Before T.H.B. Chalapathi, J

SUNIL PALTA & ANOTHER,—*Appellants*

versus

STATE (Chandigarh, U.T.),—*Respondent*

Crl.A. No. 854/SB OF 1999

1st October, 1999

Indian Penal Code, 1860-Ss.304-B, 306 & 498—A—Evidence Act, 1872—S.113—A—Suicide by wife—Sessions Court convicting husband & mother-in-Law u/s 306 IPC & acquitting u/ss 498—A & 304—B IPC—Prosecution failed to prove 'cruelty' or any demand of dowry—Presumption of abetment of suicide u/s 113—A cannot be invoked— Once the accused are acquitted u/s 498—A IPC they cannot be convicted u/s 306 IPC—Appeal allowed—Accused acquitted of the charge u/s 306 IPC.

Held that the learned Sessions Judge acquitted both the accused for the offences under Sections 498-A and 304-B IPC. Thus, it is clear both from the findings of the learned Sessions Judge and also from the evidence adduced on record that there is no evidence of any cruelty. Therefore, in my view, the presumption u/s 113-A of the Evidence Act cannot be invoked. To raise a presumption of abetment of suicide, it must be shown that the suicide was committed within seven years of marriage and that the deceased was subjected to cruelty by the husband of the deceased or his relatives. There cannot be any dispute that in the explanation to S.113-A of the Evidence Act 'cruelty' shall have the same meaning as in Section 498-A of the IPC So is once the accused are acquitted of the charge u/s 498-A IPC then it becomes clear that the deceased was not subjected to cruelty. Therefore, presumption u/s 113-A of the Evidence Act cannot be invoked in this case.

(Para 16)

Further held that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts. Therefore, the conviction u/s 306 IPC cannot be sustained. Both the accused are acquitted of the charge under section 306 IPC.

(Para 17)

R.S. Cheema, Senior Advocate with S.S. Narula, *Advocate for the Appellants.*

JUDGMENT

T.H.B. Chalapathi, J.

(1) This appeal is diredcted against the conviction and sentence imposed by the learned Sessions Judge, Chandigarh in Sessions Case No. 31 of 1997 decided on 19th August, 1999.

(2) According to the case of the prosecution, the 1st accused married Sunita Rani alias Nity the eldest daughter of Hari Chand, who is the complainant, in Novermber, 1973 at Chandigarh. The said Sunita died under suspicious circumstances on 23rd, May, 1997 in General Hospital, Sector-16, Chandigarh. On the complaint given by the father of Sunita, the case was registered against the husband and mother-in-law of Sunita for the offences under Sections 306, 304-E and 498-A I.P.C. read with section 34 I.P.C.

(3) On completion of the investigation, a chargesheet has been filed against both the accused. On the basis of the material placed before him, the learned Magistrate committed the case to Sessions as the offences are exclusively triable by the Court of Sessions. After committal, the learned Sessions Judge framed charges against both the accused for the offences under Sections 306, 304-B and 498-A I.P.C.

(4) In order to prove the guilt of the accused, the prosecution examined 10 witnesses and marked documents.

(5) On a consideration of the evidence on record, the learned Judge convicted both the accused for the offence under Section 306 I.P.C. but acquitted the accused under Sections 304-B and 498-A I.P.C. For the offence under Section 306 I.P.C. the learned Sessions Judge sentenced both the accused to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 1,000 each.

(6) Aggrieved by the said conviction and sentence imposed by the learned Sessions Judge, the accused preferred this appeal.

(7) There cannot be any dispute that Sunita Kumari committed suicide. PW-1 is the Doctor who conducted autoposy on the dead-body of Sunita Kumari on 23-5-1997. He alongwith the other doctors who constituted the Board, found a ligature mark present above the thyroid cartilege and below the chin measuring 2 cms in front of the neck. He further deposed that in their view the cause of death was due to asphyxia as a result of hanging which is sufficient to cause death in

the normal course of Nature. He also deposed that the hanging is ante-mortem in nature. He further stated that the poisoning is ruled out in the report of the Chemical Examiner.

(8) The only question for consideration is whether Sunita Kumari committed suicide being unbearable the cruel treatment meted out to her at the hands of the accused. PW-2 is the father of the deceased Sunita Kumari. According to him, right from the beginning, Sunil Kumar, the husband of Sunita Kumari was misleading them and was telling that he was a Graduate, but he was not. He also deposed that Sunil Kumar gave out that his father had only one wife, but it was found that he had another wife living in Tundla and that he has got one brother. He further deposed that his daughter was telling that she was finding it difficult to pull on with the accused as they were always cheating and taunting her and he should arrange for her divorce. But the fact remains that he did not tell this in his statement recorded under Section 161 Cr. P.C. In fact the case of the PW-2 is that his daughter was killed by the accused and one other person, but there is no evidence to this effect. His evidence in regard to the demand of dowry is quite contradictory and no reliance can be placed on his evidence. He deposed that his wife gave a cheque for Rs. 50,000 but the evidence. on record clearly shows that the cheque was encashed by his own son not by Sunil Kumar. After going through the entire, evidence of PW-2, I am of the opinion that he is not a reliable witness and his evidence is of no consequence.

(9) Admittedly, the marriage between Sunil Kumar and the deceased was not an arranged marriage. It was love marriage. The letters exchanged between the deceased and Sunil Kumar during the years 1994-95 clearly indicate that their relations were cordial.

(10) The evidence of PW-5 only shows that the marriage was performed at Dharamshala at Sector 23, Chandigarh. The evidence of PW-6 shows that on receipt of a message from the Control room he reached House No. 3113 in Sector 44, Chandigarh and he found that the door of that house was broken. He had taken the photograph of the deceased. His evidence is not material. PW-7 is a Social worker. Her evidence is to the effect that PW-2 told her that there was 'Kalesh' (quarrel) between Sunita and her husband and she should go to their house and try to advise them. Her evidence further shows that her husband also accompanied her and Sunita told her that she was very much harassed because her husband was suspecting her moral character and there was a dispute for a sum of Rs. 50,000. A close reading of her evidence does not inspire any confidence. To my mind,

she is only a chance witness. After going through her evidence, I am unable to place any reliance on her evidence.

(11) The evidence of PW-8 is only to the effect that wedding cards for the marriage of Sunita with Sunil Kumar were printed in his press. his evidence is not material.

(12) PW-9 is the brother of the deceased. His evidence clearly shows that for some time after the marriage, the relations between the deceased and her husband were cordial, but after some time some problem cropped up and she was complaning that the accused were harassing her and also suspecting her moral character. A reading of his evidence clearly shows that it is not consistent with the evidence of his father. He tried to introduce a new fact that a quarrel took place between Sunita and Sunil When they visited their house which was not spoken to by PW-2. His evidence itself discloses that the husband and wife used to quarrel over petty matters. On a close reading of his evidence, I am unable to place any reliance on his evidence.

(13) PW-10 has only deposed that he received the information of the admission of Sunita Kumari in the Hospital. His evidence is of formal nature. PW-11 recorded the statements of the witnesses under Section 161 Cr. P.C.

(14) After closure of the prosecution evidence, the accused were examined under Section 313 Cr. P.C. in which they stated that this case has been foisted.

(15) From the evidence of PW-2 it is evident that he was a heart patient and was under constant treatment and that he was also facing financial problems. The statements of the accused under Section 313 Cr. P.C. also support this theory. In his statement recorded under Section 313 Cr.P.C. accused No. 1 stated as follows :—

> "Before marriage she was giving her pay to her father and even after her marriage we both i.e. I and Sunita have been helping her family with money and other articles as and when so required. I even gave a sum of Rs. 50,000 for bye-pass surgery of my father-in-law Hari Chand Kukreja by taking a loan from my employer S. Anoop Singh. I have been attending on Hari Chand all through his treatment at the PGI, Chandigarh as well as AIIMS, New Delhi. I even arranged and donated blood for him besides footing bills off and on including expenses for travelling even to Delhi. So

much so that Bank drafts for treatment at AIIMS was also deposited by me. As the father of Sunita was facing financial problems and was also under heavy loans for which he and his mother, family members used to often ask for financial help and take money from Sunita, she being a very sensitive and emotional lady could not endure the stress on account of her father's problems. This gave final stroke when Neelam younger sister of Sunita came to the matrimonial house on 22nd May, 1997 and either said or demanded something which led to Sunita ending her life."

(16) The learned Sessions Judge acquitted both the accused for the offences under Sections 498-A and 304-B I.P.C. Thus it is clear both from the findings of the learned Sessions Judge and also from the evidence adduced on record in this case that there is no evidence of any cruelty. Therefore, in my view, the presumption under Section 113-A of the Evidence Act cannot be invoked in the present case. To raise a presumption of abetment of suicide, it must be shown that the suicide was committed within seven years of marriage and that the deceased was subjected to cruelty by the husband of the deceased or his relatives. There cannot be any dispute that in the explanation to Section 113-A of the Evidence Act 'cruelty' shall have the same meaning as in Section 498-A of the Indian Penal Code. So if once the accused are acquitted of the charge under Section 498-A I.P.C, then it becomes clear that the deceased was not subjected to cruelty. Therefore presumption under Section 113-A of the Evidence Act cannot be invoked in this case. If no presumption is raised, it is for the prosecution to prove that the deceased was subjected to curelty and that cruelty should be proved beyond all reasonable doubts. When any harassment or cruelty is not proved, no presumption can be raised. The letters exchanged between the deceased and her husband clearly show that their relations were cordial and there is not even a single word in these letters which shows that the deceased was subjected to cruelty. There is also no evidence in regard to demand of any dowry or any other article from the parents or other relatives of the deceased. Thus, it cannot be said that the accused abetted the deceased to commit suicide.

(17) On a consideration of entire evidence on record and after going through the judgment of the learned Sessions Judge, I am of the opinion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts. Therefore, the conviction under Section 306 I.P.C. cannot be sustained.

(18) The result is, the appeal is allowed and both the accused are acquitted of the charge under Section 306 I.P.C. Their bail bonds shall stand cancelled.

R.N.R.

Before T.H.B. Chalapathi, J.

DARA SINGH @ DARBARA SINGH,—Petitioner

versus

TEJ KAUR,—Respondent

Criminal Misc. No. 18538-M of 1999 & Crl. M. 21482/M/99

26th October, 1999

Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989—Ss. 3(1), 6, 9 to 14 and 20—Code of Criminal Procedure, 1973—Ss. 190, 193 and 209—Offences not triable by the Court of Session under the Code are to be tried by the Special Court alone—Special Judge can take cognizance of the offences under the Act without an order of committal by the Magistrate.

(Jyoti Arora v. State of Haryana, 1998(I) RCR (Crl.) 234, Meera Bhai v. Bhujbal Singh and others, 1995 (3) RCR 125 and Mangli Prasad v. Additional Sessions Judge, 1996(3) RCR 768, do not represent the correct law)

Held that, a look at the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocites) Act does not show that the offences committed therein are triable only by a Court of Session. It envisages that the offences under the said Act are to be tried only by the Special Judge but not by the Court of Sessions. There is a difference between the Special Judge and Sessions Court. Simply because a Sessions Judge has to be appointed as a Special Judge, the latter cannot be treated as a Sessions Judge.

(Para 5)

Further held that, a close reading of the provisions of the Act makes it clear that the Special Court constituted under the Act is intended to be a Court of original jurisdiction for all intents and purposes including the powers under Section 190 of the Code of Criminal Procedure and it can take cognizance of the offences without an order of committal by the Magistrate.

(Para17)