

Shri Baroda Nath Vs. the State of Assam.

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Court : Guwahati

Decided On : Nov-04-2010

Judge : MR. JUSTICE B D AGARWAL, J.

Acts : IPC - Section 306; Indian Penal Code(IPC) - Section 306/ 34.

Appeal No. : CRIMINAL APPEAL NO. 97 of 2008

Appellant : Shri Baroda Nath.

Respondent : The State of Assam.

Advocate for Def. : Mr. Z Kamar, Adv.

Advocate for Pet/Ap. : Mr. B K Mahajan, Adv.

Judgement :

1. The Appellant herein stands convicted under Section 306 of the Indian Penal Code vide impugned Judgment dated 06. 05. 2008 passed by the Learned Additional Sessions Judge (FTC) , Kamrup, Guwahati in Sessions Case No. 198(K) of 2006 under section 306/ 34 of the Indian Penal Code (IPC) . After convicting the appellant, he has been sentenced to undergo rigorous imprisonment for 5 (five) years and also to pay fine of Rs. 500/- with default stipulation of further rigorous imprisonment for 6 (six) months.

2. Heard Mr. B K Mahajan, learned counsel for the appellant. Also heard Mr. Z Kamar learned P. P. for the State of Assam. I have also gone through the impugned Judgment and evidence on record proffered by prosecution as well as the accused in the Trial Court. 3. Apparently, the record reveals that the marriage of the deceased with the appellant took place on 04. 03. 1998 and the deceased committed suicide on 10. 09. 2000 i. e. within a period of 2 = years. In view of the unnatural death of the deceased, her father lodged an FIR that was registered as Palashbari Police Station Case No. 113 of 2000 under Section 306 of the IPC. After investigation chargesheet was submitted against the husband and in-laws . However, after the trial the in-laws have been acquitted and the husband has been convicted as noted earlier.

As could be gathered from the records, as many as 9 (nine) witnesses were examined by the prosecution to prove the offence of abetment of suicide. Out of them one independent witness i. e. PW-8 has been declared hostile. PW-1 is the medical officer who had conducted autopsy on the dead body and in his opinion the death was caused due to consuming organo phosphorus pesticide, which is a poisonous substance. In fact the appellant did not challenge the factum of suicide due to consuming poison by his wife in the Trial Court. The remaining witnesses are either the relatives or independent witnesses from the informants village or from the village of the appellant. After scanning the evidence, it appears to me that out of seven non-official witnesses (excluding the hostile witness) three witnesses are supporting the appellant/ accused and three witnesses are pro- prosecution. The testimony of PW-4 is a balanced one. In other words only PWs- 2, 3 and 7 have spoken about the torture and abetment to suicide by the deceased. Out of these three witnesses, PW-2 is the father of the deceased, PW-3 was working as domestic help in the house of the informant and PW-7 is also distantly

related to the informant. In this way all the three witnesses can be termed as interested witnesses.

On the other hand, the witness defending the appellant includes one maternal aunt of the deceased (Pw- 9) . PWs 4 and 5 are independent witnesses and also the immediate neighbor of the appellant. These witnesses have admitted in the Chief examination itself that matrimonial relation between the husband and wife was sweet and cordial and they did not hear about any quarrel in between them. The aunt of the deceased (Pw-9) did not say anything about the matrimonial discord in the examination-in- chief. However, the entire deposition in the cross-examination is in favour of the accused. In the cross examination, PW-9 has admitted that she did not see any quarrel in between the appellant and the deceased. Not only that PW-9 has further gone to say that their relation was cordial and she was never complained about any torture to her niece. The testimony of PW-9 assumes additional significance because she is not only the aunt of the deceased but also used to live adjacent to the house of the appellant. Strangely PW-9 has not even spoken about day to day quarrel in between the husband and wife. After going through the entire testimonies of Pws- 5, 6 and 9, I do not get any reason to discard their testimonies. On the other hand, the pro-prosecution witnesses are all relatives of the deceased. PW-4 can be said to be a neutral witness. Although this witness has stated that on few occasions, the deceased came to her mothers house and reported about the torture but at the same time, PW-4 has stated that the deceased did not disclose the reasons of torture. PW-4 has further stated in the cross examination that he had also visited the house of the appellant to meet the deceased. But, in his presence, the deceased was not misbehaved. Be that as it may, PW-4 has not given a concrete evidence of high degree of cruelty which can amount to instigation for committing suicide.

8. In the case of Harijan Thiropala vs- the P. P. of High Court of A. P. (2002) Cr. L. J. 3751, the Honourable Supreme Court has held that if two views are possible on the evidence produced in the case, one indicating the guilty of the accused and on the other to his innocence, the view favourable to the accused is to be accepted. In fact this cardinal principle in criminal jurisprudence is being regularly followed. It is true that in the aforesaid case, the Apex Court has given a rider that the case of prosecution must be adjudged as a whole having regard to the totality of the evidence and the approach of the Court must be intricate and not truncated of isolated one.

9. In the case before me, the testimony of PWs- 5, 6 and 9 have totally eclipsed the prosecution witnesses favouring the prosecution story. In other words, it is not a case where it can be said that the balance of evidence tilts in favour of the prosecution. Rather the average testimony is more in favour of the appellant than to the prosecution and as such it is a fit case in which the theory of benefit of doubt deserves to be adopted.

10. The above apart in the case of Randhir Singh vs- Punjab (2004) 13 SSC 129 the Hon ble Supreme Court has held that while recording the conviction under section 306 of the IPC , the Court should also take into consideration the ordinary nature and behaviour(sic) of the victim and there should be clear evidence of instigation of abetment. The proposition laid down by the Apex Court to draw the inference of abetment to suicide can be fruitfully reproduced as follows:

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process

of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence Section 306 IPC. In State of W. B. vs- Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced

individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a find that the accused charged of abetting the offence of suicide should be found guilty.

11. In the case before me, the father of the victim has admitted in the cross examination that his younger daughter had also attempted to commit suicide. The aunt of the deceased (pw-9) has also admitted in the cross examination that the deceased had also taken poison, ostensibly to commit suicide, prior to her marriage. In this way the deceased and her sister had the tendency to commit suicide before her marriage of the deceased with the appellant. Besides this, there is no specific, clear and cogent evidence as to what kind of unlawful demand of dowry was made from the parents house.

12. Having regard to all the aspects of the case, it is a fit case that the appellant should be given the benefit of doubt and the same is given by me.

13. In the result, the appeal stands allowed. The impugned judgment is hereby set aside. The appellant is directed to be set at liberty forthwith unless wanted in any other case. Since, the appellant is in judicial custody, the Registry is directed to issue the release order.

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