

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl A(AS) No. 19/2019

State of J&K

.....Appellant(s)/Petitioner(s)

Through: Mr. Dewakar Sharma, Dy. AG

Vs

Tariq Hussain

..... Respondent(s)

Through: Mr. Sidhant Gupta, Advocate.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

(ORAL)

1. This appeal has been directed against judgment dated 24.05.2019 propounded by learned Additional Sessions Judge Kathua (for short, trial Court), vide which, respondent has been acquitted of charges under Sections 306/498-A RPC in FIR No. 57/2008 of Police Station, Basohli.
2. Before a closer look at the grounds urged in the memo of appeal, it shall be apt to have an over-view of the background facts of the case.
3. On 22nd of June 2008 at about 2.15 am, an information was received from Basohli hospital that one Mumtaz Begam W/o Tariq Hussain R/o Plahi Morah, Dayara Tehsil Basohli Distt. Kathua was admitted in the hospital as a burn case. On this H/C Rattan Singh was deputed for recording the statement of victim, whereupon, statement of the victim was recorded, which was duly attested by the Medical Officer. The victim stated that she was married to Tariq Hussain

(respondent) about 2½ years ago, but was not blessed with any issue. She was putting up separately and was not living with her parents in-laws. Her husband had gone out for labour, who gave her a phone call at 12 o'clock in the night, she requested him to come back but he refused and asked her to go from where she had come. This annoyed the complainant. She doused kerosene oil and set herself ablaze. It is pertinent to mention that complainant also stated in her statement that it was only her husband who was responsible and made her to take the extreme step to end her life and no other person was responsible. Subsequently, the victim was referred to GMC, Jammu, however, she succumbed on way to the hospital.

4. It was on the basis of this statement that FIR No. 57/2008 for offences under Sections 306/498-A RPC came to be registered against the respondent. The investigating agency completed rituals of investigation and it culminated into filing of final report in terms of Section 173 Cr.P.C. The accused was charged by the trial Court for offences under Sections 306/498-A RPC, whereby he pleaded innocence and claimed trial, promoting the trial court to ask for the prosecution evidence. Prosecution has examined as many as 14 witnesses.

5. For the sake of brevity, instead of giving a detailed resume of the prosecution evidence, the relevant excerpts of the testimonies of the prosecution witnesses shall be referred as, when and where required.

6. Learned trial court has marshalled and appreciated the prosecution evidence to conclude that prosecution case is bad for want of substantive independent evidence and prosecution has also failed to prove the abetment on the part of the respondent. Learned trial court has observed that it is a case of suicide and therefore, respondent was acquitted of the charges.

7. The appellant state has questioned the impugned judgment *inter alia* on the grounds that learned trial court has failed to appreciate the prosecution evidence in right prospective, as there was sufficient documentary and oral evidence available on the file to sustain conviction.

8. Having heard the rival contentions and perused the impugned judgment, I concur with the findings recorded therein for the following reasons.

9. First and foremost, delay in recording the statements of prosecution witnesses has weighed the trial court to turn the tables against the prosecution. The occurrence in the present case took place on 22.06.2008 and statements of the witnesses under Section 164 CrPC have been recorded on 14.01.2009 i.e about six months after the occurrence. The investigating officer alone could explain the inordinate delay but he has not been examined by the prosecution, which is sufficient to dislodge the prosecution case.

10. On the legal front, respondent has been charged, *inter alia*, with the alleged commission of offence under Section 306 RPC i.e. abetment to suicide. It reads thus:

“Abetment of suicide

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

11. It is evident from a bare perusal of afore-quoted provision that Section 306 RPC conceives abetment to suicide in the terms and meaning of abetment as understood in Section 107 RPC, which reads as below:

“Abetment of a thing

A person abets the doing a thing, who-

Firstly-Instigates any person to do that thing; or

Secondly-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

Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing.

.....
”

12. From a plain reading of Section 107 RPC, it is manifest that to constitute the abetment of an offence, intentional aid and active participation of the abettor must be established. In other words, the prosecution is obliged to prove the intentional aid and active participation of the abettor.

13. It is also evident that a person who instigates any person to do a particular thing or engages with one or more other person or persons in any conspiracy for the doing of that thing and if an act or illegal omission takes place in pursuance of that conspiracy and in order to doing of that thing, he intentionally aids, by any act or illegal omission, the doing of that thing, he shall be liable for abetment of a thing. Therefore, the pristine question which arises for consideration in the present case is whether the respondent is guilty of instigating or engaging with anybody in any conspiracy or intentionally aiding by any act or illegal omission, the victim to commit suicide.

14. In a case of abetment to suicide, the entire matter would be clothed in secrecy and it would be very difficult to collect direct evidence with regard to it. However, at times, circumstances attending the case, would be more significant than direct evidence by establishing culpability of the accused. Reverting to the case on hand, the prosecution case primarily hinges on the dying declaration of the victim. The victim in the dying declaration has only stated that her husband gave a phone call at 12 O'clock in the night, she requested her husband to come

back, but he refused and asked her to go from where she had come. It is evident from the utterance of the respondent that there was neither any intention on his part nor any positive act taken by him to instigate the victim or to aid her in the commission of suicide. It appears that his intention was only to get rid of the victim and he could not have thought of any consequences that his wife would be go and commit suicide due to such utterances. The ultimate decision taken by the victim in the present case cannot be said to have a direct nexus with the alleged acts committed by the respondent. Therefore, it cannot be said that the commission of suicide by the victim in the present case was the proximate result of the words uttered by the respondent at the relevant point of time, therefore, essentials of the offence under Section 306 RPC constituting abetment are not made out.

15. Be that as it may, star witnesses, in the present case, are parents of the victim. PW-15 Sardara Begam, who happens to be the mother of the victim has introduced altogether a different story by stating that respondent used to beat the deceased because he had illicit relations with his brother's wife due to which their relations were not cordial. She came to know from someone that accused had brought a pesticide, namely Novon with an intention to kill her daughter. She further stated that it was respondent, who put the deceased on fire and the deceased did not commit suicide. Neither testimony of the mother of the deceased, PW-Sardara Begum has been supported by any other prosecution witness, not it the prosecution case. On the contrary, PW-Alam alias Ghulam Hussain, father of the deceased has stated that he came to know from some unknown person in the morning of 22nd of June, 2008 that her daughter had been killed by her husband. He further stated that he was told by the victim that her

husband had illicit relations with her brother's wife namely, Mst. Neesma and she caught them red handed. He also stated that his daughter told him that her mother in law was sarcasting that she was issueless. Again all these facts with respect to illicit relations of the victim with the bother of the respondent is neither the prosecution story nor stated by the victim in her dying declaration. It is evident from the perusal of the testimony of both the star witnesses of the case, who happens to be the parents of the deceased, that they have tried to project it as a case of murder and not suicide as claimed by the prosecution.

16. It is pertinent to note that all independent witnesses examined by the prosecution have rather stated that relations between the couple i.e. accused/respondent and the deceased were cordial and she was leading a happy matrimonial life, however, the victim was short-tempered and used to pick quarrels on trivial issues. Contrary to the statements of parents of the victim, PW Satpal, Kouser Ali and Ashwani Kumar have testified that victim committed the suicide because she got annoyed and set herself ablaze.

17. Therefore, on careful scrutiny and critical examination of the facts and circumstances of the present case, in the light of legal position of law, there is no evidence or material on record wherefrom an inference of respondent having abetted the commission of offence of committing suicide by the deceased may be drawn. There is nothing on record to suggest that respondent ever intended or actively participated to abet the commission of suicide by the deceased, therefore, offence under section 306 IPC is not made out and observation of learned trial court in this regard cannot be faulted with.

18. Respondent has also been charged with the commission of offence under Section 498-A RPC, which reads as under.

“A. Husband or relative of husband of a woman subjecting her to cruelty_ whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation, _ for the purpose of this section ‘cruelty’ 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 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”.**

19. From a perusal of the aforesaid provision, it is manifest that consequence of cruelty, which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman, are required to be established in order to bring home application of the aforesaid provision.

20. It no longer remains res integra now that mere harassment or mere demand for dowry by itself is not cruelty. The definition of cruelty contained in explanation to section 498-A, consists of two parts. Clause (a) relates to wilful conduct, which is of such a nature as to drive the woman to commit suicide. The second part contained in Clause (b) relates to harassment of women with a view to coercing her to meet an unlawful demand for any property etc. Therefore, reasonable nexus has to be established between the cruelty within the meaning of explanation (a) of Section 498-A and the suicide within the meaning of section 306 RPC. However, prosecution has failed to establish any such nexus. As already discussed, all independent witnesses examined by the prosecution have testified in clear terms that not only the relation between the couple viz; the respondent and deceased were cordial, but they were leading a happy married life. Even parents of the victim have not stated in clear terms that deceased was

subjected to cruelty at the hands of the respondent or her in-laws which was of such a nature, as was likely to drive the deceased to commit suicide within the meaning of explanation (a) of 498-A RPC. The independent witnesses have testified, rather in clear terms, that victim was short tempered and used to pick quarrels on trivial issues. They have also stated, without mincing words, that when respondent told her to go from where she had come, she got enraged and took the extreme step. Therefore, offence under Section 498-A RPC is also not made out.

21. What comes to the fore, from the conspectus of the prosecution case is that the deceased was hyper sensitive to ordinary petulance of matrimonial life. There may be various instances of matrimonial discord between husband and wife and at times wife being constantly taunted and subjected to sarcastic remarks in the house of her in-laws may be driven to commit suicide. However, such instances are normal wear and tear of a matrimonial life. In my opinion mere harassment of a wife by her husband or in-laws due to matrimonial discord or sarcastic remarks *per se* does not attract Section 306 RPC. The courts in such circumstances are expected to assess facts and circumstance of the case as also evidence adduced by the prosecution during the trial with care and circumspection in order to determine whether cruelty alleged to have been meted out to the wife in fact induced her to end her life by committing suicide. If the present case is approached with this principal in mind, there is absolutely no doubt that unfortunately the deceased took the extreme step to end her life on account of misunderstanding with her husband, the respondent. There is nothing in the prosecution evidence to suggest that respondent ever intended or participated to abet committing of suicide by the deceased.

22. Having regard to what has been observed and discussed above, I do not find any illegality much less perversity in the impugned judgment of acquittal which is otherwise being well reasoned and lucid is liable to be upheld. Consequently, the present appeal is dismissed and impugned judgment is upheld.

23. Respondent is relieved of his bail bonds.

(Rajesh Sekhri)
Judge

Jammu
15.06.2023
Javid Iqbal

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes

