

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-1238-SB of 2003.
Date of Decision: May 20, 2015.**

LAXMAN

....APPELLANT.

VERSUS

STATE OF U.T., CHANDIGARH

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. H.S. Baath, Advocate for the appellant.

Mr. Rajiv Sharma, Additional Public Prosecutor for
respondent-UT, Chandigarh.

SNEH PRASHAR, J.

1. This is an appeal preferred by appellant Laxman, assailing the judgment of conviction dated 16.05.2003 and order of sentence even dated recorded by learned Additional Sessions Judge, Chandigarh, in case bearing First Information Report No.451 dated 18.11.2001 under Sections 306 and 498-A of the Indian Penal Code (for short "I.P.C.") registered at Police Station Sector-11, Chandigarh.

2. In precise, the story of the prosecution is that on 18.11.2001 at 9:55 a.m., a message pertaining to immolation of a lady in House No.2502, Sector 24-C, Chandigarh, was received by Assistant Sub Inspector Sohan Singh from the Police Control Room. Reaching the spot,

he came to know that the immolated lady had been taken to P.G.I., Chandigarh. He reached P.G.I. and after the doctor declared her fit for making statement, he recorded the statement of the lady, namely, Suman wife of Laxman, who had suffered burn injuries.

Suman stated that she was married to Laxman in April, 2001. She was residing with her husband and father-in-law Dharam Singh, in the house allotted to her father-in-law. Her husband had illicit relations with Mamta, her sister-in-law, which became the reason for quarrel between them and her husband often gave beatings to her. On 18.11.2001 from about 8:30 a.m. to 9 a.m., her husband Laxman quarreled with her and then left the house after drubbing her. In order to get rid of the daily affliction caused to her by her husband, she poured kerosene on her body and set herself afire. She added that she wanted to end her life because she was being troubled by her husband who did not want to cohabit with her. Her husband was solely responsible for rendering her in such condition.

Based on the statement of Suman, a First Information Report was recorded. Requisite application for getting the statement of Suman recorded in the presence of Magistrate was moved. Baljinder Singh, Judicial Magistrate Ist Class, reached P.G.I. and recorded the statement of Suman. Investigations were conducted. One half burnt plastic can, a match box, half burnt slippers and burnt pieces of clothes recovered from the spot were packed into a sealed parcel and taken in possession. The appellant was arrested. On 24.11.2001, Suman succumbed to the injuries and died. The Investigation Officer got the autopsy done on her dead body

and prepared the inquest report. On completion of investigation, the appellant was sent to the court for trial.

3. The appellant was charge-sheeted for commission of offence under Sections 306 and 498-A I.P.C. He pleaded not guilty and claimed trial.

To substantiate the charges, the prosecution examined PW1 Ashok Kumar, father of the deceased; PW2 Baljinder Singh, Magistrate; PW3 Dr. Atul Prashar, who prepared death summary; PW4 Dr. Monika, who conducted postmortem examination; PW5 Head Constable Jaspal Singh; PW6 Constable Gian Chand; PW7 Charan Dass, Work Inspector; PW8 Constable Harjinder Singh; and PW10 Assistant Sub Inspector Sohan Singh.

After closure of evidence of the prosecution, statement of appellant under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded and the entire incriminating evidence available on record was put to him to which he replied in negative and pleaded false implication. He stated that he was leading a happy married life with his wife and that his wife sustained burn injuries due to bursting of the stove. His father-in-law started blackmailing him and demanded money and when he declined to pay, he got the instant false case registered against him. Two witnesses, namely, DW1 Krishan Lal and DW2 Rajbir were examined by the appellant in his defence.

4. Considering the evidence produced by the prosecution and in defence and the submissions made on behalf of the parties, learned trial

Court arrived at the conclusion that the appellant abetted commission of suicide by deceased Suman and also subjected her to cruelty. Accordingly, the appellant was held guilty for commission of offence under Sections 306 and 498-A I.P.C. and was convicted thereunder. Learned trial court sentenced the appellant as under:-

“The convict is sentenced to undergo four years rigorous imprisonment under Section 306 IPC and to pay a fine of Rs.500/- thereunder and in default of payment of fine, he shall further undergo one month's rigorous imprisonment.

The convict is also sentenced to undergo two years rigorous imprisonment under Section 498-A IPC and to pay a fine of Rs.500/- and in default of payment of fine, he shall further undergo one month's rigorous imprisonment.”

5. Feeling aggrieved by the impugned judgment of conviction dated 16.05.2003 and order of sentence of even date passed by learned trial court, the appellant preferred the instant appeal.

6. The submissions made by Mr. H.S. Baath, learned counsel representing the appellant and Mr. Rajiv Sharma, learned counsel representing the State of U.T., Chandigarh, have been heard and record has been perused.

7. Learned counsel for the appellant argued that statement of the deceased i.e. Ex.P35, on the basis of which the First Information Report was registered, was allegedly made by the deceased before Assistant Sub Inspector Sohan Singh, the Investigation Officer. In that statement as well as in the subsequent statement Ex.PW10/D given by the deceased before the Magistrate, it was not her allegation that her husband demanded

dowry and used to harass and maltreat her on that account. It was also not the case of the prosecution that the deceased had ever given any complaint against her husband to the Panchayat/brotherhood or to any authority alleging that she was being treated with cruelty by him. The only person examined by the prosecution to prove that the deceased was being ill treated was her father PW1 Ashok Kumar. Even he did not state that on being informed by his daughter he had ever approached any authority that his daughter was not happy or was being physically assaulted in her matrimonial home. There being no such prior complaint and also in absence of corroboration of the statement of PW1 by some independent person, the prosecution could not establish that the deceased was being maltreated by the appellant and, therefore, there was nothing which could attract “**cruelty**” as defined under Section 498-A I.P.C.

8. Learned counsel further argued that in her dying declaration Ex.PW10/D, the deceased stated that her husband had quarreled with her in the morning. She also stated that her husband was flirting with her sister-in-law because of which there used to remain tension in their house. Even if that was true, she attributed no overt act to the appellant-husband during the quarrel on the day of occurrence which could/abet be directly connected with the commission of suicide by her. The solitary instance of quarrel between the husband and wife could not be sufficient to abet suicide by the wife. In fact, the statement of the deceased indicates that it was her self created suspicion of illicit relationship between her husband and her sister-in-law, which dragged her to commission of suicide by her.

No evidence has been produced by the prosecution to prove that the deceased rightly suspected her husband of having illicit relations with her sister-in-law. The suspicion expressed by the wife was not enough to blame the husband for suicide by the wife.

9. To me, there appears to be no force in the arguments of learned counsel for the appellant. The allegation of the prosecution is mainly based on the dying declaration Ex.PW10/D made by the deceased before PW2 Baljinder Singh, Judicial Magistrate Ist Class, Chandigarh on 18.11.2001. Stepping into the witness box PW2 testified that on 18.11.2001 Sub Inspector Gurmukh Singh, Incharge, Police Post Sector-24, Chandigarh, moved application Ex.P10 before him for recording statement of Suman. He recorded his endorsement on the application Ex.PW10/A at 11:05 a.m. and reached P.G.I., Chandigarh. He sought certificate of the doctor regarding fitness of Suman for making the statement i.e. Ex.PW10/B. The doctor declaring the patient fit for making the statement gave the certificate in his own hand at 11:28 a.m. Ex.PW10/C. He then, after disclosing his identity to patient Suman, recorded her statement Ex.PW10/D. At the bottom of the statement is the certificate Ex.PW10/E of the doctor that Suman remained conscious and fit during recording of her statement. The certificate of the Magistrate, that the statement was made by Suman voluntarily, is Ex.PW10/F.

10. The statement Ex.PW10/D of Suman recorded by the Magistrate became her dying declaration as she died on 24.11.2001.

It has been held by Hon'ble Apex Court in ***Prempal vs. State***

of Haryana, (2014) 10 Supreme Court Cases 336 that, 'when reliance is placed upon dying declaration, the court must be satisfied that the dying declaration is true, voluntary and not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit statement of mind'. In *State of U.P. v. Ram Sagar Yadav, (1985) 1 Supreme Court Cases 552*, this Court held that if the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.

In *Nanhau Ram vs. State of M.P., 1988 Supreme Court Cases (Cri) 342* it was held by Apex Court that normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion, but where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

11. The dying declaration Ex.PW10/D of the deceased was recorded by the Magistrate in the hospital when she was lying in burnt condition. According to the death summary Ex.P11 and Ex.P13 she had 100% thermal burns. The deceased in her statement Ex.P35, which formed the basis of First Information Report as well as in her dying declaration, unequivocally stated that her husband was having illicit relations with her sister-in-law Mamta which had become the bone of tension in the house and her husband used to physically assault her. She categorically stated that except for her husband nobody else used to harass her. She added that to get rid of the daily affliction caused to her by her husband and because

her husband did not want to cohabit with her, she had burnt herself.

From the dying declaration, it was crystal clear that the appellant subjected the deceased to utmost cruelty, physical and mental, by beating her and by adopting a harsh attitude/conduct towards her. Immediately before the deceased burnt herself, she had a fight with her husband-appellant who then left home after drubbing her.

12. PW1 Ashok Kumar was the father of the deceased. He testified that his daughter Suman used to complaint to him that she was being often beaten by her husband. He stated that on 2-3 occasions he even went to the matrimonial home of his daughter to persuade the appellant to refrain from beating/maltreating his daughter.

It may not be the allegation that the appellant used to demand dowry but the fact that he being the husband treated the deceased-wife with cruelty stands established through consistent, cogent and substantive evidence and that brings the offence committed by him within the four corners of Section 498-A I.P.C.

13. Admittedly, deceased Suman was married with the appellant on 07.04.2001. The marriage card is Ex.P7. She burnt herself to commit suicide on 18.11.2001 and died on 24.11.2001. Section 113-A of the Indian Evidence Act, 1872 (in short, “the Act of 1872”) postulates that when a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that she was subjected to cruelty, the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by her husband. In the case in

hand, presumption is not the sole ground for finding the appellant guilty of abetting suicide by his wife-Suman. There is sufficient and reliable evidence in the shape of dying declaration of the deceased made in the presence of a Magistrate and a doctor and the statement of the father of the deceased for proving that the deceased was being subjected to cruelty by the appellant because of which she committed suicide.

The sentence awarded to the appellant is just adequate and calls for no intervention.

14. Accordingly, there being no merit in the appeal, it is dismissed and judgment of conviction and order of sentence dated 16.05.2003, are upheld. The appellant is on bail, his bail bond shall stands cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

May 20, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.