

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL  
ON THE 03<sup>RD</sup> OF MARCH, 2022

CRIMINAL APPEAL No. 2618 of 1998

**Between:-**

VINOD KUMAR, S/O NABBU BALMIKI, AGED  
ABOUT 24 YEARS, RESIDENT OF AZAD WARD,  
GADARWARA, P.S. & TEHSIL GADARWARA,  
DISTRICT NARSINGHPUR (MADHYA PRADESH)

.....APPELLANT

(MS. KAMLESH TAMRAKAR, AMICUS CURIAE. FOR THE  
APPELLANT)

**VERSUS**

THE STATE OF MADHYA PRADESH, THROUGH P.S.  
GADARWARA, DISTRICT NARSINGHPUR (M.P.).

.....RESPONDENT

(MS. SHIKHA BAGHEL, PANEL LAWYER FOR THE  
RESPONDENT/STATE)

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*This appeal coming on for final hearing this day, the court passed the  
following:*

**JUDGMENT**

The appellant has preferred the present appeal being aggrieved with the judgment dated 03.11.1998 passed by the learned Additional Sessions Judge, Gadarwara, District Narsinghpur in Sessions Trial No. 10/1998, whereby the appellant has been convicted for an offence punishable under Section 306 of Indian Penal Code and sentenced to undergo R.I. for five years and fine of Rs.2000/- with default stipulation.

2. The case of the prosecution, in short is that on 16.10.1997, Police Station Gadarwara, received an application from the Government Hospital, Gadarwara that Renu Bai, W/o Vinod Balmik has been brought in burnt condition. Inspector D.K. Upadhyay (PW-7), SHO Gadarwara Police Station recorded the statement (Ex.P-3) of Renu Bai before Allu and Shitaram. In her statement (Ex.P-3) recorded under Section 161 Cr.P.C. Renu Bai stated that last year she was married to Vinod and they are blessed with a four year old son. Her husband Vinod is suffering from stomach-ache and for his treatment, he was demanding Rs.20,000/- from her. They had some dispute over the demand of Rs.20,000/-. Today, her

husband told that, if she could not bring Rs.20,000/-, he will not keep her with him. On account of that, she poured kerosene oil and immolated herself. Her earlier statement that she had accidentally sustained fire from the stove while preparing tea, was given by her under the pressure of her in-laws. After the death of the Renu Bai, on the basis of aforesaid statement (Ex. P-3) F.I.R. (Ex.P-6) was registered against her husband Vinod in Police Station Gadarwara on 18.10.1997 for commission of offence punishable under Section 306 of IPC.

3. After completion of investigation, charge-sheet was filed before the Judicial Magistrate First Class Gadarwara who in due course committed the case to the Court of Sessions and ultimately it was transferred to the Additional Sessions Judge, Gadarwara, District Narsinghpur.

4. Appellant abjured his guilt. He took the defense that his father-in-law was pressurizing him to handover his son and when he refused to hand over the custody of his infant son to his in-laws they falsely implicated him and a false case has been registered against him. He had never demanded Rs.20,000/- from his wife Renu Bai for treatment of his stomach ache.

5. In order to prove its case, prosecution examined Daulat Prasad (PW-1) (father of the deceased Renu Bai), Shushila Bai (PW-2) (mother of the deceased Renu Bai), Hemlata (PW-3) (sister of the deceased Renu Bai), Sitaram (PW-4) (grandfather of the deceased Renu Bai), Dr. D. Kumar (PW-5), Anil Kumar (PW-6) (brother of the deceased Renu Bai), Inspector D.K. Upadhyay (PW-7), Dr. N.K. Bajpayee (PW-8) and Ramesh Kumar Shrivastava, Tehsildar (PW-9).

6. In defence, Gayatri (DW-1), Sakun Bai (DW-2) and Dr. D.D. Choudhary (DW-3) were examined.

7. Learned Additional Sessions Judge after considering the prosecution evidence only convicted the appellant for commission of offence punishable under Section 306 of IPC and sentenced as mentioned above.

8. I have heard learned counsel for the parties.

9. Learned counsel for the appellant has contended that, learned trial Court has not properly appreciated the evidence of witnesses and other material on record. Deceased Renu Bai in her dying declaration before the Tehsildar has

clearly deposed that she had sustained fire from the stove while preparing tea, but learned trial Court has not appreciated that dying declaration. Police has recorded statement under Section 161 of Cr.P.C. (Ex.P-3) without taking any certificate from the Doctor on his own and that statement does not find support from the evidence of other prosecution witnesses. The evidence of the deceased's parent, sister and brother that appellant Vinod was harassing the deceased Renu for Rs.20,000/- for treatment of his stomach ache is full of inconsistency and they could not cite any specific date and time as and when it was demanded. The Police has falsely implicated him. The Statement (Ex.P-3) and dying declaration (Ex.P-1) have not been considered in a legal manner. Learned trial Court has overlooked the dying declaration (Ex.P-1) and has not returned any finding on it. The evidence led by the prosecution is not cogent. It being full of infirmities and inconsistencies is worth discard and the the appellant would have been acquitted from the charge under Section 306 of IPC.

**10.** Learned counsel for the appellant further contended that presumption under Section 113-A of Evidence Act can be taken only if the deceased has been harassed for demand of dowry and same has not been proved by the prosecution. In this case, prosecution has miserably failed to prove its case beyond all reasonable doubts. Therefore, the learned trial Court was not justified in convicting and sentencing the accused for commission of offence punishable under Section 306 of IPC. Thus, he has prayed that the impugned judgment passed by the learned Additional Sessions Judge, Narsinghpur be set-aside and appellant be acquitted of offence under Section 306 of IPC.

**11.** On the other hand, learned Panel Lawyer for the respondent/State has justified the conviction and sentence recorded by the learned Additional Sessions Judge, while making reference to the incriminating pieces of evidence and has submitted that conviction is well founded.

**12.** If the evidence of the present case is examined in the light of dying declaration (Ex.P-1), statement (Ex.P-3) recorded under Section 161 Cr.P.C., evidence given by Dr. N.K. Bajpayee (PW-8), Ramesh Kumar Shrivastava, Tehsildar (PW-9), Dr. D.D.. Choudhary (DW-3) and Investigation Officer D.K. Upadhyay (PW-7), it is clear that deceased Renu had sustained burn injury to the

extent of 92% on her body and she died after two days on 18.10.1997 due to shock caused by the burn injuries.

13. On a perusal of dying declaration (Ex.P-1), it is revealed that, it was recorded on 16.10.1997, at about 08:30 to 08:35 A.M by Ramesh Kumar Shrivastava, Tehsildar (PW-9) and before recording statement he had obtained certificate on 'B' to 'B' part of it from Dr. D.D. Choudhary (DW-3) about mental and physical fitness of Renu to give statement and also took certificate after recording her statement. In dying declaration (Ex.P-1) deceased Renu has clearly stated that she received burn injuries from stove fire while preparing tea as that time she was bearing a nylone saree, the loose end (Pallu) whereof fell on the stove and caught the fire, that time, her husband Vinod was not in the home and had gone on his duty. She was brought to Hospital by her neighbors. She clearly refused about being any dispute in her family. Dying declaration was recorded between 08:30 A.M. to 08:35 A.M. Aforesaid dying declaration (Ex. P-1) stood clearly proved from the evidence of Ramesh Kumar Shrivastava (PW-9) and by the evidence of Dr. D.D. Choudhary (DW-3). Dr. D.D. Choudhary (DW-3) has clearly deposed that he had given "A" to "A" certificate on Ex. P-1 before and after recording the statement of Renu. He has made it clear that Renu had 92% burn injuries.

14. The dying declaration (Ex.P-1) recorded by Ramesh Kumar Shrivastava (PW-9) find further corroboration from the evidence of Daulat Prasad (PW-1) father of the deceased and Anil Kumar (PW-6) brother of the deceased Rene. Daulat Prasad (PW-1) in his evidence has deposed that when he met her daughter in Government Hospital, Gadarwara she had informed him that she had sustained burn injuries in stove fire. Shushila Bai (PW-2) mother of the deceased, in para 14 of her evidence has clearly admitted that when she reached the hospital alongwith other family members, Tehsildar was recording the statement of her daughter Renu and at that time Police Inspector and Doctor were also present there. Sitaram (PW-4) is the maternal grand-father of Renu and he in para-5 of his cross-examination has clearly admitted that Renu had told them that she has burnt burned from the stove. Anil Kumar (PW-6) brother of the deceased also deposed that when they reached in the Government Hospital, Gadarwara, his sister had

informed that her saree caught fire from the stove. In para -5 of his cross-examination, he has admitted that Renu had told his father that she has burnt from stove and at that time, Police Inspector, Doctor, Head Constable and one Sir who was writing her statement was in plain cloths. From the above admission made by aforesaid prosecution witnesses, it is apparent that Renu had sustained injuries in stove fire.

15. Another dying declaration (Ex.P-3) is in form of statement recorded under Section 161 of Cr.P.C. by Inspector D.K. Upadhyay (PW-7). This statement has been recoded same day i.e. 16.10.2017 and on the basis of this statement (Ex.P-3) F.I.R. (Ex.P-6) was registered by Inspector D.K. Upadhyay (PW-7). He in his deposition has deposed that he had seized one Stove, burnt pieces of deceased's cloths, one match and one matchstick from the spot and had prepared Seizure Memo (Ex.P-8). He further deposed that Ex.P-3 bears the thumb-impression of Renu Bai and his signature is on "B" to "B" part of it and the signature of witnesses are on "C" to "C" part of it. In cross-examination he has stated that he had recorded the statement (Ex.P-3) of deceased Renu after recording of dying declaration (ExP-1) by the Executive Magistrate. As far as the truthfulness and reliability of Ex.P-3 is concerned that appears doubtful and suspicious. From the evidence of Police Inspector D.K. Upadhyay (PW-7), it is apparent that it was recorded by him in the District Hospital, Gadarwara but before recording the aforesaid statement no certificate about the mental and physical condition of deceased fit for giving statement was taken from the Doctor. Simultaneously, it also can not be overlooked that a particular part of Ex.P-3 appears to have been added subsequently. In Ex.P-3 it is stated that last year, she was married to Vinod. Her husband Vinod is suffering from stomach ache and for the treatment of that he used to demand Rs.20,000/- from her and over this issue, her husband had threaten her if she did not bring Rs.20,000/- from her parents, he will not keep her with him and on that account, she poured kerosene upon herself and immolated herself. This subsequent statement of Renu in Ex.P-3 appears suspicious, because Dr. D.D. Choudhary (DW-3) and Ramesh Kuamr Shrivastava (PW-9) have stated that in dying declaration (Ex.P-1) deceased herself had informed that she had received burn injury in stove accident. Thus, there were no

reasons for learned Trial Court to reject the version of Ramesh Shrivastava (PW-9) and evidence of Dr. D.D. Choudhary (DW-3).

16. The statement (Ex.P-3) recorded by Inspector D.K. Upadhyay (PW-7) appears suspicious and after thought as he took no certificate on it about mental and physical condition of Renu before recording her statement. From the evidence of prosecution witnesses, it is revealed that the time of giving so-called subsequent statement Renu was not in a position to give statement to Inspector D.K. Upadhyay (PW-7) as same is evident from the admissions of prosecution witnesses. Daulat Prasad (PW-1) in para-9 of his cross-examination has admitted that her daughter was not comfortable in speaking. She was speaking unclear words with a pause. Shushila Bai (PW-2) in para-15 of her cross-examination has admitted that mouth and face of the deceased Renu were in burnt condition, due to which she was not able to speak and was hardly speaking words. Sitaram (PW-4) in para-4 of his cross-examination has also stated that Renu due to burn injuries was speaking with difficulty, same is the evidence of Anil (PW-6) in para 5 of his cross examination.

17. From the evidence of aforesaid witnesses, it is apparent that Renu had sustained burn injuries on her face and mouth too, due to which she was unable to speak clear words. In such circumstances, the statement (Ex.P-3) recorded by D.K. Upadhyay (PW-7) in absence of any certification from the Doctors appears suspicious and doubtful and does not appear worth credence. Hence, I am of the considered view that where the injured and her relatives in the evidence have deposed that the injured had received injuries in stove fire, subsequently injured stated in police statement that she herself poured kerosene and immolated herself over the demand of Rs.20,000/- by her husband for his treatment, the Doctor on duty and Executive Magistrate have testified that deceased herself had informed them that she had received burn injuries in accident. There were no reasons to reject the version of Doctor and Executive Magistrate.

18. It is regretful to note that learned trial Court in impugned judgment has not taken into consideration the aforesaid dying declarations (Ex.P-1) and

(Ex.P-3) and has recorded its findings on the basis of evidence of prosecution witnesses taking recourse of Section 113-A of the Evidence Act.

19. For holding a person guilty for abatement of suicide evidence as per provision of Section 107 of the IPC should be available on following grounds:-

**"Section 107 Abatement of a thing** - A person abets the doing of a thing, who-

First.- 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.

**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."

20. For abatement of suicide Apex Court observed in **(2010) 1 SCC 750 : AIR 2010 SC 327 (Ganula Mohan Reddy v. State of A.P.)** as follows in Para 18, 20 and 21:-

"18. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently.

20. Abatement 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.

21. The intention of the Legislature and the ratio of the case 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."

21. For ascertaining the fact whether cruelty or harassment has been

committed by the appellants on the deceased. According to the provisions of Section 498A of IPC, evidence is required as follows:-

**Explanation**

"For the purpose of this section, "cruelty" means-

(a) any willful 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

(b) 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"

22. In present case, deceased has expired within the period of 2 years of the marriage in fire accident in her matrimonial house. Evidence Act, 1972 provides presumption in favour of the deceased as per Section 113(A) of Evidence Act as follows:-”

**"113A. Presumption as to abatement of suicide by a married woman.** - When the question is whether the commission of suicide by a women had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband has subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

**Explanation**

For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Penal Code, 1860"

23. In respect of applicability of the presumption, it is observed by the Apex Court in *(2008) 17 SCC 526 : AIR 2008 SC 3212 (Rajbabu v. State of M.P.)* as follows:-

"..... Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the



conscience of the court to abstain from drawing the presumption. The expression- "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption ....."

**24.** As far as evidence of Daulat Prasad (PW-1), Shushila Bai (PW-2) (Parents of the deceased), Hemlata (PW-3) sister of the deceased, Sitaram (PW-4) grand father of the deceased and Anil Kumar (PW-6) brother of the deceased is concerned, their evidence is not only self contradictory but is also full of contradictions, discrepancies and improvement.

**25.** Daulat Prasad (PW-1) has deposed that Vinod used to demand Rs.20,000/- from her daughter but in para-3 of evidence, he has specifically stated that his daughter never informed anything to him. She used to tell her mother that Vinod always quarrel with her and makes a demand of Rs.2-5,000/- (Two - Five Thousand Rupees) to Rs.20-25,000/- (Twenty - Twenty Five Thousand rupees). From the evidence of Daulat Prasad (PW-1) it is apparent that his evidence in this regard being hearsay is not worth acceptable. Shushila Bai (PW-2) mother of the deceased has deposed that Vinod use to demand Rs.30,000/- (Thirty Thousand rupees) from Renu, they had given Rs.6-7000/- (Six - Seven Thousand) in installment to Vinod. The aforesaid evidence of Shushila Bai (PW-2) is not worth reliance as she has further deposed that her daughter Renu had informed her that Vinod beat her through out the night and thereafter, poured kerosene oil upon her and ablazed her. The aforesaid evidence of Shushila Bai is totally against the very story of prosecution. Even in her statement Ex.P-3 deceased has no where stated that her husband Vinod beat her throughout the night and poured kerosene oil over her person; In such circumstances, the evidence of Shushila Bai (PW-2) being false and unreliable is not worth acceptance. The fact of giving Rs.6-7,000/- (Six - Seven thousand) to Vinod by them also does not find place in her Ex.D-2 Police Statement.

**26.** Hemlata (PW-3) is the sister of deceased Renu who has deposed that Vinod use to demand Rs.5000/- (Five Thousand) or some time Rs.2000/-

(Two Thousand) from her sister Renu. But later she came to know Vinod was demanding Rs.50,000/-. The aforesaid evidence of Hemlata (PW-3) is quite contradictory from the evidence of her father Daulat Prasad (PW-1) and mother Shushila Bai (PW-2) who have stated about the demand of only Rs.20,000/-. She has nowhere stated the date, time and place to show as to when had demanded money and when her father gave money to Vinod. According to her, Vinod was demanding Rs.2000/- for treatment of his abdominal problem, whereas her mother Shushila PW-2 has stated that Vinod was demanding money as dowry. Thus, the evidence of Hemlata (PW-3) being in gross contradiction of evidence of her mother Shushila (PW-2) is not worth reliance.

27. Anil Kumar (PW-6) has stated that his sister had informed that in the night they have quarrelled as Vinod was demanding Rs.20,000/- and was telling that if she did not bring that amount he will not keep her with him. Vinod beat and ablated her. The aforesaid evidence of Anil PW-6 also does not inspire confidence as Dr. N.K. Bajpayee (PW-8) who conducted the postmortem of the dead body of deceased Renu, in his cross-examination has clearly stated that he had not found any external injury on the dead body of Renu.

28. In so far, the reliability and truthfulness of the evidence of Daulat Prasad (PW-1), Shushila Bai (PW-2), Hemlata (PW-3), Sitaram (PW-4) and Anil (PW-6) is concerned, it can be safely concluded that they are not truthful and reliable witnesses. It can be assumed that after fire accident they have developed a false story about the demand of money by the appellant Vinod but they could not tell any specific time and date as to when such money was demanded.

29. They also could not specify the time and date of particular period in which the demand of Rs.20,000/- or any other amount of money was made by appellant Vinod. Evidence of witnesses on this point is self contradictory and prior to death of Renu Bai no complaint was made by her about any demand of Rs.20,000/- or harassment by husband Vinod. Thus, it is not established that any specific cruelty or harassment was done with the deceased in consequence of the demand of Rs.20,000/- or more. The evidence of parents, sister and brother of the deceased about the demand of money and harassment is self contradictory and

does not inspire confidence. Thus, learned trial Court was not justified in believing such evidence which is full of improvements, contradictions, discrepancies and infirmities.

30. Learned trial Court has committed error in holding that presumption under Section 113-A of the Evidence Act is attracted. There is no sufficient evidence available on record on the basis of which it can be hold that appellant had abated deceased Renu Bai to commit suicide. In fact, it was a case of fire accident and deceased Renu sustained burn injury as her loose end (Pallu) of nylon saree caught fire at the time of preparation of tea. There are no reasons to disbelieve the dying declaration (Ex.P-1) recorded by Tehsildar Ramesh Kumar Shrivastava (PW-9) which stand fortified from the evidence of other prosecution witnesses too.

31. Thus, on a meticulous scrutiny of entire evidence on record, it is apparent that prosecution has not been able to prove any proximate direct or indirect cause attributable to the appellant that could drive Renu to take extreme step of self immolation. In such a situation the conviction of appellant Vinod under Section 306 of IPC merely on basis of afterthought omnibus allegation of harassment to the deceased was not sustainable.

32. In the wake of aforesaid marshaling of evidence and on consideration of law relating to offence under Section 306 of IPC, I allow this appeal. Conviction and sentence of appellant Vinod under Section 306 of IPC by learned Additional Sessions Judge, Narsinghpur is hereby set-aside and he is acquitted of offence under Section 306 of IPC. He is entitled to receive back fine amount if any, deposited in the trial court.

33. Thus, the appeal is **allowed**. Office is directed to send the copy of judgment alongwith record to the learned trial Court.

(DINESH KUMAR PALIWAL)  
JUDGE