

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2035 of 1998

Judgment Reserved on : 1.2.2017

Judgment Delivered on : 4.4.2017

Rajendra Sahu, S/o Shri Krishna Lal Sahu, aged 35 years, R/o Village Mopar, Tahsil Bhatapara, District Raipur

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Bhatapara (Rural)

--- Respondent

For Appellant	:	Dr. N.K. Shukla, Senior Advocate with Ms. Priya Mishra, Advocate
For State/Respondent	:	Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. JUDGMENT

1. This appeal has been preferred under Section 374 of the Code of Criminal Procedure by the accused against the judgment dated 4.9.1998 delivered in Sessions Trial No.375 of 1994 by the First Additional Sessions Judge, Baloda Bazar, whereby the Learned Trial Judge has convicted and sentenced the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 IPC	Rigorous Imprisonment for 10 years and fine of Rs.10,000/-, in default of payment of fine, to further undergo rigorous imprisonment for 1 year

2. Case of the prosecution, in brief, is that Keshavram Sahu (PW-6)

lodged First Information Report (Ex.P-7) in Police Station Bhatapara (Urban) on 7.4.1994 that marriage of his daughter Sushila alias Kaushalya was performed with the Appellant 4-5 years back. Due to torture by her husband/Appellant, Sushila came back to her paternal home at Bhatapara and lived with her father. She gave birth to a son, namely, Lokesh during her living at paternal home at Bhatapara. Sushila had made a report against her husband/Appellant in Police Station Bhatapara, a case of which is pending in the Court at Baloda Bazar. The Appellant, who was living at Village Mopar, Police Station Bhatapara (Rural), along with his friends used to go to Sushila, who was living with her father at Bhatapara and threaten her, as a result of which Sushila remained disturbed and remained under fear while going alone to the market and to attend the call of nature. Police Station Bhatapara (Urban) was informed about this many times. Sushila had also filed an application before the Judicial Magistrate First Class, Baloda Bazar for grant of maintenance. When her father Keshavram Sahu (PW-6) had gone out of station for a domestic purpose, she, due to the mental torture being given by her husband/Appellant and consequent fear, committed suicide along with her son Lokesh. When Keshavram Sahu (PW-6) returned home, he found a suicidal note (letter) written by his daughter Sushila, which he submitted in the police station for appropriate action. Crime No.105 of 1994 [FIR (Ex.P-7)] was registered against the Appellant in Police Station Bhatapara (Urban) for an offence punishable under Section 306 of the Indian Penal Code. During investigation, the dead body of Sushila was sent for post mortem examination. The post mortem examination report is Ex.P-1. No definite opinion has been given about the death of Sushila

in Ex.P-1 because the dead body had been decomposed. Viscera was sent for chemical examination, but no report of examination of viscera is available on the record. Statements of witnesses were recorded. Spot-maps (Ex.P-6A and P-10) were prepared.

3. After completion of the investigation, a charge-sheet was filed against the Appellant in the Court of Additional Chief Judicial Magistrate, Baloda Bazar from where the case was committed to the Court of Session at Raipur. The First Additional Sessions Judge, Baloda Bazar received the case on transfer from the Court of Session.
4. The Additional Sessions Judge framed charge against the Appellant under Section 306 IPC. The Appellant denied the guilt. In his statement under Section 313 Cr.P.C., the Appellant took a defence that he is innocent and he has been falsely implicated in the case because at the time of death Sushila was residing at her paternal home. The Trial Court, after appreciation of the evidence available on record, convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Senior Counsel appearing for the Appellant argued that no case is made out against the Appellant under Section 306 IPC. The Trial Court did not consider that identity of the poison was not established. The doctor, who did post mortem examination on the dead body of Sushila, has given opinion of suspected poisoning only. Learned Senior Counsel argued that the Court below has committed error in not considering that the marriage between Sushila and the Appellant had already broken and Sushila had left

her matrimonial house before committing suicide and was living at her paternal home at the time of committing suicide. The prosecution has not proved any demand of dowry or cruelty. The prosecution has failed to prove any cause of death of Sushila. Therefore, the Appellant deserves to be acquitted of the charge framed against him.

6. Learned Counsel appearing for the State, opposing the arguments advanced on behalf of the Appellant, submitted that the impugned judgment of conviction and sentence is impeccable and, therefore, the appeal deserves to be dismissed.
7. The prosecution examined Dr. P. Mukundan (PW-1) who performed post mortem examination, Tiharuram (PW-2), Sunita (PW-3) who is younger sister of the deceased, Smt. Ramdulari (PW-4), Shankarlal (PW-5), Keshavram Sahu (PW-6) who is father of the deceased, Manaturam (PW-7), Jamunadas (PW-8), Raju alias Manish (PW-9), Manharan (PW-10), Patwari Ramsevak (PW-11), Assistant Sub-Inspector Awadhesh Kumar Mishra (PW-12), Ramkumar Sen (PW-13), Muchhkundlal (PW-14), Byasnarayan (PW-15), Advocate G.D. Manikpuri (PW-16), S.D.O.(P.) T.S. Katlam (PW-17), Dr. Prakash Joshi (PW-18) and Baburam (PW-19) who is uncle of the deceased. The Accused/Appellant, in his defence, examined Hinchchharam (DW-1) and Dhiraji Nishad (DW-2).
8. Tiharuram (PW-2), Smt. Ramdulari (PW-4) and Shankarlal (PW-5) are the witnesses of panchnama (inquest) of the dead body of Sushila in which they had expressed that death of the deceased would have been occurred due to consumption of any poisonous substance. Post mortem of the dead body of the deceased was

done by Dr. P. Mukundan (PW-1) and Dr. Prakash Joshi (PW-18). Both the doctors have deposed that a foul smell was coming out from the dead body of the deceased. Skin was removed. Eyeball had bulged-up. Nails had become blue and black. Abdomen and breast was bloated. There was no external injury. In internal examination of the dead body, all the organs were found congested. Viscera was preserved and was sent for chemical examination. Both the doctors, in the post mortem examination report (Ex.P-1), could not give any definite opinion about the death of the deceased because the dead body had begun to decompose. No report of chemical analysis of the viscera has been produced by the prosecution. From the medical evidence, it is not proved that the death of Sushila was suicidal in nature.

9. Tiharuram (PW-2), who is uncle of the deceased, Sunita (PW-3), who is sister of the deceased, Keshavram Sahu (PW-6), who is father of the deceased and Baburam (PW-19), who is also uncle of the deceased, have deposed that the marriage of Sushila was performed with the Appellant 4-5 years before her death. It is also proved from the deposition of Tiharuram (PW-2), Shankarlal (PW-5) and Keshavram Sahu (PW-6) that Sushila had been blessed with a child and that child had also died along with Sushila on the fateful day. From the evidence of Sunita (PW-3), it is evident that Sushila, after leaving her matrimonial house, was residing at the house of her father at Bhatapara. From the evidence of the prosecution, it is clear that Sushila died in the house of her father at Bhatapara, where she was residing for about 1 year before her death. Thus, from the evidence of the prosecution, it is proved that (i) Sushila died within 7 years of her marriage with the Appellant,

(ii) the Appellant was husband of Sushila on the date of her death also because neither from the evidence of the prosecution nor from the evidence of the defence it is proved that a divorce had taken place between the Appellant and Sushila. Therefore, now, the questions which arise for consideration are (i) whether the Appellant treated Sushila with cruelty and (ii) what were the circumstances in which Sushila died?

- 10.** Keshavram Sahu (PW-6), who is father of deceased Sushila, has deposed in para 2 that after her marriage, Sushila had gone to her matrimonial house, but returned to her parental house after three years of her marriage. On her return to the parental house, she had told him that she was being beaten at the matrimonial house for demand of dowry. Her husband/the Appellant was demanding a Hero Honda Motorcycle. He has also deposed that at the time of marriage of Sushila, no demand for dowry was made. When his son Sushil Kumar went to the matrimonial house of her sister Sushila to take her back to her parental house, he was refused to take Sushila. This refusal continued for three years. On Sushil Kumar's visit to her sister Sushila at her matrimonial house, she did not tell him anything about demand of dowry. Keshavram Sahu (PW-6) has also deposed that prior to her death, Sushila had lodged a report against the Appellant for demand of dowry which is pending consideration in a jurisdictional Court. He has also deposed that when his daughter Sushila was residing at her parental house at Bhatapara, the Appellant along with his 3-4 friends used to tease and abuse Sushila.

- 11.** Advocate G.D. Manikpuri (PW-16) has deposed that as an Advocate on behalf of Sushila and her son, he had filed an

application under Section 125 Cr.P.C. against the Appellant before the Court of Judicial Magistrate First Class, Baloda Bazar.

12. From the above evidence of the prosecution, it is clear that relationship between the Appellant and his wife/the deceased was not cordial. The deceased had lodged cases of demand of dowry, tease and abuse and for maintenance under Section 125 Cr.P.C. against the Appellant. The deceased had left her husband prior to her death and was residing at her parental house for about 1 year after leaving her matrimonial house. The prosecution has not led any evidence to show that when the deceased was living at her parental house after leaving her matrimonial house, the Appellant used to visit her there. From this, it reveals that there was no contact between Sushila and her husband/Appellant while she was living at her parental house. The prosecution has not produced any document regarding the case pending against the Appellant on the complaint of Sushila against demand of dowry nor has any witness clearly deposed on this count. What is the result of that case is not known to this Court from the evidence available on record. Even if it is accepted for the sake of argument that the Appellant was treating Sushila with cruelty, this cruel treatment was related to the period when she was residing with the Appellant at her matrimonial house. It is not clear that what were the circumstances prior to the incident which led to death of Sushila. Conviction of the Appellant under Section 306 IPC has been done by the Trial Court on the basis of presumption under Section 113-A of the Indian Evidence Act. So far as the presumption under Section 113-A of the Indian Evidence Act is concerned, the Supreme Court, in **Mangat Ram v. State of Haryana, AIR 2014**

SC 1782, has observed in para 26 as under:

“**26.** We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A, IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act. In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana* (2004) 12 SCC 257 : (AIR 2004 SC 2790 : 2004 AIR SCW 1283), wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the

woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subjected her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A, IPC.”

13. In **Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618**, the Supreme Court has observed in paras 10, 11 and 12 thus:

“10. Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 IPC, which reads as under:

“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.”

11. There is no direct evidence adduced of the

accused-appellant having abetted Seema into committing suicide. The prosecution has relied on Section 113-A of the Evidence Act which reads as under:

“113-A. *Presumption as to abetment of suicide by a married woman.*—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purpose of this section, 'cruelty' shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860).”

12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of

Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court *may presume* that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression “may presume” suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression – “the other circumstances of the case” used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase “may presume” used in Section 113-A is defined in Section 4 of the Evidence Act, which says – “Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and

until it is disproved, or may call for proof of it.”

14. From the above-quoted decisions, it is clear that if the marriage of deceased was performed within 7 years of her death, she was treated with cruelty by her husband or his relatives and the nature of death was suicide, the Court may presume that the other circumstances prove that the suicide was committed by the deceased/wife due to abetment by the husband. Therefore, the prosecution has to prove the other circumstances liable for commission of suicide by the deceased.
15. Therefore, in the instant case, when Sushila, after leaving her matrimonial house, was residing at the house of her father at Bhatapara for about 1 year before her death, the prosecution had to prove other circumstances which abetted for commission of suicide by Sushila. The prosecution has failed to prove such circumstances. Therefore, offence under Section 306 IPC is not made out against the Appellant.
16. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him. The amount of fine imposed upon him by the Trial Court, if paid, shall be refunded to him by way of a Cheque within a period of one month from the date of receipt of a copy of this judgment in the Trial Court.
17. It is reported that the Appellant is on bail. His bail bonds are not discharged at this stage and they shall remain operative for a further period of six months from today in accordance with the provision contained in Section 437-A of the Code of Criminal

Procedure.

- 18.** The record of the Trial Court be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Anil Kumar Shukla)
JUDGE