

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 19th March, 2020

+ CRL.REV.P. 937/2017 & CrI.M.A.20636/2017

UMA DEVI

..... Petitioner

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Sahil Malik, Mr.Sparsh Chaudhary and Mr.Tushar Randhawa, Advs.

For the Respondents: Ms.Meenakshi Dahiya, Additional Public Prosecutor for the State with SI Onkar Singh, P.S.Sagarpur.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order on charge dated 7.11.2017 whereby charge has been framed against the petitioner under Section 498A/306/34 Indian Penal Code (IPC for short).

2. Deceased married the son of the petitioner on 08.12.2012. On 10.07.2015, deceased committed suicide. FIR was registered on the complaint of the father of the deceased lodged on 27.09.2015.

3. The allegations in the FIR are that the married life of complainant's daughter with the one Bibhoo Kumar, who was the son of the petitioner, was not good. It is alleged that petitioner used to

mentally torture the deceased. The son of the petitioner used to work as an engineer in Chhattisgarh. When the husband of the deceased used to go to work, petitioner used to harass the deceased by saying that she would get the deceased divorced from her son.

4. It is alleged that when the deceased shifted to Delhi, petitioner used to torture the deceased over the phone. It is alleged that there were fights between the deceased and her husband at various occasions. Subsequently, the deceased committed suicide by hanging herself from the fan.

5. It is submitted by learned counsel for the petitioner that petitioner has been falsely implicated. It is submitted that father of the deceased in his very first statement to the Executive Magistrate on 11.07.2015, after the deceased committed suicide on 10.07.2015, stated that there was no problem in the matrimonial life of the deceased and he had no knowledge if the deceased was mentally disturbed.

6. It is further submitted that the deceased was living in a house separate from the petitioner – mother in law, when she committed suicide. It is submitted that the deceased committed suicide in Delhi whereas the petitioner lives in Ranchi and for the last several months they were living separately.

7. It is further submitted that the brother – Pratik Rai and nephew – Subodh Roy of the deceased in their respective statements to the Executive Magistrate on 11.07.2015, after the deceased committed suicide on 10.05.2017, stated that they did not blame anyone for the suicide.

8. It is contended that the suicide note relied on by the prosecution does not have any allegations against the petitioner – mother in law.

9. In the impugned order on charge, Trial Court has relied upon the statement of the father made on 27.09.2015 and also the suicide note allegedly left behind by the deceased.

10. It may be noted that the father in his first statement to the Executive Magistrate, given on the very next day of the suicide had stated as under:

“Stated that I live on the above mentioned address alongwith my family. Preeti Rai was my daughter and I arranged her marriage on 06.12.2012 alongwith Sh. Bibhoo Kumar. The said marriage was performed after the consent and satisfaction of both the families as per rites and customs. After the marriage she left for her matrimonial home in Ranchi. After the marriage, the matrimonial life was going on smoothly and she had no complaint in her matrimonial home. Approximately 10 months prior to the incident Preeti had come to stay with me at my house as Bibhoo used to work in Raigarh. Bibhoo also used to frequently visit my house and even Preeti went to Raigarh. Preeti and Bibhoo were both

looking for jobs in Delhi and due to this around one month back Preeti had taken a house near my house on rent. Bibhoo also stayed in the new house for some days and left back on 1st of July. As per my knowledge there was nothing which showed that Preeti was disturbed or she was having some problem. Yesterday on 10.07.15 at about 2 PM I got to know on phone that Preeti had committed suicide. I authenticate the suicide note written by Preeti as it has been written in her own handwriting. For this mishappening I don't hold any one responsible. Preeti might have taken this step due to depression. I have read over my statement and acknowledged the same to be correct.”

11. The suicide note, as per the prosecution case, left behind by the deceased reads as under:

“To my Family -

Mummy, papa, Prateek, Prasant

I am sorry, par haa... I am relieved now. Relieved from the pressure of accepting all the unreasonable terms and condition of your proud 'damad'. You guys know - if I don't earn - I did not get food there they are ready to hit me - without even thinking that I am a human and I too get hurt. But on a serious note - you should have understood me, you should have understood marriage on dowry foundation, a marriage on the foundation of lies will never work out. I alone cannot just drag this marriage not even your curse can force one to drag of accept every condition, unreasonable condition put by vibhu and his family. I was tired of their attempts on my character assassination.

I was almost every day dieing, feeling so inferior.

My question for you Vibhu –

Why you wanted my death. I wanted to live. I wanted to grow. What did I do wrong. I was ready to do everything for you. I wanted both of us growing in all aspects of life. In spite of all domestic violence I suffer wasn't that bad girl who deserves death. Its hard and getting even harder everyday to live on this earth and complete the life span god has gifted me with.

It's even more hard when your partner, life partner wants you to be dead "sooner the better".

The soul within me is very strong it stopped one doing anything wrong since part 2.5 years but I can realize now this world is so very mean, so mean, so mean.

I tried so hard to make a normal lining and I was honestly quite optimist that things will be better, no matter what I have to go through. No matter how violent, you turn vibhu, what breaks me, is your hatred towards me. How, how can you just eagerly wait to so my coffin. You failed the philosophy of "love wins over hatred". I give you my everything vibhu. All the love, I could. But it seems you do not want me anymore. I know, you will be also be happy about the fact that I died far from you.

My optimism, my hopes, my self confidence die when my love wants me to leave the world. Sooner the better. You and your family disrespected me on every stage still I wanted to be with you and your family. Not because I was afraid of moving on. Only because my love for you never allowed me.

After all, I wanted a normal living.

But then, roses of happiness for you. Because this suicide in my own decision. Now I know your answer as you always say — you deserves better than me. You do it vibhu, yes you deserves a second marriage or to understand - where you are wrong I can tolerate you so much. Thank you for everything.

This suicide is not paid, pain is - I was optimistic that one day you will love me. One day you will realize your responsibilities, but you never did. From day 1 — till date I was abused. Bye my love.

Nicky, Vineet, Meetali - trusted me I am not coward that you guys might think of me, when you would know this, but your friend is relived now. Relieved from all the pain she had. Its not my end. I have so lovely memories from you guys. Not to forget my college friends Priyanka, Avinash and many more so on. Thank for all your support for anything and everything.

Maama, Juhi, Maami and Atharv - I wanted to grow old seeing you people. Thank for all your love. “Perhaps I lost myself today”. Like every other gal I wanted to having a loving husband I wanted to have a baby. A caring and understanding family around. I have nothing I lost myself.

At 4.10 pm I got a call from a MNC. A call for an interview — This was for the same role what I am doing, this was from a global mining company. I was happy and thought it's a good sign. God is topping me, but I realized what would I do, if I have a good job but not you. Also what would I do if have you but not a job.

You are my love and job is passion. In between both I choose death. Can't live without you and job. Vibhu even

after leaving my job you are giving me an option of living with your mom. Not with you. I got married with you and not to your mom. Such conditions are unreasonable. You failed as a human, you failed as a man, as a husband, so many complaints to you. I know you would never listen to them.

My last dieing wish to you, to this world.

1st of all - I was a good soul. I died in this house, it should not be sealed. It should be free. Landlord are really nice guys. They should not be impacted of this. Not even a bit.

Empower your girls, we are not toys any one can play. I feel sad about myself as I wanted to live and see the whole world.

Dear husband — I know you will be happy about this. Still I request to all the people you and your job and family should not be impacted.

My family should not be impacted or questioned by any authority. Everyone should be forgiven.”

12. The suicide note allegedly left behind by the deceased and relied upon by the prosecution and the Trial Court does not make any allegation against the petitioner – mother in law so as to constitute an offence under section 498 A, 306 or 34 Indian Penal Code.

13. Sections 498A IPC reads 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.”

14. Sections 306 IPC reads as under:-

“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.”

15. Under Section 306 IPC, whoever abets commission of suicide is held liable for abetment of suicide.

16. Section 107 IPC defines abetment as under:-

“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 willful misrepresentation, or by willful 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.

Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.”

17. Reference may be had to the judgment of the Supreme Court in *Ramesh Kumar vs. State of Chhattisgarh*: (2001) 9 SCC 618, wherein, the Supreme Court laid down as to what conduct would amount to incitement or instigation:-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that 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 her 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.”
(underlining supplied)

18. In terms of Section 107 IPC, a person abets the doing of a thing, who, instigates any person to do that thing or engages with one or more persons in any conspiracy for the doing of that thing or intentionally aids, by any act or illegal commission the doing of that thing.

19. In the case of suicide, a person is liable for abetment if the person has *inter alia* instigated the deceased for committing suicide or has engaged in any conspiracy for committing suicide or intentionally aided the commission of suicide

20. The Trial Court in the impugned order on charge has referred to an extract of the suicide note but in the said extract also there is no reference by the deceased to the petitioner – her mother in law.

21. The Trial Court has placed reliance upon the statement given by the father to the police on 27.09.2015 and has held: “*In his statement, father of the deceased has stated that accused Bibhoo (husband) and his mother Smt. Uma Devi are responsible for the suicide of deceased as deceased could not tolerate the cruelty and harassment committed by them.*”

22. The Trial Court has erred in not noticing that in the very first statement given by the father of the deceased to the Executive Magistrate, the very next day after the suicide, he had not made any allegations against the petitioner. Even in the statement given to the

Police on 27.09.2015 after a gap of about 78 days, the allegations against the petitioner – mother in law are vague and general, without any specifics. He has alleged that the mother in law used to mentally torture his daughter and say that she would get her divorced from her son and threaten her that she should come back to Ranchi to serve her.

23. There is no allegation even in the said statement of any demand of dowry or harassment for dowry. Apart from a vague statement that petitioner used to mentally torture the deceased, there are no allegations of any kind.

24. Further, if the suicide note is taken on its face value, the suicide note also does not make any allegation of any conduct, which would amount to instigation by the petitioner – mother in law to the deceased to commit suicide or even of harassment. The Suicide note does not corroborate any of the allegations made by the father of the deceased against the petitioner-mother in law.

25. For a charge to be framed against an accused not only suspicion but grave suspicion of the accused having committed the offence is necessary. From the allegations against the petitioner, grave suspicion as is required for framing of charge is not emerging.

26. Clearly, the Trial Court has erred in framing a charge against the petitioner for having committed an offence under section 498A/306/34 IPC.

27. The impugned order dated 07.11.2017 to the extent that it holds that a charge is liable to be framed against the petitioner – Uma Devi under section 498A/306/34 IPC and the charge framed against her cannot be sustained and is accordingly set aside.

28. Since the other accused i.e. the husband – Bibhoo Kumar has not filed any petition challenging the said order, this order shall have no bearing on the charge framed against him by the Trial Court by the impugned order.

29. Petition is allowed in the above terms.

30. The Trial Court record be transmitted back forthwith.

31. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

March 19, 2020
HJ