

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : May 15th, 2017

+ CRL.A. No.3/2002
DEVI

.... Appellant

Through: Mr.R.P. Kaushik, Advocate.

versus

STATE

.... Respondent

Through: Mr.Akshai Malik, Additional Public
Prosecutor for the State with Sub-
Inspector Ranveer, Police Station New
Ashok Nagar, New Delhi.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The instant appeal has been filed being aggrieved by the judgment of conviction dated 06.12.2001 passed by the learned Additional Sessions Judge, Delhi convicting the appellant for the offence punishable under Section 306 of Indian Penal Code (hereinafter referred to as I.P.C.) and order on sentence dated 11.12.2001, whereby the appellant – Smt. Devi has been sentenced to undergo simple imprisonment for a period of two years and fine of Rs.25,000/- for the offence under Section 306 of IPC and in default of payment of fine to further undergo simple imprisonment for a period

of six months.

2. The factual matrix that emerges from the record is that the deceased-Babita was married with the son of the accused on 06.02.1996 and was blessed with a daughter and after about 3 years, she set herself on fire by pouring kerosene oil on her body in the bathroom of the matrimonial home. Smt. Babita was admitted in the burns ward of Safdurjung Hospital after sustaining 100% burn injuries on 25.03.1999 and she died on 26.03.1999. After recording the statement of Smt. Babita before the SDM, the SDM directed the registration of the case as a result of which, SI made his endorsement for the registration of the case under Section 498-A IPC. When Babita died of burn injuries, Section-306 IPC was also added. During the course of investigation, the SI prepared the site plan, got the spot photographed, took the possession of burnt hair, burnt match sticks, plastic can and after preparation of the brief facts the post-mortem was done.

3. After completion of investigation, charge sheet was filed in the court. Charge under Section 306 IPC was framed against the accused, to which she pleaded not guilty and claimed trial.

4. To bring home the guilt of the appellants, the prosecution examined as many as 9 witnesses. They are Ravi Dadhich SDM (PW-1); Davender Verma (PW-2); Devi Singh Sharma (PW-3); SI Rakesh Kumar (PW-4); HC Radha Kishan (PW-5), SI Arjun Chauhan (PW-6); Dr. Arvind (PW-7); Dr. Savita (PW-8), and SI Rajbir Singh (PW-9).

5. The statement of the appellant was recorded under Section 313 of the Cr.P.C to which the appellant pleaded not guilty.

6. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant guilty for an offence punishable under Section 306 of IPC vide judgment and order on sentence, as mentioned above.

7. Aggrieved by such judgment, the appellant has filed the instant appeal challenging the impugned judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 10.01.2002.

8. The impugned judgment of conviction has been challenged on the grounds that the deceased was not fit for making statement as she was brought to the hospital with 100% burn injuries. The statement given by the patient to the SDM is contrary to the doctor at the time of admission wherein she did not name the appellant rather, according to her it was family tension which she narrated before the doctor as a reason for putting herself to ablaze and the reason is not the quarrel with the appellant. It is further contended that there was no reason to infer that the deceased was under the apprehension of death, if she was fit for statement, therefore the dying declaration ought to have held failed on scrutiny and for this reason all the depositions of the prosecution witnesses ought to have been rejected. Learned counsel for appellant vehemently contended that the father of the deceased

deposed in his statement that his daughter was happy in her matrimonial house but the learned trial court has neglected the statement of father without any reason. Though for only one time quarrel has been alleged but that cannot be made the basis for conviction especially when her husband was with her. It is further contended that the learned trial court misconstrued the judgment cited for the definition of the abetment to suicide and other judgments relied by the appellant have not been considered by the learned trial court. The main ingredients of the offence of abetment to commit suicide are missing and therefore the same cannot be made the sole basis for holding the appellant guilty for the offence under Section 306 of IPC. It is further urged that the learned trial court has invented unwarranted motive of crime in the impugned judgment whoever, those motives are not supported by any evidence, therefore, those motives cannot form the part of the prosecution case.

9. Per contra, learned Additional Public Prosecutor for the State has submitted that the deceased Smt. Babita had died otherwise than under normal circumstances in her matrimonial home and that too within three years of her marriage. The deceased was being harassed and tortured by the appellant and it was due to harassment and cruelty which instigated the deceased for taking an extreme step of ending her life. In the circumstances of the present case, the impugned judgment and order on sentence as passed by learned Additional Sessions Judge does not suffer from any irregularity or illegality and therefore, the same is not required to be interfered with.

10. Arguments advanced by both the sides were heard and the evidence as well as material placed on record has been gone into. This court also perused the impugned judgment

11. There is only one independent public witness in the present case i.e. Devi Singh Sharma (PW-3), who is father of the deceased. He has deposed that his daughter was staying in her matrimonial house since the time of her marriage. He stated that she never complained to him regarding anything on the part of her in laws and was residing happily with them. On 20.03.1999, he received a telephone call from the deceased stating that she would come to meet him after 4-5 days. She did not complain regarding anything to him. On 26.03.1999, the son of his elder daughter, Sanjay came to his house and took him to Safdurjung hospital wherein he was informed about the death of his daughter. This witness has specifically stated that he has no complaints with the accused and there was no complaint of any harassment on the part of the mother-in-law of the deceased. He also stated that after hearing the death of his daughter, he became upset. At that time, in a fit of anger, he gave statement to the police leveling allegations against the accused. His anger was because the accused did not inform him for about 48 hours about the death of his youngest daughter. He further stated that due to anger, he leveled allegation against her.

12. From the testimony of PW3-Devi Singh Sharma, there is nothing on record to connect the appellant with the commission of suicide by the deceased. He has not given any instance of any

harassment or taunt or cruelty meted out by the appellant to the deceased which led to the commission of suicide by her. In his testimony, he has clarified that in his statement made to the police he had leveled allegations against the appellant in a fit of anger as he was disturbed due to death of his youngest daughter. He has also stated that he was angry as the appellant did not inform him about the death of his daughter for about 48 hours and that was the reason for leveling allegations against the appellant.

13. From a careful reading of the testimony of the PW3-father of the deceased, the prosecution has failed to make out its case against the appellant to the effect that she taunted or harassed the deceased which led to abetment of commission of suicide by the deceased.

14. The only other evidence against the appellant by the prosecution is the alleged dying declaration of the deceased. The same has been proved on record as Ex.PW1/A by the then SDM- Ravi Dadhich. In the said dying declaration Ex.PW1/A, it was mentioned by the deceased that she herself set afire by pouring kerosene over her in a bathroom. It was further mentioned that she had a quarrel with the appellant as the appellant had been saying that the deceased wanted to separate her son from her. It was also mentioned that 4-5 slaps were given to her by the appellant. The deceased was in good terms with her husband.

15. There is nothing else in the alleged dying declaration of the deceased. The trial court based its conviction while heavily relying

upon the said dying declaration Ex.PW1/A of the deceased, but in the considered opinion of this Court, there is nothing substantial in the said statement of the deceased from which the conviction of the appellant be based. There is no mention of any previous quarrel between the deceased and the appellant in the said statement. The deceased had only mentioned that she had a quarrel with the appellant on that day and she was slapped 4-5 times by the appellant due to which she poured kerosene on herself and set her afire. Apart from the said statement of the deceased, there is no other evidence on the record to connect the appellant with the abetment of suicide by the deceased.

16. The prosecution has not produced any other evidence on record to show that the deceased was ever subjected to harassment and taunts by the appellant. PW3-father of the deceased is the only public independent witness examined by the prosecution but he has also not stated anything against the appellant from which it could be inferred that the the deceased was taunted or harassed by the appellant which could abet the suicide by the deceased.

17. In ***Ramesh Kumar v. State of Chattisgarh (2001) 9 SCC 618*** the Hon'ble Supreme Court while considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to

go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused the Hon'ble Apex Court said: **In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".**

18. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences, were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the appellant charged for abetting the offences of suicide should be found guilty.

19. In view of the totaling of the evidence, facts and circumstances discussed above, this Court is of the considered opinion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Consequently, the impugned judgment of conviction and order on sentence are hereby set aside. The appellant is acquitted of the charge framed.

20. The appellant is already on bail. Her bail bond and surety bonds are discharged.

21. Appeal is accordingly allowed and disposed of.

(P.S.TEJI)
JUDGE

MAY 15, 2017
dd

