

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

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CRAA No. 183/2014

StateAppellant

Through: Mr. P D Singh, Dy. AG.

vs

Raj Kumar Respondent

Through: Mr. Pankaj Jamwal, Advocate.

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

JUDGMENT

(Oral)

01. The present appeal has been directed against judgment dated 18.12.2023 passed by learned Principal Sessions Judge, Jammu [“trial court” for short] in case titled “*State vs. Raj Kumar*”, vide which, respondent came to be acquitted.

02. Before a closer look at the grounds urged in the memo of appeal, it would be apt to have an overview of the background facts leading to the present case.

03. The prosecution story, in brief, is that on 17.06.2007, complainant-PW-4 Hira Lal lodged a written report with Incharge Police Post, Hari Market, Jammu, alleging inter alia that his daughter Neha was married to respondent about 1½ years back and that soon after the marriage, she was subjected to dowry harassment by the respondent and his family. It was stated by the complainant that in order to save the married life of his daughter, he used to fulfil dowry demands of the in-laws of his daughter, however, it did not satiate their greed and they kept on raising the demands. On 17.06.2007, he received a phone call from the respondent that condition of his daughter had deteriorated and she had been evacuated to Government Medical College, Jammu. The complainant and his family members rushed to the hospital and were shocked to see that blood was oozing out from the nose of his daughter. FIR No. 55/2007 for offences under Sections 498-A/306 RPC came to be registered and investigation culminated into

final report against the respondent for the aforesaid offences in terms of Section 173 CrPC. It is pertinent to mention that offences against family members of the respondent were not made out and they were given benefit of Section 169 CrPC.

04. Respondent was charged by the trial court for the aforesaid offences, whereby he pleaded innocence and claimed trial, which prompted the trial court to ask the prosecution evidence and prosecution examined all the witnesses.

05. On conclusion of the prosecution evidence, statement of accused in terms of Section 342 CrPC came to be recorded, whereby he denied the incriminating evidence against him and did not prefer to enter the defence.

06. Learned trial court, having examined, analyzed and marshalled the prosecution evidence, has acquitted the respondent primarily on the ground that prosecution has failed to establish guilt of the accused beyond reasonable shadow of doubt.

07. The appellant-State has questioned the impugned judgment, primarily, on the ground that learned trial court has failed to appreciate the prosecution evidence in its right perspective and prosecution has succeeded to establish guilt of the respondent beyond reasonable shadow of doubt.

08. Having heard rival contentions of the parties and perused the impugned judgment, I concur with the findings recorded therein.

09. As factual narration of the case would unfurl, respondent was married to the deceased for about 1½ years. Allegation of the prosecution is that deceased was subjected to dowry harassment and frequent demands of dowry made by the respondent and his family drove the deceased to hang herself with the ceiling fan and commit suicide. The prosecution in order to establish guilt of the respondent, besides parents, brother and sister of the deceased has examined independent

witnesses, namely, PW-1 Sumit Gupta, PW-6 Ashish Gupta, PW-7 Anil Gupta, PW-8 Gian Chand, PW-9 Koushal Mahajan and PW-10 Geeta Rani.

10. It is pertinent to underline at the outset that except parents, brother and sister of the deceased, all the independent prosecution witnesses have either turned hostile or have not supported the prosecution case on material aspects.

11. Respondent has been charged, inter alia, with the alleged commission of offence under Section 306 RPC i.e. abetment to suicide. It reads as under:-

“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.”

12. It is evident from a bare perusal of the 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.

.....”

13. From a plain reading of Section 107 RPC, it is manifest 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, or he intentionally aids, by any act or illegal omission, the doing of that thing, he shall be liable for abetment of a thing. In other words, in order to

constitute an offence of abetment of suicide, prosecution is obliged to prove active participation of the abettor in instigation or engagement in conspiracy or intentional aiding the doing of a thing. Therefore, the pristine question which arises for consideration in the present case is whether 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.

15. Reverting to the present case, the independent prosecution witnesses PW-1, PW-6 to PW-10, have not made any incriminating statement against the respondent. Pertinently, some of the witnesses have not even been declared hostile by the prosecution. In the aforesaid backdrop, the prosecution case hinges on the testimonial potency of the family members of the deceased including parents, brother and sister.

16. PW-2 Prabha is mother of the deceased. She has stated that married life of her daughter with respondent ran into rough weather and deceased was subjected to dowry harassment, she was once beaten by her brother-in-law and sister-in-law and since deceased was tired of continuous torture meted out to her, she decided to end her life. She has also stated that respondent demanded an amount of Rs. 1.00 lac from her, which was given to him in two instalments. It is categorical statement of the mother of the deceased that deceased has not committed suicide but she was murdered by the respondent and his family. It is pertinent to note that PW-Prabha, in her cross examination, has stated that she was told by the deceased that she was beaten by her in-laws.

17. PW-4 Hira Lal is father of the deceased. He has also stated that his daughter, the deceased, was subjected to dowry harassment at the hands of her husband- respondent and her in-laws. He has also stated that he gave Rs. 50,000/- twice to the in-laws of the deceased. Pertinently, father of the deceased could not be cross-examined during the trial.

18. PW-5 Mohit Mahajan is brother of the deceased. He has also stated that his sister has been murdered by the respondent. He further stated that his sister, the deceased, was subjected to dowry harassment, due to which, she committed suicide. He has also alleged that his father twice gave Rs. 50,000/- each to in-laws of his sister. Pertinently, in his cross-examination, he has stated that deceased was taken to the hospital by the accused-respondent.

19. PW-3 Meenu is sister of the deceased. She has also made statement on the same lines in so far as allegations against the respondent is concerned that after the marriage of the deceased with respondent, their matrimonial relation got strained and deceased was subjected to dowry harassment at the hands of the respondent and her in-laws. She has also alleged that when deceased was pregnant, she was hit by her sister-in-law on abdomen and she was tortured for bringing less dowry by the respondent and her in-laws. She has also alleged that respondent was having illicit relations with his sister-in-law (Bhabi) and he used to share everything with her. She also alleged that there were blue coloured marks on the dead body of the deceased. This allegation, pertinently, has not been made by any other prosecution witness that there were blue marks on the dead body of the deceased. Sister of the deceased, like other related witnesses examined by the prosecution, has also stated in her cross-examination that she did not remember as to when she was told by the deceased about the harassment meted out to her by her in-laws. She has also stated that she did not remember that when her parents

gave Rs. 50,000/- to accused. She goes on to state that since respondent had patted on the abdomen of his sister-in-law (Pallavi) in her presence, therefore, she had presumed the allegations levelled by the deceased that accused/respondent were having illicit relations with his sister-in-law.

20. On careful examination of the aforesaid prosecution witnesses, who happened to be close relatives to the deceased including parents, brother and sister, it is evident that whatever they have stated in chief-examination about the dowry harassment, was based on the information provided to them by the deceased and they are not eye witnesses to the same. Therefore, these related witnesses of the prosecution, being hearsay, their testimonies are not admissible in evidence in so far as allegation of dowry harassment is concerned.

21. Aside, there are serious contradictions and embellishments in the statements of the aforesaid prosecution witnesses. As already discussed, it is only PW-3 Meenu, who has alleged about illicit relation of the respondent with his sister-in-law (Bhabi) and no other prosecution witnesses has stated that they were told by the deceased that her husband-respondent had illicit relation with his sister-in-law. Even PW3 has clarified, in her cross-examination, that since respondent on one occasion had patted on the abdomen of his sister-in-law, therefore, she presumed that allegation of the deceased about illicit relations between appellant and his sister-in-law was correct. No doubt, all the aforesaid witnesses, related to the deceased have alleged that respondent demanded and was given an amount of Rs. 1.00 lac in two instalments, however, none of the witnesses has provided any detail about the payment made on two occasions whether it was paid in cash or by any other means and when it was paid. What is intriguing to note is that it is allegation of the prosecution that deceased was continuously subjected to dowry harassment, due to which, she was driven to

commit suicide, however, neither any report regarding consistent demands of dowry harassment nor any report regarding the demand and payment of aforesaid money was lodged by the parents or family members of the deceased during her life time.

22. In view of the above, the statements of the independent witnesses, PW-6 to PW-10 assume significance.

23. PW-6 Ashish Gupta and PW-10 Geeta Rani are neighbors of the deceased and the accused. PW-6 Ashish Gupta has reflected his ignorance about the occurrence and stated that his statement was never recorded by the police and nothing was seized in his presence. However, he has not been declared hostile by the prosecution for the reasons best known to it. PW-7 Anil Gupta, though admitted his signatures on the seizure memo Ext-P-AK of the scissors and seizure memo (Ext-P-AK/1) of the bed sheet but he denied their contents. He has also not been declared hostile by the prosecution and in cross-examination by the defence, he further alleged that no document was read over and explained to him by the investigating agency. PW-8 Gian Chand is witness to the superdnama of seal. Though, he identified his signatures on the superdnama but denied the contents. He has also not been declared hostile by the prosecution.

24. PW-9 Koushal Mahajan has stated that relations between the deceased and respondent were not cordial. He heard noise, went to the spot, the accused broke open the door of the house and saw that deceased was hanging with the ceiling fan. He has also stated that accused started weeping. The deceased was brought down and was taken to the hospital by the accused. He has stated, in his cross-examination, that accused and his parents are gentle persons. The witness goes on to depose that accused is running a wholesale business and he does not need any dowry. He has also not been declared hostile by the prosecution. Pertinently, PW-

10 Geeta Rani has clearly stated that deceased did not die because of any cruelty. She too, has not been declared hostile.

25. 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.

26. 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”.**

27. 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.

28. 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 deceased did not die due to any cruelty and that the respondent/accused is running a wholesale business and he does not need any dowry. Even parents of the deceased 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. Therefore, offence under Section 498-A RPC is also not made out.

29. There is another aspect of the matter which has escaped attention of learned trial court and cannot be lost sight off.

30. It is trite in law that for holding a person liable for abetment, prosecution is not only obliged to establish continuous harassment, but also prove by cogent evidence that there was a positive action/active role played by the accused which should more or less be proximate to the time of occurrence, to have led or compelled the person concerned to commit suicide. I am fortified in my opinion by **“Jagdishraj Khatta vs. State of Himchal Pradesh” (2019) 9 SCC 248**, whereby Hon’ble Supreme Court in a similar fact situation has held that incidents which had taken place between the husband and wife much before the date of suicide cannot be construed as the conduct of accused which drove the deceased

wife to commit suicide. It is also by far a settled position of law that vague and unspecific allegations of dowry demands cannot be construed to constitute harassment of the nature which may have driven the deceased to commit suicide.

31. In the present case, there are bald allegations on the part of related prosecution witnesses that respondent demanded and was paid an amount of Rs. 1.00 lac on two occasions, however, as already discussed, said witnesses have not provided specific details regarding the same and the time when those demands were made and amount was paid by the respondent to them. Even if the allegation of dowry demand is presumed to be true, there is nothing in the prosecution evidence to indicate that this was proximate to the time of occurrence, which led or compelled the deceased to commit suicide. Therefore bald, vague and omnibus allegations of dowry demand attributed to the respondent cannot be made basis for his conviction.

32. Be that as it may, Mr. P D Singh, learned Dy. AG appearing for the appellant-State has argued that since deceased in the present case, has died within seven years of her marriage with the respondent, therefore, presumption in terms of Section 114-C of the Evidence Act is attracted and burden is shifted on the respondent to prove that deceased was not driven to commit suicide due to dowry harassment. Section 114-C of the Evidence Act reads as below:-

114-C. Presumption as to abetment of suicide by a married woman.

“When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

33. It is apparent from a plain reading of Section 114-C of the Evidence Act that in order to attract the applicability of the said provision, the prosecution is

obliged to establish that (i) woman has committed suicide within a period of seven years from the date of her marriage and that (ii) her husband or his relatives had subjected her to cruelty. It is on the satisfaction of both the aforesaid requirements, that court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by relatives of her husband. It is pertinent to underline that the legislature in its wisdom has used the expressions “may presume” and “having regard to all other circumstances of the case”, to indicate that presumption under Section 114-C of the Evidence Act is not mandatory in nature and it is rebuttable. The defence can rebut the aforesaid presumption either by shaking the credibility of the prosecution witnesses in cross-examination or by leading cogent and trustworthy evidence in defence. Therefore, before a presumption can be drawn, the Court shall have regard to all other circumstances of the case.

34. Back to the present case, in so far as the first ingredient of Section 114-C is concerned, admittedly the deceased in the present case has committed suicide within a period of seven years from the date of her marriage with the respondent. In so far as second ingredient that whether suicide of the deceased was result of abetment on the part of her husband-the respondent is concerned, it has already been observed that 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 absolutely nothing in the prosecution evidence to indicate that respondent ever intended or actively participated to abet the commission of suicide by the deceased. Be that as it may, the prosecution has even failed to examine the medical officer who conducted autopsy on the dead body of the deceased, to prove the cause of death. In the

