

(2009) 07 DEL CK 0399

Delhi High Court

Case No: Criminal Appeal No. 160 of 1998

State

APPELLANT

Vs

Naresh Chand and Others

RESPONDENT

Date of Decision: July 20, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Evidence Act, 1872 - Section 113, 113A
- Penal Code, 1860 (IPC) - Section 107, 302, 306, 34, 498A

Citation: (2009) 2 DMC 771**Hon'ble Judges:** Mool Chand Garg, J**Bench:** Single Bench**Advocate:** Arvind K. Gupta, for the Appellant; K.K. Sud and Kiran Bairwa, for the Respondent**Final Decision:** Dismissed

Judgement

Mool Chand Garg, J.

This order shall dispose of an appeal filed by the State against the judgment dated 22.04.1997 of the Additional Sessions Judge in Sessions Case No. 133/88, which is committed to the Court of Sessions by the Metropolitan Magistrate concerned on the basis of a challan filed by the Police officials of Police Station Mandir Marg after investigating FIR No. 252/1983 u/s 306/34 IPC. The learned Additional Sessions Judge vide impugned judgment held that the suicide note Ex.P4 completely demolishes the prosecution case and exonerates all the accused persons of the charges framed against them and as a result the prosecution has failed to prove its case beyond reasonable doubt. Accordingly, the learned Additional Sessions Judge has acquitted all the accused persons of the charges framed against them by giving them benefit of doubt.

2. There is no dispute between the parties that deceased Suman, who was married to respondent No. 1 on 29.5.1983, committed suicide on 21.7.1983 i.e. within three months of her marriage. It is the case of the prosecution that during that short period she was harassed for not bringing adequate dowry and demands for bringing more dowry were made on her by the accused persons and therefore, they instigated/abetted her to commit suicide and as such they are guilty of an offence u/s 306/34 IPC.

3. At the outset, it may be observed that this is a case prior to coming into force of the amended provisions as contained u/s 498-A IPC as well as u/s 113A of the Evidence Act.

4. In support of their case, the prosecution has examined as many as 19 witnesses. The prosecution witnesses have reiterated what they have stated u/s 161 Cr.P.C. that is to say that they all corroborated their statements to the effect that the deceased was harassed for not bringing adequate dowry and this was the reason for her having committed suicide and therefore, made accusations against the accused persons to the effect that the accused persons/respondents instigated and abetted the deceased for committing suicide and therefore, they were liable to be punished u/s 306 IPC. However, they could not withstand the cross-examination.

5. Taking into consideration the evidence which came on record and after hearing the parties, the Additional Sessions Judge found that the evidence led on behalf of the prosecution is not reliable to hold that it is a case where the accused persons either instigated or abetted the deceased to commit suicide. The learned Additional Sessions Judge in this regard has observed as under:

44. The presumption of abetment of suicide is available to the prosecution u/s 113(a) of the Evidence Act, stands rebutted by the suicide note Ex.P4 which gives a totally different version. In the suicide note Ex.P4, the deceased has clearly stated that she will not like to suffer throughout her life by living with accused-Naresh as she cannot live happily because he is a person of 16th Century having conservative views and there is no meeting of mind between her and accused-Naresh. Accused Naresh is also not sensitive to the desires of Suman-deceased and in these circumstances, she unfortunately ended her life by committing suicide. To my mind, by any stretch of imagination, accused persons cannot be convicted u/s 306/34 of the IPC even with the aid of Section 113(a) of the Evidence Act. In taking the aforesaid view, I rely upon recent judgment of Hon"ble Supreme Court of India, reported in 1996 SCC (Criminal) 244, wherein a case of abetment of suicide the oral testimony of demand of dowry and consequent ill treatment of the deceased by her in-laws has not been accepted in the face of the letters written by the deceased to her parents and sister wherein it was not indicated that she had been taunted and humiliated on account of dowry demand. The Hon"ble Supreme Court has observed in the aforesaid case that the deceased was quite young and yet to be seasoned with discord and unpleasantness in social intercourse and not yet gaining the practical wisdom and capability of

adjustment against petulance and disharmony, became very sensitive and lost the normal frame of mind, which might have induced her to end her life before it could fully blossom.

45. In the light of the aforecited judgment, I conclude that the oral evidence led by the prosecution of harassment of the deceased on account of inadequate dowry, cannot be accepted in the face of suicide note Ex.P4 produced by the prosecution itself, which gives a clean chit to the parents of accused-Naresh, who are also accused in the present case. What all is stated about against accused-Naresh in the suicide note, does not amount to abetment of suicide. To arrive at the aforesaid conclusion, I draw support from the judgment of the Hon'ble Supreme Court reported in AIR 1975 SC Page 175, wherein it has been held that in order to constitute abetment, the abetter must be shown to have "intentionally" aided to the commission of the crime. Mere proof that a crime charged could not have been committed without interposition of the alleged abetter, is not enough compliance with the requirement of Section 107 IPC.

6. Suicide Note Ex.P4 is also reproduced hereunder for the sake of reference:

Father

I could not live happily here during my life time. The reason is his (husband's) nature. I have no grievance against his parents. They did not say anything to me. It was difficult to live with him (husband). I found him as person of 16th Century having conservative views. There was no meeting of mind between him and me. A girl like me would not like to suffer throughout life with him, who has responsibilities upon him. He did not appreciate my desires because of his adamant attitude.

7. The learned Counsel for the State has submitted that it is a case where allegations made against the accused persons by the prosecution witnesses makes out a case of treating the deceased with cruelty within seven years of her marriage and her death is unnatural and therefore, it is a case where presumption ought to have been drawn u/s 113A of the Evidence Act, which has retrospective operation.

8. However, having gone through the evidence which has come on record and the appreciation of the evidence done by the trial court, I find that the impugned judgment of acquittal passed by the learned Additional Sessions Judge does not call for any interference by this Court. In this regard, I may note down some of the observations made by the learned Additional Sessions Judge in the impugned judgment while appreciating the evidence of the witnesses relied upon by the prosecution.

27. It has come in the evidence of K.R. Lata, PW2, Ram Niwas PW9, father of the deceased, and in the evidence of S.I. Ranbir Singh, PW18, the Investigating Officer, that one letter Ex.P4 was taken into possession from the spot. It has also come in

the evidence of PW9-Ram Niwas that he had handed over to the police one printed form of J.B.T. Institute, Ex.PW9/C having the writing of the deceased, which was sent for comparison along with other handwritings Ex.PW9/DA, DB and DC of the deceased....

32. Thus I have no hesitation to hold that the suicide note Ex.P4 (produced by the prosecution) was written by the deceased in her bedroom, which gives a real cause of death.

Abetment of Suicide-Presumption:

33. Learned Addl. P.P. for the State submits that PW2-K.R. Lata, PW3-Shanti Devi, the neighbourers, PW9-Ram Niwas, father of the deceased, PW8-Smt. Shanti Devi, mother of the deceased, mediator of the marriage, PW4-Girdhari Lal, PW8-R.D.Bhardwaj, uncle of the deceased and PW10-Anil Kumar have consistently deposed that Suman-deceased was being harassed by the accused persons on account of inadequate dowry and that the accused persons were demanding colour TV and clothes for the relatives.... PW2-K.R. Lata has admitted in cross-examination that he did not state the fact of harassment of deceased on account of inadequate dowry and demand of colour TV and clothes in his statement Ex.PW2/B made during the inquest proceedings.

34. PW3-Smt. Shanti Devi has also admitted in her cross-examination that she did not tell to her husband that Suman had told her about harassment and this fact was not even told to the police. Therefore, it is difficult to believe this witness that she was told by the mother of the deceased about harassment suffered by the deceased at the hands of her in-laws.

35. The evidence of PW4-Girdhari Lal, mediator to the effect that he had sent a letter to the father of the deceased regarding the conversation he had with accused - Om Parkash that the girl would have to face the consequences for inadequate dowry, is also difficult to believe as he has stated in the cross-examination that he has got that letter written in "Mundi" script from someone and even that letter has not produced before the Court.

37. Smt. Shanti Devi, mother of the deceased, admits in cross-examination that the deceased had gone to Kashmir on a honeymoon and right from the beginning they had asked the accused if they had any demand and each time the accused persons had told that they do not have any demand and they want only a beautiful girl, which Suman - deceased was....

38. PW9 - Ram Niwas, father of the deceased, has admitted in cross-examination that he did not tell the police that the deceased had made complaints to higher authorities that the case be treated u/s 302 IPC, but he does not remember if in those letters and applications, he had mentioned that suicide note Ex.P4 is not in the handwriting of the deceased, although in the court he has stated that the suicide

note is not in the handwriting of the deceased....

40. The prosecution has also examined PW5 - Dr. N.N. Sethi, who has stated that Suman-deceased came to her on 17.7.1983 (i.e. four days prior to her death) and she told him that she was pregnant for the last 1 ♦ months and she wanted an abortion immediately and he had advised her against it. The evidence of this witness probablises the defence version that Suman-deceased was a modern girl and she did not want to have a pregnancy and wanted an abortion and this was opposed by accused-Naresh and his family.

9. In view of the aforesaid, neither any charge was framed against the respondents u/s 498-A IPC, which was also not in the statute book at the relevant time nor there was any evidence of abetment or instigation and therefore, no presumption could have been drawn u/s 113A of the Evidence Act.

10. I may also observe that though Section 113A of the Evidence Act had not come into the statute book at the relevant time, even if it is presumed for the sake of reference that such provision was in operation or can be given retrospective effect, then also the prosecution cannot take benefit of this Section in view of Section 107 IPC because of the suicide note Ex.P4 (supra) left by the deceased.

11. In this regard, reference can also be made to a judgment of the Apex Court in [Ramesh Kumar Vs. State of Chhattisgarh](#), wherein it is held:

13. The present case is not one which may fall under Clauses secondly and thirdly of Section 107 of the Indian Penal Code. The case has to be decided by reference to the first Clause i.e. whether the accused-appellant abetted the suicide by instigating her to do so.

14. It is beyond doubt that Seema did commit suicide. Undisputedly, such suicide has been committed within a year of the date of marriage. What happened on the date of occurrence is very material for the purpose of recording a finding on the question of abetment. Enough material is available on record by way of oral and documentary evidence which we shall now deal with.

15. What transpired on the date of the incident is known only to two persons, namely, the deceased and the accused. The deceased's version of that day's happening Constituting the proximate cause provoking her suicide is to be spelled out from what is contained in a diary (Article A) in the handwriting of the deceased herself and in the dying declaration Ext. P-10. The deceased wrote on p. 11 of the diary (Article A):

I Smt Seema Dubey, ashamed of my own faults, am committing suicide. Nobody is responsible and none should be harassed for it.

On p. 12 she wrote a letter to her husband as under:

Dear Raja,

With all love,

Raja this is my last love. You have made me free that I may do whatever I wish and go wherever I like. Raja, after coming in this house now I have no other place to go leaving you. You know, you have now made me free of the words I had given that I would not commit suicide. Now I would die peacefully.... Raja, this is my last word I do love you and you only, not anyone else.

Now I cannot write "yours"

Seema

22. Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence u/s 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished u/s 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. Evidential value of the two writings contained in diary, Article A is that of dying declarations. On the principle underlying admissibility of dying declaration in evidence that truth sits on the lips of a dying person and the court can convict an accused on the basis of such declaration where it inspires full confidence, there is no reason why the same principle should not be applied when such a dying declaration speaking of the cause of death exonerates the accused unless there is material available to form an opinion that the deceased while making such statement was trying to conceal the truth either having been persuaded to do so or because of sentiments for her husband. The writing on p. 11 of diary (Article A) clearly states that the cause for committing suicide was her own feeling ashamed of her own faults. She categorically declares - none to be held responsible or harassed for her committing suicide. The writing on p.12 of diary (Article A) clearly suggests that sometime earlier also she had expressed her wish to commit suicide to her husband and the husband had taken a promise from her that she would not do so. On the date of the incident, the husband probably told the deceased that she was free to go wherever she wished and wanted to go and this revived the earlier impulse of the deceased for committing suicide. The dying declaration Ext. P-10 corroborates the inference flowing from the two writings contained in the diary and as stated hereinabove. The conduct of the accused trying to put off the fire and taking his wife to the hospital also improbabilises the theory of his having abetted suicide.

23. In our opinion there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted the commission of suicide by Seema may necessarily be drawn. The totality of the circumstances discussed hereinabove, especially the dying declaration and the suicide notes left by the

deceased herself, which fall for consideration within the expression "all the other circumstances of the case" employed in Section 113-A of the Evidence Act, do not permit the presumption thereunder being raised against the accused. The accused-appellant, therefore, deserves to be acquitted of the charge u/s 306 IPC.

The aforesaid judgment also squarely applies to the facts of the present case.

12. Moreover, this is an appeal by the State. The law in this regard i.e. for interfering with an order of acquittal in a State appeal is well settled. It has time and again been said that if two views are possible one favouring the accused and the other in favour of the prosecution, the view favouring the accused must be taken into consideration. In this regard, reference can be made to a judgment delivered by this Court in *State v. Dwarka Dass* CrI. App. No. 135/1989 decided on 02.04.2007, wherein it was observed:

5. In [Sachchey Lal Tiwari Vs. State of Uttar Pradesh](#), also laid down certain principal in this regard in the following words:

(i) Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal.

(ii) If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

(iii) A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

(iv) Where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not.

(v) Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so.

13. The other possibility of interference could have been where appreciation of evidence by the trial judge is perverse, which is not the case in hand. In this regard reference can be made to a judgment of the Apex Court in *State of Punjab v. Ajaib Singh* AIR 2004 SC 2466.

14. In view of the above, I do not find any reason to interfere with the impugned judgment. The appeal is accordingly dismissed. The bail bonds of the respondents stand discharged. TCR be sent back forthwith along with a copy of this judgment.