

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

**CRA-S-51-SB-2012 (O&M)
Date of decision: 25.11.2017**

Rajesh Kumar

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aman Sharma, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Jagmohan Ghumman, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Challenge in this appeal is to the judgment of conviction dated 17.11.2011 vide which the appellant was held guilty of offence punishable under Section 306 of the Indian Penal Code ('IPC' for short) and the order of sentence dated 17.11.2011 vide which the appellant was sentenced to undergo R.I. for 5 years and to a fine of Rs.5,000/- and in default of payment of fine, he was ordered to undergo further imprisonment for two months.

This appeal is being pursued through legal aid counsel appointed by the High Court Legal Services Committee. The appeal was admitted on 05.01.2012 and sentence of the appellant Rajesh Kumar was suspended vide order dated 22.02.2013.

Brief facts of the case are that on 06.05.2011, SI Gurbir Singh,

Incharge, Police Post Vardhman received a telephone message that a lady hanged herself at Bangi Nagar, Street No.9, Bathinda. On receiving the information, he along with his other police officials reached the spot, where he met Jasvir Singh son of Darshan Singh and recorded his statement. As per the statement, Jasvir Singh stated that he is a helper on bus of Adesh Hospital, Bathinda. They are three brothers and three sisters. His elder sister Rajji @ Nisha was aged about 28 years and was married to Rajesh Kumar @ Shunti son of Krishan Lal about 7/8 years ago. She had two children aged about 5 years and 3 years. His brother-in-law Rajesh Kumar was a fruit vendor and was in the habit of taking intoxicant and he used to beat his sister. On 04.05.2011, his sister left her matrimonial home and came to stay with them in her parental home and on the same day, in the evening, her husband Rajesh Kumar, her father-in-law Krishan Lal and her mother-in-law Smt. Sheela Rani came there and persuaded his sister to go back to her matrimonial home and on their persuasion, she went back. On the night of 05.05.2011, his sister Rajji @ Nisha fed up with maltreatment and committed suicide by hanging herself with the hook of ceiling fan in her matrimonial home. On receiving this information, the police party reached the matrimonial home of his sister and there they came to know that her neighbours namely Rajpal Kaur and Baba Gurdip Singh along with certain other persons brought the body of his sister down from the hook of ceiling fan but she was dead. It was further stated that his sister taken this step due to the harassment given by her husband, father-in-law and mother-in-law.

On the basis of statement Ex.PA, which was endorsed by SI Gurbir Singh, the police registered FIR Ex.PW4/B under Section 306 read with Section 34 IPC. Thereafter, police investigated the matter and prepared a site plan

Ex.PW4/C and inquest report Ex.PW4/D. The accused persons were arrested vide their arrest memo Ex.PW4/H and search memos Ex.PW4/J to Ex.PW4/L were prepared. After recording statement of the witnesses under Section 161 Cr.P.C., the investigation was completed and challan under Section 173 Cr.P.C. was submitted before the trial Court and thereafter, the case was committed to the Court of Sessions. All the three accused persons were charge-sheeted under Section 306 IPC read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

The prosecution examined four witnesses. PW1 Jasvir Singh-complainant deposed on the same line as per his statement recorded before the police Ex.PA and stated that his sister has committed suicide on account of maltreatment given by her husband and in-laws. PW2 Darshan Singh, father of Jasvir Singh PW1 as well as father of deceased Rajji @ Nisha, also deposed on the same lines. This witness also stated that on inquiry from the neighbours, he came to know that his daughter committed suicide on account of severe beatings given by her in-laws. He also stated that Rajpal Kaur and Baba Gurdip Singh brought down the body of his daughter from the hook of fan and when he reached, the dead body was lying in the Courtyard. Thereafter, police reached and searched the place of occurrence and completed the formalities. PW3 Dr. Maninder Singh Brar, Medical Officer, Civil Hospital, Bathinda submitted his affidavit as Ex.PW3/A, in which it is stated that on 06.05.2011, he along with Dr. Monika Gupta conducted the post-mortem on the dead body of Rajji @ Nisha as per the post-mortem report Ex.PW3/B, pictorial diagram Ex.PW3/C and Ex.PW3/D. During cross-examination, this witness has stated that except the injury on the neck, there was no mark of injury or violence on the entire body of

Rajji @ Nisha.

PW4 SI Gurbir Singh testified on the same lines as per the investigation conducted by him and produced on record all the relevant documents as Ex.PW4/A to Ex.PW4/L. This witness gave all the details of conducting the investigation at the spot as well as the post-mortem report obtained from the doctor and arrest memo of the accused persons and preparation of the search memos. In cross-examination, this witness deposed as under: -

“I also did not record the statement of Baba Gurdip Singh and Rajpal Kaur. I did not visit the house of Rajesh Kumar, accused on backside of Bus Stand, Bathinda, whereas he was residing with his deceased wife Rajjii @ Nisha. I did collect any evidence or record, statement of any of the witnesses regarding the dispute between the complainant and the accused except for the statement of the complaint. I also did not record the statement of mother of the deceased.”

Thereafter, the trial Court recorded the statement of accused persons under Section 313 Cr.P.C., in which all the incriminating evidence, which has come on record against them, was put to them. They denied all the allegations levelled against them and pleaded their innocence and false implication in the case. However, no defence evidence was led.

The trial Court, on appreciation of evidence of the prosecution, vide its judgment of conviction dated 17.11.2011 acquitted two accused persons namely Krishan Lal and Sheela Rani i.e. father-in-law and mother-in-law of deceased Rajji @ Nisha, holding that the prosecution has failed to prove the charge against them beyond reasonable doubt, however, convicted the appellant

Rajesh Kumar @ Shunti, husband of deceased Rajji @ Nisha, under Section 306 IPC and vide order of sentence dated 17.11.2011 ordered him to undergo R.I. for five years and to pay a fine of Rs.5,000/-. In default of payment of fine, the appellant was ordered to undergo further imprisonment for two months.

Counsel for the appellant submits that the ingredients of abetment on the part of the appellant are not proved by the prosecution. It is submitted on behalf of the appellant that as per the statement of complainant Jasvir Singh PW1, it is alleged that the appellant was a drug addict and he used to give beatings to his wife deceased Rajji @ Nisha. Counsel for the appellant has submitted that no evidence has been collected or produced by the prosecution to prove that on any previous occasion prior to 04.05.2011, the complainant Jasvir Singh or his father Darshan Singh, at any point of time, has lodged any complaint with the police authorities or any of the relative to the effect that deceased Rajji @ Nisha was given beatings or maltreated by her in-laws.

It is further submitted by counsel for the appellant that no witness from the locality, where deceased Rajji @ Nisha was residing in her matrimonial home, was examined to prove that she was ever maltreated by the appellant-husband or any other family member from her in-laws' side. Counsel for the appellant has relied upon the statement of PW4 SI Gurbir Singh, who conducted the investigation, wherein he stated that when he reached the spot, two of the neighbours Baba Gurdip Singh and Rajpal Kaur were found present, who brought down the dead body from the hook of the fan, however, their statement was never recorded by the prosecution. Even no other neighbour, who was present at the spot, was joined in the investigation to find out that deceased Rajji @ Nisha was ever given beatings by her in-laws.

Counsel for the appellant has further submitted that the allegations of PW1 and PW2 are not corroborated from the statement of PW3 Dr. Maninder Singh Brar, who conducted post-mortem and stated as under: -

“Except for injury of hanging on the neck there was no mark of injury or violence on the entire body of Rajji @ Nisha.”

It is thus submitted that the case set up by the prosecution that the complainant Jasvir Singh and his father Darshan Singh received a phone call on 05.05.2011 that deceased Rajji @ Nisha was given beatings by the accused persons, is not proved from the post-mortem report, as there was no external mark of injury or violence on the dead body. It is further submitted that it is the case of the prosecution that marriage of the appellant Rajesh Kumar with Rajji @ Nisha was performed about 7/8 years ago and out of this wedlock, two children aged about 5 years and 3 years were born. The appellant was a daily wager who was running a small fruit stall and therefore, the allegations that the appellant was a drug addict, are not proved as the appellant was proved to be a daily wager who was looking after his family. Counsel for the appellant has further submitted that there are material discrepancies in the statements of PW1 Jasvir Singh and PW2 Darshan Singh regarding the manner of receiving the message and reaching house of the appellant.

Counsel for the appellant has relied upon **Hans Raj Vs. State of Haryana, 2004 (2) RCR (CrI.) 58**, wherein the Hon'ble Supreme Court, while dealing with an appeal against conviction under Section 306 IPC, held as under: -

“Having regard to the principles aforesaid, we may now advert to the facts of this case. The learned Trial Judge took the view that since the wife of the appellant committed suicide and since the

appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A of the Indian Evidence Act that the suicide had been abetted by him. We do not find ourselves in agreement with the finding of the Trial Court, having regard to the facts and circumstances of this case and our finding that the prosecution is guilty of improving its case from stage to stage. The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told his wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW-3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW-3, her husband, himself

stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence therefore we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 I.P.C.

The Trial Court found that there was material to support the charge under Section 498-A I.P.C. but did not pass a sentence under Section 498-A I.P.C. on a finding that the same will be overlapping, the appellant having been found guilty of the offence under Section 306 I.P.C. Having regard to the facts of the case, we are satisfied that though the prosecution has failed to establish the offence under Section 306 I.P.C., the evidence on record justifies the conviction of the appellant under Section 498-A I.P.C.

We, therefore, set aside the conviction and sentence passed against the appellant under Section 306 I.P.C. and acquit him of that charge, but we find the appellant guilty of the offence under Section 498-A I.P.C and sentence him to undergo rigorous imprisonment for one year on that count. This appeal is partly allowed. The appellant was admitted to bail by this Court. His bail bonds are cancelled, and he must surrender to his sentence, subject to the provisions of Section 428 of the Code of Criminal Procedure.

Appeal partly allowed.”

It is submitted by counsel for the appellant that since no evidence was produced by the prosecution to prove that immediately before Rajji @ Nisha,

when she committed suicide, the appellant in any manner has abetted her to commit suicide and therefore, the offence under Section 306 IPC is not made out and it is only a case falling under Section 498A IPC. It is further submitted that the appellant has already undergone 01 year, 08 months and 06 days of actual sentence and 02 years, 01 month and 17 days of total sentence including remission. It is also submitted that the appellant is not the previous convict; he is not involved in any other case; he has not misused the concession of bail after 22.02.2013 and he is taking care of his minor children.

In reply, learned State counsel, on the basis of affidavit dated 16.02.2013 of Superintendent, Central Jail, Bathinda has not disputed the custody part undergone by the appellant, however, has submitted that it has come in the statement of PW1 and PW2 that the appellant used to give beatings to deceased Rajji @ Nisha and on that account, she has committed suicide. He prays for dismissal of the appeal.

After hearing learned counsel for the parties, I find merit in the present appeal. The trial Court, in para 24 of the impugned judgment, has though recorded a finding that the prosecution has not led any cogent evidence to prove that the appellant Rajesh Kumar used to take intoxicant and there was no mark of injury or violence on the entire body of deceased Rajji @ Nisha except for the neck, yet held him guilty holding that it is established on record that there was a dispute between the husband and wife and she left the matrimonial home on 04.05.2011 and went to her parental house and therefore, this was sufficient reason for the deceased to commit suicide. On careful perusal of statements of PW1 and PW2, brother and father of deceased Rajji @ Nisha, it is apparent that previously they never made any complaint to any authority or the relatives

regrading maltreatment given by the appellant to his deceased wife. It has also not been proved from the statements of these two prosecution witnesses that since the time of marriage of deceased Rajji @ Nisha with the appellant Rajesh Kumar, in the intervening period of about 7/8 years, there was any such complaint of beating given by the appellant. It is admitted case that both the husband and wife were living in a separate house and were having two children aged about 5 years and 3 years and therefore, in the absence of any evidence that on any previous occasion, deceased was harassed or beaten by the appellant, the evidence of abetment to commit suicide on 05.05.2011 is not proved on record. The evidence that the appellant had visited her parental home on 04.05.2011 and was taken back by her in-laws, as per own version of the prosecution, shows that the appellant Rajesh Kumar and his parents were interested in keeping the deceased Rajji @ Nisha in the matrimonial home as the couple has two minor children.

It may be noticed here that except the statement of brother and father of the deceased as PW1 and PW2, no witness was examined from the locality where the appellant-husband Rajesh Kumar and his deceased wife Rajji @ Nisha were residing despite the fact that it has come in the investigation that Baba Gurdip Singh and Rajpal Kaur were present, however, they were not cited as prosecution witnesses and were never examined.

Considering the fact that there are certain allegations in the statements of PW1 and PW2 that deceased was maltreated by the appellant Rajesh Kumar, it is held that it was a case falling under Section 498A IPC and not under Section 306 IPC. Since the appellant has already undergone 01 year, 08 months and 06 days of actual sentence and 02 years, 01 month and 17 days of

total sentence including remission; he is not previous convict; he has not misused the concession of bail; he has to look after two minor children and also in view of the fact that he has faced the agony of protracted trial since 2011, the sentence undergone by the appellant is reduced to the period already undergone by him, while convicting him under Section 498A IPC with a fine of Rs.2,000/-. The appellant shall deposit the fine of Rs.2,000/- before the Chief Judicial Magistrate, Bathinda within a period of 04 months from today.

With the aforesaid modification, present appeal is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

25.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No