

Bench: R Sethi, B P Singh

CASE NO.:

Appeal (crl.) 1 of 1995

PETITIONER:

GANANATH PATTNAIK

Vs.

RESPONDENT:

STATE OF ORISSA

DATE OF JUDGMENT: 06/02/2002

BENCH:

R.P. Sethi & Bisheshwar Prasad Singh

JUDGMENT:

SETHI,J.

The appellant was charged for the commission of offences punishable under Sections 304B and 498A of the Indian Penal Code for allegedly subjecting his wife to cruelty and causing the dowry death. After trial, the appellant was acquitted of the charge framed against him under Section 304B but convicted under Section 498A of the Indian Penal Code and sentenced to three years rigorous imprisonment. The appeal filed by the appellant against his conviction and sentence under Section 498A IPC was dismissed vide the judgment impugned in this appeal.

The facts of the case are that the appellant's marriage with Rashmirekha was solemnised on 4.3.1984. A male child was born to the parties on 9.5.1985. Rashmirekha, the wife of the appellant died by hanging herself in the bathroom regarding which the appellant is stated to have lodged a written report to the Police Station Sahid Nagar and he informed the family members of the deceased. PW1, the father of the deceased thereafter lodged an FIR alleging therein that his daughter was murdered by the appellant and his family members. During the investigation it transpired that the deceased had committed suicide on account of dowry demands, allegedly made by the appellant and his family members. It was further revealed that the deceased had been subjected to ill-treatment, harassment and cruelty. The appellant was alleged to be having illicit connection with his brother's wife. The accused totally denied the occurrence. In his statement, recorded under Section 313 of the Code of Criminal Procedure, he admitted that the deceased was his wife but asserted that he was having very cordial relations with her. There was no demand of dowry either by him or his brother or his family members. According to him the deceased had committed suicide which is not related to either cruelty or harassment or demand of dowry.

Upon analysis of the prosecution evidence, the trial court concluded that, "in absence of any acceptable evidence to establish the foundational fact, the accused cannot be held guilty for the offence under Section 304B of IPC". The trial court, however, found the appellant guilty for the offence under Section 498A IPC by finding: "In this case there is evidence that the accused has given purses to the deceased in presence of PW4. He has taken away the child from her as stated by PW5. There is also evidence that the deceased was not

allowed to sit on the scooter by the accused and he was frequently staying absent in the house. He also failed to explain his position in relation to his sister-in-law Bijayalaxmi to the deceased for which there was an impression that he had illicit relationship with Bijayalaxmi. I find the evidence of the witnesses on this score is consistent. Taking away the child and the further ill treatment of the accused to the deceased as indicated above amounts to cruelty in as much as by the said conduct of the accused, it could be much possible that the deceased Rasmirekha could be driven to commit suicide."

The aforesaid findings were confirmed by the High Court vide the order impugned.

It is conceded before us that no appeal or revision has been filed against the judgment of the trial court by which the appellant was acquitted of the charge framed against him under Section 304B of the Indian Penal Code.

We do not agree with the argument of the learned counsel for the appellant that even on proof of the aforesaid circumstances, as noticed by the trial court, no case was made out against the appellant as, according to him, those facts even proved do not constitute cruelty for the purposes of attracting the provisions of Section 498A of the Indian Penal Code. Cruelty for the purposes of aforesaid section has been defined under the Explanation of the Section to mean:

"(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing here or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

The concept of cruelty and its effect varies from individual to individual also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

Learned counsel for the appellant then submitted that the findings returned by the trial court regarding the cruelty within the meaning of Section 498A of the Indian Penal Code are not based on any legal evidence.

To hold that the accused had once given pushes to the deceased which drove her to commit suicide are based upon the alleged testimony of PW4 who is the mother of the deceased. We have minutely read the statement of the aforesaid witness and do not find any mention of her having seen the accused pushing the deceased which, in turn, could be held to be "cruelty" driving her to commit suicide.

Another circumstance of cruelty is with respect to taking away of the child from the deceased. To arrive at such a conclusion, the trial court has referred to the statement of PW5, who is the sister of the deceased. In her deposition recorded in the court on 4.5.1990 PW5 had stated:

"Whenever I had gone to my sister, all the times she was complaining that she is not well treated by her husband and in-laws for non-fulfilment of balance dowry amount of scooter and twin one."

and added:

"On 3.6.1987 for the last time I had been to the house of the deceased i.e. to her separate residence. Sworna, Snigdha, Sima apa, Baby Apa accompanied me to her house on that day. At that time the deceased complained before us as usual and added to that she said that she is being assaulted by the accused now-a-days. She further complained before us that the accused is taking away the child from and her, and that

her mother in-law has come and some conspiracy is going against her (the deceased). She further told that "MATE AU BANCHEI DEBENAHIN".

Such a statement appears to have been taken on record with the aid of Section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence under Section 304B and such statement was admissible under Clause (1) of the said section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498A of the Indian Penal Code and has to be termed as being only a hearsay evidence. Section 32 is an exception to the Hearsay Rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the Hearsay Rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused.

Another finding for recording the guilt of the accused is that once the deceased was not allowed to sit on the scooter by the accused and that he was frequently staying absent from his house. Learned counsel, appearing for the respondent, fairly conceded that no witness has stated to that effect and we feel that such a finding is not based upon any legal evidence.

The alleged relationship of the appellant with his sister-in-law is stated to be another circumstance which led the deceased to commit the suicide. Again there is no evidence on the record to hold that the deceased had conceived the apprehension of the appellant having illicit relations with his sister-in-law which led her to end the life. Learned counsel for the appellant has taken us through letters Exhibit A to F, stated to have been written by the deceased as admitted by PW4. In one of the letters the deceased is shown to have written to her mother stating:

"Please informed me when the result of Tutu shall be declared and also send the new address of Bada Bhai in the letter have told you have occasion not to spread bad rumour against the sister-in-law (wife of Kailash Patnaik) and not to discuss about her with anybody; can these discussions will at all lead to a better understanding, rather it will create more misunderstanding and aggravating the situation and which is already in vogue. I came to know that you are telling to others that she is not providing me proper food, allowing me to wear good cloth and giving ill-treatment. I want to know who has given you these false information about her and as I remember, have never discuss about this to you; it is wrong to presume that she is misbehaving me; but you have been getting wrong information about her from others. When it comes her knowledge that that you have made discussion

against her it creates rift and misunderstanding in our family; further I would like to bring your notice this is to report to her by those you discuss about her. Further why are you discussing with others regarding my stay; whether it is at village-home or at Bhubaneshwar. I have made number of fervent appeals to you not to make any bad discussion against her but you are not heeding to my advise and continuing same against her. By doing this, you are isolating me from rest of the family members."

(EMPHASIS SUPPLIED)

In view of the aforesaid letter it could not be held that the deceased had conceived an apprehension about the relationship of the appellant with his sister-in-law.

It follows, therefore, that there was no legal evidence tendered in the case which could be made the basis for returning a finding with respect to the alleged cruelty of the accused with the deceased. In the absence of any legal evidence produced in the case, we are of the opinion that the prosecution has failed to prove, beyond doubt, that the appellant had committed the offence under Section 498A of the Indian Penal Code and find that it is a fit case where he is entitled to be given the benefit of doubt.

In view of our finding that there is no legal evidence to connect the accused with the commission of the offence under Section 498A of the Indian Penal Code, this appeal is allowed by setting aside the impugned judgment of the High Court as also of trial court. Giving him the benefit of doubt, the appellant is acquitted of the charge under Section 498A of the Indian Penal Code. His bail bond stands discharged.

.....J.

(R.P. Sethi)

.....J.

(Bisheshwar Prasad Singh)

February 6, 2002