

Jetha Ram and Another Vs. the State of Rajasthan and Another

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Court : Rajasthan

Decided On : Nov-29-2011

Reported in : 2012CrLJ2459

Judge : The Honourable Mrs. Justice Nisha Gupta

Appeal No. : S.B. CR. APPEAL NO. 434 & 603 OF 2009

Appellant : Jetha Ram and Another

Respondent : The State of Rajasthan and Another

Judgement :

1. These two appeals have been preferred against the judgment passed by learned Sessions Judge, Jaisalmer in Sessions Case No.38/2008 whereby the learned Sessions Judge has acquitted the appellant Jetha Ram for the offences under Sections 304B and 498A IPC but at the same time, the appellant Jetha Ram has been convicted for the offence under S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. Section 306 IPC and he has been awarded seven years' rigorous imprisonment and a fine of Rs.5000/- and in default, he has to further undergo two years' simple imprisonment.

2. The present petitioner has preferred appeal against the order of conviction and sentence for the offence under Section 306, IPC, whereas the State has preferred appeal against acquittal of Jetha Ram and others for the offence under Sections 304B and 498A IPC.

3. Both the appeals are arising out of the common judgment and hence both these appeals are being decided by this common judgment.

4.. Brief facts of the case are that on 8.6.2008 at about 10.40 p.m, a written report (Ex.P.1) has been submitted before the Police Station, Nachna District Jaisalmer by complainant Oma Ram, who is the brother of deceased Geeta, stating therein that his sister Geeta was married with appellant Jetha Ram in April, 2005 and according to their capacity, dowry has been given at the time of marriage but the present appellant and his parents used to harass the complainant's sister in connection of demand of dowry. Many S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. times, conciliations were made but the situation has never been changed. Five days back, Geeta came to the house of her parents but the present appellant took her to in-laws place, where in the presence of Parma Ram, she has been beaten and when Parma Ram was going to inform the incident to the persons of the village, he received a telephone call that Geeta has been died. It has been stated that Geeta's husband, mother-in-law Keku, father-in-law Sona Ram and brother-in-law Deepa Ram have murdered her.

5. On the basis of above report, FIR No.38/2008 has been registered and after investigation, charge-sheet has been filed against the present appellant and others for the offences under Sections 304B and 498A IPC. The case has been committed to the court of Sessions Judge, Jaisalmer. The present appellant and the others have been charged for the offences under Sections 498A and 304B IPC. Nine witnesses have been examined by the prosecution. The statements of the accused-persons were recorded under Section 313, Cr.P.C. and five witnesses have been produced as defence witnesses. After conclusion of the trial, the learned Sessions Judge has convicted the present appellant as above and acquitted the other accused persons from the offence under Sections 498A S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. and 304B IPC and at the same time, also acquitted the present appellant for the offence under Section 304B and 498A IPC. Hence Jetha Ram and State both have preferred these appeals.

6. Heard learned counsel for the appellant and the learned PP and perused the record.
7. The contention of the learned Public Prosecutor is that there is ample evidence on record to prove that the present appellant has given cruel treatment to Geeta. Oma Ram and others witnesses have categorically stated that present appellant and others were in habit of ill-treating Geeta in connection of demand of dowry and specific incidents have been narrated by Oma Ram and PW-4 Parma Ram and other witnesses have also specifically corroborated the prosecution version and hence the present appellant and others should be convicted for the offence under Section 498A and 304 B IPC.
8. Per contra, the appellant Jetha Ram has submitted that there are material contradictions in the statements of the witnesses. There is no infirmity in the order of acquittal and at the same time, he has also submitted that there is no S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. evidence which can show that the present appellant, in any way, abetted or instigated the offence or he committed any cruelty to the deceased and hence he should be acquitted of the offence under Section 306 IPC.
9. To sustain a conviction under Section 304B IPC, it is necessary that (1) the death has been caused under unnatural circumstances and (2) within a period of 7 years from the marriage and (3) also that it has been shown that soon before her death she was subjected to cruelty or harassment in connection of demand of dowry by husband or his relative.
10. As far two ingredients are concerned, there is no dispute about the fact that Geeta has died unnatural death within 7 years of her marriage. As regards factum of cruelty, consideration of evidence is essential.
11. PW-1 Oma Ram has lodged the FIR. He is also brother of the deceased. In examination-in-chief, he has stated that Jetha Ram and others accused persons were ill-treating his sister and they were asking for more money and to allot the land in their names, but in cross-examination, he has S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. specifically stated that he never

reported any incident to the police or to any person of his community or to the Sarpanch. He has also admitted in his cross-examination that in his previous statement recorded during investigation, he had not stated anything about the ill-treatment in connection of demand of dowry with the deceased. Further, he has specifically admits that Geeta used to state that he had to work all domestic chores and she has no time to relax and this was the bone of contention of the whole dispute.

12. PW-2 Smt. Phusi, who is mother of the deceased, has specifically stated that she had never seen any visible injury on the body of the deceased and she has also specifically admitted that Geeta used to complaint that she has to work all domestic chores and she has no time to relax. Same story has been narrated by PW-3 Smt. Kamla, who is aunty of the deceased.

13. PW-4 Parma Ram is the brother of deceased. He has also stated that the appellant and other family members were using to ask for more money and land but these allegations are not narrated in the FIR or in the previous statements of the witnesses which are recorded during the course of S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. investigation. He has also admitted that ill-treatment due to demand of dowry has not been written in his previous statement Ex.D.2 and hence these witnesses have improved their versions before the court and the learned trial court has rightly considered these improvement and taking note of the fact that all the witnesses are relatives and interested witnesses to the deceased and hence their statements should be considered cautiously and the learned trial court has specifically came to the conclusion that there is no reliable evidence that the present appellant and others had committed any cruelty to the deceased in demand of dowry, but rather there was a dispute regarding domestic work and there is a difference between Jetha Ram and the deceased regarding going to her parents' house and in this connection DW-1 Kastura Ram has been produced.

14. The learned PP has submitted that Kastura Ram is the interested witness as he is the uncle of accused Jetha Ram. It is not in dispute that Kastura Ram is the uncle of appellant Jetha Ram, but PW-1 Oma Ram and PW-4 Parma Ram have

specifically stated that when Parma Ram wants to take her sister to their place and Jetha Ram was not agreeable, Parma Ram went to Kastura Ram to explain the situation and as such Kastura Ram is the witness of the incident according to PW-4 S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. Parma Ram. Kastura Ram has specifically stated that he never seen Jetha Ram and other accused to ill-treating the deceased in connection of demand of dowry and he had specifically stated that Parma Ram had told him that Jetha Ram and other accused persons are not sending Geeta to her parents' house and when he asked Jetha Ram, Jetha Ram specifically stated that Geeta is ill, he want to take her to Bikaner for check up and after that he will send Geeta deceased to her parents' house or Parma Ram will come back again and he can take her sister and hence looking at the above, the whole controversy rest upon the fact that Parma Ram and Geeta want to go back to Geeta's parents' house, whereas Jetha Ram was not willing to send her as she was not well. It has been also stated that Jetha Ram has bring Geeta from her parents' house for preparing an identification card and for which photo of Geeta was also needed. The learned trial court has rightly appreciated the evidence on record and looking at the above, the prosecution has utterly failed to establish that deceased has ever been treated with cruelty in connection of demand of dowry and hence her acquittal for the offence under Sections 304B and 498A IPC has rightly been arrived at.

15. The appellant has assailed the conviction for the offence S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. under Section 306, IPC and his contention is that there is no evidence against him that he has, in any way, instigated the deceased to commit suicide and his conviction under Section 306 is not sustainable.

16. Before considering the merit of the case, it is necessary to quote the provisions of Sections 306, IPC which reads as under:-

“306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

17. A bare perusal of above goes to show that abetment involves a mental process of instigating a person or intentionally aiding that person in doing a particular thing and Section 107, IPC defines abetment 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, S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal.

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, an 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 wilful 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 be instigate the doing of that thing.”

18. The offence of abetment will constitute when a person abets the doing of a thing when (i) Instigated any person to do that thing; or, (ii) Engaged 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, an in order to the doing of that thing and (iii) Intentionally aids, by any act or illegal omission, the doing of that thing. Hence either of these things are essential to S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. complete abetment as a crime and the word “instigate” literally means to provoke, incite or persuade any person to do any thing and hence to convict a person under Section 306, IPC, it is necessary that there should be evidence of instigation or intentionally aiding as provided under three clauses of Section 107.

19. In the light of above, considering the prosecution evidence of the present case, PW-1 to PW-4 have nothing said about the instigation or intentionally aiding of any particular act.

20. The only contention of PW-4 Parma Ram is that Jetha Ram was not ready to send the deceased with him and he has beaten his wife.

21. The learned counsel for the appellant has submitted that the present appellant has not harassed, in any way, his wife, but for the sake of argument, if the prosecution case taken on face value, highest case of the prosecution is harassment to deceased and mere harassment cannot be termed as instigating or aiding a particular thing and hence conviction under Section 306, IPC could not be sustained. S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal.

22. The learned counsel for the appellant has relied upon the judgment reported in the case of Ramesh Chand and anr. v. State of Rajasthan (2008(3) 2220(Raj.) 2220) wherein it has been held that the charge and conviction of the appellant for the offence under Section 306, IPC is not sustainable mere on the allegation of harassment to the deceased. He has further relied upon the case reported in the case of Bhagwan Das v. Kartar Singh and others ((2007) 11 SCC 205) wherein it has been held as under:-

“It often happens that there are disputes and discords in the matrimonial home and a wife is harassed by the husband or her in-laws. This, however, would not by itself and without something more attract Section 306 IPC read with Section 107 IPC. Thus 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.”

23. He has placed further reliance upon the judgment reported in the case of Mahendra Singh and another v. State of M.P. (1995 AIR SCW 4570) wherein it has been held that mere allegation of harassment made by deceased against accused is not sufficient to constitute the offence under S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. Section 306, IPC. Reliance has also been placed upon the judgment reported in the case of Kishangiri Mangalgiri Goswami v. State of Gujarat (2009(4) RLW 2930(SC)) wherein it has been held that in the cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not

enough. In the present case, there is no evidence that the present appellant has, in any way, instigated or aided or provoked her wife to commit suicide and hence the conviction under Section 306, IPC is not sustainable.

24. The learned PP has placed reliance on the provisions of Section 113A of the Indian Evidence Act, which reads as under:-

“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 seven 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 S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.- For the purpose of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)”

25. To base a conviction on the strength of Section 113A of the Indian Evidence Act, it is necessary that it should be shown that the woman has committed suicide, such suicide has been committed within a period of seven years from the date of her marriage and the husband or his relative, who charged, have subjected her to cruelty. On the existence and proof of these above circumstances, the Court may presume that such suicide had been abetted by her husband or by such relative of her husband. In the present case, there is no dispute about the fact that the deceased has committed suicide and this suicide has been committed within the period of seven years of her marriage but other ingredients which are necessary to attract the applicability of Section 113A, are missing. The prosecution has utterly failed to establish that the present appellant, in any way, subjected the deceased with cruelty and hence the prosecution cannot rest on the presumption of Section 113A. S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal.

26. In these circumstances, the evidence goes to show that there was a normal dispute between the deceased and her husband regarding not sending the deceased to her parents' house and it cannot be presumed as instigating or abetting the offence. The allegation of cruelty and demand of dowry are vague and ill-founded as discussed earlier and hence the presumption should not be drawn.

27. The learned counsel for the appellant has also submitted that there is enmity between the present appellant and the complainant which has been clear from Ex.P.1 itself wherein it has been stated that cousin sister of the complainant party was died and the allegation has been levelled against the maternal uncle of the present appellant and due to this enmity, present case has been lodged. Specific questions have been put to Oma Ram and other witnesses, which also goes to show that there was some difference between the complainant and the present appellant on the above issue also.

28. The learned counsel for the appellant has also submitted that the witnesses, who are neighbours of the present appellant, had not corroborated the prosecution story and the S.B.Cr. Appeal No.434/2009 Jetha Ram vs.The State and connected appeal. investigating officer PW-8 Suresh Kumar has specifically admitted in his statement that Birma Ram, Hakim Khan, Laldeen and others who are neighbours of the present appellant had not corroborated the version of the complainant and other relative witnesses of the deceased. Hakim Khan has been produced as DW-3, who has specifically stated that he never seen any cruelty with the deceased and he further stated that Parma Ram has never narrated any incident of cruelty to him. DW-5 Babu Ram is also a witness in the list of prosecution but he has also denied prosecution story.

29. Hence looking to any angle, the conviction of the appellant under Section 306, IPC is not sustainable.

30. In view of the above, S.B.Criminal Appeal No.434/2009 of the appellant Jetha Ram is allowed and he is acquitted of the charge of offence under Section 306, IPC. He is in jail, he be released forthwith, if not required in any other case. S.B.Criminal Appeal No.603/2009 filed by the State is hereby dismissed.