about 15 years before in Bangladesh. She was very poor and earned her livelihood by working as a maid-servant. She is 'Till' by caste. Before marriage Sikha also worked as a maid-servant. PW1 worked in the house of appellant Tapan. Sikha also used to visit Tapan's house. Tapan and Sikha fall in love with each other and they married of their own and after marriage they lived for some time at Haliashahar in a rented house presumably because parents of Tapan did not approve of the marriage. Ultimately, parents of Tapan took them to their house

at Spolding Road, Kanchrapara. During the next three years, Sikha visited the house of her mother thrice. Sikha came to her house on the second time four days before the birth of her child about one year before her death and stayed there for 3 months. She then returned to her matrimonial home with the child. But one month after she had to come to her house without the child. She was not allowed to take the child with her. Sikha lamented and cried bitterly for the child. Ultimately the child was recovered from the custody of the appellants in execution of a warrant of search issued by the Court and brought to the police station. There was a compromise between Sikha and Tapan in pursuance of which Sikha started living at her matrimonial home with the child. Some time after Sikha died. The evidence of PW17 Sri Parsuram Shee, an Advocate practising in Barrackpore Court shown that he filed an application under Section 97, Criminal Procedure Code on behalf of Sikha in the Court of the Sub-Divisional Judicial Magistrate, Barrackpore on 22.4.83 (Ext. 3) and that after recovery of the baby he filed another application on 5.5.83 on behalf of Sikha intimating the Court that the dispute was amicably settled and the parents of the baby agreed to live together. The petition Ext. 3(a) was signed by both Tapan and Sikha.

11. It is clear from the above that the marital life of Sikha was not quite happy. It was quite unlikely that she would leave her matrimonial home voluntarily without taking her suckling baby, with her. The more probable conclusion is that she was driven out or forced to leave the matrimonial home and was not allowed to take her child with her. The fact that she was driven out or forced to leave her matrimonial home and debarred from having her suckling baby with her is no doubt an act of cruelty.

12. PW1 has deposed that once Tapan told her that he would not allow Sikha to live in their house as she was a 'Tili Kundu' by caste while they were Brahmins. This part of her testimony has not been challenged in the cross-examination. PW10 Malati Das is an intimate friend of Sikha. Her evidence goes to show that Sikha had to work as a Cook in a house adjacent to the house where she worked. She once accompanied Sikha to her husband's house. Sikha took her baby on her lap but Tapan and his mother abused her in filthy language. She was chided as a maid-servant and was given other defamatory epithets. They also tried to assault

her but could not do so because of her timely intervention. Ornaments were given to Sikha but the baby was not given to her. About a week after Sikha moved the Court for custody of her child.

13. The above evidence clearly shows that the appellants treated Sikha with cruelty and made her life miserable. Though Tapan married Sikha out of love and a child was born out of the wedlock, caste-prejudice and consideration of social status got the upperhand and his love or infatuation for Sikha soon vanished and she was subjected to indignities and torture. She was humiliated, driven out of the matrimonial home and was not even allowed to take her suckling baby and she was compelled to work as a cook in order to earn her livelihood. She was not even allowed to take her child on her lap and fondle her.

14. Let us next advert to the evidence of PWs. 1, 11, 12, 13 and 14 who seek to prove the statements made by Sikha from time to time. PW1 has deposed that Sikha told her that she had been ill-treated and beaten by her husband and mother-in-law. She was beaten and driven out of the matrimonial home on three occasions and she had to come to her mother's house for shelter.

15. PW11 Probodh Kumar Bagchi is a co-tenant of PW1. He saw Sikha on several occasions in their house after her marriage. Sikha told him that her husband and mother-in-law ill-treated her and drove her out of their house. On the last occasion Sikha came to her mother's house without her child. He saw her weeping on several occasions. One day he found her crying and on his query she told him that it was a day of 'Annaprasana' of her child but she was not allowed to participate.

16. PW12 Narayan Kundu, cousin of Sikha, has deposed that Sikha once told him that she had been driven out from her matrimonial home when she was pregnant. She often went to him crying and reported that she was habitually ill-treated and abused.

17. PW13 Sm. Krishna Panja is a nurse in Kalyani Hospital. She and PW1 lived in the same house. She knew Sikha from her childhood. Her testimony goes to show that after marriage Sikha came to her mother's house on several occasions. She told her that she had been habitually ill-treated and beaten in her husband's place.

After Sikha came to her mother's house last without her child, she told her that because of torture she had to come to her mother but she was not allowed to bring her daughter with her. She further stated that she was not permitted to take her daughter on her lap.

18. PW14 Sm. Karnala Shee, wife of PW17 Parsuram Shee, was a cotenant of PW1. The testimony of this witness is that Sikha told her that she was ill-treated and tortured by her husband, mother-in-law and others in her husband's house, as she was daughter of a maid-servant. She also stated that they abused her for marrying a Brahmin and threatened her with dire consequences. She also told her that sometimes she had to sleep in the kitchen or in the cattle-shed and on some occasions she had to sleep on the floor of her mother-in-law's room. She was driven out of the matrimonial home on several occasions and on the last occasion she was not allowed to take her baby with her.

19. Now, the question is whether the above statements of the deceased are relevant and admissible under Section 32(1) of the Evidence Act. The Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English law where only the statements which directly relate to the cause of death are admissible. The second part of Clause (i) of Section 32, viz., 'the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question' is not to be found in the English law. The leading decision on this question which has been followed by a long catena of authorities of almost all the Courts including the Supreme Court is the case of *Pakala Narayana Swami v. Emperor*, AIR 1939 PC 47, where Lord Alkin has laid down the following tests :

'It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the 'circumstances' can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transactions,

general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible.....'circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than *res gestae*. Circumstances must have some proximate relation to the actual occurrence It will be observed that 'the circumstances are of the transaction which resulted in the death of the declarant'.

20. In *Sharad Birdhichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738 , Fazal Ali, J, on a review of the authorities, laid down the following propositions :

(1) Section 32 is an conception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of Clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tall-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.

21. Sabyasachi Mukharji, J while concurring with the view of Fazal Ali, J. sounded a note of caution. He has observed as follows :

'I would, however, like to state that this approach should be taken with a great deal of caution and care and though I respectfully agree with Fazal Ali, J. that the test of proximity cannot and should not be too literally construed and be reduced practically to a cut-and-dried formula of universal application, it must be emphasised that whenever it is extended beyond the immediate, it should be the exception and must be done with very great caution and care. As a general proposition, it cannot be laid down for all purposes that for instance where a death takes place within a short time of marriage and the distance of time is not spread over three or four months, the statement would be admissible under Section 32 of the Evidence Act. This is always not so and cannot be so. In very exceptional circumstances like the circumstances in the present case such statements may be admissible and that too not for proving the positive fact but as an indication of a negative fact, namely raising some doubt about the guilt of the accused as in this case.'

22. Turning to the facts of the present case, it appears that the element of continuity is lacking. As seen earlier, the dispute over custody of the child was amicably settled between Sikha and Tapan on 5.5.83 and Sikha went back to her matrimonial home and lived there till her death on 15.6.83. It appears that Sikha forgot and forgave her previous ill-treatment and returned to her matrimonial home to live with her husband and child with a renewed hope for a happy future. We are, however, kept entirely in the dark about what happened during this vital period between 5.5.83 and 15.6.83. Though there was a background of ill-treatment and cruelty, in the absence of any evidence whatever it would be a mere conjecture to hold that there were renewed acts of cruelty which ultimately drove Sikha to commit suicide. There might have been altogether new transactions of a different nature having proximate relation to her death. It cannot, therefore, be said with any amount of assurance that the distant transactions as sought to be proved by the prosecution constitute one organic whole or that 'death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story'. In our opinion, the statements of Sikha have no proximate relation to her death and are, therefore, inadmissible under Section 32(1) of the Evidence Act.

23. Assuming, however, that the statements are relevant and admissible under Section 32(1) of the Evidence Act and that Sikha was treated by the appellants with continuous cruelty which ultimately goaded her to commit suicide, does it alone, without anything more, prove beyond any reasonable doubt that the appellants were guilty of abetment to commission of suicide by Sikha? In our opinion, the answer must be in the negative. The definition of abetment in Section 107 of the Indian Penal Code includes not merely instigation which is the normal form of abetment but also conspiracy and intentional aiding. In order that there may be abetment, there must be either instigation or intentional aiding or engaging in a conspiracy as laid down in this Section. The word 'instigate' literally means to goad, or urge forward or to provoke, incite, urge or encourage to do an act, by using now an evil act. Instigation may consist not only of direct incitement to crime but it may be wilful misrepresentation or concealment of a fact which a person is bound to disclose (Explanation 1). In other words, a person may instigate directly or indirectly. The illustration to Explanation 1 presents a case in point. 'A' knows that 'B' is not 'C'. There is a warrant for the arrest of 'C'. He represents to the

Officer executing the warrant that 'B' is 'C', and thereby causes the Officer to arrest 'B'. The Officer is guilty of wrongful restraint, but 'A' is guilty of abetment. Here 'A' was not under any legal obligation to assist the Officer, but having preferred his assistance he could not deceive him. The third Clause 'intentionally aids by any act or illegal omission' must be read with Explanation 2 which defines when a person is said to aid the doing of act. Explanation 2 is in the following terms :

'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 act.' The dictionary meaning of the word 'facilitate' is to render easier, to promote, to help forward, to lessen the labour of, to free from difficulty or impediment, or the assist. In order to amount to abetment aiding or facilitating the commission of the crime must have been intentional. In *Shri Ram v. The State of U.P.*, : [1975]2SCR622 , the Supreme Court has held that in order to constitute abetment, the abettor must be shown to have 'intentionally' aided to 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. The person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invites. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and, therefore, active complicity is the gist of the offence of abetment under the third paragraph of Section 107.

24. It is clear from the above that in order to amount to abetment there must then be mens res or community of intention. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. The mere fact that the deceased was treated by the appellants with cruelty is not sufficient to prove that the appellants abetted commission of suicide by the deceased. In the absence of proof of any direct or indirect acts of incitement to the commission of suicide or a conspiracy or any act

facilitating the commission of suicide it cannot be said that the appellants were guilty of abetment to commission of suicide by the deceased merely because they treated the deceased with cruelty. From the mere fact of cruelty, it cannot be inferred that the persons guilty of cruelty intended the commission of suicide and with that end in view perpetrated the acts of cruelty. Mens res or complicity of the appellants as referred to above cannot be inferred from the mere proof of cruelty. In the absence of proof of any other facts and circumstances unerringly pointing to direct or indirect incitement or intentional facilitation of the commission of suicide, the mere fact of cruelty is not sufficient to prove the offence under Section 306, Indian Penal Code.

25. The next question which is of great importance is whether the presumption as to abetment to suicide under the newly inserted Section 113A. of the Indian Evidence Act can be pressed into service in this case. Section 113A was inserted in the Evidence Act with effect from 25.12.83 by Criminal Law (Second Amendment) Act, 1983. It reads as follows :

'113A. 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 7 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 498A of the Indian Penal Code (45 of 1960).' Simultaneously, Section 498A was also inserted in the Penal Code by the same Amendment Act as follows :

'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 3 years and shall also be liable to fine.Explanation : For the purposes of this Section 'Cruelty' means :

(a) Any wilful conduct which is of such a nature as it likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(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 or on account of failure by her or any person related to her to meet such demand.'

26. The occurrence took place on 15.6.83 long before Section 113A came into force. Now, the question is whether Section 113A of the Evidence Act has retrospective operation and applies to the present case. Mr. Ghosh, learned Advocate appearing for the appellants has contended that this provision though inserted in the Evidence Act has a substantive character and in effect changes the ingredient of abetment as defined in Section 107 and consequently the offence under Section 306, Indian Penal Code and it might as well have been inserted as Explanation to Section 306, Indian Penal Code. He has alternatively contended that the provision of Section 113A, even if be regarded as a mere change in the rule of evidence, it should not be given retrospective effect inasmuch as the change of the rule is for the purpose of conviction which operates harshly and inequitably on the accused. The learned Advocate appearing for the State has contended that this being a change in the mere procedural law has retrospective operation and is applicable to the present case.

27. Let us take up the alternative argument of Mr. Ghosh for consideration first. It is true that the Law of Evidence is part of the Law of the Procedure and nobody has a vested right in a particular procedure. 'Statutes relating to rules of evidence are not subject to the general principle which looks with disfavour on giving statutes retrospective effect, unless, of course, vested rights are disturbed or contractual obligations impaired, or new rights created. As a result, a statute declaring a rule of evidence may be applied to actions already accrued as well as to those which are already pending in Court, unless legislative intent negatives such operation. In criminal cases, however, even rules of evidence should not be given a retrospective (Kittrell v. State 89 Miss 666). At least this is by far the better

view, as will appear more fully later.' (Crawford's 'The Construction of Statutes'- 1940 Edition pages 588-589). Alteration of the rules of evidence for the purpose of conviction is ex post facto law which should not be given retrospective effect. In one of the early decision of the United State Supreme Court, Colder v. Bull 3 Dall. 368 : 1 L.E.D. 648, the definition of the term ex post facto, as used there and this has been followed since by practically all the Court and law writers, is in this language :

'1st. : Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action;

2nd. : Every law that aggravates a crime or makes it greater than it was, when committed ;

3rd. : Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime when committed ;

4th. : Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offence, in order to convict the offender.' .

28. The 4th and the last item referring to laws changing the legal rules of evidence is relevant for our present purpose. The new rule of evidence as incorporated in Section 113A squarely comes within the purview of the 4th item referred to above. As seen earlier, the mere proof of cruelty, without anything more, would have been insufficient to prove the offence of abetment to suicide under Section 306, Indian Penal Code in accordance with the definition of abetment in Section 107, Indian Penal Code and the appellants could not, therefore, be convicted under the existing law regarding the rules of evidence without pressing into service the presumption under Section 113A. The effect of the Amendment is that the prosecution is relieved of the onus to prove the ingredients of abetment to suicide beyond reasonable doubt under the amended law, in case of a suicide by a married woman within 7 years of marriage, mere proof of cruelty within the meaning of Section 498A, Indian Penal Code which was also simultaneously inserted, to a married woman by the husband or any relative of the husband would

entitle the prosecution to the presumption that such suicide had been abetted by her husband or by such relative of her husband and the onus would then shift to the accused to prove that he did not abet the said suicide. Section 113A clearly provides for a less or different testimony than the law required at the time of the offence in order to convict the offender causing hardship to the accused. In our opinion, Section 113A must, therefore, be regarded as ex post facto law having no retrospective operation.

29. The learned Advocate for the State has referred to a Single Bench decision of the Punjab and Haryana High Court in Ramesh Kumar v. State of Punjab, 1986 Cri. LJ 2087, wherein the learned Judge has held that Section 113A of the Evidence Act is applicable to the crime committed before insertion of the section in the Act on the ground that being part of the Law of Procedure, changes in the rules of evidence like changes in other rules of procedure are retrospective in nature. The learned Judge has not considered the exception in the case of change of the rules of evidence for the purpose of conviction in a criminal trial as referred to above. We respectfully differ from him and hold that Section 113A of the Evidence Act is not applicable to a case of suicide by a married woman committed before it came into force, i.e., 25.12.83. We need not, therefore, consider whether Section 113A has in effect altered substantive law.

30. For the foregoing reasons, it, must be held that the prosecution has failed to prove the charge under Section 306, Indian Penal Code beyond reasonable doubt and the order of conviction and sentence passed by the Court below cannot be sustained. The appeal is accordingly allowed and the order of conviction and sentence is set aside. Appellant No. 1 Smt. Niharbala Banerjee who is on bail is discharged from her bailbonds. Appellant No. 2 Tapan Kumar Banerjee who is in jail be forthwith set at liberty, if not wanted in connection with any other case.

A.C. Sengupta, J.

31. While fully agreeing with the finding of my learned brother that in the present case the appellants could not be legally convicted of the charge under Section 306 of the Indian Penal Code on the basis of the Authority he has quoted, I may add

that one of the basic principles of the criminal jurisprudence is that a person can only be convicted for his act if that act can be found to be an offence on the basis of the evidence adduced considered in the light of the laws, both substantive and procedural, prevalent at the time of the commission of that act. Before the introduction of Section 113A of the Evidence Act which was brought into the statute book after the commission of the alleged offence involved in the present case, the act of cruelty and torture done to Sikha, the wife of the appellant No. 2, could not be found to be acts of abetment to suicide punishable under Section 306 of the Indian Penal Code because it cannot be held that whenever a person is subjected to cruel treatment that person will commit suicide and consequently, that the person responsible for such cruel acts had either the knowledge or intention that the person subjected to such cruelty would commit suicide. Something else is necessary to hold the person responsible for the acts of cruelty and torture to be guilty of an offence punishable under Section 306 of the Indian Penal Code. That something has been discussed by my Learned brother while considering the ingredients of Section 107 of the Indian Penal Code, Thus, according to law then existing the acts with regard to cruelty and torture cannot bring home the charge under Section 306 of the Indian Penal Code against the accused persons.

32. That being the position, it cannot be said that the appellant committed any offence punishable under Section 307 of the Indian Penal Code at the date of the occurrence. In order to convict a person of an act as already stated the material point for consideration is whether the act complained of could be found to be an offence at the date of its commission according to the laws, procedural and substantive, prevalent at the time of its commission. As already found, the acts complained of could not be found to be an offence punishable under Section 306 of the Indian Penal Code at the time of the occurrence on the basis of the evidence on record considered in the light of the laws then prevailing. The accused persons are, therefore, entitled to be acquitted.