

*Before Mehinder Singh Sullar, J.*

STATE OF HARYANA—Appellant

*versus*

ISHWAR SINGH—Respondent

CRA No.1012-SBA of 2000

January 8, 2013

*Indian Penal Code, 1860 - Ss.306, 498-A - 'Abetment to commit suicide' - Wife of accused committed suicide - Accused tried for offences u/s 306 and 498-A, IPC - Trial Court acquitted him u/s 306 IPC and convicted u/s 498-A IPC - State preferred appeal against acquittal - Appellant filed appeal against conviction -Held, accused cannot be convicted without any substantive evidence - Evidence of conspiracy and Actively abetting suicide missing - Both appeals dismissed.*

*Held*, that all the cogent cardinal fundamental principles and basic rules of criminal law/jurisprudence, have to be kept in focus while deciding such criminal cases. Some of these are that the absolute onus is always on the prosecution to prove its case beyond any reasonable doubt. The

accused cannot possibly be convicted without any substantive evidence as the evidence is essential element in the criminal proceedings, notwithstanding the seriousness of the allegations alleged against him. The criminal proceedings require strict proof of guilt. It is the legal evidence, on the basis of which, the decision of a criminal court is based and is the legal requirement of criminal justice. Otherwise, in the absence of cogent substantive evidence, the Courts have no option, but to record an order of acquittal howsoever painful the same may be.

(Para 10)

*Further held*, that meaning thereby, there has to be a clear mens rea, active participation or direct act and intention to provoke, incite or encourage to do an act by the accused, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a grave position that he committed suicide. The knowledge, intention, mens rea, positive active participation leaving no option and compelling a person to commit suicide, inter-alia, are the essential ingredients to convict a person u/s 306 IPC.

(Para 17)

*Further held*, that having regard to the rival contentions of learned counsel for parties, to my mind, it would be in the interest and justice would be sub served if the sentence of imprisonment imposed on the appellant-convict by the trial Court is reduced, inter-alia, on the following grounds:-

- i) The occurrence in this case is of 15.11.1998 and he has already suffered and faced the pangs of protracted trial & appeal for the last more than 14 years.
- ii) He has old mother of 75 years of age. She was suffering from Tuberculosis.
- iii) He has lost his father.
- iv) His two brothers are in the army. There is no adult member to look after his family.
- v) He is on bail.
- vi) As per custody certificate, the appellant has already undergone the period of his substantive sentence of ten months, out of the total awarded sentence of imprisonment of two years.

vii) He is a first offender and is not a previous convict except the present matrimonial dispute.

(Para 28)

*Further held*, that taking into consideration the totality of the facts & circumstances, emanating from the record, as discussed here-in-above, the sentence of imprisonment of two years is reduced to ten months already undergone by him.

(Para 29)

Gaurav Verma, A.A.G. Haryana for the appellant-State.

S.K. Garg Narwana, Senior Advocate with Naveen Gupta, Advocate for the appellant-convict.

### **MEHINDER SINGH SULLAR, J. (ORAL)**

(1) As identical questions of law & facts are involved, therefore, I propose to dispose of the indicated appeals, arising out of the same very impugned decision, by means of this common judgment in order to avoid the repetition.

(2) The matrix of the facts & evidence, unfolded during the course of trial, culminating in the commencement, relevant for deciding the instant appeals and emanating from the record, is that, the marriage of appellant-convict Ishwar Singh was solemnized with Smt. Mangi Devi (deceased), according to Hindu rites and ceremonies in the month of April, 1989. After solemnization of the marriage, they resided together and cohabited as husband & wife. Their first child was son, who died shortly after his birth. Thereafter, two daughters were born out of their wedlock, who were six years and six months old respectively at the time of occurrence. The sufficient dowry articles, including ornaments and customary gifts, were stated to have been given by the parents of the deceased at the time of marriage and on the eve of birth of daughters, but the appellant-convict was not satisfied. The prosecution claimed that he used to taunt, harass and beat the deceased for giving birth to two daughters instead of a son. Ultimately, Smt. Mangi Devi was turned out of the matrimonial home.

(3) The case of the prosecution further proceeds that on the night intervening of 15.11.1998, Amrit Singh, brother of the appellant-convict, had gone to the house of complainant Randhir Singh (PW6) and told him that his sister SmtMangi Devi, had consumed some poisonous tablets. She was admitted in City Hospital, Tohana. After receiving the information, the complainant & his brother Sewa Singh reached and "noticed the dead body of Mangi Devi lying in the hospital. She was stated to have committed suicide as her life was made miserable by the appellant-convict

(4) Leveling a variety of allegations and narrating the sequence of events, in all, according to the prosecution that the appellant-convict had treated SmtMangi Devi with cruelty and she had committed suicide by consuming some poisonous substance. In the background of these allegations and in the wake of complaint of the complainant, a criminal case was registered against the appellant-convict, vide FIR No.361 dated 16.11.1998 on accusation of having committed an offence punishable under section 306 IPC by the police of Police Station City Tohana, District Hisar in the manner depicted here-in-above.

(5) After completion of the investigation, the police submitted the final police report (challan). Accordingly, the appellant-convict was charge-sheeted for the commission of indicated offence by the trial Court and the case was slated for evidence of the prosecution.

(6) The prosecution, in order to substantiate the charge framed against the appellant-convict, examined PW1 Dr. Vinod Gupta, PW2 Dr. Aswani Kumar, PW3 Ranjor Singh Constable, PW4 Om Parkash HC, PWS Chhatar Pal Singh, MHC, PW6 complainant Randhir Singh, PW7 Lakhmi Chand, PW8 Gulshan Kumar ASI and PW9 Sita Ram Patwari in oral evidence. The prosecution has also placed reliance on the application of police (Ex.PD), application for post mortem (Ex. PE/1), death report EEx. PF), rough site plan (Ex.PN), application of police regarding report (Ex. PH), report of doctor (Ex.PH/1), affidavit of C.Ranjor Singh (Ex.PK), affidavit of HC Chhatar Pal Singh (Ex.PL), ruqqa (Ex.PM), endorsement (Ex.PM/1), FIR (Ex.PM/2), recovery memo (Ex.PO) and site plan prepared by the Patwari (Ex.PR) in documentary evidence.

(7) Having concluded the prosecution evidence, the statement of the appellant-convict was recorded. The entire incriminating evidence was put to enable him to explain any circumstance appearing against him in the evidence, as contemplated under Section 313 Cr.P.C. He has stoutly denied the prosecution evidence in its entirety and pleaded false implication. He has adopted a specific line of defence that he had always treated his wife with love & affection and never taunted, harassed & maltreated her with cruelty. She was suffering from chronic abdominal pain and was got treated by him. She got frustrated due to her ailment and committed suicide by consuming poisonous tablets. It was claimed that he had taken life insurance policy (Ex. DF), in which, he had nominated his deceased wife as the nominee/beneficiary. The appellant-convict has also brought on record the medical treatment record of the deceased (Ex. PG/1 to Ex. PG/7).

(8) Taking into consideration the entire evidence on record, the appellant-convict was acquitted for the commission of an offence punishable u/s 306 IPC. However, at the same time, he was convicted and sentenced to undergo rigorous imprisonment for a period of two years, to pay a fine of Rs. 10,000/- and in default thereof, to undergo further imprisonment for a period of one year under section 498-A IPC by the trial Court, by way of impugned judgment of conviction dated 6.10.1999 and order of sentence dated 7.10.1999.

(9) Aggrieved thereby, the State of Haryana has preferred the appeal (CRA No.1012-SBA of 2000) to challenge his acquittal u/s 306 IPC, whereas the appellant-convict has filed the separate appeal (CRA No.978-SB of 1999) to assail his conviction & sentence u/s 498-A IPC as well. That is how I am seized of the matter.

(10) At the very outset, what cannot possibly be disputed here is that all the cogent cardinal fundamental principles and basic rules of criminal law/jurisprudence, have to be kept in focus while deciding such criminal cases. Some of these are that the absolute onus is always on the prosecution to prove its case beyond any reasonable doubt. The accused cannot possibly be convicted without any substantive evidence as the evidence is essential element in the criminal proceedings, notwithstanding the seriousness of the allegations alleged against him. The criminal proceedings require strict proof of guilt. It is the legal evidence, on the basis of which, the decision

of a criminal court is based and is the legal requirement of criminal justice. Otherwise, in the absence of cogent substantive evidence, the Courts have no option, but to record an order of acquittal howsoever painful the same may be.

(11) Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present appeals.

(12) Ex facie, the argument of learned State counsel that there is ample evidence on record to suggest that the appellant-convict hastauted, gave beating and treated his wife Mangi Devi with cruelty and compelled her to commit suicide, is neither tenable nor the observations of Hon'ble Apex Court in case *State of Puniab versus Iqbal Singh and others (1)* and of this Court in case *State of Puniab versus Kashmir Singh (2)*, are at all applicable to the facts of the instant case, wherein husband (therein) persistently made dowry demand from the wife, was beating, harassing her and creating atmosphere of terror for her. The wife ultimately setting herself and her three children ablaze. On the peculiar facts and in the special circumstances of the cases, it was ruled that the offence u/s 306 IPC is made out.

(13) Possibly, no one can dispute with regard to the observations contained in the aforesaid judgments, but, to me, the same would not come to the rescue of the State in the present controversy.

(14) As indicated here-in-above, the appellant-convict was charge-sheeted for the commission of an offence of abetment. Section 306 IPC postulates that "If any person commits suicide, whoever abets the commission of such suicide, shall be punished therein." The abetment of a thing has been defined u/s 107 IPC to mean that a person abets the doing of a thing, who instigates any person to do that thing; or 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 intentionally aids, by any act or illegal omission, the doing of that thing.

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(1) (1991) 3 SCC 1

(2) 1994 (3) RCR (Cri.) 538

(15) Sequently, Section 108 IPC posits that a person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

(16) A conjoint and meaningful reading of these provisions would reveal that in order to attract the penal provisions of section 306 IPC, there should be a positive evidence on record that appellant Ishwar Singh intentionally hatched a conspiracy or actually/actively aided and abetted in such a manner, leaving no option for Mangi Devi to commit suicide.

(17) Meaning thereby, there has to be a clear mens rea, active participation or direct act and intention to provoke, incite or encourage to do an act by the accused, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a grave position that he committed suicide. The knowledge, intention, mens rea, positive active participation leaving no option and compelling a person to commit suicide, inter-alia, are the essential ingredients to convict a person *uls* 306 IPC.

(18) Such thus being the legal position and evidence on record, now the short and significant question, though very important, that arises for determination in these appeals is, as to whether the appellant-convict, was instrumental and abetted Mangi Devi to commit suicide or not?

(19) Having regard to the rival contentions of learned counsel for the parties, to my mind, since all the essential ingredients of section 306 IPC are totally lacking and are not borne out from the evidence on record, so, the trial Court has rightly acquitted him of the charge framed against him *uls* 306 IPC in this context.

(20) As is evident from the record, that the marriage of appellant convict was solemnized with Smt. Mangi Devi (deceased), according to Hindu rites and ceremonies in the month of April, 1989. After solemnization of the marriage, they resided together and cohabited as husband & wife. Their first child was son, who died shortly after his birth. Thereafter, two daughters were born out of their wedlock, who were six years and six months old respectively at the time of occurrence. The sufficient dowry

articles, including ornaments and customary gifts, were stated to have been given by the parents of the deceased at the time of marriage and on the eve of birth of daughters. She committed suicide by consuming some poisonous substance. This fact is proved from the medical evidence of PW1 Dr. Vinod Gupta, who treated the deceased in City Hospital, Tohana and PW2 Dr. Aswani Kumar, who conducted the post mortem examination on the dead body, vide report (Ex.PG). PW6 Randhir Singh and PW7 Lakhmi Chand have also so maintained in their respective statements. Moreover, PW6 in his cross-examination has admitted that the appellant-convict had donated two bottles of blood to his wife Mangi Devi for transfusing after the birth of pt daughter. Not only that, in the life insurance policy (Ex.DF), he nominated his wife as his nominee and beneficiary. Thus, the submission of learned counsel that the appellant had love & affection with his wife and he donated blood to her, which dislodges the prosecution version and proves the defence version, has considerable force.

(21) Not only that, the manner of the statements of PW6 and PW7 mainly is that the appellant-convict harassed and treated the deceased only for the reason that she gave birth to two daughters and failed to beget a son. If their entire statements are put together and believed to be true as such for the sake of argument, even then, all that stands proved from their statements is that Mangi Devi was not treated well. She was turned out of the matrimonial home. However, there is not an iota of evidence on record that she was treated with such type of cruelty in regard to birth of two daughters within a period of six months from the commission of suicide by her. The evidence on record would reveal that last act of cruelty alleged was six months before her death.

(22) There is also not an iota of evidence on record even to suggest remotely that how, at what time, when and in what manner, the appellant-convict had knowledge, intention, mens rea or actually abetted Mangi Devi to commit suicide on the relevant day.

(23) On the contrary, it has come on record that the deceased was suffering from chronic disease of abdominal pain as per her medical records (Ex.PG/1 to Ex.PG/7). The appellant-convict donated blood to her. Moreover, in the life insurance policy (Ex.DF), he nominated his wife as his nominee and beneficiary. The last act of alleged cruelty as projected by PW6 and PW7 is six months prior to the present occurrence. Under these circumstances,



as all the essential ingredients of section 306 IPC are deeply missing, therefore, it cannot possibly be said that the appellant-convict had compelled the deceased to commit suicide. Therefore, to me, the trial Court has rightly acquitted him for the commission of offence u/s 306 IPC. The learned State counsel did not point out any ground/reason, muchless cogent, to interfere in the well articulated judgment of the trial Court in this respect.

(24) Now advertng to the appeal of appellant-convict, there is ample and reliable evidence on record as discussed here-in-above to prove that he had taunted, harassed and treated his wife Mangi Devi with mental and physical cruelty. PW6 and PW7 have so maintained that she was taunted, harassed and beaten up several times by the appellant-convict and ultimately turned her out of the matrimonial home. The evidence on record is reliable and convincing in this relevant connection.

(25) Therefore, if the entire evidence of prosecution is perused and put together, then, to my mind, the conclusion is inescapable that the prosecution has miserably failed to prove all the essential ingredients, as contemplated u/s 306 IPC. However, at the same time, it has duly proved the charge against the appellant-convict u/s 498-A IPC. Hence, to me, the trial Court has rightly acquitted him u/s 306 IPC and correctly convicted him u/s 498-A IPC, in the manner indicated here-in-above.

(26) Paced with the situation, learned counsel has fairly acknowledged that he will not be in a position to contest the conviction of the appellant-convict any more u/s 498-A IPC, in view of the pointed cogent evidence brought on record by the prosecution. Since no other legal infirmity has been pointed out by the learned counsel for the appellant-convict, so, the impugned judgment of conviction and order of sentence of fine deserve to be and are hereby maintained in the obtaining circumstances of the case.

(27) Be that as it may, however, the argument of learned counsel that as the appellant has old mother of 75 years of age and is not a previous convict, therefore, he prayed for reduction in the period of sentence in view of ratio of law laid down by the Hon'ble Supreme Court in case *Mohd. Hoshan and another* versus *State of A.P.* (3) and of this Court in case *Kashmiri Lal* versus *State of Haryana* (4).

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(3) AIR 2002 SC 3270

(4) 2008(4) RCR (Cr.) 497

(28) Having regard to the rival contentions of learned counsel for parties, to my mind, it would be in the interest and justice would be sub served if the sentence of imprisonment imposed on the appellant-convict by the trial Court is reduced, inter-alia, on the following grounds:-

*i) The occurrence in this case is of 15.11.1998 and he has already suffered and faced the pangs of protracted trial & appeal for the last more than 14 years.*

*ii) He has old mother of 75 years of age. She was suffering from Tuberculosis.*

*iii) He has lost his father.*

*iv) His two brothers are in the army. There is no adult member to look after his family.*

*v) He is on bail.*

*vi) As per custody certificate, the appellant has already undergone the period of his substantive sentence of ten months, out of the total awarded sentence of imprisonment of two years.*

*vii) He is a first offender and is not a previous convict except the present matrimonial dispute.*

(29) In the light of aforesaid reasons, as there is no merit, therefore, the appeals filed by the State and appellant-convict are hereby dismissed and the impugned judgment of conviction and order of sentence of fine imposed on the appellant-convict are maintained. However, taking into consideration the totality of the facts & circumstances, emanating from the record, as discussed here-in-above, the sentence of imprisonment of two years is reduced to ten months already undergone by him. Accordingly, the impugned order of sentence is modified to the extent and in the manner depicted here-in-before.

(30) Needless to say that necessary consequences & compliance will naturally follow accordingly.