

Amalendu Pal @ Jhantu vs State Of West Bengal on 11 November, 2009

Equivalent citations: AIR 2010 SUPREME COURT 512, 2010 (1) SCC 707, 2009 AIR SCW 7070, (2010) 1 ALLCRILR 644, (2010) 2 MAD LJ(CRI) 109, 2010 (1) SCC(CRI) 896, (2009) 84 ALLINDCAS 122 (SC), 2010 CALCRILR 1 217, (2010) 1 CRILR(RAJ) 25, (2010) 2 MADLW(CRI) 764, (2010) 1 JCR 82 (SC), (2010) 45 OCR 536, (2010) 1 DMC 23, (2010) 1 UC 359, (2009) 3 ALLCRIR 3436, (2009) 4 DLT(CRL) 624, (2009) 4 CAL HN 176, 2009 ALLMR(CRI) 3755, (2009) 67 ALLCRIC 932, (2009) 4 CURCRIR 492, (2009) 3 UC 1753, (2009) 4 CRIMES 190, (2010) 1 RECCRIR 643, 2009 (13) SCALE 663, 2010 CRILR(SC MAH GUJ) 25, (2009) 13 SCALE 663, (2010) 1 CHANDCRIC 1, (2010) 1 ALD(CRL) 459

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Bench: R.M. Lodha, Mukundakam Sharma

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2091 OF 2009
(Arising out of S.L.P. (Crl.) No. 9483 of 2008)

Amalendu Pal @ Jhantu

.... Appellant

Versus

State of West Bengal

.... Respondent

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. In the present appeal, the appellant has challenged the legality of the judgment and order dated 24.07.2008 passed by the Calcutta High Court. The appellant is aggrieved by the aforesaid judgment and order as by the said judgment, the High Court has upheld the order of conviction and sentence passed by the trial Court whereby the appellant was sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 498-A of the Indian Penal Code (in short "the IPC") and for eight years together with a fine of Rs 1000/- for the offence punishable under

Section 306 of the IPC with a default stipulation. The sentences awarded to the appellant were directed to run concurrently.

3. The facts necessary for the disposal of the present appeal and as presented by the prosecution may be set out at this stage. The appellant - Amalendu Pal @ Jhantu and the deceased - Dipika were married in the year 1977. Out of the said wedlock, two sons were born. The appellant was residing in Calcutta in connection with his work and earning. During his stay in Calcutta, the appellant developed an extra-marital relationship with one Jyotsna @ Anita. The relationship between the appellant and said Anita became known to the deceased and the deceased objected to such illegal relationship. The appellant sought permission of the deceased to marry said Anita, which was also refused by the deceased. Consequently, the appellant started torturing the deceased both physically and mentally.

4. After a few days, the appellant again tried to take the consent of the deceased for marrying said Anita and on refusal of the deceased, physical and mental torture was perpetrated on the deceased. It was alleged that the deceased was provoked by the appellant to end her life by consuming poison or by hanging herself. It was also the case that three months prior to the date of death of the deceased, the appellant brought said Anita to his house. Anita was sporting a vermilion mark on her forehead and was wearing conch bangles on her wrist to indicate that she is married to the accused. It was also stated that in the evening prior to the date of the death of the deceased, the deceased was assaulted by Anita, the appellant and his family members. On the morning of 27.09.1991, the deceased was found hanging from the ceiling of the house of the appellant.

5. Ashoka Kumar Maity (PW-7) intimated Supriyo Das, brother of the deceased (PW-2) about the death of the deceased. Upon receipt of the aforesaid information, PW-2 arrived at the house of the appellant where he learnt about the entire incident from the villagers who had assembled at the scene of occurrence. Thereafter, PW-2 proceeded to the Contai Police Station and got a complaint registered. On the strength of the complaint, First Information Report (in short "the FIR") under Sections 498-A and 306 IPC was lodged on 28.09.1991 at 20.30 hrs.

6. After completion of the investigation, the police filed a charge sheet against the appellant and seven other accused persons. On the basis of the aforesaid charge sheet, the trial Court framed charges under Section 498A read with Section 34 IPC and Section 306 read with Section 34 IPC against the appellant and seven other accused persons to which all of them pleaded not guilty and claimed to be tried.

7. During the trial, a number of prosecution witnesses were examined. The defence produced two witnesses in support of its case. On conclusion of the trial, the trial Court by its judgment and order dated 25.11.1997 convicted the appellant under Sections 498A and 306 IPC and sentenced the appellant to undergo rigorous imprisonment for three years and for eight years together with a fine of Rs 1000/- respectively. All the other seven accused persons were acquitted of the above stated charges framed against them.

8. Aggrieved by the aforesaid order of conviction and sentence passed by the trial Court, the appellant herein preferred an appeal before the High Court. The State, however, did not prefer any appeal before the High Court against the order of acquittal recorded by the trial Court with regard to the seven accused persons who were also charged with the appellant for the aforesaid offences. The High Court entertained the said appeal and heard the counsel appearing for the parties. On conclusion of the arguments, the High Court passed a judgment and order upholding the order of conviction and affirming the sentence awarded to the appellant by the trial Court. The said order of conviction upheld by the High Court is under challenge in this appeal.

9. Mr. Pradip K. Ghosh, learned senior counsel appearing on behalf of the appellant, very painstakingly argued the appeal before us. He submitted that in the absence of cogent and reliable evidence to establish abetment of suicide by the appellant, the conviction of the appellant under Section 306 could not be sustained and was bad in law. He further submitted that the High Court erred in convicting the appellant under Section 306 IPC as the High Court failed to properly appreciate the evidence on record. He further strenuously submitted before us that there was no evidence of infliction of torture upon the deceased by the appellant immediately prior to the incident of suicide by the deceased and as such it could not be said that the appellant had incited the deceased to commit suicide.

10. On the other hand, the learned counsel appearing on behalf of the respondent State supported the judgments of the courts below.

11. We have carefully considered the submissions made before us by the learned counsel appearing for the parties and perused the evidence available on record before us. On a close and careful scrutiny of the oral evidence of the prosecution witnesses namely, PW-2, PW-4, PW-6, PW-7 and PW-9, we find that the appellant and the deceased had got married in the year 1977 and they had enjoyed a happy married life for 5-6 years from the date of their marriage. The aforesaid prosecution witnesses have also categorically stated in their testimony before the trial Court that the problems between the appellant and the deceased cropped up and their matrimonial life got strained only after the appellant developed an extra-marital relationship with one Jyotsna @ Anita during his stay in Calcutta and the said liaison between the appellant and the said Anita became known to the deceased. It was only when the appellant was denied permission by the deceased to marry said Anita that the appellant started torturing the deceased both mentally as well as physically.

12. At the outset, we intend to address the issue regarding the applicability of Section 306 IPC in the facts of the present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as follows:

"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.

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107. Abetment of a thing.--A
doing of a thing, who--

person abets the

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."

13. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab (2004) 13 SCC 129 as follows in paras 12 and 13:

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive 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 should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

14. Further in the case of Kishori Lal v. State of M.P. (2007) 10 SCC 797, this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6:

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons

in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

[See also Kishangiri Mangalgi Swami v. State of Gujarat (2009) 4 SCC 52]

15. 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 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.

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

17. The expression 'abetment' has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence.

18. Learned counsel for the respondent-State, however, clearly stated before us that it would be a case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

19. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he

intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"

XX "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."

20. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC.

21. We have already considered a number of decisions of this Court on the aforesaid aspect and having done so we revert back to the factual position of the present case. The prosecution has specifically alleged that on 26.09.1991, the day prior to the date of commission of suicide by the deceased, the deceased was tortured by the appellant, Anita and the other accused persons present in the house of the appellant, as a result of which the deceased committed suicide on the next day. On a perusal of the record of the present case, we find that both the trial Court as well as the High Court have disbelieved the said incident as, according to them, the statement of the witnesses to establish the said fact are not reliable and trustworthy. Those findings recorded by the trial Court and the High Court have not been challenged before us. It is not the case of the prosecution that the case in hand would fall within the ambit of clause firstly of or Explanation 1 to Section 107 IPC.

22. The prosecution, however, heavily relies on the clause thirdly of Section 107 IPC because, according to the prosecution, the appellant by way of harassment and torturing the deceased at various point of time and by marrying said Anita for the second time without the permission and against the will of the deceased, intentionally aided the commission of suicide by the deceased.

23. In support of the aforesaid contention, learned counsel for the prosecution relied upon Explanation 2 to Section 107. He submitted that prior to the commission of suicide by the deceased, the appellant had, by bringing said Anita as his second wife to his house facilitated the commission of suicide by the deceased and thus, the appellant intentionally aided the commission of suicide by the deceased. The evidence on record, however, does not support such a case. It is pertinent to note that the appellant had brought Anita to stay with him at his house three months prior to the date of the death of the deceased. If the deceased had been so perturbed by the act of the appellant in marrying the said Anita and in bringing her to his house that she felt impelled to commit suicide then she could have done so on the very day when Anita had come to stay with the appellant in his house as naturally at that point of time her annoyance or dismay with life would have been at its pinnacle. From the period of three months which elapsed in between the incidents of the appellant bringing Anita to his house and the deceased committing suicide, it can be clearly inferred that it was not the act of the appellant which instigated or provoked the deceased to commit suicide.

24. The perpetration of physical torture on the deceased on the day prior to the date of the incident which led the deceased to commit suicide is the prosecution case all throughout. It is nowhere the case of the prosecution that the appellant had played any active role either in instigating or aiding the commission of suicide by the deceased for denying to accept Anita as the wife of the appellant. Anita, the second wife of the appellant was brought by the appellant to his house about three months prior to the date of the incident of suicide by the deceased and therefore, bringing of the second wife to the house by the appellant cannot be said to have either incited or facilitated the commission of suicide by the deceased. It is also not the case of the prosecution as disclosed from the evidence led which we have scrutinised very minutely. The aforesaid contention, in our considered opinion, is far fetched and is not established by the facts of the present case. After carefully assessing the evidence on record we find that there is no direct evidence to show that the appellant had by his acts instigated or provoked the deceased to commit suicide and has not done any act which could be said to have facilitated the commission of suicide by the deceased.

25. We now intend to proceed to find out whether a case under Section 498A IPC is made out against the appellant or not. In the case of Girdhar Shankar Tawade v. State of Maharashtra (2002) 5 SCC 177, this Court gave a succinct enumeration of the object and ingredients of Section 498A IPC, when it observed as follows in paras 3 and 17:

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas
Explanation

(a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A.
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17. As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon -- the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the statute: even on an

assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws' place and requests the husband to treat her well -- at best some torture and a request to treat her well. This by itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of day."

26. From the evidence of record available before us, we find that the prosecution witnesses have in their testimonies stated that the deceased was tortured both physically and mentally by the appellant for the first time after his marriage with the deceased when he was refused permission for marriage with said Anita by the deceased. On having been refused the permission for his second marriage with Anita, the appellant again, after a few days requested the deceased to accede to his request for marriage with Anita, which request was again refused by the deceased. Consequent to the said position and due to the adamant position taken by the deceased, cruelty was meted out to her by the accused which fact is sufficiently proved from the evidence on record. Therefore, we find no reason to take a different view than what has been taken by the trial Court and the High Court as far as Section 498A IPC is concerned.

27. Accordingly, the present appeal is hereby partly allowed. We hereby set aside the conviction of the appellant under Section 306 but uphold the conviction of the appellant under section 498A. As the appellant is on bail, his bail bonds stand cancelled. The appellant is directed to surrender himself before the jail authorities within 15 days from today to serve out the remaining sentence under Section 498A, failing which the concerned authority shall proceed against the appellant in accordance with law.

.....J. [Dr. Mukundakam Sharma]J. [R.M. Lodha] New Delhi November 11, 2009