

A

THANU RAM

v.

STATE OF M.P.

(Special Leave Petition (Crl.) No. 5885 of 2009)

B

OCTOBER 05, 2010

[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

- Penal Code, 1860 – ss.498A, 306 and 107 – Married woman committed suicide by sprinkling kerosene upon herself and setting herself on fire – Suicide committed by victim in her 4th year of marriage when she was six months' pregnant – Victim made dying declaration before Naib Tahsildar (PW9) in presence of Doctor, PW11, who testified that the victim was in a fit mental condition to make the dying declaration before PW9 – Evidence of the victim's parents (PWs2 and 3) and brothers (PWs7 and 13) – Conviction of victim's husband under ss. 498A and 306 – Justification of – Held: On facts, justified – Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty – It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return – Dying declaration stated in clear and simple language that the victim had been treated with both mental and physical cruelty – Element of instigation within the meaning of s.107 IPC duly satisfied in view of s.113A of the Evidence Act – Evidence of P.Ws.2, 3, 7, 9, 11 and 13 sufficient to establish the prosecution case against the accused-husband – Evidence Act, 1872 – s.113A.*
- Evidence Act, 1872 – s.32 – Dying declaration – Appreciation of.*

Words and Phrases – "cruelty" – Meaning of – Penal Code, 1860 – ss.498A and 306.

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The petitioner's wife committed suicide in her matrimonial home by sprinkling kerosene upon herself and setting herself on fire. She died in the hospital having suffered 90-95% burn injuries. Prior to her death, she made a dying declaration to the Naib Tahsildar (PW9). The Doctor, in whose presence the declaration was made, was examined as P.W.11 to testify that the deceased was in a fit mental condition to make the dying declaration before P.W.9. While PW2 and PW3 were the father and mother of the deceased; PWs 7 and 13 were the deceased's brothers.

According to the prosecution, since the deceased committed suicide within 7 years of her marriage with the Petitioner, the presumption under Section 113-A of the Indian Evidence Act, 1872, was available against the accused and having regard to the evidence adduced by the prosecution, a case had clearly been made out for conviction of all the accused persons under Sections 306 and 498-A IPC.

The petitioner, his father and mother were tried and convicted of the offences punishable under Section 498-A and 306 of IPC. The High Court acquitted the Petitioner's father, while confirming the conviction of the Petitioner and his mother. The Petitioner's mother died subsequently.

In the instant Special Leave petition, the petitioner contended that the trial court as well as the High Court had failed to notice the main ingredient of an offence under Section 306 IPC, namely, the question of abetment in the commission of such suicide which has been spelt out in Section 107 IPC; that the meaning of the expression "cruelty" used in Section 498-A IPC cannot be linked up with an offence under Section 306 IPC, unless the "intention" as mentioned in Section 107 IPC or the

- A presumption available under Section 113-A of the Indian Evidence Act, were duly satisfied and that on facts, there was no evidence on record to indicate that the petitioner had, in any way, instigated his wife with the intention of making her commit suicide and, accordingly, the charge under Section 306 IPC not be sustained. The petitioner urged that in the absence of any intention to instigate his wife into committing suicide by his actions, which may at best amount to cruelty within the meaning of Section 498-A IPC, the provisions of Section 107 IPC and Section 113-A of the Indian Evidence Act were not attracted to the facts of the case.

- Two basic issues therefore arose for consideration, namely, (i) whether the offences complained of under Sections 306 and 498-A IPC were at all sustainable, and (ii) whether the dying declaration, said to have been made by the Petitioner's wife on which the decision of the Courts below was based, could have been relied upon without proper corroboration.

- Dismissing the special leave petition, the Court

- HELD:1.1. Section 107 IPC defines abetment to mean that a person abets the doing of a thing who instigates a person to do that thing. In the instant case, the petitioner's wife committed suicide in the 4th year of her marriage when she was six months' pregnant. Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life. In the instant case, there is no reason to disbelieve either P.W.9, Naib Tahsildar and Executive Magistrate, or P.W.11, who attended to the victim in the hospital. [Para 18] [722-D-F]

1.2. A dying declaration has to be treated with caution, since the accused does not get a chance to cross-examine the victim. In this case, however, there is no ambiguity or irregularity as far as the dying declaration is concerned and it has been stated in clear and simple language that the victim had been treated with both mental and physical cruelty and the victim has stated quite candidly how she poured kerosene on her body and set herself on fire. The evidence of P.W.13, the younger brother of the deceased, corroborates the story of the prosecution as to the manner in which deceased was treated by the petitioner, which triggered her immediate intention to commit suicide which was the culminating point of ill-treatment meted out to her by the petitioner and his mother. [Para 18] [722-H; 723-A-B]

1.3. The element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Indian Evidence Act, 1872, which provides for a presumption to be arrived at regarding abetment of suicide by a married woman and certain criteria are also laid down therein. The first criterion is that such suicide must have been committed within 7 years from the date of the victim's marriage. Since the deceased committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the Court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. In the Explanation to Section 113-A it has also been indicated that for the purpose of the said Section, the expression "cruelty" would have the same meaning

- A as in Section 498-A IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC. [Para 19] [723-C-F]

- B 1.4. Section 113-A of the Indian Evidence Act establishes a link between an offence under Section 498-A IPC, 107 IPC and 306 IPC, thereby permitting the Court to presume the commission of an offence under section 107 IPC on the basis of evidence adduced to prove an offence under Section 498-A IPC. The evidence of P.Ws.2, 3, 7, 9, 11 and 13 is sufficient to establish the prosecution case against the petitioner under Section 498-A IPC and Section 306 IPC. [Para 21] [724-C-D]

- D *Rakesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618; *Amalendu Pal v. State of West Bengal* (2010) 1 SCC 707; *Sushil Kumar Sharma v. Union of India & Ors.* (2005) 6 SCC 281; *Gangula Mohan Reddy v. State of Andhra Pradesh* (2010) 1 SCC 750; *Randhir Singh & Anr. v. State of Punjab* (2004) 13 SCC 129 and *B. Shashikala v. State of A.P.* (2004) 13 SCC 249 – distinguished.

Case Law Reference:

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|---|-------------------|---------------|---------|
| F | (2001) 9 SCC 618 | distinguished | Para 8 |
| | (2010) 1 SCC 707 | distinguished | Para 9 |
| | (2005) 6 SCC 281 | distinguished | Para 10 |
| G | (2010) 1 SCC 750 | distinguished | Para 11 |
| | (2004) 13 SCC 129 | distinguished | Para 11 |
| | (2004) 13 SCC 249 | distinguished | Para 12 |

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal)

- H No. 5885 of 2009.

From the Judgment & Order dated 14.8.2008 of the High Court of Chatisgarh at Bilaspur in Criminal Appeal No. 454 of 1990. A

Dr. Rajesh Pandey, Mahesh Pandey, Baleshwar Shukla and Mridula Ray Bharadwaj for the Petitioner B

Atul Jha and Dharmendra Kumar Sinha for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The Petitioner herein, Thanu Ram, was married to Hirabai (deceased) in 1984. On 24th March, 1988, Hirabai committed suicide in her matrimonial home by sprinkling kerosene upon herself and setting herself on fire. She died in the hospital on 25th March, 1988, having suffered 90-95% burn injuries. Prior to her death, she made a dying declaration to the Naib Tahsildar, J.R. Lahre, who was examined by the prosecution as P.W.9. Dr. K. Vinay Kumar, in whose presence the declaration was made, was examined by the prosecution as P.W.11 to testify that Hirabai was in a fit mental condition to make the dying declaration before P.W.9. C D E

2. The Petitioner, his father, Dhanaram, and mother, Lachhavantin, were tried and convicted for the offence punishable under Section 498-A and 306 of the Indian Penal Code (IPC) and sentenced to undergo Rigorous Imprisonment for 3 years and 5 years, respectively. In appeal before the High Court, accused Dhanaram was acquitted, while the conviction and sentence of the Petitioner and his mother were confirmed. F

This Special Leave Petition has been preferred by the husband of the deceased, Thanu Ram, against the said judgment and order of the High Court. For the sake of record, it may be mentioned that the Petitioner's mother, Lachhavantin, died in prison while serving her sentence. G

H

- A 3. Dr. Rajesh Pandey, learned Advocate for the Petitioner, raised two basic issues in the course of his submissions, namely, (i) whether the offences complained of under Sections 306 and 498-A IPC were at all sustainable, and (ii) whether the dying declaration, said to have been made by Hirabai on which
 B the decision of the Courts below was based, could have been relied upon without proper corroboration.

4. The prosecution examined 13 witnesses to prove its case which was denied by the accused in their statement under Section 313 of the Code of Criminal Procedure (Cr.P.C.).
 C According to the prosecution, since Hirabai committed suicide within 7 years of her marriage with the Petitioner, the presumption under Section 113-A of the Indian Evidence Act, 1872, was available against the accused and having regard to the evidence adduced by the prosecution, a case had clearly
 D been made out for conviction of all the accused persons under Sections 306 and 498-A IPC.

5. Dr. Pandey urged that the Trial Court as well as the High Court had failed to notice the main ingredient of an offence
 E under Section 306 IPC, namely, the question of abetment in the commission of such suicide which has been spelt out in Section 107 IPC. Learned counsel pointed out that in order to abet the doing of a thing, the abettor must be found to have instigated any person to do such thing or engage with one or more person
 F or persons in any conspiracy for the doing of that thing.

6. In addition to the above, Dr. Pandey contended that the meaning of the expression "cruelty" used in Section 498-A IPC cannot be linked up with an offence under Section 306 IPC, unless the "intention" as mentioned in Section 107 IPC or the
 G presumption available under Section 113-A of the Indian Evidence Act, were duly satisfied. Dr. Pandey submitted that in the instant case, there is no evidence on record to indicate that the Petitioner had, in any way, instigated Hirabai with the intention of making her commit suicide. Accordingly, the charge
 H under Section 306 IPC cannot be sustained.

7. In the course of his aforesaid submissions, Dr. Pandey referred to the evidence of P.W.9, J.R. Lahre, Naib Tahsildar and Executive Magistrate, who had recorded the dying declaration of Hirabai at the hospital on 24th March, 2008. From the evidence of P.W.9, Dr. Pandey pointed out that while Hirabai had spoken in Chattisgarhi, the said statements were recorded by P.W.9 in Hindi. Dr. Pandey then referred to the evidence of P.W.11, Dr. K. Vinay Kumar, who had in his evidence stated that the deceased had spoken in Hindi, and not in Chattisgarhi, as stated by P.W.9, and the same had been recorded in Hindi by P.W.9. Dr. Pandey urged that the said contradictions were sufficient to throw doubt on the veracity of the dying declaration, which should have been discarded, both by the Trial Court, as well as by the High Court.

8. In support of his submissions, learned counsel firstly referred to a Three-Judge Bench decision of this Court in *Rakesh Kumar Vs. State of Chhattisgarh* [(2001) 9 SCC 618], where the same question fell for consideration and it was, *inter alia*, held that merely because an accused is found guilty under Section 498-A IPC, he should not necessarily be held to be guilty under Section 306 IPC on the basis of the same evidence. It was held that in order to make out a case under Section 306 IPC, the requirements of Section 113-A of the Evidence Act would have to be satisfied, having particular regard to the element of instigation and that there must be a reasonable certainty to incite the conspiracy.

9. Reliance was also placed on the decision of this Court in *Amalendu Pal vs. State of West Bengal* [(2010) 1 SCC 707], where this Court was considering whether a case of abetment of suicide had been made out as provided under Section 107 IPC, and it was held that in the absence of any direct evidence to show that the appellant had by his acts instigated or provoked the deceased to commit suicide, the offence could not be brought within the ambit of Section 306 IPC, although, the conviction under Section 498-A IPC was upheld.

A 10. Dr. Pandey also referred to the decision of this Court
 in *Sushil Kumar Sharma Vs. Union of India & Ors.* [(2005) 6
 SCC 281], where the *vires* of Section 498-A IPC had been
 challenged. In the course of his submissions, the question also
 surfaced as to whether the consequences of “cruelty” within the
 B meaning of Section 498-A IPC, which are likely to drive a
 woman to commit suicide, were required to be established in
 order to apply the provisions of Section 498-A IPC. The said
 case examined the provisions of Section 304-B IPC in relation
 to Section 498-A IPC and the effect of Section 304-B of the
 C Evidence Act, and in course of such discussion, it was sought
 to be observed that the basic difference between Sections 306
 IPC and 498-A IPC is that of intention. It was held that under
 Section 498-A IPC, cruelty committed by the husband or his
 relations result in the woman committing suicide, whereas
 D Section 306 involves the abetting of an offence under Section
 306 IPC with the intention of making the victim take recourse
 to taking her own life.

11. Yet another decision of this Court in the case of
Gangula Mohan Reddy Vs. State of Andhra Pradesh [(2010)
 E 1 SCC 750], was referred by Dr. Pandey. In the said decision,
 the Court reiterated the observations made by this Court in
Randhir Singh & Anr. Vs. State of Punjab [(2004) 13 SCC
 129], to the effect that abetment involves a mental process of
 instigating a person or intentionally aiding a person in the doing
 F of a thing. Without a positive act on the part of the accused to
 instigate or aid in committing suicide, conviction under Section
 306 IPC cannot be sustained.

12. In conclusion, learned counsel referred to the decision
 of this Court in *B. Shashikala Vs. State of A.P.* [(2004) 13 SCC
 G 249], where a question had arisen regarding recording of the
 dying declaration of the victim in Hindi by the learned Magistrate
 who asked the questions in English with the victim replying in
 Hindi and the Doctor acting as a translator between them. It was
 held that since both the Magistrate and the Doctor had working
 H

knowledge of Hindi and since both had certified about the translation, there was no possibility of the victim making any tutored statement. The declaration was, therefore, held to be rightly admitted and relied upon by the Courts below. A

13. Dr. Pandey submitted that in the absence of any proven intention on the part of the Petitioner to instigate Hirabai into committing suicide by his actions, his conviction under Section 306 IPC could not be sustained and was liable to be set aside, even if the evidence adduced made out a case under Section 498-A IPC. B

14. The submissions made on behalf of the Petitioner were strongly resisted on behalf of the State of Chhattisgarh by Mr. Atul Jha, learned Advocate, who urged that the Trial Court had held that nothing had been elucidated by the defence from the evidence of P.W.9 and P.W.11 which could cause the evidence of the said witnesses to be disbelieved. On the other hand, the Trial Court had observed that from the statements of P.W.9 and P.W.11 it had been proved beyond doubt that the dying declaration of the deceased Hirabai had been correctly recorded prior to her death. Mr. Jha submitted that the acts of cruelty committed by the accused against Hirabai had been clearly demonstrated from the evidence of P.W.2, Jodhiram, father of the deceased, P.W.3, Devsir Bai, mother of the deceased, and P.Ws. 7 and 13, who are brothers of the deceased. Mr. Jha submitted that the said acts of mental, physical abuse and cruelty, were sufficient to drive a young woman to commit suicide within 7 years of her marriage, notwithstanding the fact that she was six months' pregnant and such fact was known to the Petitioner. It was submitted that the intention of the Petitioner to instigate and/or provoke the victim into committing suicide, was writ large on the available evidence and the judgment of conviction and sentence of the Trial Court, which was affirmed by the High Court, did not warrant any interference. C D E F G

A 15. In regard to the several decisions cited by Dr. Pandey, Mr. Jha submitted that the principles laid down therein were never in question, but the same had only limited application as far as the facts of the present case are concerned.

B 16. As will be evident from the submissions made on behalf of the respective parties, and, particularly, those advanced by Dr. Pandey, the differences between the provisions of Section 498-A IPC and 306 IPC, in the light of Section 107 IPC and Section 113-A of the Evidence Act, assumes importance. That there is sufficient evidence to bring
C home a charge under Section 498-A IPC, is not seriously disputed. What is urged in all earnestness on behalf of the Petitioner is that in the absence of any intention to instigate Hirabai into committing suicide by his actions, which may at best amount to cruelty within the meaning of Section 498-A IPC,
D the provisions of Section 107 IPC and Section 113-A of the Indian Evidence Act were not attracted to the facts of the case.

17. In order to appreciate the legal conundrum which has been presented by the facts of this case, the provisions of
E Section 306 and 107 IPC, as also Section 498-A thereof, are extracted hereinbelow, along with the provisions of Section 113-A of the Evidence Act :

F “Section 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.”

G “107. Abetment of a thing.—A person abets the doing of a thing, who First.- Instigates any person to do that thing; or

H 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. A

Explanation 1. - A person who, by wilful misrepresentation,
or by wilful conceal-ment 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. B

Explanation 2. - Whoever, either prior to or at the time of
the commission of an act, does anything in order to
facilitate the commission of that act, and thereby facilitate
the commission thereof, is said to aid the doing of that act." C

*"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. D

Explanation. - For the purpose of this section, "cruelty"
means- E

(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 F

(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." G

*"113A. Presumption as to abetment of suicide by a
married women.* - When the question is whether the
commission of suicide by a woman had been abetted by H

A 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
 B 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-
 C A of the Indian Penal Code (45 of 1860).”

18. Section 107 IPC clearly defines abetment to mean that
 a person abets the doing of a thing who instigates a person to
 do that thing. The question with which we are confronted is
 D whether there is sufficient evidence on record to indicate that
 by any of the acts of cruelty attributed to the Petitioner, there
 was an intention to instigate Hirabai into committing suicide.
 There is no getting away from the fact that Hirabai committed
 suicide in the 4th year of her marriage when she was six
 E months’ pregnant. Ordinarily, a woman in an advanced stage
 of pregnancy would not commit suicide even when treated with
 cruelty. It is only in extreme circumstances that a woman may
 decide to take her life and that of her unborn child when she
 reaches a point of no return and is in a mental state to take
 F her own life. In the instant case, we have the dying declaration
 of the victim Hirabai, which we are inclined to rely upon,
 notwithstanding the objections raised by Dr. Pandey regarding
 its veracity. We see no reason to disbelieve either P.W.9, J.R.
 Lahre, Naib Tahsildar and Executive Magistrate, or P.W.11, Dr.
 K. Vinay Kumar, who attended to Hirabai in the hospital. As is
 G well-established, a dying declaration has to be treated with
 caution, since the accused does not get a chance to cross-
 examine the victim. In this case, however, there is no ambiguity
 or irregularity as far as the dying declaration is concerned and
 it has been stated in clear and simple language that the victim
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had been treated with both mental and physical cruelty and the victim has stated quite candidly how she poured kerosene on her body and set herself on fire. The evidence of P.W.13, Uttam Kumar, the younger brother of the deceased, corroborates the story of the prosecution as to the manner in which Hirabai was treated by the Petitioner, which triggered her immediate intention to commit suicide which was the culminating point of ill-treatment meted out to her by the Petitioner and his mother.

19. In our view, the element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Indian Evidence Act, 1872, which provides for a presumption to be arrived at regarding abetment of suicide by a married woman and certain criteria are also laid down therein. The first criterion is that such suicide must have been committed within 7 years from the date of the victim's marriage. Since Hirabai committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the Court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. In the Explanation to Section 113-A it has also been indicated that for the purpose of the said Section, the expression "cruelty" would have the same meaning as in Section 498-A IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC.

20. All the decisions on the point cited by Dr. Pandey, deal with the differences in relation to the provisions of Section 498-A and Section 306 IPC, except in *Sushil Kumar Sharma's* case (supra), where the provisions of Section 498-A IPC had

- A been considered in the context of Section 304-B IPC. In that context, it was sought to be explained that the big difference between Section 306 IPC and 498-A IPC is that of intention. The provisions of Section 113-A of the Indian Evidence Act or its impact on an offence under Section 498-A IPC or Section
- B 306 IPC vis-à-vis Section 107 IPC was not considered in any of these decisions.

21. In our view, it is the said provision which makes all the difference as far as the present case is concerned. Section 113-A of the Evidence Act establishes a link between an
- C offence under Section 498-A IPC, 107 IPC and 306 IPC, thereby permitting the Court to presume the commission of an offence under section 107 IPC on the basis of evidence adduced to prove an offence under Section 498-A IPC. As mentioned hereinbefore, the evidence of P.Ws.2, 3, 7, 9, 11
- D and 13 is sufficient to establish the prosecution case against the Petitioner under Section 498-A IPC and Section 306 IPC.

22. We, therefore, see no reason to interfere with the impugned judgment of the High Court or the Trial Court. The
- E Special Leave Petition is, accordingly, dismissed.

B.B.B.

SLP dismissed.