

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

SINGLE BENCH : HON'BLE SHRI JUSTICE N.K.GUPTA, J.

Criminal Appeal No.208/1997

Ramprasad Lodhi

VERSUS

State of Madhya Pradesh

Shri R.S.Patel, counsel for the appellants.

Shri Ajay Tamrakar, Panel Lawyer for the State/respondent.

J U D G M E N T

(Delivered on the 21st day of May, 2015)

The appellant has preferred the present appeal being aggrieved with the judgment dated 22.1.1997 passed by the Sessions Judge, Tikamgarh in S.T.No.17/1993, whereby the appellant has been convicted of offence under Sections 306, 498-A of IPC and sentenced to 5 years rigorous imprisonment with fine of Rs.1,000/- and 2 years rigorous imprisonment with fine of Rs.250/-, default sentence was also imposed in lieu of payment of fine.

2. The prosecution's case, in short, is that, on 22.1.1992, the deceased Asha Bai, wife of the appellant was taken to the hospital with the report that she had consumed some poisonous substance. However, she could not be saved. Dr.A.K.Naik of Rajendra Hospital, Tikamgarh has sent a merg

intimation to the police at Police Station Kotwali, Tikamgarh and it was registered as *Ex.P/10*. Dead body of the deceased was sent for post-mortem. A team of doctors including Dr.Amitabh Jain (P.W.5) performed the post-mortem on her body and gave a report, *Ex.P/5*. It was found that she had died due to consumption of Sulphas. After due investigation, a charge-sheet was filed before the JMFC, Tikamgarh, who committed the case to the Court of Sessions.

3. The appellant abjured his guilt. He took a plea that he was residing in the house of the deceased as “*Ghar Jawa*” and he was dependent upon the property of the deceased. He could not do anything and could not abet the deceased to commit suicide. After her death, he was falsely implicated, so that he may not claim the property of the deceased. In defence, Pooran Lodhi (D.W.1) and Ramjan Khan (D.W.2) were examined.

4. After considering the evidence adduced by the parties, Sessions Judge, Tikamgarh convicted and sentenced the appellant as mentioned above.

5. I have heard the learned counsel for the parties.

6. In the present case, according to the report given by Dr.Amitabh Jain (P.W.5), it is apparent that the deceased died due to consumption of poisonous substance. There is no allegation against the appellant that he forced the deceased to consume poison and there is no allegation that the death of the

deceased was homicidal. No witness was given any suggestion that the deceased died due to an accident or due to mistake she consumed some poisonous substance. Learned counsel for the appellant does not challenge the fact that the death of the deceased was suicidal in nature. Under such circumstances, where death of the deceased was neither homicidal, nor accidental and therefore, it was suicidal. According to the witness Prabhudayal (P.W.3), Ganeshi Bai (P.W.1) and Deshraj (P.W.4), marriage of the deceased took place 6-7 years prior to her death, whereas Jhandu Singh @ Harsewak (P.W.2) has stated that marriage of the deceased took place 7-8 years back before her death. Under these circumstances, it is apparent that the deceased died after 6 years of her marriage but, a doubt is also created that she died after 7 years of her marriage. When doubt is created then, benefit of doubt is to be given to the accused and therefore, on doubt, it can be said that no presumption under Section 113-A of Evidence Act is applicable in the present case.

7. Various witnesses have tried to settle the case that the appellant was the person, who was brought by some relatives of the deceased in the house of the deceased to reside as *Ghar Jawai* and he was looking after the property of father of the deceased and maintaining the deceased and her brother Deshraj (P.W.4). Nobody has alleged that the deceased was

being subjected to cruelty on the basis of any dowry demand. It is also stated by some witnesses that initially the elder brother of the appellant was working with father of the deceased in the fields and thereafter, the appellant was working in the fields and after death of father of the deceased, marriage of the deceased was performed with the appellant. Hence, it would be apparent that the property was of the deceased and her brother and the appellant was working on the property (land) being husband of the deceased and there was no demand from the side of the appellant. Various witnesses have shown two reasons of cruelty done by the appellant upon the deceased, prior to her death. One was that, he was beating his wife after consumption of liquor and secondly that he had illicit relations with one Bismillah Bai (P.W.7) and the deceased was annoyed due to such relations and therefore, she consumed poison. However, the evidence adduced by the prosecution should be examined minutely on both the counts.

8. Ganeshi Bai (P.W.1), Jhandu Singh @ Harsewak (P.W.2), Prabhudayal (P.W.3), Deshraj (P.W.4), Premchand Jain (P.W.5) were examined to show the relations of the appellant with the deceased prior to her death. However, Ganeshi Bai (P.W.1), Prabhudayal (P.W.3), Premchand Jain (P.W.6) have turned hostile. They did not state about any quarrel between the appellant and his wife in the past. Jhandu Singh @

Harsewak (P.W.2) and Deshraj (P.W.3) have stated that before death of the deceased, on several occasions quarrel took place between the appellant and the deceased and the appellant assaulted the deceased. Both the witnesses have stated that main cause of quarrel was that the appellant was visiting the house of Bismillah Bai and deceased had an objection to such a conduct. Jhandu Singh @ Harsewak has stated that after consuming liquor, the appellant was in habit to assault the deceased. However, Deshraj brother of the deceased did not state that the appellant assaulted the deceased after consumption of liquor. Deshraj was residing with his sister and the appellant in the same house and therefore, his observation should be in a better position than the statement given by Jhandu Singh @ Harsewak because the statement of Jhandu Singh @ Harsewak depends upon the information given by others and therefore, his statement falls within the category of hearsay evidence, which is not admissible.

9. Also, it is apparent that Jhandu Singh @ Harsewak had some enmity with the appellant. In this connection, the defence witness Pooran Lodhi (D.W.1) has stated about the reason of quarrel between the appellant and Jhandu Singh @ Harsewak (P.W.2). Jhandu Singh @ Harsewak has accepted in his cross-examination that he gave a complaint to DSP that Investigation Officer and the appellant have settled the matter

in a sum of Rs.10,000/-. He has stated that the complaint was made by him because he was a reputed member of the community of the deceased and it was his duty that the appellant should be punished. However, he does not appear to be a reputed member of the community because according to him, a Panchayat took place on the subject that the appellant was visiting the house of Bismillah Bai but, he was not called in the Panchayat though he himself went to view the proceedings of Panchayat and he remained at a side place. If he was a prominent and respected member of the community of the deceased then either he would have been called in the Panchayat or given any responsibility to look after the interest of the deceased. Hence, looking to the conduct of this witness that he lodged a fake complaint to the DSP concerned that the matter was settled between the appellant and Investigation Officer in sum of Rs.10,000/-, indicates that he had an enmity with the appellant and therefore, he gave his statement before the Court to implicate the appellant, without any basis.

10. Jhandu Singh @ Harsewak has tried to show that the deceased told him that the appellant had beaten her soon before the incident when he was going to his fields. He has also stated that the deceased told about the incident in street before one Pinpin but, neither Pinpin was examined before the trial Court, nor his name was shown in the witness list by the police.

Such a fact is not told by this witness to the police and therefore, it appears that now he has made the story to show that soon before the death of the deceased, she told about the cruelty done by the appellant towards her, whereas such a fact is nothing but, an after thought, which cannot be accepted. Under these circumstances, the testimony of Jhandu Singh @ Harsewak is not at all acceptable. Most of his evidence depends upon the information received by him and being an enemy, he has given a false evidence against the appellant before the trial Court. If the testimony of Jhandu Singh @ Harsewak is discarded then, certainly, there is no other witness to say that the appellant is in habit to assault the deceased after consuming liquor.

11. Second point of the case is that since the appellant had illicit relations with Bismillah Bai (P.W.7) and the deceased had an objection to those relations. The appellant was in habit to assault the deceased on that count. However, Ganeshi Bai (P.W.1) was the person, who was present with the deceased with an information that she consumed some poisonous substance and she was to be taken to the hospital and also she went alongwith the deceased to the hospital but, according to Ganeshi Bai, the deceased did not say anything about the cause as to why she consumed the poison. Similarly, Prabhudayal (P.W.3) and Premchand Jain have turned hostile. They have

accepted that they did not have any information as to whether the appellant was in habit to assault the deceased due to appellant's relations with Bismillah Bai (P.W.7) or not. Deshraj has stated that since the deceased had an objection about the relation of the appellant with Bismillah Bai but, she was often beaten by the appellant. However, Deshraj is brother of the deceased, who has stated that the appellant had lodged an application for mutation of the property of the deceased in the name of the appellant and a case was pending before the Revenue Court. He has further accepted that after death of the deceased, the crop was reaped by him and the appellant in winter season and thereafter, though the crop was sown by the appellant and him but, it was ripen by the witness Deshraj with help of his cousin brother Prabhydayal. He has also stated that immediately after the incident, he was taken by his maternal uncle, who got the marriage of the deceased performed with the appellant.

12. However, at the time of evidence given by this witness, his land was not looked after by his maternal uncle, whereas his land was looked after by his cousin Prabhudayal. Possibility cannot be ruled out that Deshraj, who was a boy of 13-14 years of age at the time of his deposition, was tutored by other persons that if he does not state against the appellant then, he has to share the property of his father with the

appellant, who was a stranger in the family and therefore, he could state against the appellant with such allegation. It was stated that the appellant was visiting the house of Bismillah Bai and the deceased had an objection and therefore, the appellant was in habit to assault the deceased. If such a fact is examined on circumstances then, it would be apparent that the deceased had an opportunity to go to his maternal uncle, who settled the marriage of the appellant and the deceased with all allegations but, unfortunately, maternal uncle of the deceased was not at all examined. Even his name is not shown in the witness list. It is not alleged that the deceased went to his maternal uncle to get the problem resolved. It is important to mention that Bismillah Bai (P.W.7) was examined before the trial Court. She did not state that the appellant was visitor to her house. She gave her evidence according to the statement given under Section 161 of the Cr.P.C. It was for the Investigation Officer to ask the questions about her relations with the appellant on the fact as to whether the deceased raised any objection before Bismillah Bai or any Panchayat took place on that count. However, neither Investigation Officer, nor the prosecutor placed any such question before Bismillah Bai to show that the appellant was visitor to the house of Bismillah Bai. Since the evidence given by Bismillah Bai was not challenged by the prosecutor and she was examined as a prosecution witness, her

testimony is binding upon the prosecution and the theory placed by the prosecution, which was a reason of quarrel has discarded in the light of evidence given by Bismillah Bai (P.W.7).

13. Also, Deshraj and Jhandu Singh @ Harsewak has stated that a Panchayat took place due to dispute between the appellant and the deceased because the deceased was visitor to the house of Bismillah Bai. However, no independent witness was examined to prove that sitting of such Panchayat took place. Such Panchayat could be called either by husband of Bismillah Bai or the deceased Asha Bai. Name of the husband of Bismillah Bai was Rafiq Khan. In the witness list submitted alongwith the charge-sheet, name of Rafiq Khan has not been shown a witness. It is not at all clear as to whether Rafiq Khan was residing with Bismillah Bai in those days or not. However, non examination of Rafiq Khan by the police indicates that Rafiq Khan had no knowledge about the alleged relation of Bismillah Bai and the appellant, therefore, if any Panchayat was called on that issue then, it was not called by Rafiq Khan or Bismillah Bai. Certainly, it would have been called by Asha Bai. However, Jhandu Singh @ Harsewak has accepted in para 3 that in that Panchayat, Asha Bai was not present. It was strange that Panchayat was not called by Rafiq Khan or Bismillah Bai, it was not called by Asha Bai even because she was not present in the Panchayat then, there is no answer to

this question as to who called the Panchayat. As discussed above, that Jhandu Singh @ Harsewak was telling a falsehood before the Court due to his enmity with the appellant and therefore, after discarding his evidence, there is no evidence on record to say that any Panchayat took place against the appellant on the aforesaid issue. Deshraj (P.W.4) could not explain about the fact of Panchayat and he was not so sure that such Panchayat took place.

14. After considering the aforesaid evidence, it appears that Bismillah Bai was examined and no suggestion was given to her by the Investigation Officer or the Prosecutor that the appellant had illicit relations with her and the deceased had an objection to those relations. Marriage of the deceased and appellant was settled by maternal uncle of the deceased but, name of that maternal uncle was neither informed to the Court, nor such maternal uncle was examined before the trial Court. If the deceased was tortured by the appellant or dealt with cruelty for his illicit relations with Bismillah Bai then, the deceased would have atleast made a complaint to her maternal uncle and he must have resolved the problem. Similarly, one Bhagwan Das, who was shown as a respected member of the community was listed as a witness in the list of witnesses submitted alongwith the charge-sheet but, he was given up by the prosecution when he was present before the trial Court.

Similarly, Gulab S/o Babla and Jagan were also listed as witnesses but, they were dropped and not examined as witnesses. Ramjan Khan (D.W.2) was a member of community of Bismillah Bai. He has categorically stated that no such Panchayat took place on the issue that there was a dispute between the appellant and the deceased relating to illicit relations of the appellant with Bismillah Bai. He has stated that there was no rumour in the village about such relations. If conduct of the deceased is considered then, before consuming poison, she did not state about her problem to anyone, prior to her death. Nobody knew about her problem. Except Deshraj, there was nobody in the village, who could state that the appellant was in habit to assault the deceased because of her allegation that the appellant had illicit relations with Bismillah Bai.

15. It is pertinent to note that marriage of the deceased took place 7 years, prior to her death and in those 7 years, she could not be blessed with any child and therefore, she must have a reason to commit suicide that she could not be blessed with child. When the relatives of the deceased settled the marriage of the deceased with the appellant for her property be maintained and for maintenance of the deceased and her brother Deshraj. It is accepted by Deshraj that at the time of death of the deceased, property of her father was in the name of

the deceased and her brother Deshraj. Appellant had no advantage with the death of the deceased. Under such circumstances, where it is very much clear that Deshraj, who was taken by his maternal uncle after the death of the deceased came to depose in the shelter of Prabhudayal, Prabhudayal and the witness Deshraj came to the Court in the company of each other as accepted by Deshraj in para 2 of his statement. Deshraj and Prabhudayal were examined on 15.3.1994, whereas Prabhudayal had turned hostile and Deshraj has stated against the appellant. As discussed above, it was possible that to oust the appellant from the property of his sister, Deshraj could give such a statement against the appellant otherwise, Prabhudayal who came with the witness Deshraj to the Court and who was cousin brother of Deshraj, did not support the prosecution's story. There was no conflict of interest between Prabhudayal and Deshraj. Deshraj has accepted that on various dates, his maternal uncle was attending the trial Court. However, he denied that he gave his statement as tutored by his maternal uncle.

16. As discussed above, there is no believable evidence to accept that quarrel took place between the appellant and the deceased relating to relation of the appellant with Bismillah Bai. She did not inform her maternal uncle about such a fact and therefore, her maternal uncle never interfered in the family life

of the deceased in the last 7 years of her married life. No FIR was lodged by the deceased against the appellant. The appellant was maintaining the deceased as well as her brother Deshraj for last 7 years. No respectable villager of that village has stated against the appellant that he ever assaulted the deceased due to any reason and therefore, the testimony of Deshraj cannot be accepted to the fact that the appellant was in habit to assault the deceased on her objection to his relation with Bismillah Bai. At this stage, it is necessary to mention that the case diary statement of Deshraj was different and he could not be confronted with his case diary statement at the time of his examination and therefore, on 9.10.1996, the appellant has moved an application under Section 311 of the Cr.P.C. to recall the witness Deshraj but, that application was not accepted. In these circumstances, where the statement of Deshraj given before the trial Court was different from his previous statement given before the police and therefore, testimony of Deshraj cannot be accepted.

17. On the basis of the aforesaid discussion, it is not proved that the appellant had ever assaulted the deceased after consuming liquor. It is not proved beyond doubt that the appellant ever assaulted the deceased on her objection to the relation of the appellant with Bismillah Bai. It is not at all proved that the appellant had any relation with Bismillah Bai

(P.W.7). Hence, if any doubt is created then, benefit of doubt is to be given to the appellant.

18. Learned counsel for the appellant has placed his reliance upon the judgment passed by Apex Court in case of “Bhagwan Das Vs. Kartar Singh and others”, [AIR 2007 SC 2045], in which it is held that harassment of wife done by the husband due to their differences then, only by that overt-act provision of Section 306 read with Section 107 of IPC shall not be attracted and the accused cannot be convicted of offence under Section 306 of IPC. Reliance is also placed upon the judgment passed by Apex Court in case of “Sanju @ Sanjay Singh Sengar Vs. State of M.P.”, [AIR 2002 SC 1998], in which it is held as under:-

“13.The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 driven the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the

appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

14.

15.it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken pace on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C."

In that case, proceedings of the trial Court was quashed by the Apex Court under Section 482 of the Cr.P.C.

19. Learned counsel for the appellant has also placed his reliance upon the judgment passed by Apex Court in case of *Netai Dutta Vs. State of W.B.*, [AIR 2005 SC 1775], in which it is held that no reference of any act or incidence in alleged suicide note whereby accused has committed any wilful act or omission or intentionally aided or instigated deceased in committing act of suicide then, no offence under Section 306 of IPC may constitute.

20. In the light of aforesaid judgments, if facts of the present case is examined then, certainly, the prosecution could not prove any overt-act of the appellant which may fall within the purview of Sections 107 or 109 of IPC and no offence under Section 306 of IPC may constitute against the appellant. The trial Court has committed an error in convicting the appellant of offence under Section 306 of IPC. Hence, the conviction

imposed by the trial Court of offence under Section 306 of IPC may be set aside.

21. So far as the offence under Section 498-A of IPC is concerned, the deceased had never made any complaint about the cruelty done by the appellant to anyone. Respectable persons of the society were given up. Nobody was present to say that the appellant dealt the deceased with cruelty in last 7 years of her marital life. Alleged maternal uncle was not examined before the trial Court, who could state that the deceased complained about the cruelty done by the appellant and he could say about the steps taken for resolution if any but, unfortunately, neither that maternal uncle was named in the witness list of the prosecution, nor he was examined before the trial Court. Hence, on the basis of evidence of Deshraj only, it cannot be said that the appellant has dealt the deceased with cruelty in her life time, prior to her death. Hence, the appellant cannot be convicted of offence under Section 498-A of IPC.

22. On the basis of the aforesaid discussion, the appeal filed by the appellant appears to be acceptable and therefore, it is hereby accepted. Conviction and sentence imposed upon the appellant by the trial Court for offence under Sections 306 and 498-A of IPC are hereby set aside. The appellant is acquitted from all the charges appended against him. He would be

entitled to get the fine amount back, if he had deposited the same before the trial Court.

23. The appellant is on bail, his presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

24. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance.

(N.K.GUPTA)
JUDGE
21/5/2015

Pushpendra