

CASE NO.:

Appeal (crl.) 617 of 2000

PETITIONER:

RAMESH KUMAR

RESPONDENT:

STATE OF CHHATTISGARH

DATE OF JUDGMENT: 17/10/2001

BENCH:

DR. A.S. ANAND C.J. & R.C. LAHOTI & K.G. BALAKRISHNAN

JUDGMENT:

JUDGMENT

2001 Supp(4) SCR 247

The Judgment of the Court was delivered by

R.C. LAHOTI, J. This appeal by special leave is directed against conviction of Ramesh Kumar, the accused-appellant, on charges under Sections 306 and 498-A IPC. He was sentenced to seven years' rigorous imprisonment under Section 306 IPC and to two years' rigorous imprisonment under Section 498-A IPC, both the sentences having been directed to run concurrently. The conviction along with sentences has been maintained by the High Court. His father Shiv Kumar, mother Gargi Devi and brother Mahesh were also tried for offences under Sections 306 and 498-A IPC. The Trial Court found them "not guilty" and "innocent" and hence acquitted the three of them of both the charges. That acquittal has achieved a finality as not challenged by any one.

Seema Devi, daughter of Sohan Lal Sharma (PW16) and Smt. Prabhawati Devi (PW19) was married with accused-appellant on 23.6.1985. On 17.6.1986, within one year of marriage, Seema died of suicide. On 16.6.1986, she poured kerosene on herself and set herself to fire. Before committing suicide she wrote a suicide note and a letter to her husband in a diary (Article 'A') on pages 11 and 12 thereof. Her dying-declaration (Exbt. P/10) was recorded on 16.6.1986 by PW13, Parmeshwar Dayal, Tehsildar and Executive Magistrate. Sohan Lal Sharma is a resident of Raipur, Madhya Pradesh. The accused-appellant was residing in Shantinagar locality of Raipur. Seema's elder sister Shalini (PW5) married with Dr. Ramadhar Sharma (PW6) is also residing in Raipur. Thus, the three families, i.e., the family of father of Seema, the family of her elder sister Shalini. and the family of the accused-appellant are all residents of Raipur though residing in different localities at reasonable distances from each other. Nevertheless the three families were on visiting terms as admitted by almost all the witnesses. The finding of guilt as recorded by the Trial Court and the High Court rests on the testimony of five witnesses, namely, Atul Kumar (PW4), brother of the deceased, Shalini and Dr. Ramadhar Sharma (PW5 and PW6), respectively the sister and sister's husband of the deceased, Sohan Lal Sharma and Prabhawati Devi (PW16 and PW19), parents of the deceased. In addition, there is a very pertinent evidence - a document, Exbt. P/13 which is an undated letter written by the deceased and managed by her to be sent to her father. We will briefly discuss this evidence.

According to Sohan Lal (PW16) marriage of Seema with the accused-appellant was performed in a cordial manner. Dowry, as the parents wished, was given to Seema. Seema and Ramesh were quite often coming to meet with them. However, Sohan Lal did make a general statement that at one point of time when he had gone to see his daughter Seema in the house of the accused-appellant, Seema had told him that the accused was complaining that the items given in dowry were of inferior quality. However, this statement is belied and cannot be accepted for two reasons. Firstly, such a material

fact though in his knowledge was not disclosed by him to the police; on the contrary his statement to the police was that Seema never told him of anything about her in-laws' house. Prabhawati Devi admits that the behaviour of the accused-appellant towards her was good and he always treated her with respect and reciprocal affection. She also admitted that her husband, i.e., Sohan Lal. PW16 never complained about the behaviour of the accused-appellant towards him. She very clearly stated that the accused-appellant had never asked her anything about dowry. If only Seema's father would have been told by Seema that the accused-appellant had ever demanded dowry from her or was harassing her for dowry then such fact in ordinary course of things would have been told by him to his wife, i.e., the mother of Seema and would also have been disclosed by him to the police.

Atul Kumar, PW4 is younger brother of late Seema. According to him, he was told by his parents that the accused was teasing Seema. He visited Seema and her in-laws about 15 to 20 times but Seema never told him anything. However, according to Atul Kumar, 'her face was tense and terrorized and she had asked me to go back'. Immediately we may observe that Atul Kumar's testimony suffers from exaggeration because both his parents, examined in the Court, do not depose that the accused had started teasing Seema soon after the marriage. If Atul Kumar had seen Seema tense and terrorized, he must have told this fact in the ordinary course of things to his parents. But the parents do not say so. During cross examination, Atul Kumar admitted that between him and accused Ramesh there were 'good relations'. He never asked Ramesh whether and why the accused was teasing or harassing his sister. He could not give any explanation why such a natural query he did not put across to Ramesh inspite of there being good relations between the two. He further admitted that accused Ramesh and Seema often used to visit him and his parents specially on the festival days. During less than a year of marriage, Seema twice stayed with her parents for about four days each. When Shalini gave birth to a child, Seema stayed at her parents house for two days and afterwards also kept on coming to her parents and visiting hospital where Shalini was admitted. Atul Kumar specifically stated - "Seema had good terms with her in-laws and brothers-in-law". The testimony of Atul Kumar spells out that Seema's movements were not restricted by the accused; she was liberally allowed to see her parents and other relations and she never complained of any dowry demands or any serious problem being faced by her from the accused or her in-laws. Atul Kumar felt that Seema was 'tense and terrorised' is his own impression and certainly no cause is discernible for such an impression from his testimony.

A very material piece of evidence is an undated letter, Exbt. P/13 which from the evidence adduced appears to have been written by the deceased Seema at about 3 or 4 months before her death. Desh Bandhu Sathe (PW9) was working as a Technical Officer in State Bank of India, Regional Office while Sohan Lal was working in Branch Office of the same bank and therefore they knew each other. Desh Bandhu Sathe (PW9) stated that at about 3 to 4 months before the death of Seema, his wife gave the letter, Exbt. P/13 to him stating that the letter was given to her by Seema with a request to have it delivered to her father. Although the authenticity of this letter was vehemently disputed by the defence alleging it to be fabricated, however, the Trial Court and the High Court have on an evaluation of evidence believed the same. The finding that the letter was written by deceased Seema is based on the testimony of handwriting expert. There is no reason to disbelieve the statement of Desh Bandhu Sathe that the letter was in existence about 3 to 4 months before Seema's death. What is material are the contents of the letter. The letter (English translation, as filed) is reproduced as under :-

"Respected Babu Ji,

Sadar Parnam,

Babuji, I am writing this letter in very helplessness (constraint) and this

should not be known to any one that I have written this letter. If my Bangles (chudi) and Mangalsutra-payal etc. ornaments all have been repaired or get them repaired in any way and you yourself come bringing them immediately today or tomorrow by remembrance. Do not sent Atul and Sudhir and no body should come to meet me. You understand this much only that Seema is not existing. Yesterday Shalini had come then we people were not in the house. Why I do not remember that thing, saying so I was pushed and turned out from the house. I alone had come out to come to Brahmanpara. He himself came behind me and we both had gone upto house. Then he conciliated (persuaded) and bring me to home back and after coming in the house he started marpit (beating) with me from 9 O'clock in the night which continued till 21/2 O'clock in the night. Then he again started marpit (beating) in the morning and his mind is still bad. You send the ornaments immediately and now you yourself come and do not tell the thing of letter and marpit. Tell Atul and Sudhir not to come at all. I will not come in Holi. But you come to take me and take sofa and give another. Enough,

Seema."

The author of the abovesaid letter is not alive. There is no one else in whose presence the letter was written. We cannot therefore read anything in the letter which it is not there. The letter has to be read as it is and inferences have to be drawn therefrom based on the expressions employed therein and in the light of other evidence adduced in the case.

The letter nowhere indicates any demand of dowry having been made by the accused or the deceased having been pressurized by the accused for bringing more dowry. The first thing the letter states is a request to her father to return some of her ornaments. Sohan Lal (PW16) has himself admitted that his daughter had given some of her ornaments to him for the purpose of being repaired. There is nothing wrong, unusual or abnormal in Seema reminding her father to bring back the ornaments "if they have been repaired" or "to get them repaired" if not already done. The second thing which the letter suggests is of her having been beaten by her husband and her having been pushed out of the house by the accused and when she wanted to go away from the house then she having been persuaded by her husband to return to house. The accused had also tried to conciliate. Further on Seema's return the accused gave her a beating. Why this happened is slightly indicated in the letter and narrated by Shalini (PW5) and her husband (PW6). Seema had invited her sister and sister's husband for taking food with them in her house but after extending invitation she forgot about it and went out of the house with her husband. Her sister and sister's husband came to her house but there was no one and therefore they went back. This enraged the accused and he chastised his wife Seema for her forgetfulness which in his opinion was an act devoid of etiquettes and courtesy - extending an invitation to relatives and then forgetting about it and being not available to receive and entertain them. Yet another fact disclosed by Shalini and Ramadhar is that Seema had told them that the accused was suspicious of Seema having had undue intimacy with co-cds while studying in college and her continuing undue intimacy with old-time friends, which was not to the liking of the accused. These were the real causes for difference between Seema and the accused. It appears that on Seema having committed suicide there was an attempt to give it a twist of dowry death and for that purpose some plea as to demand for dowry was introduced. The finding as to demand for dowry by accused has been arrived at by the Trial Court and the High Court by placing reliance on stray general allegations occurring here or there in evidence and by ignoring such facts as were brought on record through cross-examination of the prosecution witnesses which demolished the theory of there being any demand for dowry by the accused-appellant. The reading of the entire evidence shows that the present one is a case of marital mal-adjustment between the deceased and the accused. The accused is a Professor. The deceased did not come up to the expectations of the accused. She was forgetful and the manner in which she dealt with the visitors, guests and relations was not to the liking of the accused-appellant. This is also borne out from a few

writings such as Exbts. D/4 and D/5 which are in the form of essays written by the deceased which are full of appreciation of the respondent acknowledging the love and affection which the accused-appellant had for her but which also go to state that there was 'some deficiency' in her, she did not have a compromising temperament and therefore accused used to get annoyed and get angry on minor mistakes committed by the deceased. In such writings, written at different times, she has recalled the sweet memories of her marriage with the appellant, several ceremonies and functions related with the marriage which made her feel joyous and how well she was received by the accused-appellant and his relations in the matrimonial home after the marriage.

From an independent evaluation of evidence and having gone through oral evidence adduced and the several documents available on record, mostly the writings of the deceased we are satisfied that the present one is not a case of dowry death or the deceased having been instigated into committing suicide for her failure to satisfy the dowry demands of the accused-appellant. However, teasing by the accused-appellant of the deceased, ill-treating her for her mis-takes which could have been pardonable and turning her out of the house, also once beating her inside the house at the odd hours of night did amount to cruelty within the meaning of Section 498-A of IPC and therefore we agree with the Trial Court as also with the High Court though to some extent at variance with the cause for cruel treatment that the accused-appellant subjected deceased Seema to cruelty and therefore conviction of the accused-appellant under Section 498-A deserves to be maintained.

So far as the offence under Section 306 of IPC is concerned, in our opinion, the Trial Court and the High Court have committed gross error of law in holding the accused-appellant guilty and therefore conviction under Section 306 IPC deserves to be quashed and set aside.

Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 of IPC which reads as under:

"707. Abetment of a thing - A person abets the doing of a thing, who-First-
Instigate 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."

There is no direct evidence adduced of the accused-appellant having abetted Seema into committing suicide. The prosecution has relied on Section 113-A of Evidence Act which reads as under :-

113A. 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 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 purpose of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code.

This provision was introduced by Criminal Law (Second) Amendment Act, 1983

with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. How-ever still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - 'The other circumstances of the case' used in Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says-'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'

The present case is not one which may fall under clauses, secondly and thirdly of Section 107 of 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.

It is beyond doubt that Seema did commit a 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 oral and documentary evidence with which we shall now deal with. 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 Exbt. P/10. The deceased wrote on page 11 of diary (Article A):

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

On page 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 where-ever 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"

Both the writings as held by the Trial Court are in the hand of the deceased.

The dying-declaration Exbt. P/10 recorded on 16.6.1986 at 3 p.m. by Parmeshwar Dayal, Executive Magistrate, PW13 is in question-answer form and reads as under :-

"Q. What is your name? What is the name of Husband? Marriage when done.

Ans. Seema Bai, Name of Husband - Ramesh Dubey. Marriage per-formed in June, 85.

Q. What happened with you?

Ans. Today in the morning I poured kerosene on me and set fire.

Q. Why you set fire?

Ans. Today in the morning quarrel had occurred between me and my husband.

Q. Previously also quarrel had occurred at any time.

Ans. No. From being aggrieved by the quarrel of today. I set fire.

Q. What happened in to-day's quarrel?

Ans. In the morning he told me that you are free. You go where ever you want to go.

Q. Whether you want to say any thing more? Ans. No."

In his statement under Section 313 Cr.P.C. the accused appellant stated that he did never ask any dowry nor harassed Seema. On the day of the incident he was preparing to go to his duty but Seema was pressing him to leave her at Shalini's house in Samta colony. The accused had asked her to go there alone. When he was getting ready to leave for his duty he heard a cry of Seema from kitchen. He saw her burning. He ran to save her and in doing so he burnt his hands, legs and chest.

Shashi Gupta, PW3 is a neighbour of the accused. On 16.6.1986 at about 8.30 a.m. she was outside her house to purchase vegetables. She saw smoke coming out from the house of the accused and soon she heard a cry from inside the house. She thought that the house of the accused was on fire. She called her father and younger brother who pushed the door open. They entered the house. What was seen is pertinent. Seema Devi was standing and the accused was putting a bed-sheet around her body. The accused wrapped up Seema with the bedsheet. Seema was naked and her body was burnt. Shashi Gupta asked her elder brother to bring the jeep and call the driver. Driver of a neighbour brought the jeep. Accused Ramesh and two other persons took Seema to hospital in the jeep.

The picture which emerges from a cumulative reading and assessment of the material available is this. Presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate

convenience the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing - you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having been given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had "freed" her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the Trial Court mis-spelt out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free - to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free "to commit suicide" as held by the Trial Court and upheld by the High Court.

Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

In State of West Bengal v. Orilal Jaiswal and Anr., [1994] 1 SCC 73, this Court has cautioned that the Court 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 the 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.

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 under Section 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 under Section 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 page 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 page 12 of diary (Article A) clearly suggests that some time 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 Exbt. 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 hospital also improbabilises the theory of his having abetted suicide.

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 circum-stances 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 Evidence Act, do not permit the presumption thereunder being raised against the accused. The accused-appellant, therefore, deserves to be acquitted of the charge under Section 306 IPC.

The appeal is partly allowed. The conviction of the accused-appellant under Section 306 IPC and sentence passed thereon are set aside. His conviction under Section 498-A IPC and sentence passed thereon are maintained.