

[2012] 7 S.C.R. 513

RAKHAL DEBNATH
v.
STATE OF WEST BENGAL
(Criminal Appeal No. 201 of 2010)

SEPTEMBER 4, 2012

**[SWATANTER KUMAR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

Penal Code, 1860 - ss.306, 498A and 107 - Death of married woman due to burn injuries - Conviction of appellant-husband u/ss.306 and 498A - Justification - Held: Justified - In the facts and circumstances of the case, the conclusion of High Court that deceased committed suicide cannot be faulted - s.113A of the Evidence Act was duly attracted to the facts of the case - Deceased committed suicide within 35 days from the date of her marriage and the allegation of cruelty was also fully established - Consistent statements of PWs disclosed that deceased was not happy with the marriage and complained about the conduct of the appellant - in demanding money from her father apart from his illicit relationship with his niece - The act of appellant in pledging the jewels of the deceased was also proved - Consequently prosecution case that deceased was instigated by the appellant to take the extreme decision of committing suicide by pouring kerosene on herself and set herself on fire was fully established and thereby charge of abetment u/s.306 and as well as s.498A stood proved - Evidence Act, 1872 - s.113A.

The wife of accused-appellant died due to severe burn injuries. The death occurred within 35 days after her marriage. In the hospital register it was noted by the doctor-P.W.19 that as per the statement of appellant, the deceased suffered burn injuries from the burning stove when she was preparing tea and bread in the kitchen.

A However, according to the prosecution, shortly after
marriage, the appellant demanded money from his father-
in-law, PW3, for purpose of his business which was
declined whereupon the appellant retorted that he knew
how to collect money from him through his own
B daughter, and thereafter pledged the jewels of his wife
with PW17 for a specified sum. The appellant's wife was
also stated to have been nurturing a grievance against
the appellant in view of his illicit contacts with his niece
(the second accused) who lived in the very same house
C of appellant. It was alleged by the prosecution that all this
ultimately resulted in the appellant's wife taking the
extreme decision of committing suicide by pouring
kerosene on herself and setting herself on fire.

D The appellant was proceeded against for offences
under Sections 306 and 498A of IPC. The trial court
acquitted the appellant-accused. In appeal, the High
Court reversed the acquittal of appellant and held him
guilty on both the charges. Hence the present appeal.

E Dismissing the appeal, the Court

HELD: 1.1. P.W.19 the doctor who examined the
deceased (the appellant's wife) immediately after she was
brought to the hospital reported that according to the
appellant the deceased suffered the burn injuries from the
burning stove when she was preparing tea and bread.
F However, in the 313 CrPC questioning the appellant made
it clear that he did not make any such statement. If the
said statement is to be accepted then what remains is the
postmortem report, the evidence of the post mortem
G doctor P.W.15 and the recoveries made at the place of
occurrence, namely, kitchen (viz) the 20 litre can in
which about a litre of kerosene was found, the quilt and
pillows and a piece of cloth soaked in kerosene and the
clothes worn by the deceased which also smelled

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kerosene. The question of deceased having suffered burn injuries from the burning stove is ruled out by the own version of the appellant. [Para 6] [521-G-H; 522-A-B]

1.2. Considering the extent of burn injuries stated by the doctor in the postmortem report (viz.) the first degree burn injuries from top of the head up to the tip of the leg makes it clear that it could have been caused only by pouring kerosene from the cane over the head and by burning the person after that. The smell of kerosene oil in the clothes and other materials recovered at the scene of occurrence also fully support such a situation which could have only been inflicted by the deceased herself and, therefore, the conclusion of the High Court in having held that the deceased committed suicide cannot be found fault with. [Para 7] [522-C-E]

2.1. The consistent statements of PWs 3, 9 and 11 which disclose the complaint made by the deceased about the conduct of the appellant that he made a demand for money from her father apart from his illicit relationship with the second accused merits acceptance. P.W.3 stated that after some days of the marriage the appellant approached him and his son for a sum of Rs.40,000/-, that when PW 3 expressed his inability to make the payment the appellant left the place in a huff by stating that he knows how to get the money from him through his own daughter. P.W.3 also stated that the deceased herself informed him about the torture meted out to her by the appellant along with second accused for money when P.W.3 declined to pay any money to the appellant. P.W.3 further stated that the deceased also informed him about the illicit relationship of appellant with the second accused. The pledging of jewels of the deceased with P.W.17 was also proved by producing Exhibit 3 by which P.W.3 repaid a sum of Rs.11,000/- to P.W.17 to get back the jewels which were seized by the

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A police along with ornaments. P.W.17 in his evidence also confirmed that the appellant pledged the jewels with him. P.W.3 also identified the jewels which he gifted to his daughter at the time of the marriage which were recovered from P.W.17 and marked as Exhibit 1
 B (collectively). The receipts Exhibit 3 and 3A disclosed that the said jewels were pledged by the appellant for a sum of Rs.11,000/-. If those jewels really did not belong to the deceased the same could have been established only by the appellant by producing proper evidence before the
 C Court. Except mere denial in the 313 statement, the appellant failed to show that those jewels which were pledged by him did not belong to the deceased. [Paras 8,11] [522-F-H; 523-A-C; 524-D-E]

D 2.2. PW3 stated that though his daughter complained to him about the monetary demand as well as illicit relationship of the appellant with the second accused he did not inform the same to others except his close relatives fearing any damage that may be caused to the matrimonial life of his daughter which conduct of P.W.3
 E as a father of the deceased was quite natural. [Para 9] [523-D-E]

F 2.3. P.W.5 who is a relative of the deceased also stated that the deceased informed him once about the illicit intimacy of the appellant with second accused. P.W.10 who is stated to be the cousin of the deceased deposed that when she visited his house once after marriage she informed him that she did not like the environment of her matrimonial home and that the
 G appellant and second accused used to talk in code language. P.W.11 who is the neighbour of P.W.3, in his evidence also deposed that when the deceased visited her parental home on the occasion of Dwira Gaman Ceremony she informed him that she did not like the
 H relationship of the appellant with the second accused and

that appellant was demanding money from her father. P.W.11 further stated that deceased also requested him to tell her father not to give any money to appellant. P.W.11 also stated that according to the deceased she was not happy with the marriage. To the same effect was the version of P.W.12. [Para 10] [523-F-H; 524-A]

2.4. As rightly held by the High Court the father of the deceased cannot be expected to inform everyone living around him about the unpleasant factum of the daughter's embarrassing living condition in her matrimonial home and, therefore, mere non-disclosure of those facts to others cannot be a ground to disbelieve the version of P.W.3. No inconsistency was found in the evidence of P.W.3 and other witnesses who had the advantage of hearing from the mouth of the deceased about the conduct of the appellant relating to his demand, as well as, his illicit intimacy with the second accused. Nothing was suggested to any of the witnesses on behalf of the appellant to state that they were deposing against him with any other ulterior motive. [Para 12] [524-F-H]

3. The relevant criteria for application of Section 113A of the Evidence Act, 1872 is duly attracted to the facts of the instant case. The deceased (appellant's wife) committed suicide within 35 days from the date of her marriage and the allegation of cruelty was also fully established. The evidence thus disclosed that the conduct of the appellant vis-à-vis the deceased coupled with the consequential demand of money from P.W.3 the father of the deceased and also the pledging of the jewels of the deceased fully established the case of the prosecution that the deceased was instigated by the appellant to take the extreme decision of committing suicide by pouring kerosene on herself and set herself on fire and thereby the charge of abetment under Section 306 and as well as Section 498A stood proved. There is no merit in this appeal. [Paras 14] [526-E-G]

A *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618: 2001 (4) Suppl. SCR 247 and *Thanu Ram v. State of Madhya Pradesh (Now Chhattisgarh)* (2010) 10 SCC 353: 2010 (12) SCR 710 - relied on.

B *K. Prema S. Rao and Anr. v. Yadla Srinivasa Rao and Ors.* (2003) 1 SCC 217: 2002 (3) Suppl. SCR 339 and *Devi Lal v. State of Rajasthan* (2007) 14 SCC 176: 2007 (11) SCR 219 - cited.

Case Law Reference:

C 2001 (4) Suppl. SCR 247 relied on Para 4, 13

2002 (3) Suppl. SCR 339 cited Para 4

2007 (11) SCR 219 cited Para 4

D 2010 (12) SCR 710 relied on Para 15

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E From the Judgment & Order dated 24.12.2008 of the High Court at Calcutta in G.A. No. 27/1990.

Ravi Kumar Tomar, Amitava Acharjee, H.B. Tiwari, Smriti for the Appellant.

F Chanchal Kumar Ganguly, Avijit Bhattacharjee for the Respondent.

The Judgment of the Court was delivered by

G **FAKKIR MOHAMED IBRAHIM KALIFULLA, J.** 1. The first accused is the appellant. The appellant was proceeded against for offences under Sections 306 and 498A of IPC. The Trial Court acquitted the appellant and by the impugned order, the High Court while reversing the judgment of the Trial Court found the appellant guilty on both the charges and imposed the sentence of imprisonment of 10 years and also a fine of

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Rs.10,000/-, in default to suffer further one year rigorous imprisonment for the offence under Section 306 of IPC. He was also sentenced to suffer rigorous imprisonment for three years apart from fine of Rs.10,000/-, in default to suffer further rigorous imprisonment for one year for the offence under Section 498A of IPC. Both the sentences were directed to run consecutively. The High Court thus partly allowed the appeal of the State. The acquittal of the second accused, however, was confirmed by the High Court.

2. The case of the prosecution was that the appellant got married to the deceased Krishna as per Hindu rites and customs on 22.04.1987. The unfortunate incident of the death of the deceased Krishna occurred on 26.05.1987 when she was admitted to SSKM Hospital with severe burn injuries at 08.35 a.m. and she was declared dead at 08.37 a.m. In the hospital register it was noted by the doctor-P.W.19 that as per the statement of the appellant at 07.35 a.m. in the morning while the deceased was preparing tea and bread in the kitchen of the house she got burnt of the burning stove. However, according to the prosecution shortly after the marriage the appellant demanded a sum of Rs.40,000/- from the father of the deceased Krishna for the purpose of his business which was declined, that upset by the declining of his demand by the father of the deceased the appellant stated to have retorted then that he knew how to collect the money from his father-in-law through his wife, and that thereafter on 22.05.1987, the appellant pledged the jewels of deceased Krishna for a sum of Rs.11,000/-. The deceased Krishna was also stated to have been nurturing a grievance against the appellant about his illicit contacts with the second accused Anima who was none other than the niece of the appellant. The prosecution filed its final report before the Trial Court and, thereafter, the charges under Sections 306 and 498A of IPC were leveled against the appellant.

3. Learned counsel appearing for the appellant while

A assailing the judgment of the High Court submitted that the
 B postmortem doctor-P.W.15 stated that he was not able to come
 C to any definite opinion as to whether the death was homicidal,
 D suicidal or accidental. Therefore, the main ingredient for the
 E alleged offences against the appellant was not established by
 F the prosecution. Learned counsel then contended that the
 whole case was based on circumstantial evidence and that
 there was no circumstance to link the appellant with the death
 of the deceased. Elaborating his submission learned counsel
 contended that none of the ingredients for the offences under
 Section 306 as well as 498A of IPC was demonstrably placed
 before the court below by the prosecution and, therefore, the
 conviction and sentence cannot be sustained. He further
 contended that FIR was based on the complaint of P.W.3 which
 was not written by him, that the version of P.W.3, who was the
 father of the deceased, did not in any way disclose any factor
 or even remotely suggest that there was any abetment on the
 part of the appellant for the deceased to commit suicide. The
 learned counsel therefore contended that the acquittal made by
 the Trial Court was a well considered judgment and the
 interference with the same by the High Court was not justified.
 The submission of learned counsel for the appellant was that
 there was no evidence for abetment nor was there any evidence
 to show that the appellant caused any cruelty to the deceased
 in order to convict the appellant for the offences falling under
 Sections 306 and 498A of IPC.

4. As against above submissions the learned counsel
 appearing for the State contended that the death of the
 deceased occurred hardly within 35 days after her marriage
 with the appellant, that the ocular evidences of P.Ws.3, 9 and
 11 amply disclosed that within few days after the marriage the
 appellant made a demand for a sum of Rs.40,000/-, that the
 non-payment of the said money to the appellant and the
 subsequent pledging of the jewels of the deceased which was
 established by Exhibit 7 as well as evidence of P.W.17 showed
 that the demand of dowry was amply established. The learned

counsel submitted that the evidence of P.Ws.3, 9 and 11 disclosed that the deceased duly conveyed to both the witnesses the conduct of the appellant in having raised a demand for money apart from his illicit behaviour with his niece which ultimately resulted in the deceased taking the extreme decision of pouring kerosene and setting fire to herself. The learned counsel pointed out that the recoveries made at the place of occurrence such as kerosene cane, piece of cloth soaked in kerosene, the quilt and pillows and the wearing apparels of the deceased which had the smell of kerosene and the burn injuries suffered by the deceased amply proved that the deceased committed suicide and that such an extreme decision to commit suicide was pursuant to the constant instigation of the appellant to get money from the parental home of the deceased and also his illicit relationship with second accused. The learned counsel relied upon the decisions of this Court reported as *Ramesh Kumar v. State of Chhattisgarh* - (2001) 9 SCC 618, *K. Prema S. Rao and another v. Yadla Srinivasa Rao and others* - (2003) 1 SCC 217 and *Devi Lal v. State of Rajasthan* - (2007) 14 SCC 176.

5. Having heard learned counsel for the appellant as well as the learned counsel for the State and having perused the judgment impugned in this appeal and other related papers, at the very outset, it will have to be stated that there is no merit in this appeal.

6. The deceased died due to extensive burn injuries on her body which was fully established by the postmortem report as well as by the evidence of doctor P.W.15 who conducted the postmortem. The same is also not disputed by the appellant. In fact, P.W.19 the doctor who examined the deceased immediately after she was brought to the hospital reported that according to the appellant the deceased suffered the burn injuries from the burning stove when she was preparing tea and bread. However, in the 313 questioning the appellant made it clear that he did not make any such statement. If the said

A statement is to be accepted then what remains is the postmortem report, the evidence of P.W.15 and the recoveries made at the place of occurrence, namely, kitchen (viz) the 20 litre cane in which about a litre of kerosene was found, the quilt and pillows and a piece of cloth soaked in kerosene and the clothes worn by the deceased which also smelled kerosene. The question of deceased having suffered burn injuries from the burning stove is ruled out by the own version of the appellant.

7. Considering the extent of burn injuries stated by the doctor in the postmortem report (viz) the first degree burn injuries from top of the head up to the tip of the leg makes it clear that it could have been caused only by pouring kerosene from the cane over the head and by burning the person after that. The smell of kerosene oil in the clothes and other materials recovered at the scene of occurrence also fully support such a situation which could have only been inflicted by the deceased herself and, therefore, the conclusion of the High Court in having held that the deceased committed suicide cannot be found fault with.

8. If once the said conclusion is irresistible, what remains to be examined is what was the reason for the deceased to take that extreme decision to burn herself. For that purpose, when we examine the ocular evidence placed before the court below, we find the consistent statements of P.Ws.3, 9 and 11 which disclose that the complaint made by the deceased about the conduct of the appellant that he made a demand for money from her father apart from his illicit relationship with the second accused merits acceptance. P.W.3 stated that after some days of the marriage the appellant approached him and his son for a sum of Rs.40,000/-, that when P.W.3 expressed his inability to make the payment the appellant left the place in a huff by stating that he knows how to get the money from him through his own daughter. P.W.3 also stated that the deceased herself informed him about the torture meted out to her by the appellant

along with second accused for money when P.W.3 declined to pay any money to the appellant. P.W.3 further stated that the deceased also informed him about the illicit relationship of appellant with the second accused. The pledging of jewels of the deceased with P.W.17 was also proved by producing Exhibit 3 by which P.W.3 repaid a sum of Rs.11,000/- to P.W.17 to get back the jewels which were seized by the police along with ornaments. P.W.17 in his evidence also confirmed that the appellant pledged the jewels with him. P.W.3 also indentified the jewels which he gifted to his daughter at the time of the marriage which were recovered from P.W.17 and marked as Exhibit 1 (collectively).

9. The factum of the living of second accused in the very same house of the appellant was not in dispute and the same was also deposed by P.W.3. He further stated that though his daughter complained to him about the monitory demand as well as illicit relationship of the appellant with the second accused he did not inform the same to others except his close relatives fearing any damage that may be caused to the matrimonial life of his daughter which conduct of P.W.3 as a father of the deceased was quite natural.

10. P.W.5 who is a relative of the deceased also stated that the deceased informed him once about the illicit intimacy of the appellant with second accused. P.W.10 who is stated to be the cousin of the deceased deposed that when she visited his house once after marriage she informed him that she did not like the environment of her matrimonial home and that the appellant and second accused used to talk in code language. P.W.11 who is the neighbour of P.W.3, in his evidence also deposed that when the deceased visited her parental home on the occasion of Dwira Gaman Ceremony she informed him that she did not like the relationship of the appellant with the second accused and that appellant was demanding money from her father. P.W.11 further stated that deceased also requested him to tell her father not to give any money to appellant. P.W.11 also

A stated that according to the deceased she was not happy with the marriage. To the same effect was the version of P.W.12.

B 11. The High Court while examining the charge of abetment of the suicide committed by the deceased as well as cruelty meted out to her falling under Sections 306 and 498A of IPC made a detailed analysis of the above evidence and held that the charges were proved. Though the learned counsel for the appellant attempted to point out that there was no proof to show that the appellant pledged the jewels of the deceased, we are not in a position to appreciate the said contention for more than one reason. In the first place P.W.3 the father of the deceased identified the jewels which were recovered from P.W.17. P.W.17 himself confirmed that those jewels were pledged by the appellant with him. The receipts Exhibit 3 and 3A disclosed that the said jewels were pledged by the appellant for a sum of Rs.11,000/-. If those jewels really did not belong to the deceased the same could have been established only by the appellant by producing proper evidence before the Court. Except the mere denial in the 313 statement, the appellant failed to show that those jewels which were pledged by him did not belong to the deceased.

F 12. As rightly held by the High Court the father of the deceased cannot be expected to inform everyone living around him about the unpleasant factum of the daughter's embarrassing living condition in her matrimonial home and, therefore, mere non-disclosure of those facts to others cannot be a ground to disbelieve the version of P.W.3. We also do not find any inconsistency in the evidence of P.W.3 and other witnesses who had the advantage of hearing from the mouth of the deceased about the conduct of the appellant relating to his demand, as well as, his illicit intimacy with the second accused. Nothing was suggested to any of the witnesses on behalf of the appellant to state that they were deposing against him with any other ulterior motive. The fact remains that the deceased committed suicide within 35 days from the date of marriage, coupled with the

untrammelled evidence before the court below about the cruelty meted out to the deceased, fully established the guilt of the appellant of abetment to the deceased to commit suicide as well as the cruelty under Section 498A of IPC. A

13. In this context the reliance placed upon the decision of this Court by the counsel for the State in *Ramesh Kumar* (supra) can be usefully applied. In paragraph 12 of the said decision this Court, while explaining the application of Sections 107, 113A in regard to an offence falling under Section 306 IPC has held as under: B

"12. 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 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 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, C
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A 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.

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C 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."

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E 14. When we apply the said principle to the facts of the case, we find that the relevant criteria for application of Section 113A is duly attracted to the facts of this case. The deceased committed suicide within 35 days from the date of her marriage and the allegation of cruelty was also fully established. The evidence thus disclosed that the conduct of the appellant vis-à-vis the deceased coupled with the consequential demand of money from P.W.3 the father of the deceased and also the pledging of the jewels of the deceased fully established the case of the prosecution that the deceased was instigated by the appellant to take the extreme decision of committing suicide by pouring kerosene on herself and set herself on fire and thereby the charge of abetment under Section 306 and as well as Section 498A stood proved.

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H 15. In this respect the subsequent decision reported as

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Thanu Ram v. State of Madhya Pradesh (Now Chhattisgarh) A
- (2010) 10 SCC 353 can also be usefully referred to. In
paragraphs 26 and 27 this Court has explained the legal
position as under:

"26. In the Explanation to Section 113-A it has also been B
indicated that for the purpose of the said section, the
expression "cruelty" would have the same meaning as in
Section 498-A IPC. Accordingly, if the degree of cruelty
is such as to warrant a conviction under Section 498-A
IPC, the same may be sufficient for a presumption to be C
drawn under Section 113-A of the Evidence Act in harmony
with the provisions of Section 107 IPC

27. All the decisions on the point cited by Dr. Pandey, deal D
with the differences in relation to the provisions of Section
498-A and Section 306 IPC, except in Sushil Kumar
Sharma case, where the provisions of Section 498-A IPC
had been considered in the context of Section 304-B IPC.
In that context, it was sought to be explained that the big
difference between Sections 306 and 498-A IPC is that E
of intention. The provisions of Section 113-A of the
Evidence Act or its impact on an offence under Section
498-A IPC or Section 306 IPC vis-à-vis Section 107 IPC
was not considered in any of these decisions."

16. In the light of the above conclusion of ours, we do not F
find any merit in this appeal and the same is dismissed.

B.B.B.

Appeal dismissed.