

Parveen Kumar
v.
The State of Himachal Pradesh

(Criminal Appeal No(S). 1014-1015 of 2013)

23 September 2024

[Bela M. Trivedi* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Issue arose, if the High Court was justified in convicting and sentencing the husband u/ss. 498A and 306 IPC for subjecting the victim-wife to cruelty and forcing her to commit suicide.

Headnotes[†]

Penal Code, 1860 – ss.498-A and 306 – Husband or relative of husband of a woman subjecting her to cruelty – Abetment of suicide – Evidence Act, 1872 – s.113A – Presumption as to abetment of suicide by a married woman – Victim-wife committed suicide by consuming tablets of aluminum phosphide-insecticide within two years of marriage – FIR by the victim's brother alleging that the husband had subjected the victim to cruelty and forced her to commit suicide – Trial court convicted and sentenced the husband for the offence u/s.498-A however, acquitted him for the offence u/s.306 – High Court upheld the order of conviction u/s.498A as also convicted and sentenced him u/s.306 – Challenge to:

Held: Giving birth to a male child by the victim and filing of three cases during her life time against the husband-appellant, FIR u/ss.498-A and 506; complaint u/s.107/151 CrPC and case u/s.125 CrPC seeking maintenance for herself and her child, not disputed – Fact of the deceased having committed suicide by consuming tablets of aluminum phosphide-insecticide, also duly proved by the prosecution – Courts below concurrently held the appellant guilty of the offence u/s.498-A by holding that the appellant had subjected the deceased to cruelty – Appellant's case that as per the suicide note, the suicide was committed by the deceased on account of her intolerable pain and illness and not due to the cruelty of the appellant, cannot be accepted –

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Suicidal note not duly exhibited for being admitted in evidence, as also the appellant had not even bothered to inform the parents of the deceased immediately after the incident smacked of his guilt – High Court rightly raised the presumption u/s.113A to hold that the suicide was abetted by the appellant – Prosecution by leading cogent evidence established that the deceased had committed suicide within a period of seven years from the date of her marriage and that the husband had subjected her to cruelty as contemplated in s.498-A – Thus, no illegality or infirmity in the order passed by the High Court convicting the appellant for the offences u/ss.498-A and 306. [Paras 9-11]

Case Law Cited

Hans Raj v. State of Haryana [2004] 2 SCR 676 : 2004 (12) SCC 257; *Naresh Kumar v. State of Haryana* [2024] 2 SCR 830 : 2024 (3) SCC 573 – relied on.

List of Acts

Penal Code, 1860; Evidence Act, 1872; Code of Criminal Procedure, 1973.

List of Keywords

Subjecting wife to cruelty and forcing her to commit suicide; Abetment of suicide; Presumption as to abetment of suicide by married woman; Consuming tablets of aluminum phosphide,insecticide; Commission of wilful conduct; Maintenance; Presumption u/s.113A of the Evidence Act.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1014-1015 of 2013

From the Judgment and Order dated 16.03.2011 of the High Court of H.P. at Shimla in CRLA Nos. 97 and 325 of 2000

Appearances for Parties

Ashok Tobria, M.S. Yadav, Rajesh Kumar Pandey, S.Y. Usmani, Rishi Kumar, Sahil Kaushik, Sachin Soni, Mayank Yadav, Pushkar Anand, Advs. for the Appellant.

Vikrant Narayan Vasudeva, Sarthak Chiller, Rohit Lochav, Advs. for the Respondent.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Bela M. Trivedi, J.**

1. Both the appeals arise out of the common Judgment and Order dated 16.03.2011 passed by the High Court of Himachal Pradesh at Shimla in the Criminal Appeal No. 97 of 2000 preferred by the appellant-Parveen Kumar and the Criminal Appeal No. 325 of 2000 preferred by the State of Himachal Pradesh.
2. The short facts as curled out from the record are that on 10.10.1992 the appellant had married Raksha Devi (the deceased). The said Raksha Devi gave birth to a male child from the loins of the appellant at her parental home on 18.12.1993. As per the case of the prosecution, the appellant used to beat his wife even when she was pregnant and therefore, she had gone away to her parental home and had got registered an FIR being No. 59 of 1993 for the offence under Section 498-A of IPC on 12.09.1993 at the Police Station Ghumarwin. She also filed a petition under Section 125 of the Cr.P.C. seeking maintenance from the appellant, and also filed another complaint under Section 107/151 Cr.P.C. Somewhere in May 1994, the appellant brought back his wife to her matrimonial home. On 22.09.1994, the said Raksha Devi gave a statement in the Court of Sub-Divisional Judicial Magistrate in the proceedings under Section 125 of Cr.P.C. that she did not want to pursue the matter as she was living happily with the appellant. Similar statement was also allegedly given in the Court in respect of the complaint filed by her. However, on 26.09.1994 the wife of the appellant Raksha Devi consumed tablets of aluminum phosphide at about 1:45 a.m. She was admitted in the hospital for treatment, however could not survive and died at 5.00 a.m. on the same day.
3. The information regarding her death was reduced to writing by the SHO in the daily diary register vide DDR No. 30. The SHO sent the body of the deceased to the hospital for carrying out the post-mortem. On 01.10.1994 the brother of the deceased, Sh. Madan Lal (PW-3) lodged an FIR being No. 97 of 1994 at the Police Station, Bhoranj alleging that the appellant had subjected his sister to cruelty and forced her to commit suicide. The Investigating Officer after carrying out the investigation submitted the chargesheet against the appellant for the offence under Section 498-A and 306 of IPC. The Sessions

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Court, Hamirpur, H.P. after appreciating the evidence on record adduced by the prosecution as well as by the defence, convicted the appellant-accused for the offence under Section 498-A IPC and sentenced him to undergo rigorous imprisonment for a period of two years and pay a fine of Rs.1,000/- with the default clause, however, acquitted the appellant for the offence under Section 306 of IPC vide the Judgment and Order dated 24.02.2000.

4. Being aggrieved by the said Judgment and Order passed by the Sessions Court, the appellant preferred Criminal Appeal No. 97 of 2000 against his conviction under Section 498-A IPC whereas the State of Himachal Pradesh preferred the Criminal Appeal No. 325 of 2000 against the acquittal of the appellant from the offence under Section 306 of IPC before the High Court. The High Court vide the impugned Judgment and Order dismissed the appeal preferred by the appellant whereas allowed the appeal preferred by the State and convicted the appellant for the offence under Section 306 of IPC. He was directed to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.3,000/- with default clause of the offence under Section 306 of IPC, while confirming the conviction and sentence imposed by the Sessions Court for the offence under Section 498-A of IPC.
5. The learned counsel appearing for the appellant submitted that out of the three cases filed by the deceased – Raksha Devi against the appellant, the complaint lodged under Section 107/151 of Cr.P.C. was dismissed by the concerned Court on 04.04.1994, and the other two cases filed under Section 125 Cr.P.C. and FIR No. 59/93 under Section 498-A IPC were settled between the parties as per the Order dated 22.09.1994 passed by the concerned Court. According to him the settlement between the parties could not be treated as admission of guilt, on the contrary after the settlement the deceased had come to her matrimonial home to stay with the appellant. He further submitted that there were no allegations of cruelty made between the period June 1993 till she committed suicide on 26.09.1994 and therefore no presumption under Section 113A of the Indian Evidence Act could be raised against the appellant. Placing reliance of the decision of this Court in *Hans Raj Vs. State of Haryana*¹ and in case of *Naresh*

¹ [2004] 2 SCR 676 : (2004) 12 SCC 257

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*Kumar vs. State of Haryana*² he submitted that the conviction could not be based on conjectures and surmises.

6. *Per contra* the learned counsel appearing for the respondent-State submitted that the appellant had tried to mislead the investigation by stating that the deceased had taken the tablets of aluminum phosphide as an insecticide by mistake. He further submitted that the death had happened within two years of the marriage and during the said two years the deceased had filed three complaints against the appellant alleging harassment and cruelty and therefore the presumption under Section 113A of the Evidence Act was rightly raised by the High Court for convicting the appellant under Section 306 of IPC. According to him though the appellant had examined two defense witnesses, the testimony of both the witnesses did not inspire any confidence.
7. For better appreciation of the submissions made by the learned counsel for the parties it would be beneficial to reproduce the provisions contained in Section 498-A and 306 IPC as also Section 113A of the Indian Evidence Act. The said provisions read as under:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.” — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purposes of this section, “cruelty” means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

306. Abetment of suicide. —If any person commits suicide, whoever abets the commission of such suicide,

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shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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). ”

8. From the explanation to Section 498-A IPC, it is discernible that the word ‘Cruelty’ means, (i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide (ii) any wilful conduct which is of such a nature as is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (iii) harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. So far as the instant case is concerned, as per the case of the prosecution the appellant had subjected the deceased to Cruelty i.e. had committed wilful conduct which was of such a nature, that drove her to commit suicide. Undoubtedly, the allegations of Cruelty as contemplated under Section 498A have to be established beyond reasonable doubt. Similarly, the charge under Section 306 also has to be proved by the Prosecution beyond reasonable doubt by leading cogent evidence that the appellant abetted the deceased to commit suicide as contemplated in Section 107 of IPC. Of course, Section 113A of the Evidence Act permits the Court to raise a presumption as to abetment of suicide, if the Suicide was committed within seven years of the marriage and if it is proved that she was subjected to

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the “Cruelty” as explained in Section 498A by her husband or the relative of the husband. However, for the purpose of raising the presumption by the Court under Section 113A of the Evidence Act, the basic facts as contemplated in the said provision, need to be proved by the Prosecution.

9. In the light of the above legal position, if the facts of the present case are appreciated, it appears that there are certain facts which have not been disputed, rather have been duly proved by the prosecution. Apart from the fact of the appellant had married the deceased on 10.10.1992, and the deceased had given birth to a male child from the loins of the appellant on 18.12.1993, the filing of three cases by the deceased during her life time against the appellant, i.e. (i) FIR No. 59/1993 dated 12.07.1993 under Section 498-A and 506 IPC; (ii) complaint/Kalendra under Section 107/151 of Cr.P.C. dated 01.07.1993 and (iii) case under Section 125 Cr.P.C in May, 1994 seeking maintenance for herself and her child, is also not disputed. The fact of the deceased having committed suicide by consuming tablets of aluminum phosphide, which is supposed to be an insecticide, is also duly proved by the prosecution. It is also pertinent to note that the trial Court and the High Court have concurrently held the appellant guilty of the offence under Section 498-A IPC by holding that the appellant had subjected the deceased to cruelty.
10. Though it was sought to be submitted on behalf of the appellant that as per the suicide note Exhibit DF, the suicide was committed by the deceased on account of her intolerable pain and illness and not due to the Cruelty of the Appellant, the said contention deserves to be considered for rejection only. Apart from the fact that the said suicidal note does not appear to have been duly exhibited for being admitted in evidence, the fact that the appellant had not even bothered to inform the parents of the deceased immediately after the incident smacked of his guilt. The two defense witnesses claiming to be the neighbours of the appellant were examined to prove that the relationship between the appellant and his wife was cordial and not discordant, however they also do not inspire any confidence, in view of the undisputed and proved facts that the deceased had filed three cases against the appellant during her lifetime in respect of harassment and cruelty subjected to her by the Appellant.

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11. In that view of the matter, the High Court has rightly raised the presumption under Section 113A of the Evidence Act to hold that the suicide was abetted by the Appellant. There cannot be any disagreement to the proposition laid down by this Court in case of Hans Raj vs. State of Haryana (supra) and Naresh Kumar vs. State of Haryana (supra) relied upon by the learned Counsel for the Appellant, to submit that unlike Section 113B of the Evidence Act, a statutory presumption does not arise in Section 113A by operation of law merely on the proof of the circumstances enumerated in the said provision, and that Section 113A gives a discretion to the Court to raise a presumption. As discussed hereinabove the prosecution by leading cogent evidence had established that the deceased had committed suicide within a period of seven years from the date of her marriage and that the Appellant that is her husband had subjected her to cruelty as contemplated in Section 498-A of IPC. We therefore, do not find any illegality or infirmity in the impugned order passed by the High Court convicting the Appellant for the offences under Section 498-A r/w Section 306 of IPC.
12. The Appeals being devoid of merits are dismissed. Dismissed accordingly.

Result of the Case: Appeal dismissed.

[†]*Headnotes prepared by:* Nidhi Jain