

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1248 of 1998

- Dilip Kumar, S/o Paliram, aged about 32 years, R/o Tatiband Basti, P.S. Aamanaka, District - Raipur

---- Appellant

Versus

- State of M.P. (Now C.G.)

---- Respondent

For Appellant	:	Mrs. Renu Kochar, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 11-09-2015

- 1) The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 06.05.1998 passed by the Additional Sessions Judge (Special Judge, NDPS), Raipur in Sessions Trial No.342 of 1997, whereby and whereunder the trial Court after holding the appellant guilty for commission of offence, convicted him under Sections 306 & 498A of the IPC and sentenced him to undergo R.I. for 6 years & to pay fine of Rs.2,000/-, in default of payment of fine to undergo additional S.I. for 6 months and to undergo R.I. for 2 years & to pay fine of Rs.1,000/-, in default of payment of fine to undergo additional S.I. for 3 months respectively. Both the sentences were directed to run concurrently.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced

the appellant as aforementioned and thereby committed illegality.

- 3) As per case of prosecution, marriage of deceased – Beena with appellant was solemnized in the year 1992. On the fateful day i.e. 20.05.1997, at about 9.00 to 10.00 a.m., deceased was found hanging from the ceiling fan in the house of appellant, situated at Tatiband. It is the story of the prosecution that she committed suicide within seven years of her marriage as a result of abetment caused by her husband. It is also alleged that soon after her marriage, she was being treated with cruelty in connection with demand of dowry.
- 4) Hari Prasad (PW-1), cousin of the appellant, went to police station, Amanaka and informed the police about the incident. Investigating Officer reached the place of occurrence and after summoning the witnesses vide Ex.P-3, inquest over the dead body of the deceased was prepared vide Ex.P-4. Dead body of deceased Beena was sent for autopsy to the Medical College Hospital, Raipur vide Ex.P-5, where Dr. Ullas Gonade (PW-10), conducted autopsy on the dead body of the deceased vide Ex.P-12 and found following injuries and symptoms :-
 - (i) A ligature mark $2\frac{1}{4}$ " breadth present around neck. Circular diameter is 14", the distance from right mastoid is 2" from left mastoid is 1" from chin $2\frac{3}{4}$ ". Mark is glistening dark, directed upward & laterally towards left side.

- (ii) Bubble of saliva is present from right angle of mouth. Cyanosis of nail is present.
- (iii) Tongue protruded out, mouth open, eyes open, both foot extend and right leg fold at knee.
- (iv) A single knot present on left side of neck on lateral side below left mastoid ligature used is blue colour duppatta.
- (v) No external injury present over body.
- (vi) On neck dissection, white tissue seen beneath the ligature mark.

Cause of death was asphyxia due to ante mortem hanging and it is suicidal in nature.

- 5) Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). On the basis of statements & autopsy report (Ex.P-12), First Information Report (Ex.P-13) was registered by Investigating Officer A.K. Pandey (PW-11) against the accused/appellant under Sections 306 & 498A of the IPC.
- 6) After completion of investigation, charge sheet was filed before the Court of Additional Chief Judicial Magistrate, Raipur, who in turn committed the case to the Court of Sessions, from where learned Additional Sessions Judge received the case on transfer for trial.
- 7) In course of trial, the prosecution to bring home the charges, examined as many as twelve witnesses to support its case. The accused person in his statement recorded under Section

313 of Code, denied his involvement in the occurrence and pleaded innocence and false implication in crime in question.

- 8) After providing opportunity of hearing to the parties, learned Additional Sessions Judge, Raipur, on appreciation of evidence brought on record came to hold that the prosecution had been able to establish the charges against the accused and on that basis convicted and imposed sentence as has been stated herein-before. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the accused/appellant has preferred the instant appeal.
- 9) I have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
- 10) Learned counsel appearing for the appellant has not disputed the death of the deceased. She submits that the conviction of the appellant is substantially based on the evidence of Suresh Saini (PW-2), Balmukund (PW-4), Rajesh Bajaj (PW-5) and Prasad Kumar (PW-6), but their evidence does not inspire confidence and is not trustworthy. She further submits that there are several contradictions and omissions in their statements. She also submits that prosecution has failed to prove the ingredients of Sections 306 and 498A of the IPC, therefore, the appellant be acquitted from the said charges.
- 11) *Per contra*, learned State counsel opposing the appeal submits that evidence of aforesaid witnesses is sufficient to

prove the guilt of the accused/appellant and the trial Court has not committed any illegality by convicting and sentencing the appellant as aforementioned.

- 12) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the parties.
- 13) Since the conviction is made under Sections 306 and 498A of the IPC, it would be relevant to quote the necessary ingredients of Sections 306 and 498A of the Indian Penal Code including Section 107 of IPC and Section 113A of the Evidence Act which read 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.”

“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 doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.”

“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 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”.

- 14) I would like to examine the evidence adduced by the prosecution in the light of frame work of the aforesaid Sections. Suresh Saini (PW-2), neighbour of the deceased and the appellant, has stated that soon before the incident, deceased Beena and her husband were taking tea at their courtyard, they were playing with her daughter, thereafter, appellant left his house. After sometime, she went inside the room and saw Beena hanging by fan with the help of Saree. She is the witness of inquest document (Ex.P-4). Her evidence shows that soon before death of the deceased, no quarrel had taken place between the deceased and appellant and they were living happily together.
- 15) Bal Mukund (PW-4), uncle of the deceased stated in his deposition that deceased used to write letters to her parents stating therein that appellant used to beat her on questioning as to why he was coming late to the house. In his cross-examination he admitted that no letter was written to him by the

deceased. Therefore, the statement of this witness shows that he is a hearsay witness on this point.

- 16) Rajesh Bajaj (PW-5), brother of the deceased, has stated that ten days prior to death of deceased, she told him that accused beat her, she also narrated this fact to his mother when she came to his home. For supporting his statement no documentary evidence was produced to show that he had come to Tatibandh Raipur, nor his mother has been examined, therefore, the testimony of this witness is not reliable in respect of *marpeet*.
- 17) Prasad Kumar (PW-6), uncle of the deceased, has stated that whenever deceased came to Godda she used to tell him that appellant beat her. In his cross-examination he has stated that he has given that statement to police but in his police statement made under Section 161 of the Code this version was not recorded. It shows that he has given false statement about that.
- 18) Prosecution has cited a letter (Ex.P-9) which is not properly proved. Even the letter was not sent to handwriting expert nor produced any other letter for tallying the writing. Therefore, only oral evidence is not acceptable as so called letter (Ex.P-9) was written by the deceased soon before her death. Even the letter also does not show that any unendurable mental agony and physical pain was given by the appellant to the deceased.

- 19) In order to hold the person guilty under Section 306 of the IPC, it is necessary that the offence should fall within the ambit of Section 107 of the IPC, which should comprise :
- (i) instigating a person to commit an offence.
 - (ii) engaging in a conspiracy to commit an offence
 - (iii) intentionally aiding a person to commit an offence.
- 20) Therefore, a person said to have abetted, doing of a thing when he or she instigates any person to do so with any other means of abetment besides instigating are conspiracy and intentionally aid the commission and it is sometime more than co-operation.
- 21) In the instant case, the perusal of the statements made by all the star witnesses of the prosecution have not disclosed any factum of any such cruelty which compelled the deceased for committing an offence. In order to draw presumption under Section 113A of the Evidence Act, if the death is committed within 7 years of the marriage of the deceased the presumption has to be added with the word "cruelty". Here the witnesses have not said anything about such cruelty which forced the deceased for committing the suicide.
- 22) On reading of the aforesaid Sections together, in view of the statements made by the witnesses, I do not find any fact which will constitute an offence under Sections 306 and 498A of the IPC, so as to hold the accused guilty under Sections 306 and 498A of the IPC. It is important to mention here that nothing has come on record to prove the abetment for committing

suicide under Section 306 of the IPC against this accused. Here in the instant case, there is no legal evidence which could be made basis for retaining the finding with respect to the alleged cruelty of the accused with the deceased, so as to connect the accused with the commission of offence under Section 498-A of IPC. Further, the statements of the witnesses are not admissible in evidence for offence punishable under Section 498-A of the IPC as they are hearsay witnesses.

- 23) Taking into consideration all the facts and circumstances of the case and on minute scrutiny of the entire evidence, it is clear that prosecution has failed to prove the fact that appellant treated the deceased with cruelty in connection with demand dowry, as a result of which she committed suicide and it is also not proved that appellant had abetted the deceased for committing suicide.
- 24) In the result, the appeal filed by the appellant is allowed. Conviction and sentence imposed on him by the trial Court is hereby set aside. He is acquitted of the charges.
- 25) It is stated that the appellant is on bail. His bail bond shall continue for further period of 6 months as per requirement of Section 437A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE