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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on : 05.01.2016

Judgment delivered on : 07.01.2016.

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CRL.A. 1430/2013 & CrI.M.B.No.7/2016

AMRENDER SINGH @ HARMENDER @ BUMB SINGH

..... Appellant

Through Mr.Anurag Jain, Advocate.

Versus

STATE NCT OF DELHI

..... Respondent

Through Ms. Kusum Dhalla, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 30.08.2013 and 21.09.2013 respectively wherein the appellant stands convicted under Sections 306/498-A of the IPC. The sentence awarded to him is RI 5 years for his conviction under Section 306 of the IPC as also a fine of Rs.15,000/- and in default of payment of fine to undergo SI 6 months. For his conviction under Section 498-A of the IPC, he has been awarded RI for a period of 2 years and a fine of

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Rs.2,000/- and in default of payment of fine, to undergo SI for 3 months.

2 Nominal roll of the appellant has been requisitioned. It reflects that as on date, the appellant has completed incarceration of 3 years which includes the remissions earned by him.

3 The version of the prosecution is that the victim had succumbed to her death within less than 7 years of her marriage. She had died in her matrimonial home by hanging. The statements of her parents evidenced that cruelty was meted out to her regularly; her husband used to be an alcoholic and used to beat her and complaints to the said effect had been made by the victim to her parents.

4 On the fateful night i.e. 21-22.09.2008, the victim had died by hanging. As per the prosecution, this was pursuant to the incessant beatings having been given to her by her husband which was the instigating factor which had led her to take her own life. Her cause of death was reported to be asphyxia. The medical evidence produced through the concerned doctor has also been highlighted.

5 The prosecution in support of its case had examined 14 witnesses of whom the star witnesses i.e. Uma Devi (PW-2) and Bharat Singh (PW-4) were the parents of the victim. Her mama (maternal uncle) was

examined as PW-3. The medical evidence was adduced through Dr. Manoj Dhingra (PW-8) reflecting ante mortem injuries on the upper parts of her body which was because of the beatings given to her by her husband which was the immediate cause of her taking her own life.

6 In the statement of the accused recorded under Section 313 of the Cr.PC, he had pleaded innocence.

7 No evidence was led in defence.

8 On behalf of the appellant, arguments have been addressed by the learned counsel for the appellant. The main thrust of the argument is that the ingredients of Section 306 of the IPC are not made out and before a conviction under Section 306 of the IPC could follow, there must be proof of an active abetment/instigation on the part of the accused which had led the victim to take her life. This is completely absent in the present case. Attention has been drawn to the statements made by her family members i.e. her parents and her maternal uncle. Submission being that at best, it could be a case of cruelty under Section 498-A of the IPC. The conviction under Section 306 of the IPC being illegal is liable to be set aside. Learned counsel for the appellant in support of his submission has placed reliance upon 2004 (3) ACT 2286 (SC) Hans Raj

Vs. State of Haryana. Submission being that the factual matrix of the instant case is wholly applicable to the present factual scenario. Reliance has also been placed upon a coordinate Bench of this Court reported as 2011 (1) AD (Delhi) 575 Swapan Kumar Mandal Vs. N.C.T. of Delhi as also another judgment of the Apex Court reported as 2008 (3) ACR 2723 (SC) Sohan Raj Sharma Vs. State of Haryana. Submission being that unless and until, the ingredients of abetment as defined under Section 107 of the IPC are clearly established, conviction under Section 306 of the IPC cannot follow.

9 Needless to state that these arguments have been refuted by the learned Public Prosecutor for the State. Submission being that the impugned judgment calls for no interference; the Trial Judge had appreciated the evidence in its correct perspective.

10 Record shows that the parties i.e. the victim and her husband i.e. the appellant had been married on 29.05.2004. The unfortunate incident of the victim having succumbed to her death occurred at the intervening night of 21-22.09.2008 at about 11:35 pm. The incident had occurred in the matrimonial home of the victim i.e. at house No. B-5/53, Sector-5, Rohini. The parties had one female child at the time of the incident aged

about 2 years. The victim was also pregnant by a few weeks on the date of the incident.

11 Before adverting to the ocular testimony of the witnesses of the prosecution, the medical evidence would be relevant. The medical evidence which had noted ante mortem injuries on the body of the victim was proved through Dr. Manoj Dhingra examined as PW-8. He was the doctor who had conducted the post mortem on dead body of the victim. The following external injuries were noted by him:-

“1.Right side of the face having bruise of size 3 x 2 cm.

2.Lacerated wound present over right frontal region of size 1 x ½ cm into bone deep.

3.Froth coming out of the mouth.

4.Weight of the Uterious with baby is 1.6 kg. Weight of the baby is 500 gms.

5.Bilateral hands having multiple injuries, abrasion mark present from wrist to elbow of size 0.2 to ½ cm.

6.An obliquely place legature mark present over frontal side of the neck anteriorly placed over thyroid cartilage length is about 91 cm width is 2 cm, 5 cm from chin, 4 cm from right ear and 7 cm from left ear going upward and backward towards posterior hair line skin over legature mark is hard and parchmentise, on decection of the neck tissue underneath the ligature mark is pale and glistening. ”

12 The cause of death was asphyxia consequent to hanging. All the injuries were ante mortem in nature. Time since death was 16 hours

meaning thereby that the incident had occurred at around midnight i.e. 11:30-11:35 pm.

13 This medical evidence as adduced clearly shows that the victim had been beaten; there were bruises on her right facial side; there was lacerated wound of 1 X ½ cm bone deep over the right frontal region. Both her hands had multiple injuries and abrasion mark from the wrist to elbow. There was a ligature mark over frontal side of the neck anteriorly placed over the thyroid cartilage which long and wide besides being deep. The post-mortem also revealed that the victim was pregnant by a few weeks. Cause of death as noted supra was hanging.

14 The ocular testimony of the witnesses i.e. PW-2, PW-4 and PW-3 has to be appreciated in the light of the medical evidence which is a document staring in the face of the record.

15 PW-2 was the mother of the victim. She has on oath deposed that marriage of her daughter had been solemnized on 29.05.2004 as per Hindu rites and customs and dowry articles had been given to the victim. After marriage, her daughter was residing at her matrimonial home at house No. B-5/53, Sector-5, Rohini. She had a female daughter aged 2 years at the time of her death. She was also pregnant. Her

husband used to take liquor and used to harass her. He used to threaten her to not talk to her parents. After 3-4 months of the marriage, her daughter had come to her house as a quarrel had taken place between the husband and the wife. She suspected that her daughter would be killed by the appellant in connivance with his parents. In her cross-examination, she reiterated that her daughter made complaints to her about the demands of dowry raised upon her and that the accused used to threaten her that he would drop her back to her matrimonial home or put fire upon her unless she brought the sufficient dowry.

16 The father of the victim was examined as PW-4. He has deposed on the same lines as his wife. He deposed that after about 6 months of the marriage, the accused started harassing his daughter as he was making consistent demands for bring un-sufficient dowry and he wanted more money. PW-4 pacified his daughter that he had no money at that time but he would make arrangement for the money. On the intervening night of 21-22.09.2008, he received information from his nephew that his daughter had died in her matrimonial home. When he went there, he found the dead body of his daughter lying on the ground floor of the house of the appellant. No other family member was present there. In his

cross-examination, he reiterated his stand. He reiterated that his daughter was continuously harassed by the accused who used to take liquor and used to beat her and make demands of dowry.

17 The maternal uncle of the victim was examined as PW-3. He had also deposed that his niece was harassed by the accused for dowry demands and the victim had telephonically told him that the accused used to beat her prior to her death.

18 This ocular version of the aforementioned witnesses clearly establishes that the victim was being continuously beaten in this span of four years of her matrimonial life. This was on account of the appellant consuming excessive liquor and then beating her and making demands of dowry. The injuries suffered by the victim in the incident i.e. on 21.22.09.2008 also establishes that the victim had been beaten by the accused. The victim had a two year old daughter. She was pregnant for a second time. The continuous acts of the appellants in this four long years of her married life where she had given birth to one female child and was expecting a second child had made her life so miserable that on the fateful night she probably had no other option left but to take her own life. The instigation by the appellant was acute; it was not a onetime

incident which had occurred; it was a continuous course of conduct adopted by the appellant which had led her to take her own life.

19 The law on Section 306 of the IPC and the presumption contained in Section 113-A of the Evidence Act has been the subject matter of several judicial debates. Section 113-A gives a discretion to the Court to raise a presumption where the circumstances of the case establish that the woman has committed suicide within less than 7 years of her marriage and “cruelty” had been meted out to her in this intervening period; the definition of ‘cruelty’ would have the same meaning as is contained in Section 498-A of the IPC which necessarily involves:-

“(a) any wilful 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”. ”

20 Thus this presumption contained in Section 113-A of the Evidence Act is attracted where it is prima-facie established that the accused has abetted the commission of the suicide. The definition of

‘abetment’ as contained in Section 107 of the IPC must however be

fulfilled. Each case, needless to state, depends upon its own factual matrix.

21 Section 306 of the IPC reads herein as under:-

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

22 Abetment has been defined in Section 107 of the IPC. It is a distinct offence. A person abets the doing of a thing when he instigates any person to do it or intentionally aids by an act or illegal omission, the doing of that thing. Instigate necessarily means provoke, incite, urge or being by persuasion to do any thing. In a case of abetment of suicide, there must be proof of a direct or an indirect act of instigation to the commission of the suicide.

23 The legal proposition as laid above when applied to the factual matrix of the incident case clearly shows that the acts of the appellant had urged and provoked the victim to have taken her own life. The injuries suffered by the victim on the fateful night which was not a onetime incident but a continuous course of conduct adopted by the accused who in a state of intoxication used to beat his wife was the

ultimate spoke in the wheel for the victim to have taken her own life. The medical evidence also establishes that the injuries suffered by the victim were on the same date. The cruelty i.e. the physical and mental harassment meted out to the victim continuously in her married life has been established by the oral testimony of PW-2, PW-4 and PW-3.

24 It is also not the version of the accused that the victim was hypertensive or over reactive to a situation. No such evidence or defence has been put forward by him. This does not find mention either in the cross-examination of the witnesses of the prosecution or in the statement of the accused recorded under Section 313 of the Cr.PC. The accused had simplicitor pleaded innocence.

25 It is thus difficult for this Court to digest that any woman who was in her mid 20's having a female child aged 2 years and pregnant for a second time had killed herself without any instigation from anyone. The painful accentuating circumstances created in her mind by the accused were the immediate cause for her to take her own life. At the cost of repetition, it was not a single act of the accused but the continuous course of beatings which he used to give to the victim in her 4 years of married life that led her to take this extreme step.

26 The impugned judgment does not call for any interference.
Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 07, 2016
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