

SUPREME COURT OF INDIA

Bhagwan Das

Vs.

Kartar Singh

Crl.A.No.720 of 2007

(S.B. Sinha and Markandey Katju JJ.)

14.05.2007

JUDGMENT

MARKANDEY KATJU, J.

1. Leave granted.

2. This appeal has been filed against the impugned judgment of the Delhi High Court dated 18.7.2006 in Criminal Revision No.188 of 2005.

The said judgment was delivered on a Criminal Revision filed by the accused appellant against the order of the learned Sessions Judge, Karkardooma Court dated 28.2.2005 framing charges under Section 306/498/34 IPC against the accused persons.

3. Heard learned counsel for the parties and perused the record.

4. The prosecution case is that on the night intervening 1st and 2nd March, 2000, the deceased (Shobha) had committed suicide at about 2.00 a.m. by hanging herself from the ceiling of a room in the matrimonial home.

It is alleged that she married Mangal Singh (since deceased) on 23.1.1992 and a girl child was born to them in the year 1999. Soon thereafter, in an accident, the said Mangal Singh became paralysed. It appears that the deceased (Shobha) did not leave any suicide note. It is the case of the prosecution that after her marriage, Shobha was being taunted for bringing less dowry and was being harassed on account therefore. A sum of Rs.50,000/- is alleged to have been given by her father a few days after her marriage to Mangal Singh for his business as he was allegedly unemployed.

It is further the case of the prosecution that Mangal Singh squandered the said sum of Rs.50,000/- in gambling and drinking and thereafter he raised a further demand of Rs.2 lakhs which could not be fulfilled. The prosecution also alleges that Shobha was ill-treated and harassed by the present petitioners as she was not able to give birth to a child and this harassment continued till 1999 when she gave birth to a girl child as mentioned above.

Till 1999, Shobha was being subjected to mental cruelty by being told that her husband would be married elsewhere. It is further alleged by the prosecution that since Mangal Singh, shortly after the birth of the girl child, was paralysed on account of an accident, the deceased (Shobha) was being taunted that she gave birth to a girl child which brought bad luck to the petitioners. It is these

circumstances which, according to the prosecution, drove the said Shobha to commit suicide. On the basis of these allegations, the learned Additional Sessions Judge came to the following conclusion :

"I am of the prima facie opinion that the cumulative effect of the prolonged ill-treatment and harassment of Shobha compelled her to commit suicide."

5. As already stated above, the learned Sessions Judge by the order dated 28.2.2005 framed charges under Section 306/498/34 IPC against the four accused persons namely Kartar Singh, Smt. Panno Devi, Subhash and Arvind. Kartar Singh is the father-in-law of the deceased Shobha, Panno Devi is her mother-in-law, Subhash and Arvind are her devars (brothers of her husband Mangal Singh). Admittedly the husband of the deceased Shobha, Mangal Singh, has died.

6. The High Court has held that no charge under Section 306/34 IPC was made out and it has set aside the charge. However, it remitted the matter regarding framing of charges under Section 498-A/34 IPC to the learned Metropolitan Magistrate, Delhi, and we are informed that said charge has been framed.

7. This appeal has been filed by the Bhagwan Das, who is the father of the deceased Shobha. It is submitted by learned counsel for the appellant that the charge under Section 306 was made out and hence the same should have been quashed. We do not agree.

8. The only allegation against the appellant was that they harassed the deceased Shobha because she did not bring adequate dowry. Hence, it is submitted by the learned counsel for the appellant that this amounted to abetment to suicide and hence was covered under Section 306 IPC, read with S. 107.

9. The word "abetment" has been defined in Section 107 IPC as follows:

"Abetment of a thing A person abets the doing of a thing, who First - 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 willful misrepresentation, or by willful 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.

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 the act, and thereby facilitates the commission thereof, is said to aid the doing of the act."

10. Learned counsel for the appellant has relied on the decision of this Court in Brij Lal vs. Prem Chand & Anr. AIR 1989 SC 1661. In that case it was held that :

"Where there was overwhelming evidence that the accused had made the life of his wife intolerable by constantly demanding money and made it clear to her that if she wanted to die, she may do so on very same day and give him relief forthwith, thereby spurring her and goading her to commit suicide, the case would squarely fall under the first category of abetment under Section 107."

11. On the other hand, learned counsel for the respondents relied on the decisions referred to in the impugned judgment. Thus in *Netai Dutta vs.*

State of West Bengal JT 2005(3) SC 46, where a suicide note was involved, this Court came to the conclusion that in the suicide note there was no reference of any act or incident whereby the appellant was alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to have committing suicide. Hence, it was held that there was no abetment to suicide.

12. Similarly, in *Mahendra Singh & Anr. vs. State of M.P. 1995 Supp.(3) SCC 731*, it was observed by this Court that it is common knowledge that the words uttered in a quarrel or in the spur of the moment or in anger cannot be treated as constituting mens rea. In that case the appellant said to the deceased "to go and die". As a result of such utterance, the deceased went and committed suicide. However, the Supreme Court observed that no offence under Section 306 IPC read with Section 107 IPC was made out because there was no element of mens rea.

13. In *Randhir Singh & Anr. vs. State of Punjab 2004(13) SCC 129*, it was observed that "more active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

14. In the same decision it was observed following the decision in *State of West Bengal vs. Orilal Jaiswal 1994(1) SCC 73* that :

"the courts 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."

15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide. Vide *Kans Raj vs. State of Punjab & Ors. 2000(5) SCC 207*, *Satvir Singh & Ors. vs. State of Punjab & Anr. 2001(8) SCC 633*, *Smt. Shanti & Anr. vs. State of Haryana AIR 1991 SC 1261*.

17. In the present case, since no charge under Section 304B has been framed, obviously the accused cannot be convicted under that provision.

18. In view of the above, there is no force in the appeal and hence it is dismissed. We, however, make it clear that we are not approving or justifying harassment of wives by their husbands or in-

laws, but are only clarifying the law in the peculiar facts of this case as it stands today.

Whether the law should be amended is for the legislature to decide. Appeal dismissed.