

Ashok Goyal Vs State

Court: Delhi High Court

Date of Decision: April 26, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Evidence Act, 1872 â€” Section 113A

Penal Code, 1860 (IPC) â€” Section 107, 109, 304B, 306, 498A

Citation: (2012) 1 Crimes 542 : (2011) 185 DLT 339 : (2011) 3 JCC 1592 : (2011) 3 RCR(Criminal) 772

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Anil Soni, Sanat Kumar and Poonam Gulia, for the Appellant; Pawan Bahl, APP, for the Respondent

Final Decision: Allowed

Judgement

Mukta Gupta, J.

On 15th September, 1989, an information was received at P.S. Ashok Vihar that a woman namely Pramila Goyal and a boy Amit were found dead with burn injuries at house No. A-102, Phase-I, Ashok Vihar. The mother of the deceased Smt. Parkash Wati,

Complainant met W/SI Preeti Arora and gave a statement that her daughter was married to one Ashok Goyal s/o late Keshav Nath Goyal,

resident of Gurgaon on 8th December, 1978 and they had a son namely Amit aged nine years. Her daughter deceased Pramila was living on rent

at the abovementioned house for the last eight years and her husband used to live sometimes at Ashok Vihar and sometimes at Gurgaon. She

further stated that her deceased daughter used to often complaint to her that her husband, mother-in-law, sisters-in-law and their husbands were

not treating her properly. On that day, at about 2.30 p.m. somebody telephoned her and informed her that her daughter and grandson Amit had

died due to burn injures and she along with her daughter-in-law immediately reached Ashok Vihar. She found both of them in a burnt condition.

Her daughter had left a note which was shown to her by the police signed by her deceased daughter in which she had written that her husband,

mother-in-law, sisters-in-law and their husbands are responsible for her death. On the basis of this statement Ex.PW2/A and the suicide note

Ex.P1, a case FIR No. 281/1989 Ex.PW2/B u/s 498A/306 IPC was registered at P.S. Ashok Vihar. After around 15 days when the house was

opened, PW1, the brother-in-law of the deceased recovered another note Ex.PA dated 15th September, 1989 written by the deceased. The said

note reads as under in vernacular (Hindi):

Main Pramila Goyal, police va duniya ko yeh batana chahti hoon ki hum dono ki maut ke zimedaar mere pati, saas, paanchon nandein va nandoi

hain. Meri shadi ko takriban Das sall ho gayen hain magar mere pati meri va mere bÃ-Ã½te Amit ki zimedaari nahin uthate hain. Ve shuru se hi yahin

kahtein hain ke unki zimedaari unke maah baap va bahnnon ki hai. Jab se mere pati ki do bahne va unke pati Gurgaon rahne lagin hain tab se hi in

sab logon ke atyachar bad gaye. Agar biwi bachon ki zimedaari pati ki nahin hot to unhone shadi hi kyon kit hi. Saas va nandon ne kabhi hum

dono ki banne nahin di. Meri pati va saas, nandon tatha nandoion ne mujhe itna mentally, physically va financially torture kiya hai ki ab main haar

gayee hoon.

Maine har koshish inse nibhane ki koshish ki. In logon ne bade bÃ-Ã½te Rajesh ki bahu ke saath bhi yahi kiya tha magar usne jaldi hi talak le liya tha.

Meri saas nanden jaadu tona bhi karti hain. Yeh baat Ashok Goyal jaante hain aur apne kanon se sun chuke hain. Main chahti hoon ki jis tarah

maine va Amit ne Das sall tak dukh uthaye hain usi tarah inke bache bhi uthayen. Mera saara istradhan, muhdikhai tatha sagai mein jo cash diya

thaw o sab meri saas ke pass hai. Mere marne ke baad mere ghar ka saara saman, bankon ka paisa va zavar mere maan bhai ko de diya jaye

kyonki Ashok Goyal ke paion ki ek bhi cheez nahin hai. Main phir ek baar vinti karti hoon ki mere pati, saas, nandon va nandoion ko choda na

jaaye aur mere saath insaaf kiya jaaye. Main to insaaf nahin dekhoongi magar duniya zaroor dekhegi. Meri makaanmalkin Kulwant Kaur aur

Nagpal va uski deno betiyon ne do mahino mein he itna mentally atyachar kiya hai ke main dukhi ho gayi. Makaan mallikon ko kisi ki majburi ka

najayaz fayada nahin uthana chahiye.

2. After recording statements of the witnesses and on receipt of the opinion of the CFSL as regards the handwriting on the suicide note, a charge-

sheet was filed against the Appellant, his mother Rajkumari, Sisters Pushpa Mittal, Shobha Jain, Veena Bansal, Manju Gupta, Kusum Gupta and

their husbands, Ram Avtar Mittal, Vinod Jain, Dinesh Kumar, S.S. Gupta and Khem Chand. Charges were framed against all the accused persons

for offences punishable u/s 498A/306 IPC. After recording all the prosecution evidence, statements of the accused u/s 313 Cr. P.C. and the

defence evidence, all the other accused except the mother-in-law of the deceased who died during the trial and the Appellant herein were

acquitted. The Appellant was convicted for the aforementioned offences and awarded a sentence of Rigorous Imprisonment for two years with a

fine of `10,000/- and in default thereof, to further undergo Simple Imprisonment for six months for offence u/s 498A IPC and Rigorous

Imprisonment for seven years with fine of `10,000/-and in default thereof to under Simple Imprisonment for six months for offence u/s 306 IPC.

This judgment and order on sentence is impugned in the present appeal.

3. Learned Counsel for the Appellant contends that neither in the two dying declarations Ex. P1 and PA, nor in the testimony of three witnesses i.e.

PW1 Vinod Kumar, brother-in-law of the deceased; PW 3 Mridula Gupta, sister of the deceased and PW 4 P.K. Gupta, the brother of the

deceased, there is any allegation of any willful conduct which would have caused harassment to the extent of driving the deceased to commit

suicide or cause any danger to her life or limb. In the two dying declarations and the testimony of the witnesses, there is no allegation of omission or

commission of an act on the part of the Appellant which would amount to an instigation to commit suicide. Learned Counsel for the Appellant

contends that taking the evidence of the prosecution on its face value and believing the same to be proved, the only allegation is that the Appellant

did not take care and failed to fulfill his responsibilities towards his wife and child and only fulfilled his duties towards his mother and sisters. Such

an allegation cannot amount to harassment of the kind which would drive a woman to commit suicide. The allegations leveled are vague. Even the

brother and the sister of the deceased have only stated that she was being harassed by her husband and in-laws. Reliance is placed on Mankamma

Vs. State of Kerala, For a married life spanning for more than 10 years, no specific incident of harassment has been given. It is contended that a

cumulative reading of the prosecution case shows that firstly the Appellant did not give importance and weight age to the deceased but to his

mother and sisters. Secondly, the mother-in-law and sisters-in-law were doing some black magic and the husband was not taking any action

thereon. Thus, the Appellant could not be held guilty for offences punishable u/s 306 IPC or Section 498A IPC. Relying on Sohan Raj Sharma Vs.

State of Haryana, it is contended that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the

commission of suicide which is absent in the present case. The presumption as available u/s 113A of the Evidence Act is not applicable in the

present case as the parties were married for more than nine years. The fact that she had no money is discredited by her dying declaration wherein

she states that all her household articles, money in the bank accounts and jewellery be given to her brother as they did not belong to the Appellant.

Thus, she had sufficient funds and resources with her. It is apparent that due to depression she became revengeful. Her mental depravity was to the

extent that she not only took her life but also the life of her 9 years old child.

4. It is further contended that there is no allegation that the deceased was thrown out of the matrimonial home at Gurgaon. From her dying

declarations and the statements of her brother and sister, it is clear that she left the matrimonial home within 11/2 to 2 years of marriage of her own

will and was living in an independent home with the Appellant. The statements of the witnesses and the dying declaration clearly show that not only

the deceased did not want to take any responsibility of the old aged mother-in-law but she did not even approve of her husband taking care of her

mother-in-law. The case of the prosecution is at best a normal trivial household difference caused due to the Appellant going to Gurgaon to his

mother. Reliance is placed on Bhagwan Das Vs. Kartar Singh and Others, and Nagesh Tyagi v. State 2000 III AD DHC 114 to contend that

disputes on trivial issue with the husband does not make him liable for offences punishable u/s 498A and 306 IPC. The statements of the

prosecution witnesses and the dying declaration prove the statement of the Appellant given u/s 313 Cr. P.C. that he was living at Gurgaon for the

last five months as his mother was not well and after the younger sister's marriage which was performed 4-5 months ago, there was no one to look

after his ailing mother. The Appellant regularly paid the rent and maintenance expenses to deceased by cheque through Saving Account No. 8953,

Sate Bank of Bikaner & Jaipur, Faiz Road, Karol Bagh, Delhi from April 1989 onwards. Prior to this, he paid the rent to the landlord and

maintenance to the deceased in cash. The fact that the Appellant was maintaining the two of them is evident as the son was studying in a good

public school of Delhi i.e. D.P.S., Mathura Road and there was money in the various bank accounts of the deceased. From the alleged dying

declaration Ex.PA, it is apparent that soon before her death, the deceased was harassed by her landlady and her two daughters who were taking

undue advantage of her position and causing mental harassment. Since she was sad for this reason, she committed suicide. Thus, the proximate

reason for committing the suicide was not the conduct of the Appellant but that of the landlady and her two daughters. It is thus prayed that the

Appellant be acquitted.

5. Learned APP for the State on the other hand contends that, two suicide notes Ex. P1 and PA clearly depicts that the Appellant was very often

residing with his mother at Gurgaon and did not take any responsibility of his wife and child. Merely paying rent or giving school fees of the child

does not absolve him of his responsibilities towards his wife and son. The suicide notes have been duly proved to be in the handwriting of the

deceased by the testimony of PW 1, PW3 and PW4 and the CFSL report Ex. PW9/A. PW3 in her testimony has stated that whenever her sister

met her, she complained about the harassment meted out to her by all the accused persons. Similarly, PW 4 has also stated that whenever his sister

met him, she used to say that she was not being cared by her husband Ashok and was not given money for expenditure by him. She also used to

say that she was taunted by her husband, mother-in-law and sisters-in-law and obscene calls were made to her by the husband of her sister-in-

law. The mention about the landlady and her two daughters in the dying declaration is only to the extent that they were taking advantage of her

situation for the last two months and these allegations do not amount to abetment of suicide. It is thus prayed that the appeal be dismissed being

devoid of any merit.

6. I have heard the learned Counsel for the parties and perused the records. The evidence against the Appellant besides the two dying declarations

Ex. P1 and PA which have been re-produced above is the testimony of the three witnesses, PW 1, the brother-in-law; PW2 Sister and PW 4, the

brother of the deceased. PW 1 Vinod Kumar in his testimony has only deposed about the recovery of the suicide note Ex. PA on the 29

September, 1989 and has identified the handwriting of the deceased on the same. PW3 Smt. Mridula Gupta, the sister of the deceased who was

residing in Ashok Vihar itself, thus nearest to the deceased has stated that the Appellant used to reside sometime at Gurgaon and sometime at

Ashok Vihar. Besides identifying the handwriting of the deceased on the suicide note Ex.P1; the only statement which she made before the Court

with regard to the allegations against the Appellant is that whenever her sister used to meet her she complained about the harassment meted out to

her by all the accused persons who were present in the Court. This statement is very vague and general in nature. There is no specific allegation

against the Appellant. The kind of harassment meted out to the deceased has also not been explained. PW 4 Sh. P.K. Gupta, the brother of the

deceased who besides identifying the handwriting of deceased at Ex.P1 has stated that whenever his sister met him she used to say that she was

not being take care of by her husband Ashok and she was also not given money for expenditure by him. She also stated that she was taunted by

her husband, mother-in-law, sisters-in-law and also used to receive obscene calls from the accused Ram Avtar Mittal, the brother-in-law of the

Appellant. Thus, from the perusal of the evidence of PW3 and PW4 and the two suicide notes Ex.P1 and PA, the handwriting on which has been

duly proved by the PW1, PW3, PW4 and the CFSL report Ex.PW9/A which opines that the signatures on suicide notes were that of deceased

and matched with that on the report-card of her son, the only allegation against the Appellant is that he did not take care of his wife and son but

was taking care of his mother. The other allegations that she was harassed, taunted is too general in nature. Neither any specific date of harassment

nor the kind of harassment or how she was treated badly has been stated by the witnesses. Living with ailing mother to look after her for the last 4-

5 months as the youngest sister of the Appellant got married and there was no one to look after her, cannot be a willful conduct of such a nature as

is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb of health whether mental or physical. The said

conduct cannot also be termed as an act or omission which would abet the commission of suicide. Their Lordships in *Sohan Raj Sharma v. State*

of Haryana, (supra) held:

6. Learned Counsel for the Appellant submitted that letter Ex.PX in no way establishes that the Appellant had abetted the suicide. As a matter of

fact, the fact that the deceased took the lives of two innocent children and then committed suicide without any doubt establishes that she was

mentally unsound. The letter at the most describes the accused as a sexual pervert, but his behaviour, if any, cannot be taken to be an act of

abetting the suicide. It is pointed out that in Ex Px she has clearly stated that she wanted to take Appellants' life.

7. Learned Counsel for the Respondents-State on the other hand supported the judgment of the courts below. Section 306 IPC deals with

abetment of suicide. The said provision reads as follows:

306 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.

8. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it

would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or

aiding the doing of a thing it required before a person can be said to be abetting the commission of offence u/s 306 of IPC.

9. In *State of West Bengal Vs. Orilal Jaiswal and another*, his Court has observed that the courts should be extremely careful in assessing the facts

and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in

fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary

petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and

differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court

should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

10. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A

person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any

conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to

complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The

abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act

abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be

punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the

offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence

11. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact

that the husband treated the deceased-wife with cruelty is not enough. In *Bhagwan Das v. Karta Singh & Ors.* (supra) it was held:

12. Similarly, in *Mahendra Singh Chotelal Bhargad Vs. State of Maharashtra and Others*, it was observed by this Court that it is common

knowledge that the words uttered in a quarrel or in the spur of the moment or in anger cannot be treated as constituting mens rea. In that case the

Appellant said to the deceased "to go and die". As a result of such utterance, the deceased went and committed suicide. However, the Supreme

Court observed that no offence u/s 306 IPC read with Section 107 IPC was made out because there was no element of mens rea.

13. In *Randhir Singh and Another Vs. State of Punjab*, it was observed that "more active role which can be described as instigating or aiding the

doing of a thing is required before a person can be said to be abetting the commission of offence u/s 306 IPC.

15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a

wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section

306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107

IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due

to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide. Vide Kans Raj

Vs. State of Punjab and Others, Satvir Singh and Others Vs. State of Punjab and Another, , Smt Shanti and Another Vs. State of Haryana,

7. Looking at the allegation in totality, this would at best be a case where the Appellant deserted his wife and did not take care of her and their

child. The same cannot be an act of omission or commission on the part of the husband so as to instigate her to commit suicide nor can such an act

be said to be an act of cruelty which may drive a woman to commit suicide or cause injury or harm to body or limb. The Appellant is thus entitled

to be acquitted of the offences charged i.e. Sections 306/498A IPC. The impugned judgment is set aside. The appeal is, accordingly, allowed. The

bail bond and the surety bond of the Appellant are discharged.