

Baldev Raj and ors. Vs. State

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Court : Jammu and Kashmir

Decided On : Nov-03-2008

Reported in : 2008(3)JKJ294

Judge : J.P. Singh, J.

Appellant : Baldev Raj and ors.

Respondent : State

Advocate for Pet/Ap. : Mr. V. R. Wazir

Disposition : Appeal allowed

Judgement :

J.P. Singh, J.

1. Appellants have been convicted by learned Ist Additional Sessions Judge, Jammu under Sections 498-A and 306 RPC for treating Ms. Garu Devi with cruelty and abetting her suicide, and sentenced to undergo imprisonment for three years and a fine of Rupees Ten thousand and in default thereof to simple imprisonment for four months, under Section 306 RPC, besides imprisonment of one year and fine of Rupees Ten thousand and in default of payment of fine to simple imprisonment for four months under Section 498-A RPC vide his judgment and order of November 28, 2002.

2. Calling in question their conviction and sentence, the husband, father-in-law and mother-in-law of Garu Devi deceased, Have approached this Court by this appeal.

3. Mr. V. R. Wazir, Learned Counsel for the appellants, submits that the learned Ist Additional Sessions Judge, Jammu, the trial court, had erred in relying upon Garu Devi's Dying Declaration which, in view of divergence in the statements of the Investigating Police Officer, who had recorded the Dying Declaration and PW-Dr. Satinder Dhar, who had certified her fitness to make the statement; was unworthy of credence additionally because the Investigating Police Officer had not indicated in the Dying Declaration that it was the translated version of the statement of the deceased which she is stated to have made in Dogri language and recording conviction and sentence against the appellants. Learned Counsel submitted that the facts disclosed by the prosecution and projected during the trial would not, even otherwise, making out any case, on the basis whereof, the appellants' conviction under Section 498-A/306 RPC may be justified.

4. Learned Counsel places reliance on Gananath Pattnaik v. State of Orissa reported as : [2002]1SCR845 and Gopal Dass v. State of Jammu and Kashmir reported as to support his submissions.

5. Per contra, Mr. S.C. Gupta, learned Additional Advocate General submitted that although there was discrepancy regarding the time when the statement of Garu Devi is stated to have been recorded, in the statements of the Investigating Police Officer and PW Dr. Satinder Dhar, yet the evidence on record was sufficient enough to uphold appellants conviction and sentence under Sections 306/498-A RPC.

6. I have considered the submissions of learned Counsel for the parties and gone through the evidence on record.

FACTS

7. Prosecution has founded its case on the statement of Garu Devi, which is stated to have been recorded by PW-Durga Dass, the Investigating Police Officer on July 08, 1998, in Government Medical College Hospital, Jammu after having obtained

certificate from PW- Satinder Dhar, the doctor on duty, about the fitness of Garu Devi to make statement.

8. Garu Devi says in her statement that she was married to appellant-Balev Raj about six years ago and had given birth to one female child who was four years old and a male child who was 8/9 months of age. Right from the very beginning, her husband and parents-in-law had been quarrelling with her and would accuse her of having brought less dowry. She had not, however, told anyone about all this in her parental house including her surviving Aunt. She had been beaten by her husband and father-in-law in the evening and fed up with the daily quarrel in the family, she had put herself on fire by sprinkling Kerosene at about 10.30 p.m on July 08, 1998. While extinguishing the fire, her husband too had burnt his hands and her father-in-law had also got burns when she had struck against the Cot where he was sleeping. She had been brought to the Hospital for treatment by her husband and parents-in-law.

9. In order to prove its case, the prosecution had examined (1) PW-Dr. Satinder Dhar, who, on being requested by the Investigating Police Officer, had examined Garu Devi and found her fit to make statement. PW-Durga Dass who had recorded Garu Devi's statement in presence of PW-Dr. Satinder Dhar who had attested it, (2) PW-Bishan Dass, the Uncle of the deceased who had stated that he had seen the deceased last time when she had visited his place and wanted to tell him something about the appellant. Her husband, Baldev Raj would not, however, permit her to stay with him because he was apprehending that she may not open up her mind to him, (3) PW-Tarseem Lal, the brother of the deceased, who had deposed that his sister was comfortable with her husband for about three years of their marriage, whereafter the appellants had started troubling her. This according to him was because of his refusal to marry Rita Devi, appellant Gian Chand's daughter. Appellant would not come to their place and would neither permit the deceased to visit them. He had, however, assured her sister on his visit to her in the year 1998 that he would give her more dowry on Nankaran Ceremony of her son. He had invited the appellants to his place at the betrothal ceremony of her second sister but they had not obliged him and her sister alone had come to attend the ceremony. He had not thereafter met her sister, (4) PW Kasturi Lal,

another Uncle of the deceased who had stated that Garu Devi had told him on his visit to her in the Hospital that her parents-in-law and husband had been treating her with cruelty and had beaten her because of which she had burnt herself by pouring Kerosene on her body. Baldev Raj appellant wanted to give her sister in marriage to the brother of the deceased, on whose refusal the appellants had started treating the deceased with cruelty, (5) PW Swaran singh has stated that by that time he had reached Hospital, Garu Devi had already expired, (6) PW-Durga Dass, who is the Investigating Police Officer of the case had stated that during his posting in Police Station, Akhnoor he had received a wireless message from Government Medical College, Jammu on July 08, 1998 that Garu Devi had been admitted in Hospital in a burnt condition. He was directed by the Station House Officer of the Police Station to record her statement. He, accordingly, requested PW-Satinder Dhar to certify as to whether or not Garu Devi was fit to make statement and after getting the fitness certificate from the doctor on duty, he had recorded EXPWDD/1, on the basis whereof, FIR No. 124/1998 had been registered in the Police Station. According to him, Garu Devi had made her statement to him in presence of the doctor in Dogri language which had been transcribed by him in Urdu language. He had recorded the statement of Garu Devi around 2.00 p.m on July 08, 1998 and had reached Police Station around 6.00 p.m. He had admitted in his statement that he had prepared memos of Injury forms of appellants-Baldev Raj and Gian Chand by antedating them on the request of the Medical Officer, (7) PW-Dr. R. K. Gupta, who had examined deceased Garu Devi on July 25, 1998 had stated that he was posted as Medical Officer Sub Divisional Hospital, Akhnoor and had found burn injuries on her body. She had been referred by him to Government Medical College, Jammu for hospitalization and further management. He had examined appellants-Gian Chand and Baldev Raj on the same day noticing three bum injuries on Gian Chand and five on appellant Baldev Raj And (8) PW-Dr. Bhupesh Khajuria, who had stated about his conducting the postmortem examination of Garu Devi on July 09, 1998. He had found 94% of her body to have been burnt.

10. When examined under Section 342 of the Code of Criminal Procedure, the appellants had denied treating Garu Devi with cruelty and abetting her suicide. They had produced DWs-Godawari Devi and Shanti Devi besides Sita Ram and

Naseeboo Ram as their witnesses to support their plea of innocence.

11. I would now examine the submissions made at the Bar to find out as to whether or not the trial Court was justified in holding the appellants guilty of offences punishable under Sections 306/498-A RPC and punishing them accordingly.

12. Before examining the other evidence on records, regard needs to be had to the discrepancy which the appellants counsel had indicated in the statements of PW-Durga Dass and PW-Dr. Satinder Dhar regarding the time when EXPW DD/1, the Dying Declaration had been recorded in the hospital.

13. According to PW-Durga Dass, he had recorded EXPW DD/1 around 2 p.m of 8th July, 1998 after obtaining certificate from PW-Dr. Satinder Dhar and had reached his Police Station at Akhnoor, which is about 30 Kms from Government Medical College Hospital, Jammu, by 6 p.m. Dr. Satinder Dhar, on the other hand, is categorical in stating that he had issued fitness certificate of Garu Devi to PW-Durga Dass at 7.45 p.m on 8th July, 1998. EXPW-SD is the certificate which PW-Satinder Dhar had issued to PW Durga Dass. This reads as under-

She is fit for statement.

Sd/-

Dr. Satinder Dhar

7.45 p.m. 8/7/98

14. Dr. Satinder Dhar's statement is supported by the certificate he had given on 08.07.1998 and in that view of the matter it may be difficult to accept PW Durga Dass's statement that he had recorded Garu Devi's Dying Declaration around 2 p.m on 08.07.1998 in the absence of any explanation by the prosecution and the learned Additional Advocate General to reconcile this major contradiction in the statements of the two prosecution witnesses.

15. Yet another circumstance which raises doubt in accepting EXPW DD/1 as the true reflection of the statement which the deceased is stated to have made b PW-

Durga Dass is PW-Durga Dass's admission that EXPW DD/1 was the translated version of the statement of Garu Devi which she had made in Dogri Language. There is no certificate on EXPW DD/1 certifying the statement to be the true translation of Garu Devi's statement in Dogri EXPW-DD/1 does not even contain any such endorsement on the basis whereof it may be said that the translated version of the statement had been read over and explained to Garu Devi in Dogri Language and she had accepted it to be her correct statement.

16. That apart, Garu Devi, as stated by PW Dr. Satinder Dhar was in pain when she had been examined by PW Durga Dass. The expressions used and the manner in which the translated version of Garu Devi's statement appears in EXPW DD/1 does not inspire confidence as such a coherent and consistent statement, may not be expected from a person who had burnt 94% of her body area and was in pain at the time of making statement. The statement does not contain even a single word of the Dogri language in which the statement is stated to have been made by the deceased.

17. Above noticed discrepancies in recording EXPW DD/1 would thus put the Court on guard as this statement, by itself, may not be sufficient to uphold the conviction of the appellants.

18. I would, therefore, proceed to find out as to whether the prosecution had produced any other evidence in the trial Court which may justify appellants' conviction.

19. The other evidence which the prosecution had produced is all hearsay evidence as none of the prosecution witnesses had witnessed appellants alleged cruel treatment with the deceased. None of these witnesses had ever seen any of the appellants either raising demand of dowry or beating or otherwise maltreating and taunting the deceased of having brought dowry which had absolutely no value. The prosecution story that right from the very beginning of the deceased's marriage, she had been accused of having brought less dowry and the appellants had been taunting and beating her, is not supported by any evidence on records. On the other hand, statement of PW-Terseem Lal, the real brother of the deceased, that the deceased had been living comfortably with her husband for

three years of their marriage and the appellants had started troubling her when he had refused to oblige the appellants to accept Rita Devi, appellant Gian Chands daughter, in marriage, demolishes the very basis of the prosecution story that the appellants had been maltreating the deceased right from the very beginning and fed up with the daily quarrels in the family, she had committed suicide for which the appellants were responsible. Statement of Tarseem Lal that the appellants had started troubling her sister when he had refused to marry appellant Gian Chands daughter gets further support from another prosecution witness Kasturi Lal who had stated that the appellants had started troubling the deceased when Kasturi Lal had refused to marry Gian Chands daughter Rita Devi.

20. The version given by PW-Tarseem Lal and Kasturi Lal that the deceased had been putting up comfortably with her husband for three years of their marriage and the trouble in the family had started only on refusal of PW Tarseem Lal to marry appellant Gian Chand's daughter, is not reflected in EXPW-DD/1 and as against this, a contrary version appears in the Dying Declaration that the appellants had been maltreating the deceased and quarrelling with her right from the very beginning of the marriage because of which she had committed suicide. This contradiction in the version projected in the Dying Declaration and that of the aforementioned two witnesses, too discredits the prosecution story.

21. Another blow which the prosecution story received from the statement of the brother of the deceased is his reported silence in not immediately reporting to the police that the appellants were responsible for the suicide of the deceased. This silence, according to the witness, was because of his being in two minds as to whether or not should he report the matter to the police despite the fact that his sister with 94% burns stood admitted in the hospital.

22. All these factors, taken together indicate that the Investigating Police Officer had not properly investigated the occurrence so as to elicit truth and find out the real cause for which Garu Devi had taken the extreme step of ending her life. The Investigating Police Officer does not appear to have taken requisite steps in this direction. He had failed to take necessary coercive measures to record the statements of those persons belonging to the appellants village who had the

occasion to see the conduct of the appellants vis-a-vis the deceased to find out as to whether or not the deceased had been treated by the appellants with cruelty and what was the real cause of her committing suicide.

23. Thus in the absence of any evidence on records proving that the appellants had treated deceased Garu Devi with cruelty/appellants' conviction by the learned 1st Additional Sessions Judge, Jammu cannot be justified.

24. Looked from a purely legal angle, the prosecution case against the appellants may not even otherwise sustain itself because the evidence the prosecution had led in the case was inadmissible insofar as it pertained to charge under Section 498-A RPC. This is so because none of the prosecution witnesses had actually seen the appellants either beating the deceased or maltreating or taunting her of not bringing sufficient dowry and their version about the maltreatment of the deceased was based on what had been allegedly conveyed to them by the deceased. The statement of the deceased appearing in EXPW-DD/1 that she had been maltreated and troubled by the appellants for not bringing enough dowry would be inadmissible in evidence, as Section 32 of the Evidence Act would not make such statement admissible as it did not relate to the cause of her death. I am supported in taking this view by *Gananath Pattnaik v. State of Orissa* reported as : [2002]1SCR845 where Hon'ble Supreme Court of India had held as follows:-

Learned Counsel for the appellant then submitted that the findings returned by the trial court regarding the cruelty within the meaning of Section 498-A of the Indian Penal Code are not based on any legal evidence.

To hold that the accused had once given pushes to the deceased which drove her to commit suicide is based upon the alleged testimony of PW 4 who is the mother of the deceased. We have minutely read the statement of the aforesaid witness and do not find any mention of her having seen the accused pushing the deceased which, in turn, could be held to be cruelty driving her to commit suicide.

Another circumstance of cruelty is with respect to taking away of the child from the deceased. To arrive at such a conclusion, the trial court has referred to the statement of PW 5, who is the sister of the deceased. In her deposition recorded in

the court on 4-5-1990 PW 5 had stated:

Whenever I had gone to my sister, all the times she was complaining that she is not well treated by her husband and in-laws for non-fulfillment of balance dowry amount of a scooter and a two-in-one.

and added:

On 3-6-1987 for the last time I had been to the house of the deceased Le. to her separate residence. Sworna, Snigdha, Sima Apa, Baby Apa accompanied me to her house on that day. At that time the deceased complained before us as usual and added to that she said that she is being assaulted by the accused now-a-days. She further complained before us that the accused is taking away the child from her, and that her mother-in-law has come and some conspiracy is going against her (the deceased). She further told that *mate au banchei debenahin*.

Such a statement appears to have been taken on record with the aid of Section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence under Section 304-B and such statement was admissible under Clause (1) of the said section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498-A of the Indian Penal Code and has to be termed as being only a hearsay evidence. Section 32 is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused.

25. The trial Court has, therefore, erred in holding the appellants guilty under Section 498A RPC on the basis of hearsay evidence.

26. Trial Courts finding that appellants were guilty under Section 306 RPC too is not even otherwise sustainable in the absence of any evidence produced by the prosecution to prove the ingredients of Section 107 RPC, for it is only when

ingredients of Section 107 RPC are held proved against an accused that he may be held to be an abettor for commission of any other offence. In order to succeed in the prosecution of an offence under Section 306 RPC, the prosecution is required to prove all the ingredients of Section 107 RPC against the offender (s). In the absence of any such proof, charge under Section 306 RPC may not be sustained. I am supported in taking this view by *Bhagwan Dass v. Kartar Singh and Ors.* reported as AIR 2007 SC 2015 where their Lordships of the Hon'ble Supreme Court of India had held as follows:

The only allegation against the appellant was that they harassed the deceased Shobha because she did not bring adequate dowry. Hence, it is submitted by the learned Counsel for the appellant that this amounted to abetment to suicide and hence was covered under Section 306 RPC, read with Section 107.

The word abetment has been defined in Section 107 IPC as follows: 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 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 the act, and thereby facilitates the commission thereof, is said to aid the doing of the act.

Learned counsel for the appellant has relied on the decision of this Court in *Brij Lal v. Prem Chand and Anr.* : [1989]2SCR612 . In that case it was held that:

Where there was overwhelming evidence that the accused had made the life of his wife intolerable by constantly demanding money and made it clear to her that if she wanted to die, she may do so on very same day and give him relief forthwith, thereby spurring her and goading her to commit suicide, the case would squarely fall under the first category of abetment under Section 107. On the other hand, learned Counsel for the respondents relied on the decisions referred to in the impugned judgment. Thus in *Netai Dutta v. State of West Bengal* : 2005 CriLJ1737 , where a suicide note was involved, this Court came to the conclusion that in the suicide note there was no reference to any act or incident whereby the appellant was alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to have committing suicide. Hence, it was held that there was no abetment to suicide.

Similarly, in *Mahendra Singh and Anr. v. State of M.P.* : 1996 CriLJ894 , it was observed by this Court that it is common knowledge that the words uttered in a quarrel or in the spur of the moment or in anger cannot be treated as constituting mens rea. In that case the appellant said to the deceased to go and die. As a result of such utterance, the deceased went and committed suicide. However, the Supreme Court observed that no offence under Section 306 IPC read with Section 107 IPC was made out because there was no element of mens rea.

In *Randhir Singh and Anr. v. State of Punjab* 2004 (13) SCC 129, it was observed that 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.

In the same decision, it was observed following the decision in *State of West Bengal v. Orilal Jaiswal* : 1994 CriLJ2104 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 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. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide. Vide *Kans Raj v. State of Punjab* 85 Ors. : 2000 CriLJ2993 , *Satvir Singh and Ors. v. State of Punjab and Anr.* : 2001 CriLJ4625 , *Smt. Shanti and Anr. v. State of Haryana* AIR 1991 SC 1261. In the present case, since no charge under Section 304B has been framed, obviously the accused cannot be convicted under that provision.

27. In the absence of any admissible and reliable evidence on records in proof of the prosecution story, the findings of learned Sessions Judge that he was satisfied from the evidence tendered by the prosecution that the appellants-accused had been intermittently maltreating the deceased demanding more dowry and they had compelled the deceased to commit suicide cannot be justified.

28. The judgment and order of learned 1st Additional Sessions Judge, Jammu dated 28th November, 2002 convicting the appellants under Sections 306/498-A RPC and sentencing them to imprisonment and fine as mentioned at the threshold, is, accordingly, set aside.

This appeal, therefore, succeeds and is, accordingly, allowed acquitting the appellants of charges under Sections 306/498-A RPC. The police challan against the appellants shall accordingly stand dismissed.