

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.482 of 1999

Judgment Reserved on : 5.12.2017

Judgment Delivered on : 27.2.2018

- 1. Homan, son of Khorbehra, aged about 25 years,
- 2. Hirmat Bai, wife of Khorbehra, aged about 50 years,

Both residents of Village Kesla, Police Station Aarang, District Raipur

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants : Shri P.P. Sahu and Shri Rajkumar Pali, Advocates
For Respondent/State : Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 21.12.1998 passed in Sessions Trial No.269 of 1997 by the Sessions Judge, Raipur convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 5 years

- 2. Facts of the case, in brief, are that Rajkumari (deceased) was married with Appellant No.1, Homan 4-5 years prior to her death. It is alleged that after the marriage, she lived happily for about 1 year, but thereafter the Appellants began to abuse her due to non-birth of any child from her. It is also alleged that Appellant No.2, Hirmat Bai, mother-in-law of the deceased and Appellant No.1,

Homan, husband of the deceased used to beat and harass her and ask her to leave their house and go out. On account of this, on 14.5.1997 at about 3:00 p.m., she consumed some pesticide and died. Morgue Intimation (Ex.P7) was lodged by Deonath (PW9) on the date of death itself at about 8:20 p.m. Inquest (ExP5) was prepared by Additional Tahsildar Radhey Shyam Sonpipare (PW6). Post mortem was conducted by Dr. Krishna Kumar Sen (PW12). His report is Ex.P11 in which it has been opined that the cause of death was suspected poisoning. No opinion has been stated regarding nature of the death revealing that it was an accidental or a homicidal or a suicidal death. Viscera of the dead body was preserved and sent to the Forensic Science Laboratory for chemical examination. FSL Report of examination of the viscera is Ex.P13 in which it has been reported that Aluminium Phosphide Pesticide (Sulfas) was found in the viscera. After morgue inquiry, First Information Report (Ex.P8) was registered on 15.5.1997. Offences under Sections 306 and 498A read with Section 34 of the IPC was registered against the Appellants. On completion of the investigation, a charge-sheet was filed against them for offences punishable under Sections 306 and 498A read with Section 34 of the IPC. Charges were framed against them under Section 306 of the IPC.

3. To rope in the Appellants, the prosecution examined as many as 12 witnesses. Statements of the Appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication. 3 witnesses have been examined in their defence.

4. After Trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that on the basis of testimony of Shivkumar (PW2), brother of the deceased and Pratap (PW3), father of the deceased, the offence alleged against the Appellants under Section 306 of the IPC is not at all made out. It was further argued that as per the statement of Shivkumar (PW2), the deceased had never told him about the alleged harassment and the relationship between the Appellants and the deceased was good. Shivkumar (PW2) has given the statement on the basis of statement of Raju, but statement of Raju has not been recorded by the prosecution. The prosecution has totally failed to prove the alleged harassment or cruelty by the Appellants. Therefore, the Appellants cannot be convicted for the alleged offence. There are material contradictions and omissions in the testimony of the prosecution witnesses which create doubt on the prosecution case. Reliance was placed on **(2013) 12 SCC 286 (Atmaram v. State of Maharashtra)** and **(2007) 11 SCC 205 (Bhagwan Das v. Kartar Singh)**.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Sections 107 and 498-A of the Indian Penal Code run thus:

“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 he 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 facilitates the commission thereof, is said to aid the doing of that act.

498-A. 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 purposes 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.”

9. In **Bhagwan Das case** (supra), it has been observed by the Supreme Court as under:

“15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304-B IPC may be attracted, whether it is a case of homicide or suicide. (Vide *Kans Raj v. State of Punjab*, (2000) 5 SCC 207, *Satvir Singh v. State of Punjab*, (2001) 8 SCC 633 and *Shanti v. State of Haryana*, (1991) 1 SCC 371.)”

10. In **Atmaram case** (supra), the Supreme Court has observed thus:

“19. From the discussion of the aforesaid evidence on record, we find that the prosecution has not been able to prove beyond reasonable doubt that the appellant was guilty of any wilful conduct which was of such a nature as was likely to drive Purnabai to commit suicide. Rather, there appears to be some evidence in the depositions of PW 1 and PW 4 (father and sister of Purnabai) that Purnabai was sad due to a daughter being born to her and a son being born to the first wife of the appellant. These circumstances may have driven Purnabai to commit suicide by jumping into the well along with her daughter. Such a consequence from the mental state of Purnabai cannot be a ground for holding that the appellant was guilty of cruelty within the meaning of clause (a) of the Explanation to Section 498-A IPC. We, therefore, hold that the presumption under Section 113-A is not attracted and the appellant cannot also be held guilty of abetting the suicide of Purnabai. We have to bear in mind this note of caution in *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73: (SCC p. 90, para 17)

“17. the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty

meted out to the victim had in fact induced her to end the life by committing suicide. 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 accused charged of abetting the offence of suicide should be found guilty.”

20. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court and the judgment of the trial court holding the appellant guilty of the offences under Sections 306 and 498-A IPC and direct that the bail bonds executed by the appellant be discharged.”

- 11.** From the above, it is clear that for the guilt under Section 306 of the IPC the prosecution is bound to establish that the deceased was subjected to cruelty as defined in Explanation (a) to Section 498-A of the IPC.
- 12.** In the light of above, I shall now examine the evidence adduced by the prosecution minutely.
- 13.** Admittedly, the marriage between the deceased and Appellant Homan was solemnised 4-5 years prior to her death. From the evidence adduced by the prosecution, it is also clear that the Appellant Homan had married the deceased by wearing her churi. From the evidence, it is also clear that earlier the deceased had married one Ballu and from Ballu she had two children.
- 14.** Deonath (PW9), who is brother-in-law (Devar) of the deceased is

the witness who lodged morgue intimation (Ex.P7). He has stated that the deceased came to his house in the afternoon and fell down becoming unconscious after feeling giddiness. Her body had turned into bluish colour. He has stated that how did the deceased die is not known to him. Additional Tahsildar Radhey Shyam Sonpipare (PW6) prepared the inquest (ExP5). Dr. Krishna Kumar Sen (PW12) conducted post mortem examination on the dead body. His report is Ex.P11 in which it has been opined that the cause of death was suspected poisoning. No opinion has been stated regarding nature of the death revealing that it was an accidental or a homicidal or a suicidal death. Viscera of the dead body was preserved and sent to the Forensic Science Laboratory for chemical examination. FSL Report of examination of the viscera is Ex.P13 in which it has been reported that Aluminium Phosphide Pesticide (Sulfas) was found in the viscera. Station House Officer Narendra Singh (PW5) has done the morgue inquiry, registered the FIR (Ex.P8) and investigated into the offence in question. Some part of the investigation was done by Prem Narayan Shukla (PW10). PW10 also recorded statements of some witnesses under Section 161 of the Cr.P.C.

15. From the above, it is clear that the deceased had consumed poisonous substance sulfas and she died unnatural death within 7 years of her marriage. It is not the case of the prosecution that the deceased was being harassed for dowry, but, as per the case of the prosecution, she was harassed by both the Appellants for non-birth of a child by her. For this, the prosecution has examined Shivkumar (PW2), brother of the deceased and Pratap (PW3), father of the deceased.

- 16.** Shivkumar (PW2) has stated that after the marriage, the Appellants kept the deceased happily for about 2 years. Thereafter, they started beating and harassing her alleging that she was unable to give birth to a child. He has further stated that during festivals, when the deceased was visiting their house, she had been telling him these things. He has further stated that his younger brother Raju had told him that the Appellants also used to tell the deceased if she would not leave their house they will kill her by giving her poison. In his cross-examination in paragraph 5, he has admitted that during 4-5 years after the marriage, he visited the house of her sister (the deceased) 1-2 times, but on those occasions, his sister had not made him any complaint. In paragraph 8, he has further stated that his sister, when she was visiting their house, she had been telling about the harassment. But, they did not make any report nor did they tell the same to any of the neighbours. He has categorically stated that normally these small things happen, therefore, they did not tell or report. He has further admitted that the deceased was living happily at the house of the Appellants.
- 17.** Pratap (PW3) has stated that he had visited the matrimonial house of his daughter (the deceased). On that occasion, the deceased had told him that the Appellants were asking her to go out of their house saying that she was unable to give birth to a child. He has further stated that Hirmat Bai, mother-in-law of the deceased used to abuse the deceased and on the husband of the deceased returning home, Hirmat Bai used to make him complaints. When the deceased had visited his house (paternal house of the deceased), she had told him these facts. On this, he had called a

panchayat meeting of their community and the panchayat meeting was convened. This witness has also admitted that on being complained by the deceased, he did not make any report in the police station nor did he tell this fact to any neighbour or person of their community. He has further admitted that normally these small things happen, therefore, he did not tell or report. In paragraph 9 of his cross-examination, he has admitted that daughters of his brothers-in-law have also been married in Village Kesla where the Appellants reside and the deceased used to visit the matrimonial houses of those daughters of his brothers-in-law.

18. The testimony of Shivkumar (PW2) and Pratap (PW3) reveals that after the marriage the deceased lived happily at her matrimonial house for about 2 years. Though these witnesses alleging that the Appellants were harassing and beating her alleging that she was unable to give birth to a child yet they have admitted that normally these small things happen in every house and having thought so, they did not make any complaint. Shivkumar (PW2) has categorically stated that he had visited the matrimonial house of the deceased and on that occasion, the deceased had not made him any complaint. From the statement of Pratap (PW3) also, it is clear that marriage of daughters of his brothers-in-law were also solemnised in Village Kesla where the Appellants were residing and the deceased used to visit the matrimonial houses of those daughters of his brothers-in-law in Village Kesla. But, there is nothing on record to show that the deceased ever made any complaint to those ladies [daughters of the brothers-in-law of Pratap (PW3)].

19. In **Bhagwan Das case** (supra), it has been observed by the Supreme Court that it often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, would not by itself and without something more attract Section 306 IPC read with Section 107 IPC. It has been further observed by Their Lordships that mere harassment of wife by husband due to differences *per se* does not attract Section 306 read with Section 107 IPC, if the wife commits suicide.
20. In the light of above, in the present case also, there is no clinching evidence available on record regarding harassment to the deceased. There is nothing on record on the basis of which the Appellants could be held guilty under Section 306 of the IPC.
21. Consequently, the appeal deserves to be and is hereby allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
22. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
JUDGE