

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

CRA No. 22/2013

Reserved on :06.08.2024

Pronounced on : 13.08.2024

Showket Ahmad Rather
S/o Khazir Mohammad Rather
R/o Chandergair Sumbnal

...Appellant(s)

Through:- Mr.S.T.Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate

V/s

State of Jammu & Kashmir,
Through Station House Officer,
Police Station Sumbal

...Respondent(s)

Through:- Mr. Ilyas Nazir Laway, GA

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This appeal by one Showkat Ahmad Rather arises out of an order/judgment dated 26th November, 2013 passed by the Principal Sessions Judge, Bandipora [“the trial Court”] in file No.159/Sessions titled State of J&K v. Showkat Ahmed Rather as also an order dated 29.11.2013 passed therein, whereby and whereunder the appellant has been convicted for commission of offence punishable under Section 498-A RPC and Section 306 RPC and sentenced to undergo rigorous imprisonment for two years with fine of Rs.5000/- in respect of Section 498-A RPC and rigorous imprisonment for seven years and fine of

Rs.10,000/- in respect of offence under Section 306 RPC. The sentences imposed are directed to run concurrently. The impugned order of sentence also provides that in default of payment of fine, the appellant would undergo simple imprisonment for a period of three months.

2. The appellant is husband of deceased Shaheena, who died under mysterious circumstances on 17th April, 2006. The Police Post, Hajin received an information from Hospital Hajin that a dead body was lying in the hospital. In the meanwhile, on the same day one Maqsood Ahmad Sofi, the brother of the deceased, moved a written complaint before the Police Post, Hajin alleging therein that the marriage of his sister, namely, Shaheena had taken place about a year and half ago with the appellant Showkat Ahmad Rather. The deceased was residing at her matrimonial home along with her husband. It was in the morning of 17th April, 2006, he received information from the Hospital Hajin that his sister was dead and lying in the said hospital unidentified. He along with other persons reached the Hospital Hajin and saw the dead body of his sister. It was also stated by him in the complaint that there was no body from her in-laws side present in the hospital and that the complainant had a suspicion about the cause and circumstances leading to the death of his sister.

3. Since the death was reported to have occurred under mysterious circumstances, as such, requisite entry was made by the police in daily diary and proceedings under Section 174 Cr.P.C. were initiated. The dead body was taken into possession and post-mortem was conducted. It came to light during the course of investigation that the deceased had died on

17th April,2006 due to consuming of some poisonous substance. The complainant Maqsood Ahmad Sofi filed yet another complaint raising allegation of harassment meted out to the deceased by her in-laws, which, as per the complainant, forced the deceased to end her life by committing suicide. On this FIR No.73/2006 under Section 498-A & 306 RPC was lodged. The investigating agency completed the investigation and concluded that the deceased had died due to consuming of poison and, therefore, the appellant was *prima facie* guilty of offence under Sections 306 and 498-A RPC. The police presented the charge-sheet/final report before the Judicial Magistrate 1st Class, Sumbal, who committed the same to the trial Court.

4. On conclusion of the trial, the trial Court vide judgment of conviction impugned in this appeal, convicted the appellant on both counts and sentenced him to rigorous imprisonment and fine, as indicated herein above.

5. Having heard learned counsel for the parties and having gone through the record of the trial Court, it is seen that with a view to bringing home the charge against the appellant the prosecution examined PW- Maqsood Ahmad Sofi, PW-2 Mohammad Maqbool, PW-3 Arshid Abdullah, PW-4 Jaffar Mohammad, PW-5 Mst. Sara, PW-7 Mst. Misra, PW-8 Mst. Naseena and PW-12 Dr. Manzoor Ahmad.

6. PW-1 Maqsood Ahmad Sofi, who is also complainant in this case, has, in his deposition, stated that the deceased was living in her

matrimonial home in a cordial atmosphere. However, when deceased would visit her parental home she would complain against the appellant and his parents regarding demand of dowry by them. He further deposed that he came to know about death of his sister when he was informed by someone on phone. In his deposition he would further state that he did not know as to how his sister died and what was the cause of her death.

7. Similarly, PW-2 Mohammad Maqbool Sofi, who is another brother of the deceased Shaheena, has, in his deposition stated before the trial Court that in the beginning the relations between the deceased and the appellant were cordial but subsequently a dispute arose on account of dowry demand made by the appellant. The appellant was demanding money and motorcycle. He has further deposed that he visited his sister's matrimonial home four times during the period of last two years and did not find the atmosphere congenial. He, however, has deposed that no demand of scooter or any other dowry item was made by the appellant in front of him. He has also shown his ignorance about the cause of death of the deceased but stated that the deceased had consumed poison.

8. PW-3 Arshid Abdullah, who is neighbour of the complainant Maqsood Ahmad Sofi, has, in his deposition before the trial Court, stated that he would see the deceased staying off and on at her parental home and on enquiry the deceased Shaheena told him that the appellant was demanding dowry from her in the shape of land and scooter. He would

further state that no such demand of dowry by the appellant was made in his presence.

9. PW-4 Khazir Mohammad Sofi, who is father of the deceased, has, in his statement recorded before the trial Court, stated that occurrence took place on 17th April, 2006 and what happened to her daughter only God knew better. The witness was declared hostile by the prosecution. On his cross-examination by the learned PP, the witness stated that before her death, the deceased would tell him that the appellant was demanding dowry from her. He was demanding a vehicle, which the witness was not in a position to give. It has also come in his deposition that had the appellant divorced his daughter that would have been better. The deceased was very sensible and shy girl. He has further stated that he was not aware as to how the deceased died and what was cause of her death.

10. PW-5 Mst. Sara is mother of the deceased. She has, in her statement before the trial Court, deposed that her daughter and appellant were in love with each other and the marriage took place in a very congenial atmosphere. The deceased, as and when used to come to her parental home, would complain that the appellant was harassing her for demand of dowry and was also threatening her that he would divorce her if his demand of dowry was not met. Then she scarified her life. She has also shown her ignorance about the circumstances which led to the death of the deceased. She has also denied having made any statement to the police before getting her statement recorded in the Court.

11. PW-7 Mst. Misra, who is neighbour of the deceased, has stated before the trial Court that on hearing noise, she rushed to the house of the deceased where she found her unconscious. Nothing more is stated by the said witness.

12. PW-8 Mst. Naseena, she is another neighbour of the deceased. In her statement recorded before the trial Court, she has stated that in the morning she called on the deceased. She was in the bathroom. She told the deceased to open the door of the bathroom as she wanted to wash her hands. When the witness came out, she saw the deceased vomiting and then falling unconscious. She was taken to the hospital. In her cross-examination, the witness has stated that the accused is her neighbour and she used to visit their home regularly. The deceased and the appellant were living peacefully and deceased had never made any complaint to her about demand of dowry by the appellant.

13. PW-12 Dr Manzoor Ahmed, who is a medical expert and has conducted postmortem on the deceased, in his statement, has stated that he conducted the postmortem on the deceased in five minutes. He supported the autopsy report prepared by him, which contained his opinion that the death seemed to be as a result of consuming poison.

14. This is, in a nutshell, the prosecution evidence recorded before the trial Court. The incriminating material appearing in the prosecution evidence was put to the appellant and his statement under Section 342

Cr.P.C was also recorded. The appellant has denied the entire prosecution case.

15. Regard being had to the evidence on record, it cannot be said that the prosecution has been able to conclusively prove that the deceased was subjected to harassment so as to coerce her to meet the dowry demand. PW-1 and PW-2 have in their deposition clearly stated that the relations between the deceased and the appellant were cordial. There is nothing incriminating stated except a parrotlike version made by the prosecution witnesses that the deceased was telling her parents that there was a demand of dowry by the appellant and his parents. The witnesses were, however, very categorical in their statements that no such demand was ever made in their presence.

16. The two independent witnesses, who are neighbours of the deceased, PW-7 Mst. Misra and PW-8 Mst. Naseema, have in their deposition clearly stated that they had been meeting the deceased regularly and that the deceased never ever made any complaint to them about the demand of dowry by the appellant or her parent-in-laws. Even if we were to believe the parrotlike version of PW-1, PW-2, PW-4 and PW-5, yet it may be tantamount to making a demand of dowry. However, a simple demand of dowry without there being constant harassment to the deceased to coerce her to meet such demand does not amount to 'cruelty' as defined under Section 498-A RPC.

17. Before we proceed further, it is appropriate to set out Section 498-A RPC, which reads thus:-

“498-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 purposes of this section “cruelty” means—

(a) any wilful conduct which is of such 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.”

18. From a reading of Section 498-A, it clearly transpires that for the purpose of attracting the offence under it, it has to be established:

(a) any willful conduct which is of such a nature as is 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; or

(b) harassment of 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 on account of failure by her or any person related to her to meet such demand.

19. Admittedly, in the instant case it is not the prosecution case that the appellant subjected the deceased to such a willful conduct as was likely to drive her to commit suicide. There is, however, some evidence of demand of dowry but there is nothing in the prosecution evidence, which would suggest that the harassment was meted out to the deceased with a view to coerce her or any person related to her to meet such unlawful demand. It has come in the evidence that the relations between the two i.e. deceased and the appellant were cordial. Though, there was complaint by the

deceased about the demand of scooter and cash being made by the appellant and his parents, there is nothing in the evidence to suggest that for not meeting the demand of dowry, the deceased was ever beaten, abused or turned out from the matrimonial home. Rather, the evidence is that she had been quietly living in her matrimonial home.

20. There is of course a statement made by the mother of the deceased that the appellant was threatening the deceased that he would divorce her if she did not bring the demanded dowry. This single sentenced assertion made by the mother of the deceased is not supported by any other witness. Rather, the independent witnesses, who are neighbours of the deceased, have belied such assertion.

21. In a criminal case, as is cardinal principle of criminal jurisprudence, the accused is presumed innocent until proven guilty. The onus is on the prosecution to prove the commission of offence by leading evidence beyond reasonable doubt. The Criminal Court cannot draw inferences on the basis of preponderance of probabilities. Looking at the evidence on record from this point of view, I am of the considered opinion that the evidence on record is quite insufficient and, in any case, not convincing to enable this Court to arrive at a conclusion that the deceased was harassed by the appellant with a view to coerce her to meet the demand of dowry. It is, thus, difficult for this Court to conclude that offence under Section 498-A RPC is made out against the appellant.

22. Coming to Section 306 RPC, suffice it to say that the evidence on record, which is discussed herein above, does not sufficiently prove beyond any reasonable doubt that the deceased committed suicide. All the witnesses recorded by the prosecution have not been able to say with certainty as to how the deceased died and what was the cause of her death. The opinion of the medical expert is also tentative. The Forensic Science Laboratory has confirmed presence of organo phosphorus in the viscera but the doctor has not given his final decision as to whether quantity of organo phosphorus found in the viscera was of fatal quantity and alone responsible to cause death of the deceased. Whether the poison organo phosphorus which is generally found in insecticides was taken by the deceased accidentally or voluntarily is also not coming forth from the evidence on record. Opinion of the doctor that the death seems to be because of poisoning is only a tentative opinion and does not even confirm the actual cause of death.

23. Be that as it may, the fact remains that with a view to convict a person for an offence under Section 306 RPC, it is required to be established by the prosecution that the death was suicidal and that there was an abetment on the part of the accused, as contemplated in Section 107 RPC. Section 306 RPC, which deals with abetment of suicide reads thus:-

“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.”

24. What is abetment of a thing is clearly described in Section 107 RPC, which for facility of reference is reproduced hereunder:-

“107. **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.
Explanation 1:—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

25. The abetment as defined in Section 107 RPC involves a mental process of instigating a person in doing of a thing. Without there being any evidence of any overt or covert act on the part of the accused to aid or instigate in committing suicide, conviction under Section 306 RPC cannot be sustained. It is trite law that in order to convict a person under Section 306 RPC, there has to be clear *mens rea* to commit offence. *Mens rea* would require an active act or direct act which led the deceased to commit suicide seeing no option. The act of the accused must be with an intention to push the deceased into such a situation where she is left with no option but to commit suicide.

26. In the instant case, as is evident from a reading of the entire evidence, there is nothing on record to even suggest that there was any instigation, conspiracy or intentional aid on the part of the appellant to drive the deceased into such a situation where she was left with no option but to take extreme step of ending her own life. There is also evidence on

record to suggest that deceased had given birth to a still born child and used to remain sad and pensive.

27. I am aware that the trial Court in the instant case was gravely influenced by the presumption under Section 113-A of the Evidence Act. Hon'ble Supreme Court in the case of **Mangat Ram v. State of J&K and Others of Haryana, 2014 (12) SCC 595**, while considering the provisions of Section 498-A and 306 IPC in light of the presumption under Section 113-A of the Evidence Act, has held thus:-

“30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under [Section 113-A](#) of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under [Section 498-A](#) IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under [Section 113-A](#) of the Evidence Act.

31. In this connection, we may refer to the judgment of this Court in [Hans Raj v. State of Haryana](#) [(2004) 12 SCC 257 : 2004 SCC (Cri) 217] , wherein this Court has examined the scope of [Section 113-A](#) of the Evidence Act and Sections 306, [107](#), 498-A, etc. and held that, unlike [Section 113-B](#) of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in [Section 113-A](#) of the Evidence Act. This Court held that, under [Section 113-A](#) of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty.

Even though those facts are established, the court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the court to raise such a presumption having regard to all other circumstances of the case, which means that where the

allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word “cruelty” in [Section 498-A](#) IPC.” 2 (2014) 12 SCC 595”

28. It is, thus, evident that the term “the Court may presume, having regard to all other circumstances of the case, that such suicide has been abetted by her husband”, would clearly indicate that the presumption is discretionary. Mere fact that the deceased committed suicide within a period of seven years of her marriage, presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as defined under Section 498-A, presumption under Section 113-A of the Evidence Act may be raised having regard to all the circumstances of the case that such suicide had been abetted by her husband or any relative of her husband.

29. As against the presumption that is raised under Section 113-A, presumption under Section 113-B of the Evidence Act is mandatory. Therefore, when presumption under Section 113-A is raised, the prosecution must show evidence of cruelty and continuous harassment in that regard. From the evidence on record, it is difficult for this Court to say that there is enough material on record to conclude that the deceased was subjected to harassment with a view to coercing her to meet the demand of dowry. Though, the witnesses have in a parrot like version stated that the deceased had always been complaining against the demand of dowry by the appellant and his parents.

30. In the view I have taken, I am supported squarely by the two judgments of the Supreme Court in **Kashbai and others v. State of J&K and Others of Karnataka, (2002) SCC Online SC 575** and **Naresh Kumar v. State of J&K and Others of Haryana (2024) 3 SCC 573**. Paragraph Nos. 25 to 36 of Naresh Kumar (supra) clarify the legal position and are, therefore, set out herein below:-

“25. It is now well settled that in order to convict a person under [Section 306](#) of the IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

26. We take notice of the fact that the High Court has laid much emphasis on [Section 113-A](#) of the Evidence Act.

27. [Section 113-A](#) of the Evidence Act reads thus:-

“113-A. 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.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in [section 498-A](#) of the Indian Penal Code (45 of 1860).”

28. This Section was introduced by the [Criminal Law \(Second Amendment\) Act](#) 46 of 1983. The [Indian Penal Code](#), the [Code of Criminal Procedure](#), 1973 and the [Evidence Act](#) were amended keeping in view the dowry death problems in India.

29. The Section requires proof (1) that her husband or relatives subjected her to cruelty and (2) that the married woman committed suicide within a period of seven years from the date of her marriage.

30. Although, it is not necessary for us to refer to [Section 113-B](#) of the Evidence Act which raises presumption as to dowry death yet with a view to indicate the fine distinction between the two presumptions we are referring to Section 113B. In Section 113A the legislature has used the word 'may', whereas in Section 113B the word used is 'shall'.

31. In this appeal, we are concerned with [Section 113A](#) of the Evidence Act. The mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption under [Section 113A](#) of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the presumption under [Section 113A](#) of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

32. What is important to note is that the term "the court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband' would indicate that the presumption is discretionary, unlike the presumption under [Section 113B](#) of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

33. The court should be extremely careful in assessing evidence under section 113A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hyper sensitive 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 would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

34. Section 113-A has been interpreted by this Court in [Lakhjit Singh v. State of Punjab](#), 1994 Suppl (1) SCC 173, Pawan Kumar v. State of Haryana, 1998(3) SCC 309, and Smt. Shanti v. State of Haryana, 1991(1) SCC 371.

35. This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words 'may presume'. It must take into account all the circumstances of the case which is an additional safeguard.

36. In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under [Section 306](#) of IPC by raising presumption under Section 113A."

31. For the foregoing reasons, I find merit in this appeal and the same is accordingly, allowed. The judgment/order of conviction and sentence, impugned in this appeal, are set aside. The bail bonds shall stand discharged. Record be sent back to the trial Court.

(Sanjeev Kumar)
Judge

Srinagar
13 .08.2024
Vinod, PS

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No