

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

**(SINGLE BENCH : HON'BLE SHRI JUSTICE
J.P.GUPTA)**

Criminal Appeal No. 2811 / 2000

Shiv Dhar and another Lal

Vs.

State of Madhya Pradesh

Shri Surendra Singh, learned Senior Advocate with Shri
Ashwani Kumar Dubey, Advocate for the appellants.

Shri Amit Pandey, Panel Lawyer for the respondent-State.

Whether approved for reporting : (Yes / No).

J U D G M E N T

(Delivered on 6th day of April, 2017)

The appellants have preferred this appeal being aggrieved by the impugned judgment dated 3.11.2000 passed by the Additional Sessions Judge, Beohari, District Shahdol in S.T. No.135/2000 whereby the appellants have been convicted for the offences punishable under Sections 306 and 498-A of IPC and sentenced them to undergo RI for 5 years with fine of Rs.500/- each and RI for 3 years with fine of Rs.200/- each, respectively, with default sentence as stipulated in the judgment.

2. In brief, the relevant facts of the case are that on 24.3.1999 Sitaram, father of the deceased Raniya Bai, received information about illness of the deceased. Thereafter, he along with his wife Asha Bai went to village Sapta and got information

about the death of the deceased on account of consuming poison. Thereafter, during the enquiry of merg no. 12/99, Sitaram, father of the deceased informed the police of Police station Beohari, District Shahdol, alleging that the marriage of his daughter Raniya Bai (the deceased) was solemnized with the appellant no.1 prior to six years from the date of the incident. After three years of her marriage, Gauna was done and thereafter, the deceased lived at her in-laws' house. Whenever the deceased came to her parents' house, she used to make complaint that the appellants were making demand of T.V., Fan, Watch, Cycle and Rs.10,000/- from her and also about cruel treatment by her in-laws for fulfilling the said demand. She also complained that the appellants and other co-accused persons threatened her that if the demand was not fulfilled, she would be ousted from in-laws' house. Lastly when the deceased went to her in-laws' house, she told to her parents that if the demand was not fulfilled, she would not be spared alive by the appellants and other co-accused persons. On the basis of aforesaid report, a merg no. 12/99 was registered and after merg inquiry, crime no. 98/99 was registered for the offences punishable under Sections 306, 498-A and 304-B of the IPC against the accused persons including the present appellants. After investigation was over, charge sheet was filed against the accused persons before the JMFC concerned who on its turn committed the case to the court of Sessions for trial. The learned trial court on appreciation of entire evidence and material on record acquitted the co-accused Damri and Krishnadevi of the offences under Sections 304-B, 498-A and 306 of the IPC and also acquitted the present appellants of the offence under Section 304-B of the IPC giving the benefit of doubt as the

prosecution could not prove that the death of the deceased was taken place within seven years of her marriage. But the trial court found the appellants / accused guilty for the offences punishable under Sections 306 and 498-A of the IPC and by the impugned judgment, convicted and sentenced them.

3. Being aggrieved by the aforesaid impugned judgment of conviction and order of sentence, the appellants have filed this appeal on the ground that the finding of the learned trial court is contrary to law. On record there is no reliable and plausible evidence to establish the charges against the appellants and on similar evidence; other co-accused persons have been acquitted. Hence, prayer is made to allow the appeal and set-aside the impugned judgment of conviction and order of sentence.

4. Learned PL appearing for the respondent / State has argued in support of the impugned judgment and stated that the finding of conviction and sentence of the learned trial court is in accordance with law. Hence, the appeal be dismissed.

5. Having considered the rival contentions of both the parties and on perusal of the record, following questions emerge for consideration of this appeal :-

(i) Whether the death of the deceased was suicidal in nature?

(ii) Whether the appellants subjected the deceased to cruelty in connection with demand of dowry?

(iii) Whether the appellants abetted the deceased to commit suicide?

6. So far as the first question is concerned, there is no

much dispute with regard to the nature of death of the deceased which was suicidal. Apart from it, Investigating Officer Arvind Kumar Kujur (PW-11) and the witnesses of Naksha Panchayatnama Ex.P/3, Ganga Prasad (PW-4), Babulal (PW-6) and Munna (PW-7) have stated that the death of the deceased Raniya was taken place on 7.8.2000 and the cause of death was consumption of some poisonous substance. Later on, the dead body was sent to the hospital for conducting autopsy. Dr. R. S. Pandey (PW-9) who conducted postmortem of the deceased has stated that on 25.3.1999 the dead body was examined by him and he opined that on account of taking some poisonous substance, the death was taken place. Postmortem report Ex.P/11 was prepared and viscera was preserved and the same was handed over to the police and thereafter, it was sent for chemical examination to FSL. As per the chemical examination report of FSL Ex.P/28, in the viscera, poisonous aluminum phosphate was found present. There is nothing on record to disbelieve the aforesaid evidence. Hence, it is found to be proved that the death of the deceased was taken place on account of committing suicide by her.

7. So far as the questions no. 2 and 3 are concerned, on perusal of the record, it is found that in this case, there is no eye witness with regard to disclosing the fact of commission of cruelty with the deceased by the appellants. Only the parents of the deceased have disclosed that before death, when the deceased came to their house, she narrated the aforesaid facts. In this regard, the father of the deceased, Sitaram (PW-1) has stated in his statement that at once, her daughter / deceased said that her father-in-law, mother-in-law and husband asked her that T. V.,

Transistor, Fan and Rs.10,000/- were not given in dowry and on that account, they tortured her. Besides it, there is nothing in the statement of Sitaram (PW-1) which can be considered to be relevant with regard to the aforesaid facts.

8. Asha Bai (PW-2) has stated in her statement that her daughter / the deceased said to her that her father-in-law and his both wives (her mother-in-laws) and her husband had demanded cycle, T. V., Fan, Transistor and Rs.10,000/- in dowry and in this regard, father-in-law, mother-in-law and husband of the deceased used to abuse and beat her. In the last time, when the deceased Raniya came to her parental house, her mother-in-law and husband came to take her back with them but she refused to send her with them. Even they assured that they would not torture and harass the deceased and items of the dowry could be given as per her convenience. But after persistent efforts having been made by in-laws and husband of the deceased, 10 days prior to the incident, the deceased was sent with the appellant no. 1 who is husband of the deceased. Before sending the deceased with the appellant no. 1, the facts of demanding dowry and harassment were brought into the notice of two or four neighbours but neither the names of them have been disclosed nor anyone of them has been examined.

9. Ramayan Prasad (PW-5) who is brother of the deceased has stated in his statement that her sister (the deceased) had never disclosed the fact that in her in-laws house, she was harassed and tortured on account of demand of dowry.

10. Now, it is to be seen that whether the aforesaid evidence is reliable or sufficient to prove the fact that the deceased was subjected to cruelty in connection with demand of

dowry by her in-laws or they abetted for committing suicide to the deceased. The statement of Sitaram (PW-1) with regard to demand of dowry and harassment to her daughter / the deceased Raniya Bai, is not specific as no date, time, particular of the incident and the manner have been disclosed. He has also stated that he had never disclosed this fact to any other person before the death of the deceased. He has further stated that on the date of incident he went with her wife to the house of the appellants where the police were present and he and her wife informed the police with regard to the fact that her daughter was subjected to cruelty on account of demand of dowry and also stated that the police recorded the report which was lodged by his nephew Ramkishore. But, the Investigating Officer, Arvind Kumar Kujur (PW-11) has denied the aforesaid fact and stated that the parents and other relatives of the deceased had not made any report with regard to commission of the aforesaid cruelty by the appellants or other in-laws. When their statements were taken on 29.3.1999 they had disclosed the aforesaid facts.

11. Sitaram (PW-1) has not stated that when the deceased was lastly sent to her in-laws house, any discussion was taken place before it with the husband or mother-in-law of the deceased or anything was disclosed to the neighbours before sending the deceased to her in-laws house. In this regard the statements of Sitaram (PW-1) and her wife Asha Bai (PW-2) are contradictory to each other.

12. Apart from it, Asha Bai (PW-2) the mother of the deceased, has also disclosed that in-laws of the deceased had not demanded dowry. She herself interested to give some items in the dowry. When she disclosed her desire, the in-laws of the deceased

asked her and compelled her to bring the dowry items from her parents. Asha Bai (PW-2) has also not stated any specific incident of torture and harassment disclosing the place, time, date and manner. She has given general statement and she has also claimed that on the date of death, she disclosed all the facts to the police. But, as earlier stated, Investigating Officer, Arvind Kumar Kujur (PW-11) has denied the aforesaid fact. Asha Bai (PW-2) has also stated that she had made promise to give dowry items but the deceased died. Therefore, she and her husband were displeased and in anger with the in-laws and husband of the deceased and therefore, they stated against the in-laws and husband of the deceased.

13. It is clear that the aforesaid evidence is not believable and sufficient to establish the fact that the appellants subjected the deceased to cruelty in connection with demand of dowry as the statements of the parents of the deceased are not trustworthy and cannot be considered to be reliable beyond reasonable doubt as they are full of contradictions, exaggerations and imprudent behavior and the statements have not been corroborated from any other independent source. The circumstance of non-disclosure of the fact to the police on the same day also makes the statements highly doubtful. On the basis of such statements, in criminal case ingredients of the offence cannot be deemed to be proved. Hence, in view of this court, the prosecution has failed to prove the fact that the appellants subjected the deceased to cruelty with regard to demand of dowry and the finding of the learned trial court is not sustainable as it is contrary to law.

14. In this case, for the purpose of proving the fact of

abatement for committing suicide by the appellants, no other facts and circumstances have been brought into the notice which may be considered to be relevant. The Apex court in the case of **Amalendu Pal v State of W.B. (2010) 1 SCC 707**, has observed in paragraphs no. 12, 13 and 14 as follows :-

12. Thus, the court has consistently taken the view that before holding an accused guilty of an offence under sec. 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with other alternative but to put an end to her life. 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 suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of sec. 306 IPC is not sustainable.

13. In order to bring a case within the purview of sec. 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 sec. 306 IPC.

14. The expression 'abetment' has been defined under sec. 107 IPC which the court has extracted. A person is said to abet the commission of suicide when a person instigate any person to do that thing as stated in clause Firstly or to do anything as stated in Clauses Secondary or Thirdly of sec. 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence.

15. The facts and evidence of the present case do not disclose that so called alleged cruelty was of such nature that it can be presumed that the cruelty had left the victim with no other alternative but to put an end to her life. It is necessary ingredients to constitute the offence of instigation as held by Three Judges Bench of the Apex court in the case of **Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618**. Relevant paragraphs 20, 21 and 22 are quoted here as follows :-

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without

intending the consequences to actually follow cannot be said to be instigation.

21. [In State of West Bengal v. Orilal Jaiswal and Anr.](#), [1994] 1 SCC 73, this Court has cautioned that the Court 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.

22. [Sections 498-A](#) and [306](#) IPC are independent and constitute different offences. Though depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under [Section 498-A](#) and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under [Section 498-A](#) IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.

16. In view of the aforesaid discussion it is clear that in this case, the evidence with regard to prove the necessary ingredients for commission of offence under sec. 306 IPC for abetment to commit suicide has not been brought before the court and in such circumstances, the conviction of the appellants as awarded by the trial court for commission of the offence is contrary to law. Therefore, the appeal is allowed and the judgment of conviction and order of sentence passed by the trial court against the appellants for the offences under sections 306

and 498-A of the IPC is hereby set-aside. The appellants are acquitted of the aforesaid offences. The appellants are on bail, their bail bonds stand discharged. Fine amount, if any deposited by the appellants, be returned to them.

17. A copy of this judgment be sent to the trial court and the jail authorities concerned for information and necessary action.

(J.P.GUPTA)
JUDGE

JP/-