

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Cr.A.No.S.2157-SB of 2003 (O&M)
DATE OF DECISION : 18.3.2015

V.V.Parshant

APPELLANT

VERSUS

State of Haryana

RESPONDENT

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Ms.Tanu Bedi, Advocate for the appellant.

Shri P.S.Chauhan, Additional A.G. Haryana with
Shri Himmat Singh, A.A.G. Haryana.

MAHESH GROVER, J.

This appeal is directed against the judgment/order dated 9.9.2003/11.9.2003 of the learned Additional Sessions Judge, Fast Track Court, Gurgaon vide which the appellant was convicted under Section 498A I.P.C. and sentenced to undergo RI for one year and to pay a fine of Rs.1000/-, in default, to further undergo RI for six months. The appellant was also convicted under Section 306 I.P.C. and sentenced to undergo RI for five years and to pay a fine of Rs.2000/-, in default, to further undergo RI for one year. Both the sentences were

ordered to run concurrently.

The prosecution case is based on the statement of the complainant, the father of the deceased who stated that marriage of his daughter was solemnized with the appellant on 6.7.1999 without parental consent to which there was a reluctant reconciliation. He stated that his daughter was being ill-treated in her matrimonial home. The deceased was working as a Postal Assistant since 1.1.2000 and her parents-in-law, unhappy with her assignment, would pressure her to give up her service to become a housewife. A child was born to the couple on 3.6.2000 at the complainant's house but the deceased along with her child left for her matrimonial home barely after 11 days of the delivery. The complainant stated that the deceased was subjected to harassment on account of dowry even though gold and other ornaments were given by the complainant to satiate the repeated demands of the appellant. It was further stated that a sum of Rs.1 lac was demanded at the time of purchase of a vehicle Opel Astra to replace their earlier vehicle, a Maruti 800. The complainant paid Rs.20,000/- in cash and Rs.30,000/- through a cheque. The deceased according to the complainant, usually remained upset on account of such harassment where the mother-in-law imposed restrictions upon her visits to her parents. A monthly income scheme account was opened in the name of the deceased by the complainant out of which a sum of Rs.4,000/- was withdrawn to meet the demands of the husband of the deceased. On 27.10.2001, the deceased came to the house of the complainant after obtaining the consent of her husband and in-laws. The entire salary of the deceased was utilized by her in-laws to meet the needs of the household. On the fateful day, i.e. 29.10.2001, the deceased is said to have a lengthy argument with the appellant over telephone which upset her considerably prompting her to take leave from the office to come to the house of the complainant. At about 1.15 p.m., after spending sometime with the relatives and her daughter, she jumped from the terrace of the house situated on

the 5th floor leading to her death.

Upon information, the S.D.M., Delhi conducted the inquest proceedings and the statements of the witnesses were also recorded. Eventually, the F.I.R. was registered, investigation completed and challan submitted implicating the appellant under Sections 498-A, 306 I.P.C.

Charge was framed appropriately to which the appellant pleaded not guilty to claim trial.

The prosecution examined 18 witnessess to bring home the guilt of the accused.

In his statement under Section 313 Cr.P.C., the material intended to be used against the accused was put to him inviting a denial and a claim to trial and defence evidence. They examined 3 witnesses in defence.

The learned trial Court concluded that the appellant had violated the provisions of Sections 498-A and 306 I.P.C. and convicted and sentenced him as per details given above.

It is pertinent to mention here that appellant's mother namely Mridula Rao was summoned under Section 319 Cr.P.C. during the course of trial, but acquitted subsequently.

The death on account of a fall, was established as the injuries on the person of the deceased would suggest coupled with the testimony of Dr.Sunil Kumar Sharma PW-1 who stated as such.

The prosecution went on to examine as many as 18 witnesses which included the statement of the complainant, his wife and his son as also the two independent witnesses from the office of the deceased and the other, an acquaintance. The other formal witnesses who were instrumental in preparing the recovery memo, the site plan and special reports were also examined.

Learned counsel for the appellant contended that the impugned

judgment suffers from a great fallacy as it is based solely on acceptance of improved versions given out by the witnesses during the course of trial which are deviant in content to the statements under Section 161 Cr.P.C. recorded at the outset after the unfortunate incident. With specific reference to the statement of the complainant himself, it has been asserted that no specific demands of dowry were elaborately set out in the first statement recorded by the police and even if the testimony of these witnesses is perused, it still does not reveal any cogent evidence with specific demand of dowry. Besides, it is contended that concededly, the deceased had married of her own accord which was not to the liking of the complainant and difficulty of the family to come to terms with an inter-caste marriage performed without their consent had possibly given a cause to the deceased to take her own life particularly when the death took place in the parental house with the appellant distanced from the deceased at that particular point of time. It is further contended that the best witnesses were the colleagues and friends of the deceased at the work place who could have given an insight into the state of mind of the deceased immediately prior to the incident or even in close proximity to the period of death. These witnesses though helpful to the appellant as the statement under Section 161 Cr.P.C. would reveal, were not examined by the prosecution leading to suppression of truth.

It is thus, contended that if the entire evidence of the prosecution is seen, it is at variance with the first statement given out by the very same witness and such improvements, seemingly an afterthought, cannot form the basis of a conviction.

A prayer for setting aside the conviction and sentence has therefore, been made, which is resisted by the learned counsel for the respondents who states that there is ample evidence to show that demands of dowry were being raised by the appellant and his family members on the deceased and the complainant and the

evidence of the complainant, his wife and his son coupled with the independent witnesses being consistent, should be considered to be inspiring enough to sustain the conviction and sentence awarded by the learned trial Court.

I have heard the learned counsel for the parties and perused the material on record.

The first and foremost issue that needs to be addressed is the question of sustainability of the conviction of the appellant under Section 498-A I.P.C. Section 498-A I.P.C. is extracted here below :-

“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 and shall also be liable to fine.

Explanation.- For the purpose of this section, “cruelty” means-

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman ; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

If the evidence of the complainant and other witnesses is seen, then it is more or less centering around the demands made on account of jewellery and

purchase of a car. Strangely, the complainant does not give the details of the gold ornaments/jewellery given by him to satisfy the demands of dowry in this regard except to state that some articles were given. No specifics find mention in the entire testimony. Neither has any evidence in the shape of bank transactions been brought on record. The Court would thus view this evidence of demands of jewellery and gold articles to be merely accusation sans any supportive evidentiary material and thus, not worthy of credence. Regarding the demands of money for purchase of a car, the same also is uninspiring as the complainant in his testimony states that mother of the appellant was working as a Senior Teacher and had contributed her entire salary towards the car loan. If that be so, then it is hardly conceivable that the complainant or his family had contributed towards the purchase of car as is being sought to be suggested in the evidence.

In the considered view of this Court, these two instances forming the epicenter of demands of dowry are largely untrust-worthy and if that be so, then there would hardly be any evidence to sustain a conviction under Section 498-A I.P.C.

Another factor which would persuade this Court to take the above stated view in the given set of circumstances is the marriage of the deceased with the appellant without parental consent. The statement of the complainant as also the other witnesses from the family would bring out this aspect rather forcefully. A family grappling with the societal pressures accompanying a run away inter-caste marriage of their daughter and the reluctance to accept such a fact, would hardly become an obliging source of satisfaction of demands of dowry, if ever made. It is evident from the testimony of these witnesses that they largely remained disgruntled on account of such involvement of their daughter with the appellant and probably with a grudging acceptance towards the end.

I would thus hold that in the absence of any evidence to sustain the

conviction of the appellant, under Section 498-A, the charge against him on this count would fall.

In so far as the charge under Section 306 I.P.C. is concerned, it has to be noticed that the case of the prosecution rests largely on an incident which allegedly took place in the morning of the date of death where words are said to have been exchanged between the deceased and the appellant on telephone leading the deceased to leave her office in a huff only to come to her parents' house where after spending some time, she jumped from the 5th floor of the house.

Apart from this, no other circumstances have been detailed or elaborated to give an insight into the harassment supposedly being meted out by the appellant or his family members so as to to provoke the deceased into taking her life. The allegations even if accepted, would only indicate a stray incident merely between the husband and wife and cannot be construed to be of the standards of harassment, the language of the statute would warrant. The Hon'ble Supreme Court in numerous judgments has stated that to sustain the charge of abetment to suicide, an accused should have committed such instigation which the language of Section 107 I.P.C. would suggest.

For the purpose of reference, Section 107 I.P.C. is extracted here below :-

“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 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 willful misrepresentation, or by willful 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 any 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.”

The Hon'ble Supreme Court in **Bhagwan Das v. Kartar Singh and others A.I.R. 2007 S.C. 2045** held as under :-

“15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 Indian Penal Code read with Section 107 Indian Penal Code.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 Indian Penal Code, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due

to demand of dowry soon before her death then Section 304B Indian Penal Code may be attracted, whether it is a case of homicide or suicide.”

Finding that even if the allegation of exchange of hot words is accepted to sustain a charge against the appellant on this count would still be a far cry. That apart, even though the statements under Section 161 Cr.P.C. would not be of any evidentiary value, but still the statements of colleagues recorded by the police in the initial stages of the investigation clearly reveal that the deceased was having settled matrimony with no indication of stressful relations and thus, it becomes acutely presumptuous to derive an inference of the appellant having instigated the deceased into suicide.

For the aforesaid reasons, the appeal is accepted and the appellant is acquitted of all the charges against him.

March 18, 2015
GD

(MAHESH GROVER)
JUDGE