

**CRA No.2365-SB of 2003
Date of Decision : 25.02.2015**

Raj Kumar @ Raja

..... Appellant

Vs.

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the digest?**

Present : Mr. H.S.Gill, Senior Advocate with
Mr. Vivek Goel, Advocate
for the appellant.

Mr. A.P.S.Gill, AAG, Punjab.

AJAY TEWARI, J.(ORAL)

This appeal has been filed against the judgment dated 3/4.12.2003 passed by the Sessions Judge, convicting the appellant under Section 306 IPC and sentencing him to undergo rigorous imprisonment for 8 years.

The case unfolded by the prosecution was that the deceased was married to the appellant about 15-16 years prior to the occurrence and there was no child from the marriage and that was the reason why the appellant used to treat her with cruelty. On the fateful day i.e. 7/8.10.2001, the appellant called up the complainant (his father-in-law) at about midnight and informed him that his daughter was ill and he should come to Jalandhar. As per the complainant he told his son-in-law that his son had gone to

Ambala and he would come to Jalandhar after his son returned. Again at

about 10:00 am on 8th of October, 2001 the appellant was stated to have called his father-in-law and again asked him to come and again the complainant told him that he would come by the evening. About 15 minutes later, the third phone call went from the appellant to the complainant when he was informed that his daughter had died. The complainant reached the house of his daughter's in-laws in the evening of the 8th of October, 2001 and found there were burn marks on the dead body of his daughter. It was then that the prosecution was set in motion. On 9th of October, 2001 at about 2:30 pm, the postmortem was conducted which confirmed that the deceased had died due to ante mortem burn injuries.

The primary argument of learned Senior counsel for the appellant is that even if all these allegations are accepted to be correct, as per the testimony of the prosecution witnesses, i.e. the father and brother of the deceased, the last act of cruelty had taken place a few years ago. It is stated that mere differences between husband and wife (even if admitted) would not suffice for a conviction under Section 306-IPC. As per the learned counsel, some people can withstand much larger amount of unpleasantness than other people but a subjective reaction to unpleasantness could not be enough to warrant a conviction under Section 306-IPC. As per him, some times barrenness can cause an extreme reaction amongst women leading to depression of such an order that she may commit suicide.

Learned Senior counsel for the appellant has relied upon a decision of the Hon'ble Supreme Court titled as Amalendu Pal @ Jhantu Vs. State of West Bengal 2010 Volume I SCC page 707, where

the Hon'ble Supreme Court held as follows:

“15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, 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 Indian Penal Code is not sustainable.

16. In order to bring a case within the purview of Section 306 of Indian Penal Code 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 abatement by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 Indian Penal Code.”

Learned Assistant Advocate General, has however countered by arguing that the un rebutted fact that the appellant did not remove his burnt wife to hospital itself corroborates the allegation under Section 306-IPC. Apart from that he has argued that once there is credible testimony to the effect that appellant used to treat the deceased with cruelty and thereafter, the deceased committed suicide, an offence under Section 306-IPC would

be made out.

I regret my inability to accept this extreme argument particularly in view of the exposition of law extracted above. However, it cannot also be denied that even when his wife had suffered serious burn injuries, the appellant did not bother to take her to the hospital and get her treated from the doctor and she died after suffering (even by his own admission) for almost 10 to 12 hours.

In the circumstances, it is hard to resist the conclusion that he caused her death by negligence. Consequently, I alter the conviction of the appellant from abetment of suicide to Section 304-A IPC. Since he has already undergone sentence longer than that prescribed under Section 304-A, the sentence is reduced to that which he has already undergone.

Appeal stands disposed of in the above terms.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

February 25, 2015
ps-I/pooja sharma-I

(AJAY TEWARI)
JUDGE