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RAJBABU & ANR.

v.

STATE OF M.P.

(Criminal Appeal No. 895 of 2003)

B JULY 24, 2008

[R.V. RAVEENDRAN AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – ss. 306 and 498-A – Prosecution C *under – Of husband, mother-in-law and father-in-law – Suicide committed within seven years of marriage – No direct evidence – In dying declaration deceased exculpating all the accused – Trial Court convicting husband and mother-in-law on the basis of a letter written by the deceased on the date of* D *the occurrence and acquitting father-in-law – Order upheld by High Court – On appeal, held: On account of death of husband, his appeal abated – Conviction of Mother-in-law not justified – She was entitled to benefit of doubt – The letter or the evidence of the mother and sister-in-law of the deceased, do* E *not disclose any act or incident to make out a case of abetment or cruelty – In view of the evidence presumption u/s 113-A of Evidence Act cannot be invoked to find the guilt u/s 306 – Evidence Act, 1872-s. 113-A.*

Evidence Act, 1872 – s. 113-A – Presumption under – F *Invocability – Held: Such presumption to be raised keeping into consideration nature of cruelty having regard to meaning of 'cruelty' in s. 498-A IPC – Mere fact that woman committed suicide within seven years of marriage and was subjected to cruelty by her husband or his relative does not automatically* G *give rise to such presumption.*

Prosecution was initiated against 3 accused u/s 306 and 498-A. Prosecution case was that the deceased was married to accused No.1-husband two years prior to the occurrence. At the time of occurrence, none of the accused

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were at home. On getting the news that his wife had set herself on fire, accused-husband came home and then reported the matter to the police. He took the deceased to railway station in order to take her to the hospital. There her dying declaration was recorded by Police Station Incharge whereby she exculpated all the accused. Immediately thereafter she died. Trial Court acquitted accused father-in-law and convicted accused-husband and accused mother-in-law. High Court upheld the order of trial court. Hence the present appeal. During the pendency of the appeal accused-husband died rendering the appeal by him abated and infructuous.

Allowing the appeal, the Court

HELD: 1.1 The conviction under Sections 306 and 498-A IPC passed against the appellant No.2 -accused (mother-in-law) is set aside and acquittal is ordered granting her benefit of doubt. [Para 20] [285-B]

1.2 The only evidence that has been produced and was used for levelling accusations against the appellant was the dying declaration and the contents of Ex. P.1 which is stated to be a letter written by the deceased. Some of the witnesses like PW 1 and PW 3, the family members of the parental home of the deceased have stated in their deposition about the alleged ill-treatment meted out to the deceased by the in-laws family. [Para 6] [277-D,E]

1.3 A perusal of the said dying declaration would prove and establish that there is nothing incriminating in the said statement against the appellant and, therefore, the said dying declaration, which was exculpatory in nature, so far as the prosecution is concerned is of no relevance and would rather help the accused appellants. [Para 8] [278-B,C]

1.4 The conviction cannot be based against the appellant No. 2 on the basis of the letter (Exbt. P-1) alone. In

her statement PW 1 had, of course, brought in some allegations about the mother-in-law but only from that statement it cannot be said that she had directly any hand in the act of commission of suicide. So far as the evidence of PW 1 and PW 3 are concerned, there is only evidence to the extent that at times the deceased was not treated well by the appellant. There is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. [Paras 10, 13 and 15] [279-B, 280-D,E, 281-A]

2.1 Section 113-A of Evidence Act gives a discretion to the court to raise such a presumption as provided under the provision having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must 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. The court has to consider whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. [Para 15] [281-C,D,E,F]

Ramesh Kumar v. State of Chhattisgarh 2001 (9) SCC 618; *State of W.B. v. Orilal Jaiswal* 1994 (1)SCC 73– relied on.

2.2 In the instant case, the evidence on record discloses that the deceased wanted to be married in a literate family. She was not happy with the fact that her husband was illiterate and also with the status and condition of the family of her husband. She was also required to do

some domestic work as the family was poor, for which she was not happy. The deceased was of the view point that her life has been spoiled by marrying appellant No. 1. The letter reflects the attitude of the in-laws of the deceased towards the deceased. In the said letter there was no reference of any act or incident whereby the appellants were alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to commit suicide. On such slender evidence, the presumption u/s 113-A of the Evidence Act cannot be invoked to find the appellant guilty of the offence u/s 306 IPC. [Paras 16 and 17] [283-G, 284-A,B,C]

3.1 No offence is made out even under section 498A of IPC. Though the letter mentions the fact that the attitude of the family was not good towards the deceased and she was not treated well but there is no mention about any of such incident. PW1 and PW3 in their statements have emphasized that the mother-in-law of the deceased used to ask the deceased to run hand driven flourmill to which she was not habitual. In the year 1988 when the incident occurred, the hand driven flourmills were generally used by women in the poor families in the villages and even till today one may find use of the same in some villages in the country. Thus asking one to run the same at that point of time may not amount to an act of cruelty. [Para 18] [284-C,D,E,F]

3.2 In the said statements there is also a mention of an incident where the deceased had been beaten by her husband. The mother-in-law (appellant No. 2) cannot be held liable for the said act; rather there is evidence on record of PW3 who had stated that appellant No. 2 had once restrained her son. Though in the statement of PW 1 there is mention of one or two incident when the present appellant had beaten the deceased but there appears to be possibility of embellishment. The father of the deceased (PW2), in his statement has not made any state-

ment regarding cruelty being committed on his daughter in her in-laws house. [Para 19] [284-F,G, 285-A]

Case Law Reference

2001 (9) SCC 618	**Relied on**	**Para 15**
1994 (1)SCC 73	**Relied on**	**Para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 895 of 2003

From the Judgment and Order dated 23.9.2002 of the High Court of Madhya Pradesh at Jabalpur in Crl. Appeal No. 618 of 1989

Shiv Sagar Tiwari for the Appellants.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. By this Judgment and order we propose to dispose of the appeal filed by the appellants against the judgment and order dated 23-9-2002 of the High Court of Madhya Pradesh at Jabalpur whereby the Learned Single Judge dismissed the appeal filed by the appellants against the judgment and order dated 17-6-1989 of the Learned Additional Sessions Judge, Khurai, convicting the appellants under the provisions of Sections 306 and 498A of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo rigorous imprisonment for three years on each count.

2. The deceased, Shanti Bai, daughter of Janak Rani (PW.1) and Gyan Das (PW.2) was married to Rajbabu-appellant No.1 two years prior to the date of occurrence. On 17.7.1988 Shanti Bai set herself on fire in her matrimonial home and she died because of burn injuries received by her. At the time when the occurrence took place the Appellant No.2, Smt. Munnibai (mother-in-law of the deceased) had gone to fetch water from the well. The husband of Appellant No.2, Shri Jagat Bandhu

(father-in-law of the deceased), who was acquitted by the trial court, was away to some other place, whereas Appellant No.1 had gone for cutting wood from the forest. Appellant No.1 immediately coming to know about the incident came back and lodged the first information report at police station Bhangarh which was recorded by the Head Constable Narbada Prasad, who was examined as PW.9 during the trial. The said report which was lodged by the appellant No.1 was exhibited during the trial and was marked as Ex. P.16. The deceased was carried to the railway station Karonda for being taken to the Government Hospital at Bina for treatment. The police station Incharge, Mr. Ashok Chourasia (PW.8), also arrived at the railway station and recorded the dying declaration, wherein it was noted that Shanti Bai died in the accidental fire while cooking food in the house. In the said dying declaration the deceased exculpated all the members of her matrimonial home. Immediately thereafter she died at the railway station itself. The police thereafter sent the body for post mortem examination which was conducted and exhibited as Ex. P.20 during the trial. According to the said post mortem report the deceased suffered 90% burns which were found to be ante mortem. The police thereafter started investigation and on completion thereof, submitted a charge-sheet against Rajbabu-appellant No.1, Smt. Munnibai-appellant No. 2, who is mother of appellant No.1 and Jagat Bandhu, father of the appellant No.1 under Sections 306 and 498A of the IPC. On the basis of the aforesaid charge-sheet, charges were framed against all the three accused-appellants under Sections 306 and 498A of the IPC for treating the deceased with cruelty and abetting her to commit suicide as a result of which allegedly she committed suicide.

3. During the course of the trial, altogether eight witnesses were examined in order to prove the charges against the accused persons. Trial court after hearing the arguments and on appreciation of the evidence on record acquitted accused No.3, the father of the Appellant No.1, whereas an order was passed convicting appellant No.1 and appellant No.2 under Sections

306 and 498A of the IPC after holding that offences against both of them are proved beyond reasonable doubt. The learned trial court thereafter passed an order of sentence, sentencing both the appellants to undergo rigorous imprisonment for three years on each count. Both the sentences were to run concurrently. No fine was imposed. Against the aforesaid judgment both the appellants filed an appeal before the High Court which was dismissed by its judgment on 23rd September, 2002. Being aggrieved by the said judgment this appeal has been filed by the appellants. During the course of the trial they were granted bail. In the present appeal order was passed by this Court enlarging them on bail.

4. We have heard the learned counsel appearing for the appellants. However, counsel for the respondent-State did not appear in the hearing of the appeal although her name was shown in the daily cause list. Counsel appearing for the appellants at the very outset brought to our notice that Appellant No.1, namely, Rajbabu son of Jagat Bandhu had died on 27th September, 2005 at village Sabgah. The said appellant having died, the appeal filed by him stands disposed off having been abated and therefore having been rendered infructuous. This appeal, therefore, survives only so far as accused/appellant No.2, namely, Smt. Munni Bai is concerned.

5. Learned counsel appearing for the appellant, Smt. Munni Bai submitted that the deceased had died of burn injuries received by her while she was cooking food in the kitchen in her matrimonial home and that it is clearly established from the records that all the other members of the family, at the time of occurrence were not present. It was also submitted that the prosecution case itself indicates that appellant No. 2 had gone out of the house for fetching water and, therefore, she could not have been held guilty for an offence either under Section 306 or 498A of the IPC. He further submitted that the only incriminating evidence that could be said to be available against her is the letter which was allegedly written by the deceased and was exhibited as Ex. P.1 and a dying declaration which was recorded

by Shri Ashok Choursia, the investigating officer who was examined as PW 8. It was submitted by him that none of the aforesaid documents pin point the guilt of the appellant in the act of commission of suicide by the deceased.

6. We have considered the aforesaid submissions in the light of the record including the evidence adduced on behalf of the prosecution. There is no eye witness to the occurrence of the act of suicide committed by the deceased who was the daughter-in-law as she was the only person available at the relevant time in the matrimonial home. At that point of time she was cooking food for all the members of the family who had gone out of the house. Her husband, appellant No.1 had gone to the forest for collecting wood whereas her father-in-law, who was original accused No.3 had gone out of the house for some other work and whereas the sole appellant before us, had gone out of the house to fetch water. The only evidence that has been produced and was used for leveling accusations against the present appellant was the dying declaration and the contents of Ex. P.1 which is stated to be a letter written by the deceased. Some of the witnesses like PW 1 and PW 3, the family members of the parental home of the deceased have stated in their deposition about the alleged ill-treatment meted out to the deceased by the in-laws family. Let us therefore analyse and appreciate the said pieces of evidence as available on record.

7. The dying declaration was recorded on 17.7.1988 at about 12.45 hrs. by the investigating officer, PW 8 at the railway station from where the deceased was to be taken to the hospital for medical treatment. The incident had taken place at about 10.30 AM. Deceased had stated in the said dying declaration which was recorded in the presence of some of the villagers that while pouring kerosene oil, one end of her sari caught fire as she was cooking food and that in the aforesaid manner she got burnt. It is also stated by her in the said dying declaration that she did not set fire on her own and no body set fire on her and that while preparing meal her sari caught fire accidentally. She has categorically stated in the said dying declaration

A that no quarrel had taken place and that there was no problem in her matrimonial home. The said statement was read over to her and her thumb impression was put as she could not sign because of the burn injuries received by her.

B 8. The courts below have questioned the evidentiary value of the said dying declaration. A perusal of the said dying declaration would prove and establish that there is nothing incriminating in the said statement against the appellant and, therefore, the said dying declaration, which was exculpatory in nature, so far as the prosecution is concerned is of no relevance C and would rather help the accused appellants. As there is nothing incriminating in the said document against the appellants, neither are we inclined nor are we required to go into the question of evidentiary value of the said document.

D 9. The other incriminating document against the accused appellants is the undated letter exhibited as exhibit P.1. The said letter appears to have been written by the deceased, addressing to father, mother and the younger brothers of the husband. In the said statement the deceased has stated that she is E unable to tolerate the atmosphere in the family in her matrimonial home. She also stated that she prefer to live in hell because in-laws have done such acts with her which are of no use to mention. She has also stated that whatever has been done was all-right. In her letter she has stated that she had always considered her father-in-law and mother-in-law more than her F parents and that even then they have treated her in such a manner which she never expected. It is mentioned therein that the matrimonial house was ruined after her arrival and that she was treated like an enemy. She has stated that her mother-in-law had told that if she (Shanti Bai) is kept in their house then noth- G ing will remain. In that view of the matter she did not want to become burden on herself nor on her in-laws and that moment was the last time of her life. Of course, in the letter there is no date written but towards the end of the letter it was mentioned that it was the last day of her life. She also stated that she had a H long life but the hard words had made her life incomplete and

she has no further time to write further. The said letter appears to have been written on the date of occurrence and in the said letter she had given vent to all her expressions, feelings and contempt for the family. The said letter was found in the box seized from the room where the incident occurred.

10. The issue, therefore, that falls for our consideration is whether the conviction can be based against the appellant No. 2 on the basis of the said letter alone.

11. The prosecution has examined the mother of the deceased as PW 1. She had stated in her deposition that her daughter told her that in her in-laws house, her mother-in-law used to ask her to run hand flourmill. She also stated that her son-in-law Rajbabu also used to quarrel with her daughter and used to beat her. She has also stated that her daughter told her that her mother-in-law used to use filthy language for her father and brothers. It is further stated by her that once her husband had gone to bring Shanti Bai, at that time her mother-in-law did not send her rather she was beaten by her in his presence for not cleaning the utensils. Thereafter her husband came back. In her cross examination she stated that her daughter wanted to become educated and wanted to go for employment. Her daughter told her after coming back from the matrimonial home that her husband is not educated and the family is poor for which she had expressed pain. Her daughter told her that her life would be spoiled in that house and on that issue she was very unhappy. It was also stated by her that her daughter never sent any letter from her in-laws house. She further replied in her cross-examination that the deceased never told anything to her relatives and members of the society regarding her troubles because she never wanted to make her life public.

12. We have also on record the deposition of the sister-in-law of the deceased Smt. Kamla Rani who was examined as PW 3. She has also deposed that when Shanti Bai came back from her in-laws house for the first time she told her that her husband and mother-in-law are troubling her very much. She

A is forced to run hand driven flourmill which she was not habitual and when she was not able to run the flourmill, her mother-in-law and husband used to beat her. It has also been stated in her deposition that after coming back from her in-laws house Shanti Bai told her that once there had been a quarrel between her B and her mother-in-law and on the said issue her husband wanted to burn her but at that moment her mother-in-law stopped her husband not to do so at that time. It was further stated in her deposition that Shanti Bai told her not to narrate this story to any of her brothers. The contents of exhibit P.1 were approved C by PW 3, stating that the said letter was written by the deceased Shanti Bai.

13. It appears from the statement of PW 1 and also corroborated by the statement of PW 3 (sister-in-law of the deceased) that the deceased studied upto XI standard and wanted D to study further and wanted to be employed but since her husband was not literate and since the family was poor, they could not make arrangements for her further studies and they could not have even allowed her to go for employment, for which she was upset. In her statement PW 1 had, of course, brought in some E allegations about the mother-in-law but only from that statement it cannot be said that she had directly any hand in the act of commission of suicide. So far as the evidence of PW 1 and PW 3 are concerned, there is only evidence to the extent that at times the deceased was not treated well by the appellant.

F 14. Of course, reliance is placed by the learned courts below on the provisions of Section 113A of the Indian Evidence Act, 1872 (for short 'the Evidence Act'). Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of G abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of H that thing.

15. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Evidence Act, under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in Section 498-A of the IPC. Under Section 113-A of the Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband or any relative of her husband had subjected her to cruelty. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must 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. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The law has been succinctly stated in *Ramesh Kumar v. State of Chhattisgarh* reported in (2001) 9 SCC 618 wherein this Court observed:

> "*12.* This provision was introduced by the 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

A 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 anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption B 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*) the woman has committed suicide, C (*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 D had been abetted by her husband or by such relatives of her husband. 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 E 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 F 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. G 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 H Section 113-A is defined in Section 4 of the Evidence Act,

which says — 'Whenever it is provided by this Act that the 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.' " A

In *State of W.B. v. Orilal Jaiswal* reported in (1994) 1 SCC 73 this Court observed: B

"*15.* We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of the Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in *Bater* v. *Bater* (1950) 2 All ER 458 (All ER at p. 459) has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter." C D E F G

16. Having regard to the principles aforesaid, we may now advert to the fact of the present case. Here is a case where the evidence on record discloses that the deceased wanted to be married in a literate family. She was not happy with the fact that H

her husband was illiterate and also with the status and condition of the family of her husband. She was also required to do some domestic work as the family was poor, for which she was not happy. The deceased was of the view point that her life has been spoiled by marrying Appellant No. 1. The letter reflects the attitude of the in-laws of the deceased towards the deceased. In the said letter there was no reference of any act or incident whereby the appellants were alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to commit suicide.

17. On such slender evidence, therefore, we are not persuaded to invoke the presumption under Section 113-A of the Evidence Act to find the appellant guilty of the offence under Section 306 IPC.

18. The next question which remains for our consideration is whether an offence is made out under section 498A of IPC. Though the letter allegedly written by the deceased mentions the fact that the attitude of the family was not good towards the deceased and she was not treated well but there is no mentioned about any of such incident. PW1 and PW3 in their statements have emphasized that the mother-in-law of the deceased used to ask the deceased to run hand driven flourmill to which she was not habitual. In the year 1988 when the abovementioned incident occurred, the hand driven flourmills were generally used by women in the poor families in the villages and even till today one may find use of the same in some villages in the country. Thus asking one to run the same at that point of time may not amount to an act of cruelty.

19. In the said statements there is also a mention of an incidents were the deceased had been beaten by her husband. The mother-in-law (appellant No. 2) cannot be held liable for the said act; rather there is evidence on record of PW3 who had stated that appellant No. 2 had once restrained her son. Though in the statement of PW 1 there is mention of one or two incident when the present appellant had beaten the deceased

but there appears to be possibility of embellishment. The father of the deceased (PW2), in his statement has not made any statement regarding cruelty being committed on his daughter in her in-laws house. After analyzing the said evidence and the statements made by PW1 and PW3 we are of the opinion that the benefit of doubt should be granted to appellant No. 2.

20. We, therefore, set aside the conviction under Sections 306 and 498A of the IPC passed against the appellant No. 2 and acquit her granting her benefit of doubt. The appeal is allowed in so far as appellant No. 2 is concerned. The appeal has abated in so far as appellant No. 1 is concerned. The appellant No. 2 is already on bail. She is released from the terms of her bail bonds.

K.K.T. Appeal allowed.