

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.2981 of 1998**

(Arising out of judgment dated 17-10-1998 passed by the 6th
Additional Sessions Judge, Durg, in ST No.394/96)

- Kuvaria Bai

---- Appellant

Versus

- State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant
For Respondent/State

Shri Shikhar Sharma, Advocate
Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Judgment on Board****22/08/2017**

1. Appellant, aged about 66 years, being the mother-in-law of Mamta Bai (since deceased) has been convicted for offence punishable under Sections 306 & 498-A of the Indian Penal Code (for short 'the IPC') and has been sentenced to undergo RI for 10 years and RI for 2 years, respectively with usual default stipulations.
2. Deceased Mamta Bai was married with Dhanraj about 3 years prior to the date of incident. The incident happened on 11-5-1996 when

she committed suicide by setting herself on fire in her matrimonial house.

3. Appellant has been convicted mainly on the statements of Munni Bai @ Rajeshwari (PW-4), Rekham Yadav (PW-5) & Usha Bai (PW-9). Munni Bai @ Rajeshwari happens to be the *Mausi* of the deceased. The deceased had informed this witness that her husband is good, but her mother-in-law is quarrelsome and also commits *marpeet*/assault. Rekham Yadav (PW-5) is the maternal uncle of the deceased. According to this witness, the deceased used to tell him that the appellant treats her with cruelty on the allegation that she has illicit relation with her father-in-law (appellant's husband). Usha Bai (PW-9) has stated about the instances of cruelty committed by the appellant on the deceased, however, she has not made any statement that the appellant used to make allegation that the deceased is having illicit relation with her father-in-law.
4. Let me first consider as to what amounts to abetment under Section 107 of the IPC. Similarly, the provision under Section 306 of the 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.”

5. 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.
6. 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 abetted. Therefore, the offence for the

1 (2004) 13 SCC 129

2 (2007) 10 SCC 797

abetment of which a person is charged with the abetment is normally linked with the proved offence.”

7. 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.

8. 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

3 1995 Supp (3) SCC 731

ingredients of abetment are attracted on the statement of the deceased.

9. In an extremely recent case the Supreme Court in **K.V. Prakash Babu v. State of Karnataka**⁴, 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.
10. 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

4 2016 (4) Crimes 184 (SC)

5 2013 (10) SCC 48

prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”.

11. 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 explanation (a) to Section 498-A of the IPC which includes cruelty to drive the women to commit suicide, would not be attracted.
12. 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

6 (2015) 11 SCC 753

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.”

13. 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.
14. 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.

15. In the case at hand, the allegation against the appellant is not of demanding dowry or committing such cruelty, which would amount to inciting or provoking or inducing the deceased to commit suicide as has been defined or pronounced by the Supreme Court in the cases referred in the preceding paragraphs of this judgment. An act of cruelty may constitute abetment only when it has tendency to provoke or incite the deceased to commit suicide. Moreover, in the case at hand, the mother of the deceased Usha Bai (PW-9) has not made any statement that the deceased used to inform her that the appellant was making allegation of her illicit relation with father-in-law. Ordinarily, a woman i.e. the deceased would not make such

statement to a male relative i.e. Rekham Yadav (PW-5), who happens to be her maternal uncle. This is more so because her *Mausi* Munni Bai @ Rajeshwari (PW-4) has also not made any such statement about the allegation of illicit relation.

16. Having considered the evidence in its entirety, it appears the statement of Rekham Yadav (PW-5) is exaggerated in view of the statements of Munni Bai @ Rajeshwari (PW-4) & Usha Bai (PW-9) who have not made any such allegation that the appellant was alleging that the deceased had illicit relation with her father-in-law.
17. Even otherwise, if the said part of the allegation against the appellant is proved, yet it may not constitute abetment, as held by the Supreme Court in **K.V. Prakash Babu** (supra).
18. In so far as the offence under Section 498-A of the IPC is concerned, there is material available on record in form of statements of Munni Bai @ Rajeshwari (PW-4) & Usha Bai (PW-9) that the appellant used to commit *marpeet* or assault with the deceased. She also used to criminal intimidate the deceased by saying that she would be killed by setting her ablaze. Such act would definitely constitute cruelty under Section 498-A of the IPC.

19. At this juncture, learned counsel appearing for the appellant has referred to the decision rendered by the Supreme Court in **Bhaskar Lal Sharma and Another v. Monica**⁷.
20. In the said judgment the allegation was only in respect of calling the deceased as liar and threatening by the mother-in-law that her son would be married again. The judgment is distinguishable on facts, considering the nature of cruelty alleged in the case.
21. In the result, this appeal succeeds in part. Conviction and sentence imposed on the appellant under Section 306 of the IPC is hereby set aside and she is acquitted of the said charge. However, her conviction under Section 498-A of the IPC is maintained. The appellant was aged about 45 years at the time of commission of offence i.e. 11-5-1996. Her present age would be about 66 years. She remained in jail for only four days i.e. from 23-5-1996 to 27-5-1996, however, after the impugned judgment dated 17-10-1998 she was directed to be released on 24-2-1999, therefore, after the impugned judgment she remained in jail for more than four months.
22. Considering the age of the appellant and other relevant aspects of the mater including the fact that the incident happened more than 20

⁷ (2009) 10 SCC 604

years back, I am of the opinion that the sentence already suffered by the appellant would be the adequate sentence for offence under Section 498-A of the IPC, therefore, the appellant is sentenced to the period already undergone by her. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge
Prashant Kumar Mishra

Gowri