

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-803-SB of 2003

DATE OF DECISION: APRIL 29, 2015

JOGINDER SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgment should be reported in the digest? **Yes**

PRESENT: MS. B.K.MANN, ADVOCATE FOR THE APPELLANT.

MS. RITU PUNJ, ADDL.A.G., PUNJAB.

MR. RAVI MALHOTRA, ADVOCATE FOR THE COMPLAINANT.

M. JEYAPPAUL, J.

1. Accused Joginder Singh has challenged the judgment passed by the trial Court whereby he has been convicted under Section 306 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹1000/- and in default of payment of fine to undergo further period of two months.

2. It is the case of the prosecution that the accused got married to Dilbagh Kaur in the year 1991. He taunted his wife and beat her quite often. In spite of the fact that he was blessed with three children, the accused wanted to remarry. Therefore, Dilbagh Kaur having been fed up with the conduct of the accused, took poisonous substance and committed suicide. It is the case of the prosecution that the accused abetted Dilbagh Kaur to commit suicide.

3. PW1 Gulzar Singh, the brother of Dilbagh Kaur, set the law in motion by lodging a complaint. He has deposed that his sister Dilbagh Kaur who was married to accused Joginder Singh in the year 1991 was

blessed with three children. After one year of marriage, the accused started taunting his sister saying that she was not educated and she had no manners to behave. Compelling Dilbagh Kaur to bring her share from his parents, he beat her. She was sent out of the matrimonial home. With the intervention of the respectables, she was sent back to the matrimonial home. On 21.6.1999, PW2 Parsin Kaur, the mother of Dilbagh Kaur visited the house of her daughter Dilbagh Kaur. In her presence, the accused used filthy language and gave beatings to Dilbagh Kaur. On 22.6.1999, a telephonic message was received that Dilbagh Kaur was admitted to Muni Lal Chopra Hospital, Amritsar. Dilbagh Kaur committed suicide on account of the torture meted out at the hands of the accused.

4. PW2 Parsin Kaur corroborated the statement of PW1 Gulzar Singh as regards the taunting and beating allegedly given by the accused to Dilbagh Kaur.

5. PW6 Dr.Gurmanjit Rai along with Dr. Didar Singh conducted post mortem examination on the dead body of Dilbagh Kaur on 23.6.1996 at 4.30 P.M. He opined that Dilbagh Kaur died due to aluminum phosphide poisoning which was sufficient to cause death in the ordinary course of nature.

6. The accused submitted in his statement under Section 313 Cr.P.C. that he was innocent, but a false case was foisted on him.

7. On the side of the defence, DW1 Surinder Singh was examined to prove that he conducted departmental enquiry against accused Joginder Singh as regards the allegation of demand of dowry. But he could not give any finding as the criminal case was pending.

8. DW2 ASI Gurcharan Singh deposed that he received a

communication that wife of accused Joginder Singh took some poisonous substance and therefore, the accused was sent to his house.

9. DW3 H.C. Dharamjit Singh spoke about the fact that Dilbagh Kaur who consumed poison was admitted to hospital after Joginder Singh was called to his house.

10. The trial Court having adverted to the evidence on record, came to the conclusion that the prosecution has established beyond reasonable doubt that the accused abetted the commission of suicide by his wife.

11. The evidence of PW1 Gulzar Singh, the brother of Dilbagh Kaur and PW2 Parsin Kaur, the mother of Dilbagh Kaur would go to establish that the accused Joginder Singh had taunted Dilbagh Kaur as she was uneducated. The appellant had also beaten her twice and turned her away from the matrimonial house with a view to compel Dilbagh Kaur to bring some share of property from her parents. The testimony of PW1 and PW2 also would establish without any pale of doubt that on 21.6.1999, a day prior to the occurrence, accused used filthy language and gave beatings to Dilbagh Kaur even in the presence of PW2 Parsin Kaur. Vexed with the cruelty and harassment meted out to her by her husband, she had committed suicide.

12. There is no reason to discard the evidence of PW1 and PW2 though they were brother and mother of the deceased Dilbagh Kaur. The deceased would have shared such matrimonial discord only to her close relatives. It is not a pleasant episode which could be happily shared with any third party. Therefore, in my considered view, PW1 and PW2 are the most competent witnesses to speak about the cruelty and harassment

meted out to deceased Dilbagh Kaur in the matrimonial home. Further, the entire evidence adduced by PW1 and PW2 is found to be cogent, reliable and trustworthy. Therefore, relying upon their testimony, it is concluded that accused had committed cruelty and on account of which Dilbagh Kaur had committed suicide as established by the medical evidence on record.

13. The learned counsel appearing for the appellant would vehemently submit that unless the appellant intended Dilbagh Kaur to commit suicide or intentionally instigated her to kill herself, the penal provision under Section 306 IPC would not be attracted.

14. Per contra, learned counsel appearing for the complainant as well as the learned State counsel would vehemently submit that cruelty and harassment committed by the accused had virtually instigated the deceased to commit suicide. The deceased was forced to take such a decision on account of the cruelty committed by the accused. Instigation done by the accused by committing cruelty to the deceased is found quite apparent in this case. Therefore, it is their submission that the trial Court has rightly convicted the accused under Section 306 IPC.

15. Section 107 of the Indian Penal Code deals with abetment. Instigation of a person to do a thing or intentionally aiding a person to do a thing would amount to abetment. Section 306 IPC is the penal provision for abetment of suicide.

16. The penal consequences of subjecting a married woman to cruelty by a husband or his relative is dealt under Section 498A of the Indian Penal Code. It is very much important to refer to explanation 'a' to Section 498A which reads that cruelty means any willful contact which is of such a nature as is likely to drive the woman to commit suicide.

17. It is also pertinent to refer to the presumption of abetment to suicide dealt under Section 113A of the Indian Evidence Act, 1872. As per the above provision relating to presumption, in a case where the question arises as to whether the commission of suicide by a woman had been abetted by her husband, if it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the Court may presume that such suicide had been abetted by her husband. The word cruelty referred to in Section 113A of the Evidence Act shall have the same meaning as in Section 498A IPC as per the explanation found thereunder.

18. When the suicide is preceded by cruelty contemplated in Section 498A of the Indian Penal Code and the death has occurred within a period of seven years of marriage, in view of Section 113A of the Evidence Act a presumption may be drawn that the husband of the victim had abetted the suicide.

19. The basic difference between Section 306 and 498A IPC is the intention or the mens rea to cause the death of the deceased by self killing. In other words to attract the offence under Section 306 IPC, suicide should have been abetted and intended, whereas to punish a person for the offence under Section 498A cruelty caused by the husband to drag the woman to commit suicide is sufficient. If the evidence available on record establishes that there had been willful conduct on the part of the husband which had compelled the victim to end her life, the husband shall be convicted only under Section 498A and not under Section 306 IPC. But in a case where the occurrence had taken place within seven years of marriage, the husband or his relative will be convicted under Section 306

IPC drawing presumption available under Section 113A of Indian Evidence Act, unless and otherwise the presumption under Section 113A of Indian Evidence Act is convincingly rebutted by the husband or his relative. Cruelty simpliciter without any intention on the part of the accused to cause the death of his wife by self killing in a case where the occurrence had taken place beyond seven years of marriage would attract only the offence under Section 498A IPC.

20. The learned State counsel referred to the decision of the Hon'ble Supreme Court in ***Karan Singh and another versus State of Haryana 2014(2) Criminal Court Cases 855 (SC)*** wherein it has been held as follows:-

“25. But, there is no doubt that Manju and Sunita were subjected to ill-treatment and harassment from time to time by Karan Singh and Mukhtiari though it was not relatable to any demand for dowry. The evidence on record shows that they were turned out from the matrimonial home on more than one occasion. They were even turned out from the matrimonial home within about ten days after Manju gave birth to a baby boy. Ram Kishan had spoken about this to Satbir and Sukhbir but in spite of this, the attitude of Karan Singh and Mukhtiari did not change. As mentioned above, no allegation has been made against Satbir and Sukhbir. Again, a few days before Manju's death, Sunita was subjected to beating and turned out of the matrimonial home. Although, Manju did not accompany her sister, she paid the price for staying back in village Raiya. From the facts of the case it is quite clear to us that although

there may be no evidence of Manju having been compelled by Karan Singh and Mukhtiari to consume poison, they had created a situation over a sufficiently long period of time whereby she was left with no option but to take her life. It is quite unlikely that a young lady, particularly one having a year old child, would take her life unless she had some mental health issues (which is not the case) or was compelled by circumstances to do so. An offence of abetment of suicide punishable under Section 306 of the IPC is much broader in scope than an offence punishable under Section 304-B of the IPC *Bhupendra v. State of U.P.*, 2014(2) SCC 106. In this case an offence punishable under Section 306 of the IPC is clearly made out against Karan Singh and Mukhtiari.”

21. That was a case where the husband and his relatives faced charges under Section 304B IPC but the conviction was recorded under Section 306 IPC. It is further found in the above case that the victim married the main accused on 17.5.1993. She committed suicide on 13.12.1995. In other words, within 2½ years of the marriage, the above occurrence had taken place. In my view, the presumption under Section 113A of Indian Evidence Act was very much available in that case to conclude that the accused, though not committed an offence under Section 304B IPC, had committed an offence under Section 306 IPC. Therefore, the above decision is factually distinguishable.

22. The learned counsel appearing for the appellant referred to the decision of the Hon'ble Supreme Court in ***S.S. Chheena versus Vijay Kumar Mahajan and another 2010(4) R.C.R. (Criminal) 66*** wherein it

has been held as follows :-

“27. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009(4) R.C.R. (Criminal) 196 : 2009(5) R.A.J. 278 : had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances. 28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

23. It has been categorically held in the aforesaid decision that mens rea to commit an offence is a sine-qua-non to attract the offence under Section 306 IPC. In the absence of intention to cause the death of

the victim by suicide, the offence under section 306 will not be attracted. Coming to the facts and circumstances of this case, I find that taunting on account of uneducation, beating to bring share in the property from the family of the wife and using filthy language in the presence of the mother of the victim would definitely amount to cruelty which would attract the offence under Section 498A IPC but it would not attract the offence under Section 306 IPC as he had not intended such commission of suicide by the victim.

24. In ***M.Mohan versus State Tr. Dy. Supdt. of Police 2011 (3)***

SCC, 626, it has been held as under :-

“The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 Indian Penal Code there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

25. The pre-requisites of mens rea to commit the offence and the intention of the accused to push the deceased to end her life should be established to attract the penal provision under Section 306 IPC.

26. The appellant and the victim lady Dilbagh Kaur had lived their marital life for more than eight years. They have been blessed with three children. Under such circumstances, the question of drawing presumption under Section 113A of the Indian Evidence Act does not arise. The above act of the accused proved by PW1 and PW2 would go to establish that the

appellant in fact subjected his wife Dilbagh Kaur to cruelty. As he had not intended the commission of suicide by his wife, the question of convicting the appellant under Section 306 IPC does not arise for consideration at all.

27. The custody certificate produced by the Additional Advocate General, Punjab would establish that the accused had already undergone 1 year 2 months and 22 days of sentence.

28. In the above facts and circumstances, the judgment of conviction and sentence passed by the trial Court under Section 306 IPC is set aside and instead, the accused is convicted under Section 498-A IPC and is sentenced to undergo the above period of 1 year 2 months and 22 days already undergone by him. The fine amount and the default sentence imposed by the trial Court for the offence under Section 306 IPC is maintained for the offence under Section 498-A IPC.

29. The accused-appellant is on bail. His bail bond stands discharged.

30. The appeal is disposed of accordingly.

**(M. JEYAPPAUL)
JUDGE**

April 29, 2015

Gulati/p.singh