

SUPREME COURT OF INDIA

Wasim

Vs.

State NCT of Delhi

CrI.A.No.1061 of 2019

(L.Nageswara Rao and Hemant Gupta,JJ.,)

18.07.2019

JUDGMENT

L.Nageswara Rao,J.,

SLP(CrI.)No.193 of 2019

1. Leave granted.

2. On receipt of information on 27.10.2015 about a suicide, PW-23 Sub-Inspector Bijender Dahia attached to Police Station Aman Vihar rushed to Nithari village, Delhi. By the time he reached, the body of the deceased i.e. Moniya had already been brought down from hanging position. Ashwani (PW-12), the brother of the deceased was found sitting besides the body of the deceased. The elder brother of the Appellant was also present. A suicide note was seized. PW-23 sent the body of the deceased for post-mortem. The statement of Ashwani was recorded by PW-23. Inquest was conducted by the Executive Magistrate on the next day. According to the post-mortem, the cause of death of Moniya was due to asphyxia as a result of ante mortem hanging.

2. FIR was registered on the statement of Sunita (PW-11), the mother of the deceased on 04.11.2015. A charge sheet was filed on 05.02.2016. Later, charges were framed against the Appellant under Section 498A/304B of the Indian Penal Code, 1860 (hereinafter 'IPC'). 23 witnesses were examined by the prosecution and several documents relied upon to prove the guilt of the Appellant. The Trial Court convicted the Appellant under Section 498A and 306 IPC. Sentence of three years' simple imprisonment for the offence under Section 498A IPC and four years simple imprisonment for the offence under Section 306 IPC was imposed on the Appellant. The appeal filed by the Appellant was partly allowed by the High Court. The Appellant was acquitted for the offence under Section 306 IPC. The conviction and sentence under Section 498A IPC was upheld by the High Court. Hence, this appeal.

3. The deceased Moniya who was working as a teacher was married to the Appellant on 02.05.2015. PW-11 Sunita deposed that her daughter Moniya was being harassed by the

Appellant by demanding dowry. She testified in the Court that on two occasions she gave Rs.40,000/- and Rs.50,000/- to the deceased for handing over the same to the Appellant to meet his demands of dowry. She stated that the same was not informed either to her husband or her son and that she made the payments from her savings. She also spoke about the demand for a bigger car. The Appellant was working in Nagercoil District, Tamil Nadu and he was demanding for air fare to travel to the place of his work. PW-11 further stated that she was informed by the deceased that the Appellant had extra marital relations with one Poonam and he informed the deceased that he intended to marry Poonam after leaving the deceased.

4. The statement of PW-12 Ashwani was recorded on the day of the incident in which he did not mention about the demand of dowry by the Appellant. He stated that the deceased was depressed by the behavior of the Appellant. PW-10 Sukhbir, the father of the deceased, who reached the place of incident also did not accuse the Appellant of any demand of dowry. The suicide note which was seized from the place of incident was proved on a comparison of the admitted hand writing of the deceased from the school records with the suicide note. The suicide note also did not contain any allegation of demand of dowry by the Appellant. The suicide note which was reproduced in the judgment of the Trial Court is as follows:

"Relations have come heavy on dreams"

Always lived with head ups and never did nay work by which I have to down my neck. I love a lot to my dad and brother. Today they have tears in their eyes I have broken from inside. I love a lot to my profession and education. I have done nothing that is why I cannot tolerate I want to live my life with Master Ji, He a/so manipulated. I do not have any complaint to anyone.

5. After examining the evidence on record, the Trial Court held that the demand of dowry was not proved. However, the Trial Court was convinced that the prosecution proved the extra marital relationship of the Appellant with Poonam. The oral evidence relating to the Appellant informing the deceased about such extra marital relations to the deceased was accepted by the Trial Court. Having found that the Appellant was guilty of mental cruelty, the Trial Court convicted the Appellant under Section 498A, IPC. Though, there was no charge under Section 306 IPC, relying upon the judgments of this Court, the Trial Court was of the opinion that the conviction under Section 306 IPC was permissible. The Trial Court found that the offence under Section 306 IPC was made out against the Appellant and convicted him.

6. The main issue that was considered by the High Court in the appeal against the judgment of the Trial Court was the correctness of the conviction under Section 306 IPC without a charge being framed. The Appellant contended before the High Court that the charge that was framed against him was under Section 304B, IPC and that he could not have been convicted under Section 306 IPC. Placing reliance on the judgments of this Court, it was held that a conviction under Section 306 IPC is permissible even without a charge being framed in a case where the accused is charged under Section 304 B IPC. The

High Court held that such conviction would not amount to failure of justice. However, the High Court found no convincing evidence to hold that the Appellant abetted the commission of suicide by the deceased. The Appellant was acquitted for the offence under Section 306 IPC on the basis that there was no evidence to show that the deceased was subjected to mental or physical cruelty before her death. The High Court affirmed the conviction of the Appellant under Section 498A IPC by holding that there was sufficient evidence on record regarding the demand of dowry.

7. The acquittal of the Appellant under Section 306 IPC has become final as no appeal is preferred by the State against the judgment of the High Court. Ms. Aishwarya Bhati, learned Senior Counsel on instructions submitted that a decision was taken not to file the appeal in view of the fact that the Appellant has already undergone the sentence under Section 498A IPC. The learned counsel for the Appellant submitted that his conviction under Section 498A is impermissible after he was acquitted for the offence under Section 306 IPC. He relied upon the reasons given by the Trial Court regarding the non availability of any evidence pertaining to demand of dowry.

8. Ms. Bhati, learned Senior Counsel for the State submitted that it is clear from the evidence of the family members of the deceased that there was demand of dowry by the Appellant and the High Court was justified in holding that the Appellant is guilty of committing an offence under Section 498A.

9. The conviction of the Appellant by the Trial Court under Section 498A was not for demand of dowry. The conviction under Section 498A was on account of mental cruelty by the Appellant in having an extra marital relation and the threats held out by him to the deceased that he would leave her and marry Poonam.

10. The High Court acquitted the Appellant under Section 306 IPC by reaching a conclusion on the basis of evidence that the charge of abetment of suicide on part of the Appellant was not proved. Without any discussion of the evidence pertaining to demand of dowry and without dealing with the findings recorded by the Trial Court regarding the demand of dowry, the High Court held that the offence under Section 498A was made out.

11. Cruelty is dealt with in the Explanation to Section 498A as follows:

[498A. Husband or relative of husband of a woman subjecting her to cruelty. — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section,

"cruelty" means—

(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 (hi 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.]

12. Conviction under Section 498A IPC is for subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of 'Cruelty'. It is clear from a plain reading of Section 498A that conviction for an offence under Section 498A IPC can be for wilful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no evidence of dowry demand, the Trial Court convicted the Appellant under Section 498A IPC for his wilful conduct which drove the deceased to commit suicide. The Appellant was also convicted under Section 306 IPC as the Trial Court found him to have abetted the suicide by the deceased.

13. Section 306 IPC provides for punishment with imprisonment that may extend to ten years. There should be clear mens rea to commit the offence for conviction under Section 306 IPC. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide - See M. Mohan vs. State . To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary - See Pallem Deniel Victorations Victor Manter vs. State of Andhra Pradesh . Whereas, any wilful conduct which is likely to drive the woman to commit suicide is sufficient for conviction under Section 498A IPC. In this case, the High Court recorded a categorical finding that neither mental nor physical cruelty on the part of the Appellant was proved. Therefore, the conviction under Section 498A IPC is not for wilful conduct that drove the deceased to commit suicide. The High Court held that though there was no demand of dowry soon before the death, the prosecution proved dowry demand by the Appellant immediately after the marriage.

14. The High Court ought not to have convicted the Appellant under Section 498A for demand of dowry without a detailed discussion of the evidence on record, especially when the Trial Court found that there is no material on record to show that there was any demand of dowry. The High Court did not refer to such findings of the Trial Court and record reasons for its disapproval.

15. For the aforementioned reasons, the judgment of the High Court is set aside. The appeal is allowed.