

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

CRA-S-2388-SB OF 2007 (O&M)

Date of decision:- 25.11.2017

P. Janardhan

...Appellant

Versus

State of Haryana

...Respondent

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Aman Dhir, Advocate/Legal Aid Counsel,
for the appellant.

Mr. Munish Sharma, AAG, Haryana.

RITU BAHRI J. (Oral)

This appeal has been preferred against the judgment dated 15.11.2007 passed by the Sessions Judge, Ambala, whereby accused-appellant (P. Janardhan) has been convicted and sentenced to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.2500/- for commission of an offence under Section 306 IPC.

Brief facts of the case are that on 22.04.2005, Mrs. P.J. Luxmi (deceased) wife of P. Janardhan-accused (appellant) was brought to Military Hospital, Ambala Cantt., at about 10.00 P.M., with history of 100% burns. She was medico-legally examined by Dr. Lt. Col. Umesh Kapoor. Ruqa along with MLR was sent to the police station. On 23.04.2005, ASI Santokh Singh, Investigating Officer, on receipt of telephonic message from Police Post Regiment Bazar, Ambala Cantt., regarding admission of P.J. Luxmi, visited the police post and collected ruqa and thereafter, he visited

Military Hospital and moved an application Ex.DC seeking fitness of the injured to make statement. Thereafter, the Investigating Officer visited the Duty Magistrate for recording dying declaration, upon which, Sh. Rajneesh Kumar Sharma, Judicial Magistrate Ist Class, Ambala (DW-1) visited the hospital and sought opinion of the doctor regarding fitness of the injured. Doctor on duty declared the injured fit to make a statement. Since the victim did not understand English or Hindi, Sh. K. Ramakrishna Naidu (PW-11), an interpreter, was arranged by Army Authorities. Thereafter, statement of the victim was recorded. Investigating Officer visited the place of occurrence and collected a kerosene stove, matchbox, burnt clothes, portion of burnt blanket and got the scene photographed from Vijay Taneja, Photographer. DDR Ex.PE, in this regard, was recorded. On 25.04.2005, Major Sanjay Sudhanshu, Commanding Officer of the Unit where the accused was posted, sent a writing with a request to again record the statement of Mrs. P.J. Luxmi. Thereafter, Investigating Officer moved an application before the Duty Magistrate, Ambala for recording statement of the victim, whereupon Sh. Y.S. Rathore, the then Additional Chief Judicial Magistrate, Ambala visited the hospital and recorded dying declaration of the victim with the help of subedar K. Ramakrishna Naidu, interpreter. During investigation, a telephonic message along with ruqa Ex.PK was received from the Military Hospital regarding death of Mrs. P.J. Luxmi. On the basis of dying declaration Ex.PF, FIR Ex.PG was recorded by ASI Munish Kumar. Inquest proceedings were conducted. Postmortem of the dead body was got conducted from Civil Hospital. Rough site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. Accused was arrested on 27.04.2005.

On completion of investigation, challan was presented against the accused before the Illaqa Magistrate. Thereafter, the case was committed to the Court of Sessions. Finding a prima facie case, charge under Section 302 IPC was framed against accused-appellant, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. Vijay Kumar, Medical Officer from Civil Hospital, Ambala Cantt (PW-1), Constable Ram Saran, Draftsman (PW-2), EHC Randhir Singh (PW-3), Vijay Taneja, Photographer (PW-4), SI Baljit Singh (PW-5), ASI Ved Parkash (PW-6), Jati Ram Constable (PW-7), ASI Munish Kumar (PW-8), Dr. Lt. Col. Umesh Kapoor (PW-9), Ram Seti Rangiah, father of accused (PW-10), Subedar K. Ramakrishnudu (PW-11), Sh. Y.S. Rathor, the then Chief Judicial Magistrate, Ambala (PW-12), ASI Santokh Singh (PW-13) and Dr. Jayati Banik (PW-14). On conclusion of evidence of prosecution, statement of accused-appellant under Section 313 Cr.P.C. was recorded, wherein entire increminating evidence was put to him. However, he denied the same. In defence, accused-appellant examined Sh. Rajneesh Kumar, the then Judicial Magistrate Ist Class, Ambala City (DW-1) and Dr. Sangeeta Tiwari (DW-2).

After going through the evidence led by the parties, trial Court convicted and sentenced the accused in the aforesaid terms. Hence, the present appeal. The second dying declaration, which was recorded on the night of 25/26.04.2005, has not been made basis for conviction of accused-appellant keeping in view that though two views are possible from two dying declarations, the view favourable to the accused, which was of less

serious in nature, was being accepted. As per second dying declaration,

Ex.PM, allegations of murder that accused had poured kerosene upon the victim and then set her on fire, has been made. Ram Seti Rangiah (PW-10), who was father of deceased, had admitted that he had visited the victim on 25.04.2005, at about 4.00 P.M. Thereafter, on a letter written by the Commanding Officer, second dying declaration, Ex.PM, was recorded on the night of 25/26.04.2005. Since, PW-10 had met the victim on 25.04.2005, possibility of the second dying declaration being the result of tutoring and influence could not be ruled out. Further, at the time of recording statement of accused-appellant under Section 313 Cr.P.C., he had admitted the factum of recording of first dying declaration by Sh. Rajnish Sharma, Judicial Magistrate (DW-1). As per treatment record Ex.DD, accused-appellant had suffered 6% burn injury and he had taken his wife to the hospital along with neighbours. Mr. K. Rama Krishna Naidu (PW-11), one of the neighbours of the accused, had stated that after hearing shrieks from the house of accused-appellant, he had gone there and found P.J. Luxmi (wife of accused) burnt and accused was standing by her side. As per deposition of Dr. Sangeeta Tiwari (DW-2), accused was admitted in Military Hospital on 23.04.2005 with burn injury and was discharged on 28.04.2005. The deceased, in her dying declaration, had specifically stated that she was harassed and troubled by her husband on account of drinking. This fact was also stated by Ram Seti Rangiah (PW-10) that accused used to harass and treat his daughter (deceased) with cruelty on account of drinking. On the basis of above evidence, accused-appellant has been convicted under Section 306 IPC. It was held that the victim had committed suicide within a period of seven years from the date of marriage and had been subjected to cruelty. Word 'cruelty' would have the meaning as

in Section 498-A IPC.

After hearing learned counsel for the parties and going through the evidence on record, this appeal deserved to be allowed. The accused (appellant) was married to deceased (P.J. Kuxmi) about five years prior to the incident. The only allegation levelled against him, as per first dying declaration Ex.DC/7 was that he used to trouble her after drinking. When specifically a question was put to her, as to whether he (accused) had asked her to die, she replied, 'yes'. Even as per the deposition of Ram Seti Rangiah, father of deceased (PW-10), accused-appellant used to trouble his daughter after drinking. There is no allegation that she was subjected to cruelty immediately before she committed suicide. The allegations of drinking and troubling the wife are general in nature, which spread almost over five years of the married life. In order to make out a case for abetment of suicide, there has to be a munimum cause, which compelled a person to take the extreme step of committing suicide. Even if, a husband tells his wife to go and die, this in itself would not amount to abetment of suicide.

In the present case, as per deposition of K. Rama Krishna Naidu (PW-11), accused-appellant was present in the house when deceased had put kerosene oil. Keeping in view the dying declaration Ex.DC/7 of deceased and deposition of her father Ram Seti Rangiah (PW-10), accused-appellant was in the habit of drinking and his behaviour had led the deceased to commit suicide. However, this in itself would not amount to abetment as per Section 107 IPC. Hence, the appellant should not have been convicted under Section 306 IPC. Hon'ble the Supreme Court in **Heera Lal and another vs. State of Rajasthan**, 2017 (2) RCR (Criminal) 839, was

of marriage. It was held that the third ingredient of Section 113-A of Evidence Act, 1872 was missing. Hon'ble the Supreme Court has observed that in order to make out a case under Section 113-A, even if harassment has been caused by the family members of the in-laws of victim, but harassment is something of a lesser degree than cruelty. There has to be a vital link between cruelty and the act of committing suicide. Hence, merely a finding of harassment would not lead to a conclusion that there was abetment of suicide. In that case, after the accused had been acquitted under Section 498-A IPC, abetment of suicide under Section 306 IPC was not made out and the judgment of conviction under Section 306 IPC was set aside.

Further, in **Sanjay vs. State of Maharashtra**, 2007 (2) RCR (Criminal) 678, the bride had committed suicide by pouring kerosene oil. It was a love marriage and both of them often quarrelled with each other. Deceased had written letters to her father that her husband did not behave properly with her, he daily returned home late at night in a drunken state and because of it, there used to be quarrels. In her dying declaration, she stated that she set herself ablaze because she was angry with her husband and her husband extinguished fire. In that case, there were three dying declarations. In the first dying declaration, appellant's wife Seema had stated that while she was pumping the stove, it suddenly burst and her saree caught fire. She shouted loudly and then her husband rushed towards her and extinguished the fire by pouring water on her. In the second dying declaration, she stated that she had poured kerosene on her person and set herself ablaze because she was angry with her husband. As per prosecution version, subsequent dying declarations made by Seema alleging that she committed suicide because there used to be quarrels between her and her

husband, were corroborated by two letters dated 24.01.1994 & 26.07.1994 Ex.P28 and Ex.P29. On the basis of these letters, trial Court and the High Court convicted the accused under Section 306 IPC. However, Hon'ble the Supreme Court held that when there were different dying declarations, it would not be safe to uphold the conviction of appellant. By extending the benefit of doubt, he was acquitted.

A Co-ordinate Bench of this Court in **Boota Singh vs. State of Punjab**, 2011 (23) RCR (Criminal) 423, has held that if, husband is under the influence of liquor and gives beatings, it would not amount to an offence under Section 306 IPC. In paragraph 22 and 23, it has been observed as under:-

"22. This Court in '**Gurmeet Singh v. State of Punjab**' (**Criminal Appeal No.338-SB of 2002, decided on 25th January, 2011**) has held that in case a husband under the influence of liquor used to give beatings to his wife, no offence punishable under Section 306 IPC will be made out against him. To fortify the conclusion, it will be necessary to rely upon the reasoning propounded in Gurmeet Singh's case (supra), wherein it was observed as under:

"In '**Sanjay v. State of Maharashtra**' 2007 (2) RCR (Criminal) 678, it was held that where under the influence of liquor, husband used to give beatings to his wife, the act of a **drunkard** husband will not constitute an offence punishable under Section 306 IPC. In **Bhagwan Das v. Kartar Singh and others**' 2007 (3) RCR (Criminal) 87, their Lordships of Hon'ble the Apex Court held that disputes and discords are part of the matrimonial home and the fact that wife is often harassed by her husband, will in itself and without something else, will not attract an offence punishable under Section 306 read with Section 107 IPC. In **Sohan Raj Sharma v. State of Haryana**' 2008 (2) RCR (Criminal) 810, relying upon '**State of West Bengal v. Orilal Jaiswal**', 1994 (3) RCR (Criminal) 186, it was held that the mere fact that husband treated the deceased wife with cruelty, is not sufficient to constitute offence of abetment to suicide. There must be a proof of direct or indirect act of incitement leading to the commission of

suicide and cruelty must have the effect of inducing the victim to end her life.

In the present case, under the influence of liquor, husband used to give beatings to his wife, during subsistence of their marriage. Therefore, this instance in itself cannot be considered as an abetment to suicide."

23. In the present case, there is no evidence that for non-fulfilment of any demand, the accused said or did anything, which led the deceased to commit suicide. Merely because under the influence of liquor on something said by the wife the accused used abusive language and gave beatings to her, will not be sufficient to hold that the appellant committed an offence punishable under Section 306 IPC. This Court has already ruled out the presence of complainant Darshan Singh PW-4 and his father at the place of occurrence. Therefore, the allegation that the accused told the deceased that it would be better if she dies, cannot be taken into consideration. However, giving beatings to the wife under the influence of liquor will constitute an offence punishable under Section 498-A IPC."

Applying the ratio of the above said judgments to the facts of the present case, there are two different dying declarations. As per second dying declaration, there was an allegation of murder. However, conviction is based on the first dying declaration. Even in the first dying declaration, the allegation is only that the accused (appellant) used to drink and trouble the victim (wife). There was no specific incident immediately before the commission of suicide, which would amount to abetment of suicide under Section 113-A of the Evidence Act. As per ratio of the above said judgments, allegation of drinking and beating would not amount to abetment. Therefore, conviction under Section 306 IPC is not made out in the present case.

Now, the question for consideration is, as to whether this case would fall under the category of 'cruelty' under Section 498-A IPC. For

reference, Section 498-A IPC is reproduced as under:-

"498A. **Husband or relative of husband of a woman subjecting her to cruelty.**—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(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."

Deceased, in the present case, was married to accused-appellant about five years prior to the incident and had two daughters from this wedlock. As per deposition of her father (PW-10), she had been consistently facing cruelty at the hands of her husband (appellant) after he used to come home under the influence of liquor. Harassment to wife, after being drunk, would fall under the definition of cruelty under Section 498-A IPC.

As per deposition of PW-10, there is no evidence that the accused used to beat his wife after drinking. He used to harass and trouble her after drinking. At this stage, reference can be made to a judgment passed by Hon'ble the Supreme Court in **Ramesh Kumar vs. State of Chhattisgarh**, 2001 (4) RCR (Criminal) 537, in which it has been held that harassment by the in-laws would be of a lesser degree than actual cruelty. Since in the statement made by the deceased and her father, nothing has been stated with regard to giving beatings, mere harassment would not amount to cruelty for conviction under Section 498-A IPC.

In view of the above discussion, this Court is of the view that the prosecution has miserably failed to prove its case against accused-appellant beyond the shadow of reasonable doubt and the trial court had erred in convicting and sentencing the appellant on the basis of untrustworthy and unreliable evidence.

Resultantly, the impugned judgment of conviction and sentence is set aside and the accused is acquitted of the charges framed against him. He is ordered to be released forthwith, if not required in any other case.

Allowed accordingly.

25.11.2017
ajp

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>