

CASE DETAILS

KAMALAKAR

v.

STATE OF KARNATAKA

(Criminal Appeal No.1485 of 2011)

OCTOBER 12, 2023

[VIKRAM NATH AND RAJESH BINDAL, JJ.]

HEADNOTES

Issue for consideration: Whether the prosecution has proved the charges against the appellant-accused u/ss. 498A and 306 IPC beyond reasonable doubt.

Penal Code, 1860 – s. 498A and s.306 – The prosecution alleges that after two years of marriage, all the three accused, i.e., the appellant and his parents, started ill-treating and assaulting victim-deceased – Appellant brought victim back to her parents' house – The appellant refused to take her back to his house and told the informant that he will be remarried – After two months, victim poured kerosene oil on her body and burnt herself – Victim died – Appellant was convicted u/ ss. 498A and s. 306 IPC – Propriety:

Held: In the instant case, the death of the deceased has taken place within seven years of her marriage and as such, there will be a presumption as to harassment meted out to the deceased – Even though it is rebuttable presumption, the appellant has not provided substantial evidence in his favour – It is an undisputed fact that the appellant left victim at her parents' home and she took her own life a few days later – There is a specific overt act attributable to the appellant wherein he assaulted and ill-treated the deceased on the ground that she was not doing household work properly and that he also refused to take her back with him to their matrimonial house despite repeated requests made by the deceased's parents – The same was fully supported by the evidence of PW 1 to 3 as well as PW 5 and the Trial Court rightly held that there were no reasons to disbelieve the said evidence – Hence, the conviction of the appellant u/s. 498A IPC is

upheld – However, on a careful reading of the factual matrix of the instant case and the law regarding s.306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself – The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased – Hence as the ingredients of s.306 IPC have not been fulfilled in the case at hand, the conviction of the appellant u/s. 306 IPC cannot be sustained. [Paras 7.2, 7.3, 8.6, 8.7]

Penal Code, 1860 – s. 498A – Applicability of:

Held: Section 498A the IPC penalizes husbands or their relatives who subject a woman to cruelty, with penalties of up to three years' imprisonment and a possible fine – “Cruelty” encompasses actions that could drive the woman to suicide or cause severe mental or physical harm, and harassment aimed at coercing her or her family into unlawful property or valuable security demands. [Para 7.1]

Penal Code, 1860 – s.306 and s.107 – Applicability of:

Held: Section 306 IPC penalizes abetment of commission of suicide – To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide – Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC – This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide. [Para 8.2]

LIST OF CITATIONS AND OTHER REFERENCES

Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618: [2001] 4 Suppl. SCR 247; *M. Mohan v. State* (2011) 3 SCC 626: [2011] 3 SCR 437; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707: [2009] 15 SCR 836 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1485 of 2011.

From the Judgment and Order dated 07.11.2007 of the High Court of Karnataka at Bangalore in Crl. A. No.102 of 2002.

Appearances:

Basavaprabhu S. Patil, Sr. Adv., Anirudh Sanganeria, Adv. for the Appellant.

Nishanth Patil, AAG, V. N. Raghupathy, Ayush P Shah, Vignesh Adithya S, Manendra Pal Gupta, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

VIKRAM NATH, J.

1. This Appeal is by the accused challenging the order of conviction and sentence passed by the High Court of Karnataka in Criminal Appeal No. 102/2007 on 7.11.2007.

2. FACTS OF THE CASE:

2.1. The case pertains to offences relating to cruelty towards deceased at her matrimonial home under Section 498A IPC and subsequent allegations of abetment to suicide under Section 306 IPC. The deceased, who is the informant's daughter, was married to the appellant for four and a half years until her death in 1994. After their marriage, the couple resided in their matrimonial home in Chinkera Village along with the appellant's parents. The prosecution alleges that after two years of marriage, all the three accused, i.e., the appellant and his parents, started ill-treating and assaulting her owing to not giving birth to a child and accusing her of not doing household and agricultural work properly. The deceased informed the same to her father when she went to her parental home. The informant, i.e., the father of the deceased, advised the accused and requested them not to ill-treat his daughter.

2.2. About two months prior to the incident, the appellant took the deceased to Bombay for about 4-5 days and then brought her back to her parents' house. Upon her return, the deceased informed her parents that the accused had assaulted her in Bombay and consequently, her father went to

the accused and requested them to take her back to their house. The accused refused his request and told the informant that they were going to remarry the appellant as they were not happy with the conduct of the deceased. The informant came back to his house and informed his family, including the deceased, of the response of the accused.

2.3. On 04.09.1994, at about 08.00 AM, the informant along with his wife and other children, went off to his agricultural land. The deceased was alone at home. They were informed around 10.00 AM that their daughter had poured kerosene oil on her body and burnt herself. It has been alleged by the prosecution that the deceased had burnt herself due to the increasing harassment and mental cruelty from the accused persons.

2.4. On 05.09.1994, the father of the deceased lodged an FIR bearing Cr. No. 81/94 at Hallikhed-B police station Humnabad circle under Section 498A IPC. Since the daughter of the informant succumbed to her injuries on 06.09.1994, offence under Section 306 IPC was added to the FIR. The accused were arrested and after completion of the investigation, the charges were framed against the accused by the Trial Court for the offences under Sections 498A and 306 IPC on 28.11.1998.

3. The accused pleaded not guilty and claimed to be tried. After hearing the arguments of both the parties, the Ld. Additional District & Sessions Judge, vide order dated 11.12.2001, acquitted accused no. 2 and 3, i.e., the parents of the appellant herein owing to lack of evidence against them. However, the husband (accused no. 1), i.e. the appellant herein, was convicted for the offence punishable under Section 498A and Section 306 IPC. He was sentenced to undergo rigorous imprisonment for the period of 2 years for the offence punishable under Section 498A IPC and to pay a fine of Rs. 2000/- . In default of payment of fine amount to undergo simple imprisonment of two months. Further, he was sentenced to undergo rigorous imprisonment for a period of 7 years for the offence punishable under Section 306 IPC and to pay a fine of Rs. 3000/- and in default of payment of fine amount, to undergo simple imprisonment of three months. Both the sentences were to run concurrently.

4. Thereafter, the appellant filed Criminal Appeal under S. 374(2), Cr.P.C. praying to set aside the judgement of the Sessions Judge. The High Court of Karnataka, vide order dated 7.11.2007, partly allowed the appeal.

While the Court upheld the conviction of the accused for the offence under Sections 498A and 306 IPC, it modified the sentence in respect of Section 306 IPC and reduced it from 7 years to 5 years of rigorous imprisonment. The sentence to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 2000/- for the offence under Section 498A was however sustained.

5. The appellant has filed the present appeal on several grounds, *inter alia*, that for the past two months prior to the incident, the deceased was residing at her parental home and there was no occasion for the appellant to cause abetment to the deceased to commit suicide. Further, the appellant also claimed that the allegation of cruelty was not backed by any substantial proof and that the appellant was convicted on the same evidence based on which his parents were acquitted.

6. Having heard the arguments of both the parties, we find that there are two issues that arise in the instant case.

- i) Whether the prosecution has proved the charge under Section 498A IPC beyond reasonable doubt?
- ii) Whether the prosecution has proved the charge under Section 306 IPC beyond reasonable doubt?

7. Applicability of Section 498A IPC.

7.1. Section 498A the IPC penalizes husbands or their relatives who subject a woman to cruelty, with penalties of up to three years' imprisonment and a possible fine. "Cruelty" encompasses actions that could drive the woman to suicide or cause severe mental or physical harm, and harassment aimed at coercing her or her family into unlawful property or valuable security demands.

7.2. In the instant case, the death of the deceased has taken place within seven years of her marriage and as such, there will be a presumption as to harassment meted out to the deceased. Even though it is rebuttable presumption, the appellant has not provided substantial evidence in his favour. It is an undisputed fact that the appellant took the deceased to Bombay for approximately a week from her parents' residence. Shortly after their return, she was left at her parents' home again, and she took her own life a few days later.

7.3. In so far as the appellant's argument of parity with the acquittal of his parents is concerned, the same cannot be granted to the appellant. As held by the Trial Court, the evidence adduced by the prosecution was not sufficient to convict accused no. 2 and 3, i.e., the parents of the appellant. However, there is a specific overt act attributable to the appellant wherein he assaulted and ill-treated the deceased on the ground that she was not doing household work properly and that he also refused to take her back with him to their matrimonial house despite repeated requests made by the deceased's parents. The same was fully supported by the evidence of PW 1 to 3 as well as PW 5 and the Trial Court rightly held that there were no reasons to disbelieve the said evidence.

7.4. Hence the conviction of the appellant under Section 498A IPC is upheld.

8. Applicability of 306 IPC.

8.1. Section 306 deals with abetment of suicide wherein whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine. This provision has to be read with Section 107 IPC which reads as:

"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 facilitates the commission thereof, is said to aid the doing of that act."

8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In **Ramesh Kumar V. State of Chhattisgarh**¹, this Court has analysed different meanings of "instigation". The relevant para of the said judgement is reproduced herein:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

8.4. The essentials of Section 306 IPC were elucidated by this Court in *M. Mohan v. State*², as under:

*"43. This Court in *Chitresh Kumar Chopra v. State* (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goad". The Court opined that there should be intention to provoke, incite or encourage the doing*

1 (2001) 9 SCC 618

2 (2011) 3 SCC 626

of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in **Amalendu Pal alias Jhantu v. State of West Bengal**³ in the following paragraphs:

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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 there 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.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence,

³ (2010) 1 SCC 707

the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.

8.7. Hence as the ingredients of Section 306 IPC have not been fulfilled in the case at hand, the conviction of the appellant under Section 306 IPC cannot be sustained.

9. Consequently, the appeal filed by the appellant is partly allowed.

10. The conviction and sentence under Section 306 IPC is set aside and the appellant is acquitted of the said offence. However, the conviction under Section 498A is affirmed. We are informed that the appellant has already undergone 7 months' incarceration. We modify the sentence of 2 years under Section 498A IPC to the period already undergone.

11. The appellant is already on bail. The bail bonds are discharged.

12. Pending application(s) if any, shall stand disposed of.

Headnotes prepared by:
Ankit Gyan

Appeal partly allowed.