

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-S-4547-SB-2013
Date of decision: 12.08.2016**

Dhani Ram

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Sukhpreet Kaur, Advocate,
for the appellant.

Mr. Himmat Singh, DAG, Haryana.

Mr. Sanjeev Patiyal, Advocate,
for respondent No.2.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 09.10.2013 passed by the Sessions Judge, Kaithal, vide which, accused-respondent No.2, Dayawanti, has been acquitted of the charges framed against her under Sections 498-A/306 IPC.

Marriage of Rajni (daughter of complainant Dhani Ram) was solemnized with Paramjit Singh on 27.11.2009. Out of this wedlock, one son was born. On 15.02.2012, a telephonic message was received at Police Station from General Hospital, Kaithal regarding admission of Rajni in a burnt condition. Thereafter, an application was moved before the Chief Judicial Magistrate, Kaithal for recording the statement of Rajni (since deceased) under Section 164 Cr.P.C. The Chief Judicial Magistrate reached the General Hospital, Kaithal and sought the opinion of the doctor regarding fitness of the injured. The doctor on duty declared Rajni fit to make a

statement, upon which, her statement, Ex.PA, was recorded by the Chief

Judicial Magistrate, on the basis of which, FIR under Sections 498-A/309 IPC was registered against Dayawanti-respondent No.2. Later on, Rajni succumbed to the injuries on 26.02.2012. Later on, offence under Section 304-B IPC was added. On conclusion of investigation, challan was presented before the Court.

On appearance of the accused in Court, charge under Sections 306/498-A IPC was framed against her, to which, she pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as 14 witnesses. Thereafter, statement of accused-respondent No.2 under Section 313 Cr.P.C. was recorded, wherein entire incriminating evidence was put to her. However, she denied the same and pleaded false implication.

The trial Court, after going through the evidence led by the parties, acquitted accused-respondent No.2 of the charges framed against her. Hence, this appeal.

Dying declaration of Rajni (deceased) has been placed on record as Annexure A-1. The prosecution based its case on the statement of Dhani Ram, father of deceased (PW-8), Ashok Kumar, cousin of deceased (PW-9) and dying declaration of deceased (Ex.PA), which was proved by Sh. Rajesh Garg, Chief Judicial Magistrate, Kaithal. From the statement, it stood established that the deceased was harassed by accused-respondent No.2 and was compelled to finish her life. Trial Court, while examining the dying declared, Ex.PA, has observed that it does not contain any allegation or instance that the accused ever subjected the deceased to cruelty on demand of dowry or any valuable security or property, or gave any beatings or acted in a manner that caused apprehension of any threat to her life or

limb. In his examination-in-chief, Dhani Ram (PW-8) had stated that accused used to abuse and taunt his daughter without any reason. There was no allegation that accused-respondent No.2 had subjected the deceased to cruelty or harassment on demand of dowry. Even the deposition of Ashok Kumar (PW-9) did not state anything against the accused that she had harassed the deceased on demand of dowry. The Investigating Officer (PW-5) did not speak on the allegations of demand of dowry. Hence, the offence under Section 498-A IPC was not made out.

As per medical evidence i.e. MLR (Ex.PR) and statement of Dr. Neeraj Singh (PW-7), who prepared the postmortem report (Ex.PH), deceased-Rajni had died due to burn injuries. There were 40-45% burn injuries, which were sufficient to cause death in normal course of life. As per deposition of Dr. Sanjeev Goyal (PW-12), the deceased was semi conscious when she was examined. Further, as per depositions of PW-12 and PW-6, when the deceased had made the statement (Ex.PA), she was in a fit state of mind. Accused-respondent No.2 was charge-sheeted under Section 306 IPC, which refers to “abetment of suicide.” To constitute an offence under Section 306 IPC, the prosecution was to establish that the deceased had committed the suicide and that she was abetted by the accused. Abetment, as per Section 107 IPC, is a mental process of instigating a person or intentional aiding that person in doing a thing or conspiracy also involves a mental process. Word 'instigate' denotes incitement or urging to do so drastic or advisable action or to stimulate or incite. Presence of *mens rea* is necessary concomitant of instigation, conspiracy etc. The words uttered in a quarrel or in a spur of moment cannot be taken to be uttered with *mens rea*. It is in a fit anger and emotion,

different from *mens rea* as taken in criminal jurisprudence. In her dying declaration (Ex.PA), the deceased had stated that she had no complaint against any other member of her in-laws. The said statement has been annexed with this appeal as Annexure A-1. A perusal of Annexure A-1 shows that her mother-in-law (respondent No.2) had been quarreling for the last three days. This quarrel can be taken to normal course of life. In anger, she put herself on fire by sprinkling kerosene oil. The deceased and accused-respondent No.2 belong to an ordinary agricultural family. In rural areas, generally, people are not literate and they use hard language. Hence, ordinary war and tears in a family or quarrel or exchange of words uttered in a spur of moment in domestic dispute or discord cannot be treated as constituting *mens rea* to attract the offence under Section 306 read with Section 107 IPC.

Paramjit, husband of deceased-Rajni, appeared as PW-11 and did not support the prosecution version. A perusal of the statement of Dr. S.P. Bansal (DW-2) shows that the deceased was taking some treatment for some mental problem. As per documents, Ex.DB and Ex.DC, there was history of insomnia, headache, irritable, emotionally up-set and had been weeping and plucking her hair. The deposition of Dr. S.P.Bansal (DW-2), coupled with the documents Ex.DB and Ex.DC, suggests that Rajni (deceased) was a lady of filthy temperament and on the date of incident, she committed suicide in a fit of anger. Accused-respondent No.2 has been acquitted as no incriminating evidence of *mens rea* could be attributed to her.

Learned counsel for the appellant has not been able to dispute that the deceased was taking some treatment for mental problem. Hence, she was a temperamental lady and would get emotionally upset and irritable

without any major cause in her family life. The trial Court has acquitted respondent No.2-accused by following the judgment passed by Hon'ble the Supreme Court in **Bhagwan Dass Vs. Kartar Singh and others**, AIR 2007 (SC) 2045, wherein it has been observed that harassment of wife by husband or in-laws due to differences, per se does not attract Section 306 read with Section 107 IPC, if wife commits suicide. Similar observations have been made by Hon'ble the Supreme Court in **Sohan Raj Sharma Vs. State of Haryana**, 2008 (2) RCR (Criminal) 810.

In the present case, as per statement (Annexure A-1) given by Rajni (deceased), her mother-in-law had been quarreling, which had ruined her family life. Then in anger, she had put herself on fire. This statement further shows that the quarrel with her mother-in-law might be a cause of harassment, but she had taken such an extreme step to set herself on fire by sprinkling kerosene oil in a fit of anger. This could be on account of some treatment, which she was taking from Dr. S.P.Bansal (DW-2). In these circumstances, accused-respondent No.2 could not be held liable for abetting the deceased to commit suicide.

Having examined the impugned judgment, no illegality, much less perversity has been found therein, warranting interference by this Court. The evidence has been appreciated in the correct perspective.

Resultantly, the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

12.08.2016
ajp

speaking/non-speaking : Yes/No
Reportable : Yes/No