

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2561 of 1998**

(Arising out of judgment/order dated 27.10.1998 in Sessions Trial No.209 of 1996 passed by learned Second Additional Sessions Judge, Ambikapur, Sarguja)

- Amarnath

---- Petitioner

Versus

- State Of M.P.

---- Respondent

For Appellant
For Respondent /State

Mr. Manoj Mishra, Advocate
Mr. Ramakant Mishra, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra**Judgment On Board****22/8/2017**

1. Heard.
2. The short question arising for consideration in this appeal is "whether the suicide by the appellant's wife on account of the appellant's alleged extra-marital relations with his sister-in-law, co-accused Sushila Bai (appellant's elder brother's wife), would amount to abetment to commit suicide under Section 107 of IPC for sustaining his conviction under Section 306 of IPC?".

3. The factual score, as put-forth by the prosecution, is that the appellant was married with deceased Srimanthi about 3 years prior to the date of the incident i.e.14.4.1996, on which date, she committed suicide by hanging herself in her matrimonial house.
4. The evidence adduced by the prosecution in form of oral statements of PW-1 Parasnath, father of the deceased, PW-2 Heeralal, a villager, PW-4 Kashi, Uncle of the deceased, PW-5 Santosh Prasad, younger brother of the deceased, have proved that the appellant had extra marital relations with the deceased's *Jethani* (sister-in-law of the appellant). The witnesses have categorically stated that the appellant used to leave the house for 10-12 days, during which, he used to reside with his sister-in-law and that on several occasions, he was not consuming meals prepared by the deceased but was dining with his parents. This part of the allegation concerning having food by the appellant with his parents may not amount to cruelty by him but the real issue revolves around the first part of the allegation where the deceased was found to have extra marital or illicit relations with his sister-in-law.
5. Mr. Manoj Mishra, learned counsel for the appellant, would refer to the law laid down by the Supreme Court in the matters of **K.V. Prakash Babu Vs. State of Karnataka, 2016 (4) Crimes 184 (SC)**, **Amalendu Pal alias Jhantu Vs. State of West Bengal, AIR 2010 SC 512** and **Ghusabhai Raisanghbhai Chorasiya and others Vs. State of Gujarat, AIR 2015 SC 2670**.

6. Per contra, Mr. Ramakant Mishra, Dy. AG for the State, would refer to the law laid down by the Supreme Court in the matters of **State of Karnataka Vs. Anni Poojary, 2005 CRI.L.J. 2662**, **Bhagwati Prasad and others Vs. State, 2008 CRI.L.J. 4655** and **Amal alias Nirmal Dutta and another Vs. The State of West Bengal and another, 2009 CRI.L.J. 4333**.
7. Let me first consider as to what amount to abetment under Section 107 of IPC. Similarly, the provision under Section 306 of IPC dealing with abetment of suicide also needs to be noticed. Both the provisions are reproduced hereunder :

“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 wilful misrepresentation, or by wilful concealment of a material fact which 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 an 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.

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.”

8. Considering the provisions contained in Sections 107 & 306 of the IPC, as quoted above, the Supreme Court in **Randhir Singh and another v. State of Punjab**¹ has held that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also, it would involve that mental process of entering into conspiracy for the doing of that thing.
9. Reiterating the principle, the Supreme Court in **Kishori Lal v. State of M.P.**², has held, thus, in para 6:

“6. Section 107, IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence

1 (2004) 13 SCC 129

2 (2007) 10 SCC 797

abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

10. It is, thus, consistently held by the Supreme Court that before holding an accused guilty of an offence under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of each case and assess the evidence adduced before it in order to find out whether the treatment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement or provocation to the commission of suicide. Merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide, the conviction in terms of Section 306 of IPC is not sustainable.

11. Earlier, in **Mahendra Singh and another Gayatribai v. State of M.P.**³, the Supreme Court was dealing with a case, where, apart from allegations of harassment, abuse and torture, the deceased-wife complained of the accused's illicit relations with his sister-in-law. The Supreme Court allowed the appeal of the accused and set-aside his conviction by holding that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In an extremely recent case the Supreme Court in **K.V. Prakash**

³ 1995 Supp (3) SCC 731

Babu v. State of Karnataka⁴, relying on its earlier decision in the matter of **Pinakin Mahipatray Rawal v. State of Gujarat**⁵, has held that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498-A of the IPC.

13. The Supreme Court, thereafter, again quoted **Pinakin Mahipatray Rawal** (supra) and reproduced the observation made in the said case that to constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”.

14. Referring to **Ghusabhai Rasangbhai Chorasiya and Others v. State of Gujarat**⁶, the Supreme Court reproduced the observation made therein that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the

4 2016 (4) Crimes 184 (SC)

5 2013 (10) SCC 48

6 (2015) 11 SCC 753

explanation (a) to Section 498-A of the IPC which includes cruelty to drive the women to commit suicide, would not be attracted.

15. In **Ghusabhai Rasangbhai Chorasiya** (supra) the Supreme Court observed that “true it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in **Pinakin Mahapatray Rawal** (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. The accused may have been involved in an illicit relationship with the appellant No.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted.”

16. In **K.V. Prakash Babu** (supra) the Supreme Court concluded that extra-marital relationship, *per se*, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be

regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

17. Dealing with the applicability of presumption engrafted under Section 113-A of the Evidence Act, the Supreme Court in **K.V. Prakash Babu** (supra), would observe thus in para 17 :

17. We are absolutely conscious about the presumption engrafted under Section 113-A of the Evidence Act. The said provision enable the Court to draw presumption in a particular fact situation when necessary ingredients in order to attract the provision are established. In this regard, we may reproduce a passage from **Pinakin Mahipatray Rawal** (supra) :-

“Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498-A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution.”

We have reproduced the aforesaid passage only to highlight that the Court can take aid of the principles of the statutory presumption.

18. In the case in hand, the evidence would suggest that the

deceased was raising quarrel with the appellant because she was suspecting that the appellant had illicit relations with his sister-in-law, however, there is no allegation that such uncalled for conduct or behaviour of the appellant was performed in the presence of or in front of the deceased or that she was subjected to physical cruelty or maltreatment only for the reason that she was objecting to the appellant's relation with his sister-in-law.

19. It is also worth notice that the appellant's mother, brother and sister-in-law Sushila Bai, in whose respect, the allegations of extra marital relationship was levelled against the appellant, were also accused before the trial Court, but have been acquitted of the charges. If the appellant's extra marital relationship with co-accused Sushila Bai was an action constituting abetment, the same yardstick would apply for Sushila Bai also, however, she has been acquitted by the trial Court.

20. The judgments relied by learned State Counsel may not assist the Court in view of the clear legal position settled by the Supreme Court in **K.V. Prakash Babu (supra)**.

21. For the foregoing, I am of the opinion that even if the appellant was having any extra marital or illicit relations with his sister-in-law (co-accused – Sushila Bai), in the absence of any proof of incitement or provocation or inducement to the deceased to commit suicide, the same would not amount to abetment under Section 107 of IPC, therefore, the appellant's conviction under

Section 306 of IPC deserves to be and is hereby set-aside.

22. Accordingly, the appeal is allowed. The appellant be set at liberty unless his detention is required in connection with any other case.

Sd/-

Judge

(Prashant Kumar Mishra)

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