

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-780-SB-2003 (O&M)
Reserved on:- 24.04.2023
Pronounced on:- 05.05.2023

Kuldip Kaur and Others

....APPELLANTS

Versus

State of U.T. Chandigarh

...RESPONDENT

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sumeet Singh Brar, Advocate
for the appellants.

Mr. Sumit Jain, Addl. P.P. U.T. Chandigarh.

Ms. Samanpreet Aulakh, Advocate (Amicus Curiae).

AMARJOT BHATTI, J.

1. The appellants – Kuldip Kaur, Kulwant Singh and Jaswant Singh have filed the present appeal against judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Chandigarh in Session Case bearing No. 17 dated 09.08.2002, titled as “State Vs. Jaswant Singh and Others”, vide which Kuldip Kaur, Kulwant Singh and Jaswant Singh were held guilty and convicted under Section 306 read with Section 34 of the IPC and all of them were sentenced to undergo four years Rigorous Imprisonment and to pay fine of Rs. 500/- each and in default of payment of fine to further undergo Rigorous Imprisonment of three months each, vide judgment of conviction and order of sentence dated 08.03.2003.

2. The brief facts of the case are that SI Hardit Singh received

call from General Hospital, Sector 16, Chandigarh on 17.04.2002 regarding admission of Amarjit Kaur in the hospital in a case of poisoning. The Investigating Officer filed application before the doctor regarding fitness of the victim for recording her statement but she was declared unfit by the doctor. The Investigating Officer recorded the statement of complainant Ajmer Kaur who stated that she is resident of village Dhanas, Chandigarh. The victim was married to Jaswant Singh resident of village Dhanas, Chandigarh about three years ago. Out of this wedlock, she had a daughter who was one year old. On 17.04.2002, at about 04:30 P.M. the victim who was her niece came to her house at Dhanas and fell down. On enquiry, she disclosed that her husband, brother-in-law and his wife harassed her and she further revealed that she had consumed pills. Even on that day, they had a quarrel with her. The victim had earlier disclosed to her regarding the harassment caused to her by the accused persons. She (complainant) had persuaded them not to behave in this manner. The complainant stated that Amarjit Kaur had consumed poisonous pills on account of harassment caused to her by her husband, brother of her husband and wife of brother of her husband. In the meantime, Pappu and Kesar reached there and she was taken to her in-laws house in a vehicle. She was further admitted in General Hospital, Sector 16, Chandigarh by Angrej Singh - father-in-law and Jaswant Singh - husband for her treatment. The victim expired at about 07:00 P.M. in the hospital. On this statement, SI Hardit Singh made his endorsement and rukka was sent to Police Station Sector-11, Chandigarh for registration of FIR. The FIR was registered by SI Phool Singh. The investigation was started by SI Hardit Singh. He obtained death summary of the victim from the hospital. He

visited the place of occurrence at village Dhanas and from there one empty container of aluminium sulphas was recovered. It was sealed in a parcel and was taken into police possession. The case property was deposited with the MMHC and later on, it was sent to the office of Chemical Examiner. The site plan of the place of occurrence was also prepared. The inquest report was prepared. The statements of the witnesses were also recorded. The scaled site plan was got prepared. Further investigation was carried out by SI Hari Kumar. The accused persons were arrested on 02.05.2002. On the receipt of report of Chemical Examiner Laboratory, the opinion of the doctor was obtained regarding the cause of death. After completion of entire investigation, the challan was presented in the Court of Illaqa Magistrate at Chandigarh.

3. The accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 306 of the IPC is exclusively triable by the Court of Sessions, therefore, the learned Magistrate, Chandigarh committed the case to the Court of learned Sessions Judge, Chandigarh for trial vide commitment order dated 26.07.2002.

4. The learned Additional Sessions Judge, Chandigarh after hearing the arguments framed charge-sheet against all the accused persons under Section 306 read with Section 34 of the IPC, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

5. In order to prove the facts of the case, the prosecution examined PW1 Ajmer Kaur, PW2 Jaswinder Singh, PW3 Kesar Singh, PW4 C. Sanjiv Kumar, No. 3715 Photographer, PW5 SI Vishnu Dutt, PW6

C. Yashpal, PW7 C. Raj Singh, No. 901, PW8 SI Hardit Singh, Investigating Officer, PW9 Dr. Rajwinder Singh, EMO, PW10 Dr. Balbir Singh, SMO, PW11 HC Jaspal Singh and PW12 SI Hari Kumar and closed the prosecution evidence.

6. The statements of all the accused were recorded under Section 313 Cr.P.C. to which Jaswant Singh accused took the stand that all the allegations are false. The prosecution witnesses are relatives of the deceased. The deceased Amarjit Kaur was of suspicious nature. She had come from a poor background. She stayed with her aunt Ajmer Kaur who did not treat her well, therefore, she used to remain sad. Kulwant Kaur is the wife of his elder brother, who is 40 years of age and having two daughters and two sons. She used to treat him like her son. The victim never complained regarding any misbehaviour as she was always treated well. She gave birth to a daughter who is residing with his family. He and his wife were having separate room whereas his brother Kulwant Singh and his wife Kuldip kaur were having there own separate room. The victim was never maltreated or beaten up. No complaint was ever filed to the police. She was conscious in the hospital but even then her statement was not recorded intentionally by the police and the doctors. There is no suicide notice. She was provided treatment by them without any support from the relatives of Amarjit Kaur. In fact, Ajmer Kaur and her relatives were demanding 2 lacs rupees which they did not give, therefore, this false case is planted on them. He further claimed that the victim died due to cardiac respiratory failure and not due to poison. The empty container was falsely planted by the police. The statements of Kulwant Singh and Kuldip Kaur were also recorded under Section 313 Cr.P.C. who have also taken

the stand on the same lines.

7. The accused examined DW1 Harbhajan Singh and DW2 Jagat Singh in defence and thereafter, closed their evidence.

8. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused, all accused were convicted and sentenced under Section 306 read with Section 34 of IPC as referred above and feeling aggrieved of this judgment of conviction and order of sentence, the present appeal has been filed.

9. I have heard the arguments advanced by learned counsel for the appellants/convicts and learned counsel representing the State and have gone through the record carefully.

10. The learned counsel for the appellants argued that the learned trial Court has failed to consider the facts of the case and the evidence on record. The allegations levelled against the appellants are vague and without any basis. The prosecution has examined Ajmer Kaur, the complainant who is the maternal aunt of the deceased victim. The FIR was registered on her statement recorded before the police dated 17.04.2002 which is Ex.P-1. In this statement, Ajmer Kaur nowhere stated that Jaswant Singh and Kuldip Kaur were having extra marital affair or on that account the victim Amarjit Kaur was being maltreated. The complainant gave supplementary statement on 17.04.2002 Ex.D-A where she has levelled the allegations for the first time regarding extra marital affair of Jaswant Singh with Kuldip Kaur. The aforesaid allegations levelled by Ajmer Kaur are false and afterthought and the same cannot be relied upon. The counsel for appellants referred to the cross-examination of Ajmer Kaur PW-1 and she was duly confronted with her statement given before

the police Ex.P-1, where no such allegation was levelled. In fact, all the prosecution witnesses have tried to give improved version. The counsel for appellants referred to the statement of Jaswinder Singh PW-2 and Kesar Singh PW-3, who were also confronted with their statements recorded by the police during inquest proceedings. It is argued that false allegations are levelled against the appellants. There is no eye witness to the alleged extra marital affair of Jaswant Singh with Kuldip Kaur. Ajmer Kaur as PW-1 during her cross-examination conceded that no such incident took place in her presence. The witnesses examined by the prosecution are close relatives of deceased Amarjit Kaur. Thus all are interested witnesses and their testimonies cannot be safely relied upon. It is argued that Kulwant Singh is the elder brother of Jaswant Singh, whereas, Kuldip Kaur is the wife of Kulwant Singh. Jaswant Singh was younger to them and he was treated like their son. Therefore, there was no question of having extra marital affair between Jaswant Singh and Kuldip Kaur. The learned counsel for the appellants referred to the statement of Harbhajan Singh DW-1, Sarpanch of village Dhanas and Jagat Singh DW-2 and both the witnesses consistently stated that there were harmonious relationship between Amarjit Kaur and accused Jaswant Singh. They never heard of any illicit relation between Jaswant Singh and Kuldip Kaur. They also stated that Kuldip Kaur treated Jaswant Singh like her son. They also claimed that Amarjit Kaur was never beaten up or harassed in her matrimonial home.

The counsel for appellants further pointed out that prior to this occurrence, there was no complaint ever filed by Amarjit Kaur against her husband or any member of the in-laws family. It was wrongly alleged

by the complainant Ajmer Kaur that Amarjit Kaur was beaten up or harassed by her husband Jaswant Singh or by Kuldip Kaur. The counsel for appellants referred to her Postmortem Report Ex.P-22 according to which there was no external mark of injury on her body. In fact, after the said unfortunate incident, the victim was brought to General Hospital, Sector 16, Chandigarh by her husband Jaswant Singh and other members of in-laws family. The Investigating Officer did not try to investigate as to who had brought the victim to the hospital. No proper investigation was carried out by the police. Learned counsel for the appellants pointed out that the Investigating Officer did not record the statement of the deceased victim deliberately. It was wrongly opined by Dr. Rajwinder Singh PW9 that the victim was unfit to make the statement. As per the medical record, Amarjit Kaur was conscious and was responding to the command. Therefore, the statement of Amarjit Kaur was not recorded timely by the Investigating Officer causing serious prejudice to the appellants/convicts. The learned counsel for the appellants pointed out that there was delay in sending the samples to the Chemical Examiner Laboratory. The Investigating Officer has failed to explain the said delay which creates serious doubts in the investigation carried out by the police.

The learned counsel for the appellants further raised the issue that no offence under Section 306 of the IPC is made out. There is no specific role attributed to any of the appellants/convicts to establish that they directly or indirectly played any role in commission of suicide by Amarjit Kaur. There is no suicide note recovered in this case. In order to constitute the offence under Section 306 of the IPC, it was required that there was some overt act on the part of appellants in the commission of

suicide by deceased Amarjit Kaur. Infact, there is no abetment on the part of appellants. To support his argument, he has relied upon the authority of the Hon'ble Supreme Court of India in **Criminal Appeal No. 1138-1139 of 2016 titled as "K.V. Prakash Babu Versus State of Karnataka"**, where it was explained in a similar case registered under Section 498-A, 306 of the IPC, where husband was having extra marital relationship with another woman and the wife committed suicide. It was held that "*husband was not guilty of abetment but that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments.*" It was further explained that "*solely because husband was involved in extra-marital relationship and there was some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of offence under Section 306 IPC.*" It is pointed out that Amarjit Kaur was having suspicious nature and was extra sensitive. She took this grave step without any reason for which the appellants/convicts cannot be held responsible. Therefore, without considering the aforesaid facts, the appellants were wrongly convicted and sentenced by the trial Court. The judgment of conviction and order of sentence passed by the trial Court is not on sound footing, therefore the same may be set aside and the appellants/convicts may be acquitted of the charge framed against them.

11. The learned counsel representing the U.T. Chandigarh argued that the facts of the case and the evidence on record were rightly appreciated by the trial Court. The facts clearly indicate that Jaswant Singh was having extra marital affair with the wife of his elder brother namely Kuldip Kaur, as a result of which there was matrimonial dispute between

Jaswant Singh and his wife Amarjit Kaur. She was harassed and humiliated on account of this relationship. She tried to stop them but for this reason she was ill treated in the matrimonial home. Ultimately, Amarjit Kaur due to the harassment caused by the appellants/convicts consumed poisonous pills which resulted into her death. The facts of the case are duly proved on record from the testimony of PW-1 Ajmer Kaur, PW-2 Jaswinder Singh, brother of the deceased victim and PW-3 Kesar Singh, son of Ajmer Kaur. The victim came to the house of her aunt Ajmer Kaur and fell down. She was taken to matrimonial home and then admitted in General Hospital, Sector 16, Chandigarh where she was given medical treatment. The statement of the victim could not be recorded as she was unfit to make statement. The medical record is proved on file by PW-9 Dr. Rajwinder Singh and her Postmortem Report Ex.P-22 is proved on record by PW-10 Dr. Balbir Singh. The report of Chemical Examiner Laboratory is Ex.P-23 and the opinion of doctor is Ex.P-25, according to which, the cause of death of Amarjit Kaur was declared due to 'cardio-respiratory failure, as a result of aluminium phosphide poisoning'. The entire investigation carried out by the Investigating Officer is proved by PW-8 SI Hardit Singh as well as PW-12 SI Hari Kumar. The link evidence is also proved on file by PW-7 C. Raj Singh, PW-11 HC Jaspal Singh. The entire prosecution case is duly proved on record. Therefore, after considering the entire evidence, the appellants were rightly convicted and sentenced by the trial Court under Section 306/34 of the IPC. The appeal preferred by the appellants is without merits and it deserves dismissal.

12. I have considered the arguments advanced before me and have gone through the record and legal propositions carefully. In the case

in hand, FIR has been registered on the statement of Ajmer Kaur, complainant, who is the aunt of deceased victim Amarjit Kaur. The complainant stated that marriage of Amarjit Kaur was performed with Jaswant Singh three years ago. Out of this wedlock, they have a daughter. On 17.04.2002 at about 04:30 P.M., Amarjit Kaur came to her house and she fell down. On enquiry, she disclosed that she being harassed by her husband, brother-in-law and his wife, she had consumed poisonous pills. Even on that day, they had a quarrel with her. The victim had earlier told the complainant about the harassment caused to her in the matrimonial home. She had tried to make them understand not to behave in this manner. The victim was taken to her in-laws house and from there she was taken to General Hospital, Sector 16, Chandigarh, where she expired during treatment at about 07:00 P.M. The statement of the complainant recorded by the police on the same day i.e. 17.04.2002 at 07:45 P.M. is Ex.P-1. Thereafter, the complainant Ajmer Kaur gave supplementary statement on the same day Ex.DA where she further explained that six months after her marriage, Amarjit @ Rani had disclosed that her husband Jaswant Singh was having extra marital affair with his brother's wife namely Kuldeep Kaur. Ajmer Kaur suggested to the victim to make her husband understand. The victim tried to make her husband understand but he got annoyed and started accusing her. She further explained that Amarjit Kaur had disclosed about the illicit relations of her husband Jaswant Singh with Kuldeep Kaur several times and because of this reason, there was quarrel between the husband and wife. She further alleged that due to the extra marital relation of her husband Jaswant Singh with Kuldeep Kaur, she consumed poisonous pills. With these allegations present FIR

was registered. All the accused namely Jaswant Singh - husband, Kuldip Kaur - wife of Kulwant Singh i.e. sister-in-law and Kulwant Singh - brother-in-law were charge-sheeted for the offence under Section 306/34 of the IPC. In order to prove this charge-sheet, the prosecution has examined Ajmer Kaur, complainant as PW-1, where she has reiterated her aforesaid version. PW-2 Jaswinder Singh, brother of the victim and PW-3 Kesar Singh, cousin of the victim further supported the version of complainant. All these witnesses categorically stated that Ajmer Kaur was ill treated in the matrimonial home on account of extra marital affair of Jaswant Singh, husband of the victim with his own sister-in-law (brother's wife) Kuldip Kaur and because of this reason, she took this grave step of ending her life by consuming poisonous pills.

The learned counsel for the appellants/convicts assailed the prosecution version firstly on the ground that Ajmer Kaur has given improved version while stepping into the witness box as PW-1. She was confronted with her statement Ex.P-1 where she did not say anything about illicit relations of Jaswant Singh with his sister-in-law Kuldip Kaur. It is pointed out that the version put forward in the supplementary statement Ex.DA is afterthought. The counsel for appellants/convicts also referred to the statements of PW-2 Jaswinder Singh and PW-3 Kesar Singh, who were confronted with their statements recorded during the inquest proceedings where the aforesaid fact was not mentioned.

I have considered the aforesaid points raised by learned counsel for the appellants/convicts. In the case in hand, the occurrence took place on 17.04.2002 at about 04:30 P.M. when Amarjit Kaur victim came to the house of her aunt Ajmer Kaur and fell down. Firstly, she was

taken to her matrimonial home and from there she was taken to General Hospital, Sector 16, Chandigarh where she remained under treatment and ultimately died at about 07:00 P.M. The statement of complainant Ajmer Kaur was recorded at 07:45 P.M. which is Ex.P-1. It has come on record that Amarjit Kaur victim was looked after by Ajmer Kaur during her childhood and she lived with her as daughter. Therefore, on account of sudden death of Amarjit Kaur, Ajmer Kaur must have felt the trauma and in that situation if she could not narrate about the reason behind this occurrence that will not be fatal to the prosecution case. Moreover, on the same day she gave supplementary statement Ex.DA dated 17.04.2002 where she had explained the reason why the aforesaid occurrence took place. Therefore, it cannot be said that the supplementary statement was recorded after a long gap or it is afterthought to falsely implicate the accused persons. The learned counsel for the appellants/convicts also referred to the statements of Jaswinder Singh PW-2 and Kesar Singh PW-3 where they were confronted with their respective statements recorded during inquest proceedings. The learned Additional Sessions Judge rightly came to the conclusion that scope of inquest proceedings under Section 174 of Cr.P.C. has every limited scope pertaining to the report regarding apparent cause of death, whether it is suicide, homicide, accidental or by other way. Therefore, from the statements of the witnesses recorded during inquest proceedings, it cannot be said that witnesses have given improved version later on. The version put forward by PW-1 Ajmer Kaur, PW-2 Jaswinder Singh and PW-2 Kesar Singh is consistent and I do not find any discrepancy in their version explaining the reason why this occurrence took place.

13. The learned counsel for the appellants/convicts further raised the issue that prosecution has failed to examine any independent witness to prove the facts of the case. This stand taken by the learned counsel for the appellants/convicts is without merits. In the case in hand, Amarjit Kaur victim was facing harassment in the matrimonial home on account of extra marital affair of her husband Jaswant Singh with his elder brother's wife namely Kuldip Kaur. This kind of problem cannot be discussed in public and these facts are usually in the knowledge of close family members. Moreover, such like offences take place within the closed doors of the house and no independent corroboration can be expected in such like cases. There is a tendency to hide such things in order to save the honour of the family. Even in the case in hand, we cannot say what conversation took place between the husband and wife. The victim died in this occurrence and Jaswant Singh husband was arrayed as accused. Therefore, this point raised by learned counsel for the appellants/convicts does not hold any ground.

14. The learned counsel for the appellants/convicts further pointed out that the victim remained under treatment in General Hospital, Sector 16, Chandigarh for few hours and during this period her statement was not recorded by the police, even though she was fit to make the statement. Learned counsel for the appellants/convicts has assailed the opinion of the doctor given on application Ex.P-13 vide which she was declared unfit to make the statement.

I have considered the arguments raised by learned counsel for the appellants/convicts. In the case in hand, Amarjit Kaur victim was taken to the hospital by her husband and members of in-laws family. Dr.

Rajwinder Singh PW-9 had given intimation to the police Ex.P11 regarding admission of Amarjit Kaur in the hospital at about 05:50 P.M. dated 17.04.2002 as a case of poisoning. Thereafter, PW-8 SI Hardit Singh, Investigating Officer filed application to the doctor to know about her fitness. The application dated 17.04.2002 is Ex.P-13 and the victim was declared unfit to make the statement vide endorsement Ex.P-14 at 06:30 P.M. The victim expired on the same day at 07:00 P.M. I have also gone through the cross-examination of Dr. Rajwinder Singh PW-9 where he proved the aforesaid facts and further reiterated that Amarjit Kaur was declared unfit to make statement after seeing her physical condition at that time. He admitted that in the Bed Head Ticket, it is mentioned that Amarjit Kaur was conscious and she was responding to the commands at 05:50 P.M. on 17.04.2002. It has come in the cross-examination of the doctor that in this case blood pressure and pulse of patient was not recordable. Moreover, it is the doctor who is the expert witness who can give his opinion regarding stable physical and mental condition of the patient for recording of his/her statement. In the case in hand, the doctor declared the patient unfit to make the statement at 06:30 P.M. and she expired within half an hour. Therefore, the stand taken by learned counsel for the appellants/convicts that doctor had wrongly declared the patient unfit to make the statement does not convince the mind of this Court.

15. The learned counsel for the appellants/convicts also took the stand that in this case there is no abetment on the part of appellants/convicts in the commission of suicide by the deceased victim Amarjit Kaur. In fact, the victim was a lady of suspicious nature and hyper sensitive. She belonged to a poor family and was looked after by her

maternal aunt Ajmer Kaur who did not treat her properly. There was no extra marital affair between Jaswant Singh and Kuldip Kaur. In fact, Kulwant Singh and Kuldip Kaur treated Jaswant Singh as their son. In order to support this fact, learned counsel for the appellants/convicts have also examined two witnesses in defence i.e. Harbhajan Singh, Sarpanch of the village Dhanas as DW-1 and Jagat Singh as DW-2 who have supported the version of appellants/convicts. I have considered this aspect of the case. It is the case of prosecution that Amarjit Kaur victim came to know about extra marital affair of her husband Jaswant Singh with Kuldip Kaur sister-in-law, therefore there was dispute between husband and wife. The victim tried to stop them but her husband quarrelled with her, as a result of harassment and cruelty faced by her she took this extreme step ending her life by consuming poisonous pills. The Court is required to determine whether the victim was treated with cruelty in the matrimonial home, whether there was abetment on the part of appellants/accused in the commission of offence and whether the victim died unnatural death. Keeping in mind the aforesaid facts, the Court is to examine the facts and circumstances of the present case. The offence of abetment is defined in Section 107 of the IPC, which runs 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...”

Therefore, there can be abetment by instigation, conspiracy or by way of act or omission. A probable consequence of an act is one which is likely or which can reasonably be expected to follow from such an act. Therefore, every man is presumed to intend the natural consequences of his act. In the case in hand, Amarjit Kaur faced physical and mental cruelty in the matrimonial home due to extra marital affair of her husband Jaswant Singh with his sister-in-law Kuldip Kaur living under the same roof. It has come in the testimony of prosecution witnesses referred above that Amarjit Kaur had come to know about their relationship after about six months of marriage. Thereafter, she tried to stop them but in return she was harassed both physically and mentally and faced humiliation time and again. In order to understand the facts and circumstances of the case, cross-examination of Ajmer Kaur (maternal aunt of the deceased) PW-1 is material where she categorically stated that Amarjit Kaur shifted with her during her childhood when she was four years old. Ajmer Kaur was mother of five children (three daughters and two sons). She looked after Amarjit Kaur as her own child. She further pointed out that marriage of Amarjit Kaur with Jaswant Singh was performed in their native village Mand. Ajmer Kaur, the complainant PW-1 is resident of village Dhanas whereas, the appellants/convicts are also resident of Dhanas. The complainant further explained that Amarjit Kaur used to visit her house and told her about the aforesaid problem faced by her in the matrimonial home. The facts of the case clearly indicate that the victim Amarjit Kaur belonged to a poor family. Once she got married, she was not in a position either to return to her parental house nor she could fall back on her maternal aunt, who looked after her since her childhood. The victim was a

young girl, aged about 23 years. She tried to adjust in the matrimonial home but could not convince her husband Jaswant Singh or Kuldip Kaur to mend their ways. Therefore, the victim faced cruelty in the matrimonial home. The cruelty is defined under Section 498A of the IPC, which runs 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” mean—
(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.”

Therefore, from the facts of the case, it is duly established that Amarjit Kaur victim faced continuous mental cruelty in the matrimonial home from the hands of her husband Jaswant Singh for having illicit relations with his sister-in-law Kuldip Kaur. The facts of the case indicate that due to unwanted conduct of her husband, the victim was left with no other alternative but to commit suicide. She faced continuous harassment and humiliation in the matrimonial home. There was nobody in the family from whom she could get some support to solve her matrimonial problem. In a way they instigated the victim to take extreme step to end her life, leaving behind her small child. Moreover, there is a presumption in favour of prosecution under Section 113A of The Indian Evidence Act, 1872

which runs as under: -

“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.

Explanation – For the purposes of this section, “cruelty” shall have the same meaning as in Section 498A of the Indian Penal Code.”

Section 113A of the Indian Evidence Act, 1872 was enacted to curb of growing menace of crime against women. Since such like crimes are committed in the privacy of residential home, it is not easy to gather direct evidence in such like cases. In fact, the Court is to consider all the facts and circumstances of the case. The Court is fully aware that the presumption is rebuttable one. The charge-sheet against the appellants/convicts is to be proved beyond the shadow of reasonable doubt. In the case in hand prosecution has examined as many as three witnesses i.e. Ajmer Kaur complainant as PW-1, Jaswinder Singh, brother of the victim as PW-2 and Kesar Singh, cousin as PW-3 who have fully corroborated the prosecution version and there is no reason to disbelieve their testimony. On this point there is authority of the **Hon’ble Supreme Court of India in 2018 AIR (Supreme Court) 3829, case titled “Siddaling versus State, Through Kalagi Police Station”** where while dealing with the provisions of Section 498A and 306 of the IPC, it was explained in the said judgment that *the appellant in that case continued his relation with another woman. The appellant’s illicit relation with*

another woman would have definitely created the psychological imbalance to the deceased which led her to take the extreme step of committing suicide. It cannot be said that the appellant's act of having illicit relationship with another woman would not have affected to negate the ingredients of Section 306 of IPC. It was held in this case that the High Court has rightly maintained conviction under Sections 498A and 306 of the IPC. Therefore in this case, it was for Jaswant Singh husband or the other accused Kulwant Singh and his wife Kuldip Kaur to explain the circumstances in which unnatural death of the victim took place. They are bound to give a reasonable explanation which is acceptable to a reasonable and prudent man. However, in the case in hand, the stand taken by the appellants/convicts under Section 313 Cr.P.C. is not convincing. Rather they claimed that the victim was over sensitive and of suspicious nature and because of her nature, she took this grave step. I have considered the defence raised by the appellants/convicts. The victim Amarjit Kaur was witness to the extra marital affair which was going on between her husband Jaswant Singh and his sister-in-law Kuldip Kaur. She tried to prevent them but failed, as a result, she was continuously facing humiliation. The learned trial Court rightly pointed out that Jaswant Singh husband of the deceased victim was 24 years old, whereas, Kuldip Kaur was about 30 years of age. Therefore, considering their age difference, it cannot be believed that Kuldip Kaur treated Jaswant Singh as her son especially when the parents of Jaswant Singh were alive. The version put forward by the defence witnesses namely Harbhajan Singh DW-1 and Jagat Singh DW-2 cannot be believed as they are outsiders to the family. Therefore, they cannot say what was happening in the house of

appellants/convicts. At the most, the parents of Jaswant Singh and Kuldip Kaur could have thrown some light as to what was happening in the family. Somehow they have not opted to step into the witness box. Considering the entire evidence on record, the appellants/convicts have failed to rebut the presumption in favour of prosecution under Section 113A of the Indian Evidence Act, 1872. There is no reason to disbelieve the testimony of prosecution witnesses.

It is a case of unnatural death of victim Amarjit Kaur while living in the matrimonial home in a period of about three years of marriage. The prosecution has examined Dr. Balbir Singh PW-10 who has proved the Postmortem Report of the deceased victim as Ex.P-22. The report of Chemical Examiner Laboratory is Ex.P-23, according to which aluminium phosphide was found in the contents of exhibits I, II, III and V. On the basis of this report, the opinion of the doctor is Ex.P-25, according to which cause of death of Amarjit Kaur was declared due to 'cardio-respiratory failure, as a result of aluminium phosphide poisoning'. Therefore, unnatural death of Amarjit Kaur victim is duly proved on record. The entire investigation carried out by SI Hardit Singh PW-8 and SI Hari Kumar PW-12 is also proved on record. The prosecution has also proved the link evidence. The report of Chemical Examiner Laboratory Ex.P-23 further indicates that all the parcels received in the laboratory were with seals intact. Therefore, there is no reason to doubt the testimony of doctors who initially treated the victim and conducted her Postmortem examination. Resultantly, considering the entire evidence on record, it is duly established on file that Amarjit Kaur faced mental and physical cruelty in the matrimonial home on account of extra marital affair of her

husband Jaswant Singh with his own sister-in-law Kuldip Kaur. She tried to control the situation by stopping her husband from indulging in this relationship but she failed. The act and conduct of Jaswant Singh and Kuldip Kaur instigated the victim and led her to this hopeless situation. Therefore, due to continuous humiliation faced by her, she was left with no alternative but to take this grave step to end her life by consuming poisonous pills. Therefore, in my opinion, the guilt of both the appellants/convicts namely Jaswant Singh and Kuldip Kaur is duly established on record under the provisions of Section 306 read with Section 34 of the IPC and both of them were rightly convicted and sentenced by the trial Court by passing the judgment of conviction and order of sentence dated 08.03.2003.

16. The other aspect of the present case is the role played by Kulwant Singh appellant/convict in the commission of offence. Kulwant Singh is elder brother of Jaswant Singh and husband of Kuldip Kaur. It cannot be believed that Kulwant Singh who is father of two sons and two daughters would allow his wife Kuldip Kaur to have illicit relations with his own younger brother Jaswant Singh. Either he was not aware of this extra marital affair between his brother Jaswant Singh and his wife Kuldip Kaur or he could not believe such like situation. Considering the nature of allegations and the aforesaid facts, in my opinion, the prosecution has failed to bring any convincing evidence on record to establish the guilt of Kulwant Singh falling under Section 306 read with Section 34 of the IPC. In the impugned judgment dated 08.03.2003 passed by learned Additional Sessions Judge, Chandigarh, no specific role is attributed to Kulwant Singh. Therefore, considering these facts, the conviction of Kulwant Singh

under Section 306/34 of the IPC is not justified and the same is accordingly, set aside by accepting the present appeal qua appellant Kulwant Singh.

17. As referred above, the judgment of conviction and order of sentence passed against appellants/convicts Jaswant Singh and Kuldip Kaur is upheld and the appeal preferred by them is accordingly, dismissed. The appellants Jaswant Singh and Kuldip Kaur are directed to surrender before learned Chief Judicial Magistrate, Chandigarh within ten days from today, failing which learned Chief Judicial Magistrate, Chandigarh would issue warrants of arrest to secure their presence and send them to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

The appeal is accordingly, disposed of.

Pending application(s) if any, also stands disposed of.

05.05.2023
lalit

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No