

Naresh Kumar vs State Of Haryana on 22 February, 2024

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2024 INSC 149

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL (NO.) 1722 of 2010
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 8873/2008)

NARESH KUMAR

VERSUS

STATE OF HARYANA

O R D E R

1. This appeal is at the instance of a convict accused and is directed against the judgment and order dated 03.09.2008 passed by the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 762-SB of 1998, by which the High Court dismissed the appeal filed by the appellant herein and thereby affirmed the judgment and order of conviction passed by the Additional Sessions Judge, Karnal dated 08.09.1998/10.09.1998 in Sessions Trial No. 06 of 1996 holding the appellant guilty of the offence punishable under Section 306 of the Indian Penal Code (for short 'IPC').

2. The short facts necessary to be narrated for disposal of this appeal, are as under:-

The deceased, Rani, was married to the appellant herein. The marriage was solemnized on 10.05.1992. The marriage of Rani with the convict was her second marriage. In the wedlock with the convict, Rani gave birth to a girl child.

The case of the prosecution is that soon after marriage, the appellant-convict and her parents started demanding money as the appellant convict wanted to start a ration shop. It may not be out of place to state at this stage that the parents of the appellant-

convict herein were also put to trial for the alleged offence.

However, they came to be acquitted by the Trial Court.

The record reveals that on 19th November, 1993, Rani committed suicide by

consuming poison. According to the case of the prosecution, Rani committed suicide on account of incessant harassment at the end of her husband i.e., the appellant herein and in such circumstances, the appellant-convict was charged with the offence of abetting the commission of suicide by his wife punishable under Section 306 of the IPC.

In the course of the trial many witnesses were examined, however, we have looked into the oral evidence of PW-4, namely, Madan Lal, who happens to be the brother of the deceased and PW-5, Narata Ram, who happens to be the father of the deceased.

ORAL EVIDENCE ON RECORD:

3. PW-4 Madan Lal (brother of the deceased) son of Narata Ram in his examination in chief has deposed as under:-

“We are four brothers and 9 sisters. My younger sister Rani was married to Naresh accused on 10-5-92 at Kurukshetra as per Hindu rites and custom. At the time of her marriage she was aged about 18/19 years. A female child was born to my sister Rani after marriage. The daughter of Rani at the time of death of Rani was aged about 4 or 5 months. After about 2/2½ months of marriage, Fakir Chand, Anguri and Naresh demanded a sum of Rs. 50,000/- for starting business of Kiryana shop for accused Naresh. We being poor person could not arrange for the said money. We had performed the marriage of our sister by selling family property (later portion is volunteered). About one or quarter before death of Rani we got opened a shop at our village Raison for accused Naresh Kumar which he had run for about 8 or 9 months. Accused Naresh had run the shop for about 11 months. Since accused Naresh suffered loss, he wound up the shop and left for Delhi. About 1½ month before death of Rani, accused Naresh had taken her to Delhi. On 17-11-93 my sister Rani along with accused Naresh came to our house. My sister Rani stated that accused Naresh, Fakir Chand and Anguri Devi are raising demand of Rs. 20,000/- for opening a shop for Naresh. I, my father and my mother told accused Naresh that we would arrange the amount and pay the same after about 8 or 10 days. On 19-11-93 accused Naresh and my sister left for Delhi at about 7 a.m. saying that they are going and amount be sent later. My sister Rani used to remain tense because of repeated demands by the accused. Getting fed up my sister consumed some poisonous thing on 19-11-93. On learning that my sister had consumed some poisonous thing, we came to Karnal. Police met me at G.H. Karnal where my statement Ex. PJ was recorded by the police which was read over to me and after admitting the contents, I signed the same. After post mortem, the dead body of my sister was handed over to us on 20-11-93.”

4. PW-5 Narata Ram (father of the deceased) in his examination in chief has deposed as under:-

“I have four sons and 9 daughters. My daughter Rani was married to Naresh accused on 10-5-92 at Kurukshetra. After about 2½ months of marriage all the accused

started harassing my daughter. They raised demand of Rs. 50,000/- for opening a shop for Naresh. Being poor people we could not arrange the amount. By arranging some amount we opened a shop for accused Naresh at Raison. Accused Naresh continued the shop for about 7 or 8 months. The accused Naresh Dulian Kha Pee Kay left the shop and went to Delhi. After about 5 or 7 months accused Naresh came to take my daughter Rani to Delhi. On 17-11-93 accused Naresh alongwith my daughter Rani came to our house. My daughter Rani told that all the accused are demanding a sum of Rs. 20,000/- for starting business at Delhi. I expressed my inability to pay same day. At this Naresh told that either pay the amount or he shall finish himself by consuming some poison. Accused Naresh then left with my daughter. My daughter used to remain tense due to repeated demands of the accused. On learning that Rani had consumed some poisonous thing we came to G.H. Karnal.”

5. The learned counsel appearing for the appellant convict submitted that the Courts below committed an error in holding the appellant guilty of having abetted the commission of suicide by the deceased. He would submit that there is not an iota of evidence to even remotely suggest that there was any kind of harassment, physical or mental, to the deceased by her husband.

6. In such circumstances, he would submit that the conviction be set aside and the appellant convict be acquitted.

7. On the other hand, Ms. Sabarni Som, the learned counsel appearing for the State of Haryana, submitted that no error not to speak of any error of law could be said to have been committed by the Courts below in holding the appellant guilty of the alleged offence. Much emphasis was laid on the fact that the deceased committed suicide within seven years from the date of her marriage.

8. The learned counsel appearing for the State tried to fortify her above referred submission by relying on Section 113A of the Indian Evidence Act, 1872 (for short ‘the Evidence Act’) which enables raising of presumption as to abetment of suicide by a married woman. She would submit that the oral evidence of PW-4 and PW-5 has been well appreciated and the Courts below have rightly held the appellant guilty of the alleged offence. ANALYSIS:

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment?

10. We have looked into the evidence of PW-4 i.e., the brother of the deceased and also the evidence of PW-5 i.e., the father of the deceased. Both these witnesses have only stated that after the marriage, there was a demand of some money by the convict, as he wanted to start a ration shop. It appears from the evidence of both these witnesses that on account of such demand, the deceased used to remain tense.

11. What ultimately led the deceased to take such a drastic step of committing suicide is not clear. To put it in other words, the plain reading of the oral evidence of both these witnesses does not disclose

any form of incessant cruelty or harassment on the part of the husband which would in ordinary circumstances drag the wife to commit suicide as if she was left with no other alternative. Mere demand of money from the wife or her parents for running a business without anything more would not constitute cruelty or harassment.

12. Section 306 of the IPC 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."

13. Thus, the basic ingredients to constitute an offence under Section 306 of the IPC are suicidal death and abetment thereof. Abetment of a thing is defined under Section 107 IPC 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 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 wilful 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 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 that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

14. This Court in *Geo Varghese v. State of Rajasthan and another*, (2021) 19 SCC 144, has considered the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC observed as under:-

"14. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

...

15. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in *Ramesh Kumar Vs. State of Chhattisgarh*, (2001) 9 SCC 618, has defined the word 'instigate' as under:-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act"."

16. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S. Cheena Vs. Vijay Kumar Mahajan and Anr (2010) 12 SCC 190, it was observed as under:-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

15. This Court in M. Arjunan v. State, represented by its Inspector of Police, (2019) 3 SCC 315, while explaining the necessary ingredients of Section 306 IPC in detail, observed as under:-

“7. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.”

16. This Court in Ude Singh & Others v. State of Haryana, (2019) 17 SCC 301, held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide.

Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

17. This Court in *Mariano Anto Bruno & another v. The Inspector of Police*, 2022 SCC OnLine SC 1387, Criminal Appeal No. 1628 of 2022 decided on 12th October, 2022, after referring to the above referred decisions rendered in context of culpability under Section 306 IPC observed as under:-

“44. . . . It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

18. This Court in *Gurcharan Singh v. State of Punjab*, (2020) 10 SCC 200, observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

19. This Court in *Kashibai & Others v. The State of Karnataka*, 2023 SCC Online SC 575, Criminal Appeal No. 627 of 2023 (arising out of SLP (Crl.) No. 8584/2022) decided on 28th February, 2023, observed that to bring the case within the purview

of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

20. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1)foresees that it will happen if the given series of acts or omissions continue, and (2)desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).

21. For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:

“A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.” Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the ba-

sis of all the evidence.

22. It is now well settled that in order to convict a person under Section 306 of the IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

23. We take notice of the fact that the High Court has laid much emphasis on Section 113A of the Evidence Act.

24. Section 113A of the Evidence Act reads thus:-

“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 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 1860)."

25. This Section was introduced by the Criminal Law (Second Amendment) Act 46 of 1983. The Indian Penal Code, the Code of Criminal Procedure, 1973 and the Evidence Act were amended keeping in view the dowry death problems in India.

26. The Section requires proof (1) that her husband or relatives subjected her to cruelty and (2) that the married woman committed suicide within a period of seven years from the date of her marriage.

27. Although, it is not necessary for us to refer to Section 113B of the Evidence Act which raises presumption as to dowry death yet with a view to indicate the fine distinction between the two presumptions we are referring to Section 113B. In Section 113A the legislature has used the word ‘may’, whereas in Section 113B the word used is ‘shall’.

28. In this appeal, we are concerned with Section 113A of the Evidence Act. The mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the presumption under Section 113A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

29. What is important to note is that the term ‘the Court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband’ would indicate that the presumption is discretionary, unlike the presumption under Section 113B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

30. The court should be extremely careful in assessing evidence under section 113A for finding out if cruelty was meted out. If it transpires 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 would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

31. Section 113A has been interpreted by this Court in *Lakhjit Singh v. State of Punjab*, 1994 Suppl (1) SCC 173, *Pawan Kumar v. State of Haryana*, 1998(3) SCC 309, and *Smt. Shanti v. State of Haryana*, 1991(1) SCC 371.

32. This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words 'may presume'. It must take into account all the circumstances of the case which is an additional safeguard.

33. In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306 of IPC by raising presumption under Section 113A.

34. Before we part with this matter, we may only observe that the criminal justice system of ours can itself be a punishment. It is exactly what has happened in this case. It did not take more than 10 minutes for this Court to reach to an inevitable conclusion that the conviction of the appellant convict for the offence punishable under Section 306 of the IPC is not sustainable in law. The ordeal for the appellant started some time in 1993 and is coming to the end in 2024, i.e. almost after a period of 30 years of suffering. At the same time, we are also mindful of the fact that a young woman died leaving behind her 6 months old infant. No crime should go unpunished. But at the same time, the guilt of the accused has to be determined in accordance with law. To put it in other words, the guilt of the accused has to be determined on the basis of legal evidence on record. The question is : On what and where did the two courts falter? In our opinion, the two courts faltered as they failed to apply the correct principles of law to the evidence on record on the subject of abetment of suicide. The two courts got enamoured by just three things, (i) the deceased committed suicide within seven years of marriage, (ii) the accused was demanding money from the parents of the deceased for starting some business, and (iii) the deceased used to remain tense. We do not say that these are irrelevant consideration. All the three aspects are relevant. But there are settled principles of law to be made applicable to the matters of the present type. In the case of accusation for abetment of suicide, the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence. Appreciation of evidence in criminal matters is a tough task and when it comes to appreciating the evidence in cases of abetment of suicide punishable under Section 306 of the IPC, it is more arduous. The court must remain very careful and vigilant in applying the correct principles of law governing the subject of abetment of suicide while appreciating the evidence on record. Otherwise it may give an impression that the conviction is not legal but rather moral.

35. For all the foregoing reasons, we have reached to the conclusion that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt.

36. In the result, the appeal succeeds and is, hereby, allowed. The judgment and order of conviction passed by the Trial Court as affirmed by the High Court is, hereby, set aside.

37. The appellant stands acquitted of the charge framed against him.

38. Pending the present appeal, vide order dated 13.05.2009 a coordinate Bench had ordered release of the convict on bail. Since the appeal is being allowed and the convict is being acquitted, the bail bond(s) furnished then shall also stand discharged.

.....,J.

[J.B.PARDIWALA],J.

[MANOJ MISRA] NEW DELHI;

22ND FEBRUARY, 2024

ITEM NO.102

COURT NO.10

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1722/2010

NARESH KUMAR

APPELLANT(S)

VERSUS

STATE OF HARYANA

RESPONDENT(S)

Date : 22-02-2024 This appeal was called on for hearing today. CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA HON'BLE MR. JUSTICE MANOJ MISRA For Appellant(s) Mr. S.D.Singh, Adv.

Mrs. Shweta Sinha, Adv.

Mr. Ram Kripal Singh, Adv.

Mr. Siddharth Singh, Adv.

Mrs. Aparna Jha, AOR For Respondent(s) Mr. Raj Singh Rana, A.A.G. (N/P) Mr. Samar Vijay Singh, AOR Mr. Keshav Mittal, Adv.

Ms. Sabarni Som, Adv.

Mr. Fateh Singh, Adv.

UPON hearing the counsel the Court made the following O R D E R The appeal is allowed in terms of the signed order. The relevant portion of the order, reads as under:-

“ In the result, the appeal succeeds and is, hereby, allowed. The judgment and order of conviction passed by the Trial Court as affirmed by the High Court is, hereby, set

aside.

The appellant stands acquitted of the charge framed against him.

Pending the present appeal, vide order dated 13.05.2009 a coordinate Bench had ordered release of the convict on bail. Since the appeal is being allowed and the convict is being acquitted, the bail bond(s) furnished then shall also stand discharged.” (VARSHA MENDIRATTA) (POOJA SHARMA) COURT MASTER (SH) COURT MASTER (NSH) (Signed reportable order is placed on the file)