

RANDHIR SINGH AND ANR.

A

v.

STATE OF PUNJAB

OCTOBER 12, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

B

Penal Code, 1860—Section 306 r/w Section 34—Abetment of suicide—Demand of dowry—Proved—Death occurring within 7 years of marriage—Conviction by Courts below—On appeal, held: Conviction justified as demand is proved—In the facts of the case custodial sentence reduced to 3 years.

C

Words and Phrases:

'Abetment'—Meaning of in the context of Section 306 IPC.

Appellant No.1—accused was married to the deceased, daughter of PW-9—informant. It was alleged that from the very beginning of the marriage the appellants—accused had been making demand of more dowry and abusing the deceased to bring more money from her parents and used to threaten her with second marriage in case she did not bring it. Informant and his wife (PW-12) were told about the demand by their daughter (deceased) several times and they had paid the amount towards the demand to their daughter which they had received by way of compensation from acquisition of land. PW-10 informed the informant that deceased had died after putting herself on fire. Death was within 7 years of marriage. FIR was lodged by the complainant. Appellants alongwith one co—accused was tried for offences u/s 306 r/w Section 34 IPC. Plea of the accused was that he had cordial relationship with the deceased. Defence examined 8 witnesses to substantiate their case. Trial Court relying upon prosecution version convicted accused—appellants for the offences charged, but acquitted the co—accused. Appellants—accused filed appeal while the complainant filed revision petition before High Court. High Court confirmed the conviction but reduced the sentence. Revision petition was dismissed.

D

E

F

G

In appeal to this Court appellants—accused contended that Section 306 IPC has no application to the facts of the case; that plea of the

A complainant that he had given money is unbelievable in view of his evidence that he had no capacity to pay dowry; that defence version that he had cordial relations with the deceased was supported by defence witnesses (friends of deceased) who had stated that deceased had not made any statement before them about lack of cordiality or any harassment for dowry.

B

Disposing of the appeal, the Court

C HELD: 1. In view of the elaborate analysis of the evidence of the trial Court and the High Court there is no infirmity in the conclusion arrived at regarding guilt of the accused persons. The conviction is, therefore, confirmed. However, looking to the peculiar facts of the case the custodial sentence is reduced to 3 years in each case. [3581-F-G]

D 2. 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 it required before a person can be said to be abetting the commission of offence under Section 306 IPC. [358-B-C]

E *State of West Bengal v. Orilal Jaiswal*, AIR (1994) SC 1418, relied on.

F 3. In the present case the evidence of relatives, more particularly, father and the mother clearly proves demand of dowry. Mere fact that whatever he had obtained by way of pension or compensation for land acquisition had been spent, the capacity to pay may be affected. But it does not prove that the accused persons did not make a demand.

[357-C-D]

G 4. In a tradition and custom bound Indian society no conservative woman would disclose family discords before a person, however close he or she may be. Merely because the deceased had not told close friends about the demand of dowry or harassment, that does not positively prove the absence of demand of dowry. The said circumstance has to be weighed along with the evidence regarding demand of dowry. If the evidence regarding demand of dowry is established, is cogent and reliable, merely because the victim had not stated before some persons about the harassment or torture that would be really of no consequence. [357-A-B]

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 641 A
of 1999.

From the Judgment and Order dated 28.9.98 of the Punjab and Haryana
High Court in Crl. A. No. 819-SB of 1986.

Ranjit Kumar, B.S. Jain, Ajay Veer Singh and Goodwill Indeevar, with B
him for the Appellant.

Arun K. Sinha, Rakesh Singh and Bimal Roy Jad for the Respondent.

The Judgment of the Court was delivered

ARIJIT PASAYAT, J. By the impugned judgment the conviction of C
the appellant who faced trial for alleged commission of offence punishable
under Section 306 read with Section 34 of the India Penal Code, 1860 (in
short the 'IPC') was upheld though sentence in respect of appellant no. 2 was
reduced. While the trial court had imposed sentence of imprisonment for five
years and fine of Rs. 3000 each with default stipulation, the High Court by D
the impugned judgment maintained sentence so far as appellant no. 1 but
reduced the sentence so far as appellant no. 2 is concerned.

It is to be noted that the two cases were disposed of by the common
judgment. Criminal appeal no. 819 SB/86 was filed by the accused-appellants
while Criminal revision No. 441/87 was filed by the informant questioning E
correctness of acquittal of co-accused Gurdev Singh.

Background facts as unfolded during trial are as follows:

Pirthipal Singh (PW-9) father of Smt. Devinderjit Kaur (hereinafter
referred to as the 'deceased') alleged in the complaint filed before the police F
that he is resident of village Burail. He had one son, namely, Kulquant Singh
and one daughter i.e. the deceased. Deceased was married with Randhir
Singh (Accused-appellant no. 1). From this wedlock two sons, namely, Balraj
Singh and Ranpreet Singh were born. The complainant alleged that at the
time of engagement of his daughter one bangle (kara) weighing 3 Tolas, one
ring weighing one Tola and Rs. 501 in cash were given to Shri Randhir Singh G
appellant. Gold Jewellery weighing 20 Tolas, T.V., Bajaj Chetak Scooter
costing Rs. 13000, one Godrej Almirah, furniture and utensils etc. were given
to his daughter, the deceased and son-in law accused Randhir Singh on the
day of marriage. Gurdev Singh, father of Randhir Singh, Smt. Narhbai Kaur
(appellant no. 2), mother of Randhir Singh and Randhir Singh appellant had H

- A started abusing his daughter from the very beginning after the marriage on the pretext that she should bring more money from the house of her parents. The complainant used to assure his daughter that he would meet the demand of the accused subject to the availability of the funds. The complainant received a sum of Rs. 16000 by way of compensation as the share of his land in the year 1982. Randhir Singh (appellant no. 1) compelled the deceased to bearing the money from her parents, otherwise he could arrange a second marriage. Deceased came to village Burail and narrated this story to her father Prithipal Singh, her mother Smt. Gurjit Kaur (PW-12) and her uncle Shri Bhopal Singh. She further told her parents that her husband only used to pay her bus fare from salary. Appellants had sent her in order to bring Rs. 15000 and
- C have also warned her that if she did not bring the money dire consequences would follow. Upon this the complainant made a payment of Rs. 5000 to his daughter and assured her that the remaining amount would be paid thereafter. After sometime, the complainant and his wife came to the house of Randhir Singh in order to see their daughter, the deceased at Kharar. When they entered the house, they saw accused-appellant Randhir Singh and Smt. Nirbhay
- D Kaur giving taunts to the deceased to bring more money. The complainant and his wife made them understand that they were poor persons and assured them that they would pay more money on receipt of second instalment of compensation. Then the complainant received Rs. 22,000 as cost of the acquired land and he and his wife came to Kharar along with a sum of Rs.
- E 5000 and gave it to the deceased. The accused told the complainant to pay at least Rs. 20,000 so that their daughter may live comfortably. Upon this the complainant told them that they were poor persons and they were not in a position to pay the huge money. On 3.2.1985 the deceased again went to the house of her parents in village Burail and told them that accused-appellant Randhir Singh and Smt. Narbhay Kaur had sent her to bring more money and
- F also told that they had warned her that in case she did not bring the money, she would not be allowed to live. It was further told to the complainant by the deceased that her life was miserable and that she was being abused every time. PW-9 assured her that he along with his wife would visit very shortly the house of her in-laws after making arrangement of the money. On 7.2.1985
- G the complainant was present at his house in village Burail when one Bahadur Singh (PW-10) came and told the complainant that the deceased had died after putting herself to fire. Upon this complainant, Bahadur Singh, Karnail Singh son of Hazure Singh, resident of Mohali, went to the house of Randhir Singh at Kharar and they saw that the deceased was lying dead in a burnt condition and her dead body was lying in a Kothri at the backside of the
- H house. In-laws of the deceased had not sent any information to him. Thereafter

the complaints proceeded for the Police Station but on the way S.I. Jaspal Singh (PW-17), met him and complainant Prithipal Singh made a statement (Ex.PK) before him. It was recorded, read over and explained to the complainant and vide endorsement (Ex.PK/1) it was sent for registration of the case and on the basis of which formal FIR (Ex.PK/1) was recorded. Thereafter the Investigating Officer along with ASI Aran Debv (PW-4), ASI Ram Pal and other police officials visited the spot. He arranged for taking photographs and two photographs of the dead body were taken. Inquest report (Ex.PB) of the dead body was prepared. It was sent for post-mortem examination vide request (Ex-PC). The doctor conducted autopsy on the dead body of the deceased and issued post-mortem report (Ex.PA). In the opinion of the doctor, the death was due to asphyxia as a result of extensive burns, which was sufficient to cause death in the ordinary course of nature. The injuries were ante-mortem and the doctor also preserved viscera of the deceased and it was sent to the office of the Chemical Examiner, who vide report (Ex.PD) detected aluminium phosphide weighing 46.0 mgms. and 18 mgms in the stomach and large and small intestines, respectively.

The appellants along with their co-accused Gurdev Singh were challaned under Section 306 read with Section 34 of the IPC in the Court of the Illaqa Magistrate who vide commitment order dated 11.10.1985 committed them to the Court of sessions. Appellants and their companion Shri Gurdev Singh were charge sheeted under Section 306 read with Section 34 of the IPC.

Initially there were 3 accused persons but accused Gurdev Singh was acquitted by the trial court. In order to substantiate its accusations, prosecution examined 17 witnesses. Dr. Arun Chawla (PW-1) who conducted the post mortem along with Dr. S. Chadha (PW-3) was associated with post mortem examination. Father of the deceased was examined as PW-9 while her mother Gurjit Kaur was examined as PW-12. The accused persons took the plea that the acquitted Gurdev Singh was not present at the spot at the relevant time as in the morning he was gone to Chandigarh for medical treatment of his father. Accused Randhir Singh also denied his involvement. His specific stand was that he had cordial relationship with his wife. Prior to the incident on the previous evening the deceased was seen moving in the company of a stranger. His friend Hari Singh who was examined as DW-7 had also seen her then. When Randhir Singh enquired from her as to what was her relationship with the stranger, her reply was unsatisfactory. He told her that he would be telling her parents. This query was real reason for which she took the extreme step to commit suicide. Randhir Singh stated that he was

- A not present on that day. In order to substantiate their version the accused persons examined 8 witnesses.

B The trial court relied upon the prosecution version and convicted the two accused-appellants while directing acquittal of Gurdev Singh. The appeal by the accused persons and the revision by the informant was taken up together by the High Court; which found that offence punishable under Section 306 read with Section 34 IPC was clearly made out. Therefore, the conviction was maintained. But the sentence as aforesaid was reduced. The criminal revision was dismissed.

C In support of the appeal, Mr. Ranjit Kumar, learned senior counsel submitted that Section 306 IPC has no application to the facts of the present case. It was submitted that with respect to evidence of the informant when he had no capacity to pay dowry, the plea that he gave the money is unbelievable. NSCs were purchased in the joint names of the wife and the husband and joint savings accounts were opened into the names of the children.

D The relationship is thus established to be cordial. The basic requirement of Section 306 IPC is demand for dowry "soon before the death". In other words, there must be a proximity. The cordial relationship is borne out from the record that appellant no. 1 used to visit the deceased and their children when she was in the house of the informant. The defence witnesses as examined clearly stated that at no point of time, the deceased had made any statement before them about lack of cordiality or any harassment for dowry. The defence version that she was upset when questioned about her movement with the stranger is established by the evidence of DW-7. It was pointed out that the deceased had come to stay with the appellants. That itself shows that the relationship was extremely cordial and normal.

F In response, learned counsel for the State submitted that merely because the victim has not disclosed her anguish that in no way affects credibility of the evidence tendered by the father, mother and other relatives about the demand of dowry. The fact that the deceased came to live with her husband is no proof of cordiality, and it was because of family compulsion. The elder child had been taken away by the husband and, therefore, not to be separated from her son, the deceased had come back. It was submitted that the demands of dowry continued unabated and the suicide was on account of victim not being able to any further bear torture or harassment. Accordingly, it was submitted that the appellants have been rightly convicted.

H Great stress was laid on the victim's statement having not expressed

before her friends about a harassment. In a tradition and custom bound India society no conservative woman would disclose family discards before a person, however close he or she may be. Merely because the deceased had not told friends about the demand of dowry or harassment this does not positively prove the absence of demand of dowry. The said circumstance has to be weight all with the evidence regarding demand of dowry. If evidence regarding demand of dowry is established, cogent and reliable merely because the victim had stated before some persons about the harassment torture that would be really of no consequence.

In the present case the evidence of relation more particularly, father and the mother clearly pr demand or fowry. Mere fact that whatever he obtained by way of pension or compensation for acquisition had been spent, the capacity to pay may affected. But it does not prove that the act persons did not make a demand. Trial court and the Court have considered this aspect and given pos finding about the demand of dowry having established. The death occurred during 7 years marriage. Section 306 IPC deals with abetmer suicide. The said provision reads as follows:

"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."

Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under:-

Section 2 Definition of 'dowry'- In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage:
or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

A *Explanation I* For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

B *Explanation II* The expression 'valuable security' has the same meaning in Section 30 of the Indian Penal Code (45 of 1980)."

C 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 adding the doing of a thing it required before a person can be said to be abetting the commission of offence under Section 306 of IPC.

D In *state of West Bengal v. Orilal Jaiswal*, AIR (1994) SC 1418 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

E 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.

F In view of the elaborate analysis of the evidence of the trial court and the high Court we do not find any infirmity in the conclusion arrived at regarding guilt of the accused persons. The conviction is, therefore, confirmed. However, looking to the peculiar facts of the case the custodial sentence is

G reduced to 3 years in each case.

The appeal is disposed of accordingly.

K.K.T.

Appeal disposed of.