Heera Lal And Anr vs State Of Rajasthan on 24 April, 2017

Equivalent citations: AIR 2017 SUPREME COURT 2425, 2018 (11) SCC 323, (2017) 2 ORISSA LR 327, (2017) 67 OCR 785, (2017) 6 SCALE 152, (2017) 4 MH LJ (CRI) 404, (2017) 3 ALLCRILR 628, (2017) 178 ALLINDCAS 131 (SC), (2017) 3 DLT(CRL) 854, (2017) 2 CRILR(RAJ) 473, 2017 CRILR(SC MAH GUJ) 473, (2017) 2 UC 1174, (2017) 3 PAT LJR 160, (2017) 2 ALD(CRL) 259, 2017 CRILR(SC&MP) 473, (2017) 3 CRIMES 389, (2017) 124 CUT LT 788, (2017) 101 ALLCRIC 265, (2017) 3 CURCRIR 362, (2017) 2 RECCRIR 839, (2017) 2 KER LJ 690, (2017) 3 JLJR 69, 2018 (2) SCC (CRI) 656, 2017 (3) KCCR SN 353 (SC)

Bench: Mohan M. Shantanagoudar, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.790/2017
(@Petition(s) for Special Leave to Appeal (Crl.) No(s).1165/2017)

HEERA LAL AND ANR — Appellant(s)

VERSUS

STATE OF RAJASTHAN — Respondent(s)

J U D G M E N T

ROHINTON FALI NARIMAN J

1. Leave granted.

2. In the present case, an F.I.R. dated 28th March, 2002 was lodged in which it was stated that the father-in-law and mother-in-law of the lady who committed suicide harassed her for at least five years and this harassment, therefore, led to offences being committed under Sections 498A and Section 306 of the Indian Penal Code. The Trial Court relied upon the evidence of PWs 4 and 5, who were neighbours, who attested to the fact that there was harassment meted by the in-laws to the dead lady. Medical evidence also shows that there were 90% burns as the lady had poured kerosene on herself and set herself on fire. Most importantly, according to both the Trial Court and the High Court, a dying declaration was made before PW 9 who was a Sub-Divisional Magistrate, which reads as follows:-

> "The PW-9, Himmat Singh has stated that as on 28.03.02, he was working as SDM and on that day he had gone to the hospital to record the statement of the deceased.

> At that time Dr. Verma was the duty doctor and he has stated that Lalita was in a state of fitness to record her statement. When I asked Lalita she had told that she was sleeping and her in-laws were quarrelling with her every day. Today also they quarrelled with me. They asked me to leave the house. My husband is not responsible for anything. He resides in Kuwait. He has come here now. I am residing separately from my in-laws. Today they had come with their luggage and said that they have come to stay with her. I told them that I am not in good relations with them and therefore I cannot reside with them. They told, we will stay here and you get lost. Then I got angry and went inside the kitchen and poured kerosene from the stove and set myself on fire. My father-in-law was looking at me but did not try to stop me. My husband tried to save me. My in-laws were demanding dowry from me. I did not have any quarrels with my husband. My signatures are there on the statement recorded by me. Lalita's thumb impression is there at point X. During the cross examination by the Ld. Counsel the witness stated that the statement recorded by him is at Ex. P-5 and at point X the thumb impression of Lalita is there. At the time of recording the statement no one from her parent's side was present and the in-laws of the deceased were turned out of the room at the time of recording the statement. Lalita's husband Omprakash was present at the time of Lalita setting herself on fire and at the time of putting off the flames."

3. On this evidence, the Trial Court held that the offence under Section 498A was not made out but convicted the two appellants before us under Section 306 and sentenced them to imprisonment for three years. In an appeal filed by them before the High Court, the High Court, relying upon the aforesaid dying declaration, dismissed the appeal.

4. Learned counsel for the appellants has argued before us that the State did not appeal against their acquittal under Section 498A and, that therefore, the fact that the offence under Section 498A has not been made out is final. This has a vital bearing on the offence under Section 306 as one of the ingredients of this offence is that cruelty should have been meted out by the offenders. He also argued that based on the dying declaration which has been given prime importance, this is not a case of abetment as there is no evidence of any intention to help the deceased to commit suicide.

5. On the other hand, the learned counsel appearing for the State of Rajasthan supported the impugned Judgment. According to him, it is concurrently held, based on the evidence of the case as well as the dying declaration, that abetment of suicide is made out on the facts of the case. Learned counsel also heavily relied upon the presumption contained in Section 113A of the Evidence Act inasmuch as death has been caused within seven years of the marriage; and this presumption, not having been rebutted, did not require any interference at our end.

6. Having heard the learned counsel appearing for the parties and having gone through the evidence, we are of the opinion that Section 113A of the Indian Evidence Act requires three ingredients to be satisfied before it can be applied i.e., (i) that a woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage and (iii) the husband or his relatives who are charged had subjected her to cruelty.

7. This Court in an illuminating Judgment in Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618 has stated the law as follows:-

> "This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide,
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> (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression - "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption.

The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says - "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

8. We find that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498A, the third ingredient for application of Section 113A is missing, namely, that the relatives i.e., the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in- laws to assist the victim to commit suicide.

9. In the absence of this vital link, the mere fact that there is a finding of harassment would not lead to the conclusion that there is “abetment of suicide”.

10 On the facts, therefore, we find, especially in view of the fact that the appellants have been acquitted for the crime under Section 498 A of the Code, that abetment of suicide under Section 306 is not made out.

11. In the circumstances, we set aside the impugned Judgment of the High Court. If incarcerated, the appellants shall be released forthwith.

12. The appeal is allowed in the afore-stated terms.

.....J (ROHINTON FALI NARIMAN) .....J (MOHAN M. SHANTANAGOUDAR) NEW DELHI;

24TH APRIL, 2017.