

CRA 595 of 2018

In the matter of : Dhanu Das

Ms. Puja Goswami ... amicus curiae for the appellant

Ms. Faria Hossain

Ms. Sujata Das ... for the State

The Criminal appeals assails the judgement and order of conviction passed by the learned Additional Sessions Judge, Kalna, Burdwan in S.C. No. 72 of 2012 and corresponding to Monteswar P.S. Case No. 89 of 2011 dated 22.8.2011. The appellant Dhanu Das by the impugned judgement stood convicted for committing offence under Sections 498A/306 of the Indian Penal Code.

Briefly stated, Kanu Das set the criminal proceeding into motion by informing the Officer-in-Charge, Monteswar P.S. in writing about the unnatural death of his daughter Jhuma Das. Jhuma was married to Dhanu Das three years prior to the date of information and after marriage she was residing in her matrimonial home. It is alleged that Jhuma was subjected to physical and mental torture by her husband and other family members. On 20.8.2011, Kanu Das was informed that his son-in-law set his daughter ablaze by pouring kerosene oil on her person. She was taken to Monteswar BPHC and from there to Burdwan Medical College and Hospital where on 21.8.2011 she succumbed to injuries at the age of twenty years. The information since disclosed

offence cognizable in nature, police registered Monteswar P.S. Case No. 89 of 2011 and took up investigation which culminated into submission of charge sheet against the accused persons under Sections 498A/306/34 of the Indian Penal Code. On 30.10.2015 trial was commenced and pleading innocence to the charge under Sections 498A/304B of the Indian Penal Code the accused persons stood the trial together with two of his family members.

To crown success, prosecution examined twelve witnesses. Learned Trial Court after considering the evidence on record was pleased to hold the appellant guilty for committing offence within the meaning of Sections 498A/306 of the Indian Penal Code and two of the accused persons were acquitted.

Ms. Goswami, learned amicus curiae has taken me through the testimony of the witnesses. P.W. 1 is the *de facto complainant* Kanu Das, who stated in his evidence that he could not satisfy the demands made by his son-in-law at the time of marriage and as a result his daughter was subjected to torture. The dispute was reported to Ashes Mallick and Falguni Roy the local Panchayet members.

During cross-examination he stated that one month previous to the date of death, he took his daughter back to her in-law's house. His son-in-law informed him of his daughter's death, and when he went to Monteswar Hospital, his son-in-law was there with him.

Pratima Das, P.W. 2 mother of the victim stated that had ornaments and money been returned by the accused person after

the death of her daughter they would not have initiated the criminal proceeding.

P.W. 3 Sanat Das, P.W. 4 Kenaram Das, P.W. 5 Ek-kari Das, P.W. 6 Prafulla Chakraborty expressed their ignorance about the incident.

Ashes Mallick, P.W. 7 stated that he attended one meeting for amicable settlement of the dispute existing Jhuma Das and Dhanu Das. The outcome of the said salishi was not reduced in writing.

Falguni Roy, P.W. 8 is the panchayet member who also stated that he along with Ashes Mallick, Jhuma Das, her father, Dhanu Das and his two uncles sat in the office of the Co-operative society of their village to settle the dispute between the man and his wife. Dhanu and his family members stated that they would solve the dispute among themselves.

During cross-examination he stated that he did not have any personal knowledge about the dispute between the P.W.9 Satyanarayan Ghosal who prepared the dead body challan and conducted inquest examination. P.W. 10 Dr. Debasish Sarkar held post mortem examination of the dead body of Jhuma Das. P.W. 11 Smita Samanta attended the victim at B.P.H.C. at 80% burn injury. P.W. 12 is the Investigating Officer.

From the attending facts of the case, it is submitted that Jhuma Das died on burn injury within seven years of her marriage. But apart from some general and omnibus statements regarding the disharmony between the husband and wife in their conjugal life, there is nothing that indicated that Jhuma Das was subjected

to cruelty within the meaning of Section 498A of the Indian Penal Code. There is no evidence that she was instigated by the accused person which is essential to prove charge under Section 306 of the Indian Penal Code.

Though Ms. Das, learned counsel representing the State submits that the victim since died within seven years of her marriage an unnatural death, the learned Trial Court was absolutely justified in recording the order of conviction.

Section 113A of the Evidence Act has conferred power upon the Court to draw presumption as to the abetment of suicide by a married woman.

Section 113A of the Evidence act read as follows;-

*“113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”*

Therefore, in order to draw presumption as to the abetment there has to be evidence to establish that victim was treated with cruelty as enunciated under Section 498A of the Indian Penal Code.

I have already pointed out that there is no cogent evidence to show that the victim was treated with cruelty in her matrimonial home which constitutes offence within the meaning of Section 498A of the Indian Penal Code. The dearth of evidence to constitute offence within the meaning of Section 498A leaves no room for the Court to draw presumption as to the abetment of

commission of suicide, taking recourse to the provision of Section 113A of the Evidence Act. In order to constitute abetment within the meaning of Section 306, prosecution was under the obligation to prove the ingredient of offence within the meaning of Section 107 of the Indian Penal Code that defines abetment.

“107- the abetment of a thing – a person abets the doing of a thing, who instigates any person to do that thing or intentionally aids, by any act or illegal omission, the doing of that thing, is said to aid the doing of that act.”

Thus, it is crystal clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing such thing.

Ms. Goswami, relied upon a decision of the Hon'ble Supreme Court in the case of *Gurucharan Singh vs. State of Punjab* reported in (2021) 1 SCC (Cri) 417 submits that in order to prove the offence of abetment the set up of mind to commit a particular crime must be visible to determine the culpability. *Mens rea* to commit such offence in this particular case is glaringly absent.

Learned Trial Court capered to conclusion that victim was subjected to cruelty by her husband relying upon the testimony of P.Ws. 7 and 8, the members of Panchayet Ashes Mallick and Falguni Roy, who stated that they sat with family members of the victim and the accused person to settle a marital discord. That solitary incident was sheet anchor for the learned Trial Judge to record an order of conviction which in my humble opinion is not sufficient to make the appellant culpable for committing offence

within the meaning of Section 498A of the Indian Penal Code and for that reason for committing offence under Section 306 of the Indian Penal Code.

In my humble opinion the impugned judgement suffers from infirmity which should be set aside which I accordingly do. Consequently, the appeal succeeds.

The order of conviction and sentence passed by the learned Trial Court is set aside.

The appellant Dhanu Das is not found guilty to the charge under Sections 498A/306.

The accused person is set at liberty and be released on bail subject to execution of bond under Section 437A of Code of Criminal Procedure for six months.

Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.

I record my appreciation to the able assistance of Ms. Puja Goswami, learned counsel representing the appellant as amicus curiae.

(Siddhartha Roy Chowdhury, J.)