

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CRAA No. 10/2006

Pronounced on : 12 .06.2020

State of J&K

.... Appellant(s)

Through:- Mr. Arshad Majid Malik, Dy.A.G
with Ms. Monika Thakur, Assisting
counsel.

V/s

Ram Parkash & ors.

.....Respondent(s)

Through:- Mr. Jagpaal Singh, Advocate.

Coram : HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

- 01.** This appeal is filed against the judgment of acquittal dated 04.08.2005 passed by the Sessions Judge, Rajouri in case titled *State Vs. Ram Parkash & ors.* under Sections 498-A/306 RPC.
- 02.** The prosecution case against the accused persons is that Mst. Anita Devi was married to accused-Raj Pal, in the year 1988, they have two children but since she suspected that her husband-A2 had illicit relation with Champa Devi-A4, wife of Ram Parkash (A1), therefore, she was slighted from time to time and was also subjected to ill-treatment and beating. She committed suicide by jumping in the well on 08.04.1996.
- 03.** As her brother-Surinder Kumar came to know from one Ved Parkash that she was missing since 08.04.1996, so he went to her in-law's house and searched for her but she could not be traced, thereafter he got an application drafted and reported the matter to the Station House Officer, Police Station Nowshera. However, on 13.04.1996, her dead body was found from the village well.

04. After recovering of her dead body, police registered a case under Section 498-A RPC but after receipt of the post-mortem report, added the charge under Section 306 RPC so all the accused were charged under Sections 306 & 498-A RPC.

05. The Trial Court framed charges under Section 306 & 498-A RPC. Even though none of the ingredients to make out the charge of 498-A RPC have been mentioned.

06. Appeal has been filed on the ground that as the offences have been proved, as such, the order of acquittal is against law because there is no appreciation of evidence by the trial Court.

07. The question is whether there was any abetment or inducement to the deceased, which drove her to commit suicide, that too, after giving birth to two children and after eight years of married life. The allegation is that her husband was having extra-marital affairs with accused-Champa Devi, wife of the elder brother of Raj Pal. This is in the statement of Rano Devi, mother of the deceased. The deceased, according to the witnesses, had disclosed this to her mother. This is also stated by PW-Dev Raj, father of the deceased but he does not say as to who told him about this. He also deposed that A1 & A4 used to trouble her. He also stated that a day before, she went missing, the deceased had come to collect her children, who were with them and went back in the same evening. He also stated that Ram Parkash and his wife Champa Devi used to ask the deceased to ask her father to provide her a piece of land and also to construct house for them but he also admitted that his daughter has been living separately from A1 & A4 as her husband was in the Army.

08. It is also in his statement that the deceased lived with her mother-in-law in a separate house while Ram Parkash and his family lived

separately as they have two houses. He also deposed that she came to stay with the parents in the month of January, 1996 and stayed for a month whereafter her husband came and she went back with him.

09. PW-Suraj Parkash is a Mason by profession. His father found corpse of the deceased in the well whereafter he was asked to inform, the village head-Nambardar. He also stated about having constructed separate house of A1-Ram Parkash.

10. PW-Sunita Kumari stated that the deceased was her sister who was harassed by the accused-Champa Devi and Ram Parkash but on cross-examination stated that the accused Raj Pal used to stay separately. Assuming that the allegation that Raj Pal was having extra-marital affairs with the elder brother's wife, it would be quite unusual that while the deceased confided with her mother and not with her sister PW-Sunita Kumari, also did not say a word about this, though she spoke that both A1 and his wife had abused her sister. But the question is whether the suspicion about her husband's extra-marital relation was the result of mental sickness and if so, does it mean, she had committed suicide because she was suffering from depression.

11. Prosecution witnesses state that for a mental problem, the deceased used to be taken for treatment at Dhianpur Gadhi. PW-Rano Devi and her husband-Dev Raj, both, stated that the deceased was taken to Dhianpur Gadhi for treatment for not bearing a child. Whether it is correct or otherwise, the fact has been admitted by PW-Jeet Ram, who is the village head, an old man of 72 years at the time, when he was examined as a witness. In cross-examination, he stated that he once asked Raj Pal about the state of mental health of the deceased, he admitted that she had some problem for which they used to go to Dhianpur Gadhi i.e., a sacred place where the

villagers go for treatment on the basis of faith in such places. There is no reliable evidence against the allegations of her husband's extra-marital relation with her real elder brother's wife as no one spoke about it prior to her death. Pw-Subhash Chander has stated that the deceased used to be taken to Dhianpur because she used to get fits.

12. This could not be the reasons for suicide. It appears that she was a weak-minded woman having suicidal tendency. It is in the evidence that both, Ram Parkash and his wife, used to harass the deceased as stated by her mother PW-Rano Devi. But in case of similar allegations, in case titled **Mahendra Singh Vs. State of M.P., 1995 Supp (3) SCC 731**, which was referred by Apex Court in **Gangula Mohan Reddy Vs. State of Andhra Pradesh, (2010) 1 SCC 750**, in Para-11, it has been held as under:-

“11. Learned counsel for the appellant has placed reliance on a judgment of this Court in **Mahendra Singh & Another v. State of M.P.** In **Mahendra Singh**, the allegations levelled are as under:-

"1....My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.”

13. Their lordships stated the law in Para-17 of the said judgment, which is also reproduced below:-

“ 17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. 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 committed suicide.”

14. Again in **Amalendu Pal Alias Jhantu Vs. State of West Bengal, (2010) 1 SCC 707**, their lordships were referring to Section 306 IPC, observed in Para-10 as under :-

“10. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in *Randhir Singh v. State of Punjab* as follows in paras 12 and 13: (SCC p. 134)

12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. 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.

13. In *State of W.B. v. Orilal Jaiswal* this Court has observed 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. Finally, their lordships held in Para-13 as under: -

“13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

16. The other set of evidence regarding torture and physical assault of the deceased by Ram Parkash and his wife, A1 & A4, is PW-Subash Chander, who is an employee of the Health Department. He says that the deceased met him on 13.04.1996, while she was sitting in the Dispensary. He heard some weeping and came out and found the deceased was weeping and walking on the road. He asked Parveen, vegetable vendor to bring her to the Dispensary. He enquired about her problem and she complained against her in-laws. He then sent for her husband who came and told him that she has run away from the house. She again started weeping and her husband abused her and then dragged her and thereafter started hitting her head with small stones. In the meanwhile, the deceased father Pw-Dev Raj alighted from the bus and told him that he would take her to Dhianpur Punjab. It is in

his statement that the deceased used to get fit, for which, he wanted to take her for treatment in Punjab.

17. The other witness regarding cruelty is Sita Devi, who is closely related to the deceased. She stated that sometime in March, two years ago, she met the deceased, who was weeping as she stood near the Sari Hospital. She was followed by her husband, who started beating her and other accused also came after him and they also started beating her. They were beating her only because they wanted her to get money and land for construction of house from her father. They took her away from the Hospital and thereafter the deceased never met her. After sometime, she came to know that her dead body was found in the well. She also stated that the accused-Ram Parkash and Champa Devi used to quarrel with her. Her evidence is of no consequence because she never disclosed this to the Police when her statement under Section 161 Cr.P.C. was recorded.

18. Another witness is Kinto Devi W/o Bansilal. She is the witness only about what she was told by the wife of Ravi Dutt. Mst. Raj Kumari, after she came to know about the death of the deceased, she went on spot near the well and asked Raj as to what she knew about this, but told her that the deceased was beaten by the accused and they took them towards well but they threatened her that she would be killed if she told this to anybody. This witness is speaking a lie because the cause of death is drowning as per the statement of the doctor, who conducted the post mortem report. He has denied that she had any injury on any part of her body.

19. Next witness is Surinder Pal, the brother of the deceased, who has lodged a missing report on 09.04.1996 in which neither any allegation of cruelty nor demand of dowry has been alleged. However, his statement in the Court is that the accused-Ram Parkash & Champa Devi were always

quarrelling with her and they used to thrash her but this was not stated in her missing report, therefore, he could not be believed for this. He also alleged that the accused had called her but even this allegation has not been stated in the missing report.

20. The next witness is Pw-Kamla Devi. Her statement is that once she met Anita Devi who she told her that the accused Ram Parkash and Champa Devi have always been troubling her. She heard cries and then stated that she has heard this from others also as she did not herself only heard her cries. She has nowhere stated that she was being harassed by the accused. This is the only evidence regarding alleged cruelty, so even the charge of cruelty is not made out.

21. Trial Court has appreciated the evidence correctly and reached the conclusion and has rightly acquitted the accused.

22. It is a clear case that the deceased was suffering from depression getting fit periodically as she was suffering from a psychotic problem due to which she committed suicide as revealed in the medical evidence. There is no ground for interference in the judgment of acquittal passed by the Trial Court, which is well reasoned and, as such, the appeal is **dismissed** being without any merit.

(Sindhu Sharma)
Judge

JAMMU
12 .06.2020
Ram Murti

Whether the order is speaking : Yes.
Whether the order is reportable : Yes.