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HANS RAJ

v.

STATE OF HARYANA

FEBRUARY 26, 2004

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[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

Penal Code, 1860—Sections 306 and 498-A—Evidence Act, 1872—Section 113-A—Suicide by wife—Allegations of cruelty against husband but no direct evidence that suicide abetted by husband—Case sought to be made out at trial not stated in the course of investigation—Conviction of husband under section 306 taking aid of presumption—Justification of—Held: Having regard to the evidence on record, prosecution is guilty of improving its case from stage to stage—Further on slender evidence presumption under section 113A cannot be invoked—Mere fact that woman subjected to cruelty by her husband does not automatically give rise to presumption that suicide was abetted by her husband—Cruelty is to be of such a nature driving her to commit suicide—Hence, conviction under section 306 set aside but having regard to the evidence on record conviction under section 498-A justified.

E According to the prosecution, appellant's wife committed suicide on account of cruelty and harassment meted out to her by the appellant. Father of the deceased lodged FIR. It was alleged that there were frequent quarrels sometimes resulting in physical assaults between appellant and his wife whenever deceased attempted to prevent her husband from taking 'bhang' and that he was aggrieved of the fact that his sister married to his wife's brother was not looked after properly by her husband. However, the father of the deceased did not state during the course of investigation that the appellant used to taunt the deceased because she was not good looking, or that he was going to re-marry, or that he was addicted to liquor and even used to beat her or that the deceased had reported these matters to her parents and others or that the deceased had once come to her father's house in an injured condition. Also the brother of the deceased did not state during investigation that appellant was addicted to liquor, or that the appellant had told him that his sister was not good looking or that his sister told him that appellant was aggrieved by this fact. Trial court found that though there were improvements in the statements of the prosecution witnesses, it could not be

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disbelieved that the appellant treated his wife with cruelty. It took the view A that since the deceased committed suicide and appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A of the Evidence Act that the suicide had been abetted by him. Trial Court convicted and sentenced the appellant under Section 306 IPC. High Court upheld the order. Hence the present appeal. B

Partly allowing the appeal, the Court

HELD: 1.1. In the instant case, there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon section 113-A of the Evidence Act under which the Court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty, it must consider the nature of cruelty to which the woman was subjected, whether it was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman, having regard to the meaning of word cruelty in Section 498-A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. [683-F; 684-C-D] D E

Rameshkumar v. State of Chhattisgarh, [2001] 9 SCC 618; Sanju Alias Sanjay Singh Sengar v. State of M.P., [2002] 5 SCC 371 and West Bengal v. Orilal Jaiswal and Anr., [1994] 1 SCC 73, referred to. F

1.2. Having gone through the evidence on record it is clear that the prosecution has sought to improve its case at the trial by introducing new facts and allegations which were never stated in the course of investigation as such the finding of the trial court cannot be accepted. The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told his wife about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations G H

A regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. That the appellant was aggrieved of the fact that his sister was not being properly treated by her husband, who is the brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the martial life of his sister. In fact, her husband, himself stated on oath that he was living happily with his wife, sister of the appellant. On such slender evidence the presumption under Section 113-A cannot be invoked to find the appellant guilty of the offence under Section 306 IPC. [686-D-H]

1.3. Trial Court found that there was material to support the charge under Section 498-A IPC. but did not pass a sentence under the section on a finding that the same will be overlapping, the appellant having been found guilty of the offence under Section 306 IPC. Having regard to the facts of the case, though the prosecution has failed to establish the offence under Section 306 IPC., the evidence on record justifies the conviction of the appellant under Section 498-A IPC. Therefore, conviction and sentence of the appellant under Section 306 IPC, is set aside but he is convicted and sentenced under Section 498-A IPC. [687-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 609 of 1997.

F From the Judgment and Order dated 21.1.1997 of the Kerala High Court in Crl. A. No. 633-SB of 1986.

Dhruv Mehta and S.K. Mehta for the Appellant.

Ms. Avneet Toor, D.P. Singh and Vinay Kumar Garg for the Respondent.

G The Judgment of the Court was delivered by

H B.P. SINGH, J. In this appeal by special leave the appellant Hans Raj has impugned the judgment and order of the High Court of Judicature of Punjab and Haryana at Chandigarh dated January 21, 1997 in Criminal Appeal No.633 - SB of 1986 affirming the judgment and order of the learned Additional Sessions Judge, Kurukshetra dated September 24, 1986 convicting

and sentencing the appellant to seven years rigorous imprisonment and a fine of Rs.300/- under Section 306 I.P.C. We have carefully perused the judgments of the learned Additional Sessions Judge and the High Court and we are constrained to observe that the High Court while disposing of the appeal did not even apply its mind to the facts of the case. A disturbing feature noticed by us is that the High Court merely repeated paragraphs after paragraphs from the judgment of the learned Additional Sessions Judge as if those conclusions were its own, reached on an appreciation of the evidence on record. Many of the paragraphs are word from word borrowed from the judgment of the learned Additional Sessions Judge without acknowledging that fact. We are, therefore, left with the impression that the High Court failed to apply its mind to the facts of the case as it was required to do, and was content with repeating what was stated in the judgment of the Trial Court. In these circumstances we found it necessary to carefully scrutinize the evidence on record since the High Court even though the first court of appeal failed to do so.

The case of the prosecution is that the wife of the appellant, namely, Jeeto Rani committed suicide on 24.8.1986 on account of the cruelty and harassment meted out to her by the appellant herein.

The case of the prosecution is that in the year 1982 the appellant married Jeeto Rani, daughter of Munshi Ram, PW-2. It is also not in dispute that Naro, sister of the appellant was married to Fateh Chand, PW-3 the brother of the deceased. The appellant lived in village Kheri Sahidan with the deceased while Naro and Fateh Chand resided in the house of Munshi Ram, PW-2 at village Laha Majri. The appellant was blessed with a daughter only seven months before the death of Jeeto. On August 24, 1986 Munshi Ram, PW-2 father of Jeeto (deceased) lodged the FIR which was recorded by ASI Chaman Lal, PW-5 of Police Station Ismailabad at 2.50 p.m. The allegations in the FIR were to the following effect.

The appellant was addicted to 'Bhang' and did not pay any attention towards his domestic affairs. Whenever Jeeto attempted to prevent her husband from taking 'Bhang' she used to be assaulted by him. Jeeto (deceased) had reported this matter to her parents but they all persuaded her to go back to her matrimonial home. On Friday last the appellant and Jeeto (deceased) came to the house of Munshi Ram (PW-2) when the appellant stated that he would not keep Jeeto (deceased) with him because his sister Naro was being harassed by Fateh Chand, PW-3, the brother of Jeeto (deceased). Munshi

A Ram and members of his family persuaded the appellant not to do so but Jeeto (deceased) was frightened and refused to accompany her husband. The appellant and Jeeto (deceased) stayed at the house of Munshi Ram for two days and on the third day with great difficulty Munshi Ram, PW-2 persuaded his daughter Jeeto to accompany the appellant to her matrimonial home. It was alleged by Munshi Ram in the FIR that the appellant had told them that

B since Fateh Chand, PW-3 was harassing his sister he would take revenge.

On the date of occurrence at about 10 a.m. Munshi Ram, PW-2 was informed by one Shana Ram that Jeeto was seriously ill and asked him to reach village Kheri immediately. The informant alongwith his brothers and

C others reached village Kheri and found that his daughter was dead. In the report he stated that he entertained a suspicion that Jeeto had committed suicide by taking poison being fed up by the beatings and the harassment caused to her by her husband.

On the basis of the said report a case was registered and the matter was

D investigated by ASI, Chaman Lal, PW-5. The medical evidence on record as well as the chemical examiner's report established the fact that Jeeto died of poisoning. Apparently, therefore, the case of the prosecution was that she had committed suicide by consuming poison. The record also discloses that Jeeto was treated by Dr. Ram Gopal Sharma when she was in a precarious condition at the house of the appellant. He gave her an injection and thereafter she was shifted to his clinic at Ismailabad on his advice. It appears that thereafter Dr. Kaushal also treated her but her life could not be saved.

In the FIR only two allegations were made by Munshi Ram, PW-2, firstly, that there were frequent quarrels, sometimes resulting in physical assault, between the appellant and Jeeto on account of his being addicted to consumption of 'Bhang', and secondly, that the appellant was aggrieved by the fact that his sister was not being properly looked after by his brother-in-law namely, Fateh Chand, PW-3.

Munshi Ram was examined by the prosecution as PW-2. In his

G deposition he stated that the appellant was addicted to liquor and bhang and whenever Jeeto attempted to persuade him to desist from this addiction he used to misbehave with her and even beat her. According to him, 8-9 days before her death Jeeto had come to his house alongwith the appellant. The appellant had then complained to him that Jeeto was not good looking and therefore he was not going to take her back and that he intended to perform

H a second marriage. However, on their persuasion he stayed at his village for

2-3 days whereafter he persuaded his daughter Jeeto to accompany the A appellant to village Kheri. From his cross-examination, it appears that the case sought to be made out at the Trial that the appellant was addicted to liquor was not stated in the course of investigation. Similarly, Munshi Ram, PW-2 had not stated in the course of investigation that the appellant had complained that Jeeto was not good looking. It also appears that in the course of investigation he had not stated about Jeeto having told him that the accused had been beating her. B

Fateh Chand, PW-3 also deposed in favour of the prosecution and he also alleged that the appellant was addicted to liquor and bhang and that he had been told by Jeeto that the appellant did not want to keep her as he did not find her to be good looking. According to Fateh Chand, PW-3 whenever Jeeto came to their house she used to complain about the treatment meted out to her by the appellant. Even the appellant had told him that he did not like Jeeto. PW-3 further deposed that for about a year and a half after marriage the appellant and Jeeto lived in harmony. In his statement before the police in the course of investigation there is no mention about the fact that the appellant was addicted to liquor. PW-3 also admitted that in his statement before the police he did not state that the accused had told him that his sister was not good looking, nor did he state that his sister had told him that the accused felt aggrieved because she was not good looking. C D

The case of the prosecution rests mainly on the evidence of these two witnesses namely, Munshi Ram, PW-2 and Fateh Chand, PW-3. In his examination under Section 313 Cr.P.C. the appellant stated that the case against him was false. He had kept his wife Jeeto with love and affection and had never proclaimed that she was not good looking. She had given birth to a daughter but thereafter she had been keeping unwell because of some tension in her mind on account of birth of a daughter. Only four days prior to her death she had come from her parents' house and thereafter she started vomiting. Dr. Ram Gopal Sharma was called from Ismailabad and he gave her an injection. Thereafter Jeeto was removed to the clinic of Dr. Ram Gopal. Dr. Kaushal was also consulted but he did not give any hope. The parents of Jeeto were thereafter informed through a messenger but by the time they came Jeeto had died. E F G

The learned Additional Sessions Judge noticed the fact that Munshi Ram, PW-2 had considerably improved his case at the trial. The allegations that the appellant used to taunt Jeeto because she was not good looking, or H

A that he was going to re-marry, or even regarding beatings to her, were all in the nature of improvements. His statement at the trial that once the deceased had come to his house in injured condition did not find mention in his statement recorded by the police in the course of investigation. The allegation that the appellant was addicted to liquor also did not find recorded in the statement of the witnesses before the police. However, the Trial Court was

B greatly impressed by the fact that this was clearly a case of suicide and the appellant had maintained complete silence as to what was the conversation between him and the deceased immediately before the deceased was found in a precarious condition. According to the Trial Court, law enjoined upon the husband an obligation to explain the circumstances in which his wife

C committed suicide. Reliance was placed on the presumption under Section 113-A of the Indian Evidence Act. It observed that in the absence of any suitable answer from the defence a presumption arose under Section 113-A of the Indian Evidence Act. Therefore, the Court found that though there were improvements in the statements of the prosecution witnesses, it could not be disbelieved that the appellant treated his wife with cruelty. Taking the aid of Section 113-A the trial court concluded that a presumption of law arose in the given circumstances. Since Jeeto was led to commit suicide, it must have been due to the abetment on the part of the appellant, since the story set up by the appellant in his statement under Section 313 Cr.P.C. was totally unbelievable. Surprisingly, the Trial Court observed that the appellant's

E remark that his wife was not good looking and to his liking and that he was going to re-marry was "a gravest of abetment on the part of the husband leading to the wife to commit suicide". The trial court while recording this conclusion completely lost sight of its own finding that this part of the story was clearly an improvement and that no such allegation was made either in the FIR or in the course of investigation. All that was stated in the FIR and

F in the course of investigation was that the appellant was aggrieved of the fact that his sister Naro was not properly treated by Fateh Chand, PW-3 who was the brother of Jeeto. The only other allegation found in the FIR is that the appellant was addicted to 'Bhang' and whenever Jeeto objected to it, it resulted in a quarrel and sometimes physical assault on Jeeto.

G Having gone through the evidence on record we are satisfied that the prosecution has sought to improve its case at the trial by introducing new facts and allegations which were never stated in the course of investigation. All that appears to have been satisfactorily established is that the appellant was addicted to 'Bhang' and that frequent quarrels took place when his wife

H Jeeto objected to his taking 'Bhang'. Though it is stated in the FIR that the

appellant had complained about the treatment meted out to his sister Naro by A Fateh Chand, there is evidence of Fateh Chand, PW-3 himself that he was living happily with Naro, his wife, who happened to be the sister of the appellant. One fails to understand why the appellant should make such an allegation when his sister was living happily with Fateh Chand, PW-3. As to the frequent assaults on the deceased by the appellant and her reporting the matter to her father and brother, there appears to be no reason why, if these facts were true, no such allegation was made in the course of investigation by the prosecution witnesses PWs 2 and 3. We are, therefore, satisfied that the prosecution has been able to establish its case only to the extent that the appellant was addicted to 'Bhang' which was opposed by his wife Jeeto and on account of such opposition there used to be frequent quarrels and may be B on some occasions Jeeto was assaulted by the appellant. Beyond this we find C the other allegations made by the prosecution to be unacceptable.

The question then arises as to whether in the facts and circumstances D of the case the appellant can be convicted of the offence under Section 306 I.P.C. with the aid of the presumption under Section 113 A of the Indian Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 I.P.C. Section 107 I.P.C. lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more person in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Indian Evidence Act under which the Court may presume E on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113-A further clarifies that cruelty shall F have the same meaning as in Section 498A of the Indian Penal Code which 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 H

A 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".

Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act.

B Under Section 113-A of the Indian Evidence Act the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the Court is not bound to presume that the suicide had been abetted by her husband.

C Section 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word cruelty in Section 498-A I.P.C. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty

D by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave

E injury or danger to life, limb or health of the woman. The law has been succinctly stated in *Ramesh Kumar v. State of Chhattisgarh*, [2001] 9 SCC 618 wherein this Court observed :

F "This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women

were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the

G accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had

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subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression - "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says - "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it".

The same principle has been reiterated in *Sanju Alias Sanjay Singh Sengar v. State of M.P.*, [2002] 5 SCC 371.

In the *State of West Bengal v. Orilal Jaiswal and Anr.*, [1994] 1 SCC 73 this Court observed :

"We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne

A in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in *Bater v. Bater*, [1950] 2 All ER 458, 459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter".

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C Having regard to the principles aforesaid, we may now advert to the facts of this case. The learned Trial Judge took the view that since the wife of the appellant committed suicide and since the appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A of the Indian Evidence Act that the suicide had been abetted by him. We do not find ourselves in agreement with the finding of the Trial Court,

D having regard to the facts and circumstances of this case and our finding that the prosecution is guilty of improving its case from stage to stage. The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told his wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between

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F the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW-3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW-3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence therefore we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 I.P.C.

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The Trial Court found that there was material to support the charge under Section 498-A I.P.C. but did not pass a sentence under Section 498-A I.P.C. on a finding that the same will be overlapping, the appellant having been found guilty of the offence under Section 306 I.P.C. Having regard to the facts of the case, we are satisfied that though the prosecution has failed to establish the offence under Section 306 I.P.C., the evidence on record justifies the conviction of the appellant under Section 498-A I.P.C. A

We, therefore, set aside the conviction and sentence passed against the appellant under Section 306 I.P.C. and acquit him of that charge, but we find the appellant guilty of the offence under Section 498-A I.P.C and sentence him to undergo rigorous imprisonment for one year on that count. This appeal is partly allowed. The appellant was admitted to bail by this Court. His bail bonds are cancelled, and he must surrender to his sentence, subject to the provisions of Section 428 of the Code of Criminal Procedure. B C

N.J.

Appeal partly allowed.