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Court No. - 76

Case :- CRIMINAL APPEAL No. - 1407 of 2011

Appellant :- Jagveer Singh Alias Bantu

Respondent :- State of U.P.

Counsel for Appellant :- Awadhesh Kumar
Srivastav, R.P. Srivastava

Counsel for Respondent :- Govt. Advocate

Hon'ble Ajai Tyagi, J.

1. This appeal has been preferred by the appellant-Jagveer Singh @ Bantu against the judgement and order dated 28.02.2011 passed by Additional Sessions Judge, Court No.02, Pilibhit, in Session Trial No.179 of 2009 (*State Vs. Jagveer Singh @ Bantu*) arising out of Case Crime No.1657 of 2008, under Sections 498-A & 306 IPC and Section 3/4 Dowry Prohibition Act, 1961, Police Station-Jahanabad, District- Pilibhit, by which the learned trial court convicted and sentenced the appellant- Jagveer Singh @ Bantu for five years rigorous imprisonment and Rs.10,000/- fine (three months imprisonment for default of fine) under Section 306 IPC and two years rigorous imprisonment and Rs.3,000/- fine (one month imprisonment in default of fine) for the offence under Section 498A IPC. All sentences are directed to run concurrently.

2. The brief relevant facts of this case are that on 14.12.2008, informant Madan Lal submitted a written report in P.S.- Jahanabad, District- Pilibhit, with the averments that his grand-daughter (daughter of his daughter) Laxmi Devi

WWW.LIVELAW.IN

was married to Jagveer Singh @ Bantu s/o Khoob Chandra resident of Village-Jalipura in April, 2008. They have given sufficient dowry according to their financial capacity but Jagveer Singh and his parents were not satisfied with the dowry. So, they used to torture Laxmi Devi. Laxmi Devi on several occasions made complaints regarding the demand of additional dowry and torture due to non-fulfillment of the demand. Several times they tried to convince Jagveer Singh, but Jagveer Singh used to quarrel with them also. Villagers of Jagveer Singh's village informed us in the morning at 10 O'clock through telephone that Laxmi Devi has been killed. It was evident that she was given poison.

3. On the above written report, the Case Crime No.1657 of 2008, under Section 498A, 304B IPC and Section $\frac{3}{4}$ Dowry Prohibition Act, 1961, was registered at P.S.-Jahanabad, District- Pilibhit on the same day against the appellant- Jagveer Singh and his parents. Postmortem of Laxmi Devi was conducted and cause of death could not be ascertained, therefore, viscera was preserved. After inquest of the dead-body of the deceased, report from Forensic Science Laboratory, Lucknow (Ex.ka7) was received. In the report, *aluminum phosphide* poison was found in viscera of the deceased, therefore, charge sheet was submitted against Jagveer and his father Khoob Chandra under the above mentioned offences.

4. Learned trial court framed charges under Section 498A, 304B IPC and $\frac{3}{4}$ Dowry Prohibition Act, 1961, against both the accused persons. Learned trial court, after conducting full

trial, acquitted Khoob Chandra for all charges framed against him, but convicted Jagveer Singh @ Bantu under Section 306 IPC for five years rigorous imprisonment and Rs.10,000/- fine and under Section 498A IPC for two years rigorous imprisonment and Rs.3,000/- fine. Hence, this appeal.

5. Heard Shri Awadhesh Kumar Srivastav, learned counsel for the appellant and Shri S.S. Sachan, learned AGA, appearing for the State.

6. Learned counsel for the appellant argued that the appellant has been falsely implicated in this case by the informant and wrongly convicted by the trial court. No offence is made out against the appellant. Learned counsel for the appellant further submitted that initially a case was registered against the appellant under Section 304B, 498A IPC and $\frac{3}{4}$ Dowry Prohibition Act, 1961, and it was alleged in the First Information Report that appellant and his parents were not happy and satisfied with the dowry given in the marriage of the deceased and they used to demand additional dowry and also used to torture for non-fulfillment of the dowry, but no such evidence has come out on the record and learned trial court acquitted the accused- Khoob Chandra for all the charges and convicted the appellant- Jagveer Singh under Section 306 IPC only, therefore, it is clear from the judgement of the learned lower court that prosecution story was not believed to be true by the trial court and allegations of demand and torture were found false. Learned counsel for the appellant argued that when prosecution story was not found true then trial court should have acquitted the appellant

also.

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7. Learned counsel for the appellant next submitted that in this case a suicide-note had come into the picture. Suicide-note was found from the room of the deceased by the Investigating Officer. Entire case is based on it and in the entire suicide-note there is no allegation of demand of dowry or torture and moreover there is no allegation against the appellant for instigating the deceased to commit suicide, but learned trial court did not consider the suicide-note in right perspective. Learned counsel for the appellant further submitted that the informant, who is *Nana* of the deceased and real brother of the deceased Rakesh @ Satish Kumar admitted in their statements that suicide-note was written in the hand-writing of the deceased, therefore, there was no dispute regarding the suicide-note and prosecution witnesses admitted it to be in the hand-writing of deceased-Laxmi Devi. There is no averment in the suicide-note regarding abetment on the part of appellant to commit suicide. Appellant and deceased had cordial relations. Learned trial court has quoted the suicide-note in the judgement, which does not disclose any abetment even then trial court convicted the appellant and sentenced him under Section 306 IPC. Learned counsel for the appellant argued that for abetment, there should be immediate instigation, but it is not so in suicide-note. In this way, appellant is wrongly convicted by the trial court, therefore, the instant appeal may be allowed.

8. Learned AGA submitted that there was cruelty against the deceased by appellant and due to this cruelty trial court

convicted the appellant for the offence under Section 498-A IPC. Learned AGA next submitted that suicide-note shows that appellant had driven out the deceased from his life due to which the deceased was mentally disturbed and could not tolerate keeping herself out of life of the appellant.

9. Learned AGA also submitted that although in suicide-note, deceased has written to his brother that her husband and her-in-laws should not be harassed and no case should be registered against them after her death, but law will take its own course. Learned trial court, after believing the averments of the suicide-note, came to the conclusion that deceased was very uncomfortable and under mental disturbance when the appellant drove out her from his life, although, they were residing together. Due to this mental agony and disturbances, she committed suicide for which appellant was responsible and, therefore, learned trial court rightly convicted the appellant under Section 306 IPC.

10. Prosecution case is that appellant and his parents were not satisfied with the dowry given in marriage of deceased and they used to demand additional dowry and torturing the deceased for not meeting out the same. Prosecution has also brought this case before the court that due to non-fulfillment of demand of additional dowry, Laxmi Devi was killed by poison. To prove its case, prosecution produced two witnesses of fact, PW1- Madan Lal and PW2- Rakesh Kumar @ Satish Kumar. PW-1 is the informant and *Nana* of deceased and PW-2 is the real brother of the deceased. In their respective statements, both the witnesses have reiterated the demand of

WWW.LIVELAW.IN

Rs.50,000/- and a four wheeler as additional dowry from the family of the deceased. Both the above witnesses have stated in their examination-in-chief that due to non-fulfillment of demand of additional dowry, deceased was killed by poison. Both the witnesses supported the version of first information report in their examination-in-chief, but a suicide note, written by the deceased, is the main basis of this case, which was found by Investigating Officer from the room of the deceased. On believing the averments of suicide-note, trial court acquitted Khoob Chandra, father of the appellant and convicted the appellant, not for offence of dowry death but for the offence of abetment to suicide under Section 306 IPC. The learned trial court has opined in the judgement that this fact is not proved on the basis of evidence available on record that husband or father-in-law of deceased have ever tortured her in connection with demand of dowry and trial court gave finding that appellant has separated the deceased from his life which comes in the category of mental cruelty which is clear from the suicide-note, therefore, in this way, the appellant had created such a circumstance and situation before the deceased, which inspired the deceased to commit suicide by consuming the poison and, therefore, the appellant was solely responsible for abetting the deceased to commit suicide.

11. This Court is not at all convinced with the above findings of the trial court regarding mental cruelty and abetment to commit suicide by the appellant.

12. Prosecution witness PW1- Madan Lal and PW2- Rakesh Kumar have failed to prove the version of FIR

regarding the demand of additional dowry, torture and killing the deceased by administering the poison to her. The version of the First Information Report is the genesis of this case, but during the course of investigation the suicide-note of deceased was found and it changed the entire story of the prosecution.

13. Learned trial court found that appellant tortured the deceased mentally and he had created such a situation before the deceased by separating her from his life that she was not left with any other option but to commit suicide. This finding of trial court is not in-consonance with the settled position of law regarding abetment. Abetment to suicide is provided under Section 306 IPC as under:-

"Section 306 in The Indian Penal Code

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

14. Before discussing the law of abetment it is relevant to quote the provision of Section 107 IPC which is as under:-

"Section 107 in The Indian Penal Code

107. Abetment of a thing.—A person abets the doing of a thing, who—

(Firstly) — 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 wilful misrepresentation, or by wilful 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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. 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 that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

15. Hon'ble Supreme Court has held in **Amalendu Pal Vs. State of West Bengal (2010) 1 SCC 707** that "it is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of the suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of the occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

16. Before a person may be said to have abetted the commission of suicide, he must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. As per provision of Section 107 IPC, it is very much clear that for abetment a person should do something to instigate any person to do something or engages with one or more persons in any conspiracy to do that thing or intentionally aids, by any act or illegal omissions, to do that particular thing. In this case, it was necessary for appellant to be convicted him for the offence under Section 306 IPC that

WWW.LIVELAW.IN

he should have instigated the deceased to commit suicide or he should have engaged with one or more persons in any conspiracy to abet the deceased to commit suicide or he should have intentionally aided by any act for abetting her to commit suicide.

17. Hon'ble Apex Court in **Chheena Vs. Vijay Kumar Mahajan (2010) 12 SCC 190** held that 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. It is also held by the Hon'ble Apex Court in that judgement 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 that act must have been intended to push the deceased into such a position that he committed suicide.

18. In **Rajesh Vs. State of Haryana 2019 (1) JIC 791 (SC)**, Hon'ble Apex Court held that conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of the occurrence on the part of the accused, which led or compelled the person to commit suicide. 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 the suicide must have played an active role by

an act of ~~instigation or by doing~~ WWW.LIVELAW.IN certain act to facilitate the commission of the suicide. Therefore, the act of abetment by the person charged with the said office must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

19. The Full Bench of Hon'ble Apex Court in ***Gurcharan Singh Vs. State of Punjab*** 2020 (4) JIC 336 (SC) held that "as in all crimes, *mens rea* has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability in order to prove *mens rea*, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased.

20. In the case in hand, the trial court has referred the suicide-note left by the deceased which shows the sole reason of committing the suicide by the deceased was that she was separated by the appellant from his life. In the opinion of this Court, the aforesaid reason could not be the reason which could come under the category of the abetment. There is absolutely nothing in the suicide-note, which would make him responsible for an offence under Section 306 IPC. This Court finds nothing in the suicide-note suggesting abetment to commit suicide. There is nothing in the suicide note which can be said to be proximate reason to commit suicide by the deceased. The aforesaid suicide note does not show any *mens rea* on the part of the appellant. No guilty mind of appellant is shown by any statement in suicide note as referred by the trial

court. Further, suicide note does not show the fact that there was any instigation or even cruelty on the part of appellant due to which the deceased was left with no option but to commit suicide because if the appellant had separated the deceased from his life, it was not compelling reason which put the deceased in a situation where she had no option but to commit suicide. Learned trial court has given finding that there was mental cruelty on the part of appellant towards the deceased and on the basis of this finding, appellant was convicted under Section 498A IPC, but this Court is not convinced with this finding also because firstly there was no averment of demand of additional dowry of Rs.50,000/- and a four wheeler in the FIR. The statements of PW-1 and PW-2 show that they did not state this fact before the Investigating Officer also, both the above witnesses have stated the fact of demanding Rs.50,000/- and a four wheeler for the first time before the trial court, therefore, these averments will come under the category of improvement. Moreover, entire suicide-note does not contain any such demand of dowry or torturing the deceased. Learned trial court has wrongly given the finding of mental cruelty on the basis that appellant drove out the deceased from his life. In the absence of *mens rea* and proximate cause for abetting the suicide, learned trial court has wrongly appreciated the law regarding the abetment.

21. On the basis of above discussion, this Court is of the definite opinion that learned trial court did not appreciate the evidence on record in right perspective and wrongly convicted the appellant for the offence under Sections 306 IPC and 498A IPC.

WWW.LIVELAW.IN

22. Hence, the appeal is liable to be allowed.

23. Accordingly, the appeal is **allowed**. Conviction and sentence of appellant as awarded is hereby set aside. Appellant is on bail, his bail bond is cancelled and sureties are discharged.

(Ajai Tyagi, J.)

Order Date :- 17.9.2021
Ashutosh Pandey