

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Appeal No. 38 of 2014

Reserved on: 24.3.2017

Date of Decision: 31.3.2017

State of Himachal Pradesh.

....Appellant

Versus

Bimla Devi.

....Respondent

Coram:

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes.

***For the Appellant: Mr.M.A. Khan and Mr. Virender Verma,
Additional Advocate Generals.***

For the respondent: Mr. Virender Singh Rathour, Advocate.

Vivek Singh Thakur, Judge

State has assailed acquittal of respondent vide judgment dated 25.7.2013 passed in Sessions Trial No. 72-J/VII-2010/2009 by Sessions Judge, Kangra at Dharamshala in case FIR No. 136 of 2008 under Sections 498-A and 306 IPC registered in Police Station Indora.

2. We have heard learned counsel for the parties and have also gone through the record.

3. On 18.6.2008 at about 11.30 A.M. a telephonic message was received in Police Post Fatehpur, calling police for action, as a lady having burn injuries was brought for treatment in CHC, Fatehpur. On reducing the said information into writing as report No. 7, dated 18.6.2008,

¹ Whether reporters of Local Papers may be allowed to see the judgment? yes

PW-2 ASI Mohinder Singh along with Head Constable Rajesh Kumar departed for CHC Fatehpur, on whose application Ex. PW-2/B, Medical Officer opined that injured was fit to give statement whereupon statement of injured Ex. PW-2/D was recorded in presence of PW-11 Janak Raj Pradhan Gram Panchayat, Up-Pradhan Karnail Singh and Medical Officer duly attested by Medical Officer wherein injured (deceased Asha Devi) stated that she caught fire accidentally when she was lighting kerosene stove and on crying her mother-in-law who was outside with cattle, came and extinguished fire and in the incident there was no negligence or fault of any body. The said statement was also reproduced in rapat No. 9, dated 18.6.2008 Ex. PW-2/E in Police Post, Fatehpur by PW-2 ASI Mohinder Singh. On finding that case pertained to jurisdiction of Police Station Indora, at about 1:00 P.M., telephonic information was sent to Police Station Indora through Head Constable Rajesh Kumar on behalf of Incharge of Police Post Fatehpur for taking action in the matter with further information that statement of injured has been recorded whereupon, from Police Station Indora, PW-9 H.C. Anubhav Krishan was sent to CHC Fatehpur where he found that injured had been taken to Pathankot for treatment. From Pathankot deceased was shifted to Dr. Rajendra Prasad Government Medical College (RPGMC), Tanda. On 19.6.2008, PW-9 H.C. Anubhav Krishan, on receiving telephonic information about return of father of

injured (deceased), who was accompanying her in hospitals, to his village, went to parental village of deceased, where he found that PW-15 ASI Geeta Parkash had already arrived there who recorded statement Ex. PW-10/A of PW-12 Subash Singh, father of deceased under Section 154 Cr.P.C.

4. In his statement Ex. PW-10/A recorded under Section 154 Cr.P.C, PW-12 stated that his daughter Asha Devi (deceased), married to son of respondent, whenever came to meet him, had been telling him that respondent used to taunt her for not delivering to male child and for not giving gifts by her parents to them and also used to quarrel on insignificant issues whereupon he used to propose his daughter to advise respondent, but his daughter always refrained him from doing so because of some pressure. Thereupon he asked his son-in-law to advise his mother not to harass deceased. He further stated that on 18.6.2008 on receiving information about burning of his daughter, he reached hospital, where on asking, his daughter did not tell anything and he took her to a private hospital at Pathankot, wherefrom she was referred to Chandigarh/Ludhiana whereupon he brought his daughter in the same vehicle to RPGMC Tanda for treatment. Thereafter he stated that he believed that his daughter burn herself by pouring kerosene oil upon her on 18.6.2008 because of harassment by respondent. The aforesaid statement was sent

to Police Station Indora as rucka, in pursuance to which FIR Ex. PW-10/B was recorded by PW-10, Inspector Shakti Parsad.

5. On the basis of FIR Ex. PW-10/B, investigation was started, statements of witnesses were recorded, burnt cloths alongwith bottle of kerosene oil and match box were taken into possession vide seizure memo Ex. PW-11/A and were sent to chemical examination to forensic lab and on 22.6.2008 at about 11:35 A.M. another statement Ex. PW-15/G of deceased Asha Devi was recorded by PW-15 Geeta Prakash in Medical College, Tanda in presence of her mother PW-3 Kamla Devi and one Baldev Singh and Medical Officer made endorsement Ex. PW-17/A on it, certifying making of the statement in his presence. PW-17 Dr. Sanjay Sood was examined to prove the signatures of Dr. Kuldeep Singh (deceased) in endorsement Ex. PW-17/A made on the statement of deceased Asha Devi Ex. PW-15/G. In this statement, deceased alleged that on 18.6.2008 respondent Bimla Devi, her mother-in-law, started quarreling on issue of cattle and poultry and thereafter she started taunting for not giving birth to male child and teasing by uttering hopeless words and she did not stop despite requests of deceased whereupon deceased felt angry and poured kerosene oil upon herself and put herself on fire by lighting matchstick and on feeling pain she ran out of the room and started crying and her mother-in-law also cried for help and tried to extinguish fire of her clothes. She fell down on the

ground and respondent threw water upon her. Thereafter villagers took her to hospital and she had put on fire herself because of harassment by Bimla Devi. She further stated that she did not want to say anything about statement given in CHC Fatehpur.

6. On 25.6.2008, Asha Devi succumbed to her injuries at about 6:15 P.M. Her post mortem was conducted by PW-14 Dr. Atul Gupta on 26.6.2008, who issued her post mortem report Ex. PW-14/C with opinion that she died due to asphyxia and septic shock due to antimortem burns approximately 70%. In chemical examination report, traces of kerosene oil were detected in burnt clothes with skin of deceased and match box. On completion of investigation, prima facie findings complicity of respondent, challan was put in the Court against her and she was charged under Sections 498-A and 306 IPC.

7. Prosecution has examination 17 witnesses to prove its case. After recording statement of respondent under Section 313 Cr.P.C., she had chosen not to lead any evidence in defence. On conclusion of trial, respondent stands acquitted.

8. Receiving burn injuries on 18.6.2008 by deceased at her in-laws house and her death on 25.6.2008 succumbing to her injuries is not disputed. Respondent Bimla Devi had also received burn injuries, for which she was also treated in CHC Fatehpur and remained admitted in the hospital from

20.6.2008 to 29.6.2008 is also an admitted fact as prosecution examined PW-1 Dr.Randhir Thakur, who medically examined and treated her, to prove her MLC Ex. PW-1/B and discharge card Ex. PW-1/C. In cross-examination, he admitted injuries mentioned in MLC Ex. PW-1/B were possible, if person tried to extinguish fire of other person and probable time of receiving these injuries might be morning and day time of 18.6.2008.

9. The moot question to be decided in this appeal is that whether prosecution has established beyond reasonable doubt that deceased Asha Devi had burn herself by putting kerosene oil upon her, because of harassment subjected to her by respondent.

10. PW-6 Shiv Kumar photographed the dead body of deceased. PW-7 H.C. Santokh Singh had received message from Police Post Fatehpur and recorded report on the basis of said message. PW-8 H.C. Sushil Kumar, being Malkhana incharge, had received articles taken in possession during investigation and sent them for chemical examination. PW-9 H.C. Anubhav Krishan had visited the parental village of deceased and hospital in pursuance to information received PW-10 Inspector Shakti Parsad had registered FIR after receiving statement Ex. PW-10/A made by PW-12. PW-14 Dr.Atul Gupta conducted post mortem of dead body of deceased. PW-17 Dr.Sanjay Sood identified signatures of Dr.Kuldeep Singh (deceased) on statement of deceased Ex. PW-

15/G. PW-4 Surinder Kumar had taken deceased Asha Devi to CHC, Fatehpur in his Jeep. PW-5 Hoshiar Singh on hearing cries of deceased went to the house of her in-laws and found deceased in burnt condition and helped to take her to CHC Fatehpur. All these witnesses are not aware about the cause of incident.

11. Prosecution has examined PW-3 Smt. Kamla Devi, PW-12 Subash (parents of deceased), PW-13 Tilak Raj and PW-16 Ram Pal (paternal and maternal uncles of deceased) and PW-11 Sh. Janak Raj, Pradhan of Gram Panchayat to prove that deceased has committed suicide as a result of harassment faced by her in the hands of respondent.

12. Except PW-16, all these witnesses were declared hostile for resiling their earlier statements recorded by police under Section 161 Cr.P.C. PW-16 also, though in examination-in-chief stated that mother-in-law of deceased i.e. respondent Bimla Devi maltreated and tortured the deceased, resulting into commission of suicide by deceased. But in cross-examination, he admitted that deceased in her statement recorded by police in CHC Fatehpur, stated that she had caught fire accidentally. He further stated that deceased never complained to him or his family members about any maltreatment or any instance of torture by respondent. He had shown his ignorance about relations between respondent and deceased. He also expressed his ignorance about the fact

that respondent remained admitted in the hospital for nine days for her treatment, due to burn injuries sustained by her. The version of this witness is self-contradictory.

13. Conviction can be based on statements of hostile witness as statement of hostile witness is not to be brushed aside in toto and Court can consider evidence of hostile witness to corroborate other evidence on record. It is also clearly well settled that mere fact that a witness is declared hostile does not make him unreliable witness so as to exclude his evidence from consideration altogether but the said evidence remains admissible in the trial and there is no legal bar to base conviction or acquittal upon testimony of hostile witness if corroborated by other reliable evidence. Hon'ble Supreme Court in case ***Raja and others Vs. State of Karnataka (2016) 10 SCC 506*** has held as under:-

“32. That the evidence of a hostile witness in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny was reiterated by this Court in Himanshu @ Chintu (supra) by drawing sustenance of the proposition amongst others from Khujii vs. State of M.P. (1991) 3 SCC 627 and Koli Lakhman Bhai Chanabhai vs. State of Gujarat (1999) 8 SCC 624. It was enounced that the evidence of a hostile witness remains admissible and is open for a Court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record.”

14. In the light of aforesaid settled position, we have to examine statements of hostile witnesses PW-3, PW-11, PW-12 and PW-13.

15. PW-3 Smt. Kamla Devi in her cross-examination by learned Public Prosecutor also desisted from supporting case of prosecution and has denied to have made statement portion A to A recorded under Section 161 Cr.P.C. Though she admitted that her son-in-law used to keep her daughter nicely and only respondent maltreated and tortured her, but she further stated that she could not say that due to torture of respondent, her daughter committed suicide. She admitted that they had good relation with respondent and she want to save old lady from punishment for daughters of deceased and her son-in-law and for that reason she was not deposing against her as per police case. In cross-examination by defence counsel, she denied that her daughter never complained to her that respondent had been torturing and maltreating her for not giving birth to a male child, but so far as cause of burning of deceased is concerned, she categorically stated that she could not say that deceased had stated to police that she had caught fire accidentally. At the same time, she also remained silent about the incident, by not saying that deceased had committed suicide because of maltreatment of respondent. What can be gathered from her entire statement is that respondent was

taunting deceased for not delivering male child. About cause of burning this witness is not sure.

16. PW-12 Subash is father of deceased and on the basis of his statement Ex. PW-10/A recorded under Section 154 Cr.P.C. case was registered against the respondent, has also not lent support to the prosecution case. He was declared hostile and was subjected to cross-examination by learned Public Prosecutor. He denied the entire case of prosecution and also statement Ex. PW-10/A, except his signatures on the same. He stated that he was an illiterate person and was not conversant with Hindi language and he could not say what was written by police in Ex. PW-10/A. He admitted that he did not want to pursue the present case against the respondent. He stated that Ex. PW-10/A was not read over to him and nor he himself read it. He also expressed his ignorance about recording of statement of deceased in CHC, Fatehpur, wherein she stated that she had caught fire accidentally. However, he admitted that deceased never made any complaint regarding maltreatment or any kind of mental torture to him against respondent and it was told by him to the police at the time of recording his statement that he did not know anything about the case. Despite lengthy cross-examination by learned Public Prosecutor, nothing favourable could be extracted in favor of prosecution.

17. PW-13 Tilak Raj, uncle of deceased, was also declared hostile for not supporting the prosecution case. In cross-examination by learned Public Prosecutor, he admitted that deceased Asha Devi used to visit his parental house and tell him that respondent harassed and maltreated her. He also stated that because of that harassment and maltreatment, she set herself on fire. In cross-examination by defence counsel, he stated that he was not present at the time of incident on the spot and he could not say how and why deceased sustained burn injuries. He admitted that on 18.6.2008 in CHC Fatehpur, statement of deceased was recorded by PW-2 ASI Mohinder Singh in presence of PW-11 Janak Raj and Karnail Singh Pradhan and Up-Pradhan of Gram Panchayat, wherein she stated that she had caught fire accidentally when she was trying to pump oil in kerosene stove. He further stated that deceased was living very nicely prior to death with respondent Bimla Devi and deceased was not having any dispute of any nature with respondent or her husband and in his presence respondent never tortured deceased for giving birth to daughters. However, he denied suggestion that deceased had never complained to him against respondent for being maltreated by her for not giving birth to son. This witness also indicates harassment of deceased by respondent for not delivering male child.

18. PW-11 Janak Raj Pradhan Gram Panchyat, went to CHC Fatehpur on coming to know about burn injuries received by deceased along with Up-Pradhan Karnail Singh. He stated that in his presence and also that of Medical Officer, deceased made a statement to police stating therein that at about 9:00 A.M. she caught fire accidentally when she was trying to pump oil in kerosene store. He was also declared hostile for resiling his earlier statement recorded under Section 161 Cr.P.C. and was subject to cross-examination by learned Public Prosecutor. He admitted recording of his statement, but stated that he did not remember whether small girl child named Shibu was present on spot and he denied that small girl child Shibu told in his presence that her mother poured kerosene oil and set her on fire. He denied to have made such statement to the police. A suggestion was put to him by prosecution itself that respondent had tried to extinguish fire on the person of deceased and during that process, respondent had also sustained burn injuries on her person, which he admitted. In cross-examination by defence counsel, he again admitted making of statement by deceased, recorded by ASI PW-2 Mohinder Singh, in his presence and that of Karnail Singh, stating therein that she caught fire accidentally and the said fact was also told by him to police at the time of recording his statement. Small girl child namely Shibu was never examined despite being claimed to be eye witness in cross-examination of

PW-11 by learned Public Prosecutor. Prosecution did not explain why the said Shibu was not brought before the Court. Prosecution must also be fair to the accused. Fairness on the part of investigating agency in investigation as well as trial is a human right of an accused. The State cannot suppress vital evidence from the Court only because the same would support the case of accused. (See *Samadhan Dhudaka Koli Vs. State of Maharashtra (2008) 16 SCC 705*).

19. PW-15 recorded statement Ex. PW-15/G made by deceased in RPGMC, Tanda in presence of her mother PW-3 Kamla Devi and one Baldev Singh which was endorsed by Dr. Kuldeep Singh (now deceased). Signatures of Dr. Kuldeep Singh were proved by PW-17 Dr. Sanjeev Sood. However, PW-17 is not witness to statement. PW-3 Kamla, mother of deceased is silent about this statement. Interestingly the statement was not put to her even during cross-examination by learned Public Prosecutor. Another witness to this statement PW Baldev Singh was not examined.

20. In statement Ex. PW-15/G, deceased had accused respondent for abetting her to commit suicide by maltreating and taunting her. However there is another statement Ex. PW-2/D made by deceased to PW-2 Mohinder Singh, which is also on record, wherein she had attributed the incident of her burning to an accident. Therefore, there are two inconsistent statements of deceased on record. The circumstances and

timing of these statements are so proximate to the death of deceased and to each other that both of these statements can be considered to be her dying declaration. The statement of deceased cannot be discarded only on the ground that there is more than one dying declaration. Conviction can also be based upon only on dying declaration of deceased in case the said dying declaration is trustworthy, credible and confidence inspiring. However, when there is material variance and inconsistency in two statements of deceased, definitely either of those statements cannot be made basis for convicting accused.

21. In case **Umakant and another Vs. State of Chhattisgarh (2014) 7 SCC 405**, Hon'ble Apex Court has held as under:-

"22. The legal position about the admissibility of a dying declaration is settled by this Court in several judgments. This Court in Atbir v. Government of NCT of Delhi - 2010 (9) SCC 1, taking into consideration the earlier judgments of this Court in Paniben v. State of Gujarat - 1992 (2) SCC 474 and another judgment of this Court in Panneerselvam v. State of Tamilnadu 2008 (17) SCC 190 has given certain guidelines while considering a dying declaration:

"(i) Dying declaration can be the sole basis of conviction if it inspires full confidence of the Court.

(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) *It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborative. The rule requiring corroboration is merely a rule of prudence.*

(v) *Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*

(vi) *A dying declaration which suffers from infirmities, such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*

(vii) *Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*

(viii) *Even if it is a brief statement, it is not to be discarded.*

(iv) *When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*

(x) *If after careful scrutiny the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”*

22. Law on multiple dying declarations is well settled. In **Samadhan Dhudaka Koli vs. State of Maharashtra (2008) 16 SCC 705**, Hon’ble Apex Court has held as under:-

“18. Consistency in the dying declaration, therefore, is a very relevant factor. Such a relevant factor cannot be ignored. When a contradictory and inconsistent stand is taken by the deceased herself in different dying declarations, they should not be accepted on their face value. IN any event, a rule of prudence, corroboration must be sought from other evidence brought on record.”

23. However, after considering plethora of judgments, Hon’ble Supreme Court in case **Bhadrhiri Venkata Ravi Vs.**

**Public Prosecutor, High Court of Andhra Pradesh,
Hyderabad (2013) 14 SCC 145** has held as under:-

“22. It is a settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused. In such a fact-situation, the accused gets the benefit of doubt. (Vide: Sanjay v. State of Maharashtra, (2007) 9 SCC 148; and Heeralal v. State of Madhya Pradesh, (2009) 12 SCC 671).

23. In case of plural/multiple dying declarations, the court has to scrutinise the evidence cautiously and must find out whether there is consistency particularly in material particulars therein. In case there are inter-se discrepancies in the depositions of the witnesses given in support of one of the dying declarations, it would not be safe to rely upon the same. In fact it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If the dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. But the statements should be consistent throughout.

24. In case of inconsistencies, the court has to examine the nature of the same, i.e. whether they are material or not and while scrutinising the contents of various dying declarations, the court has to examine the same in the light of the various surrounding facts and circumstances. In case of dying declaration, as the accused does not have right to cross-examine the maker and not able to elicit the truth as happens in the case of other witnesses, it would not be safe to rely if the dying declaration does not inspire full confidence of the court about its correctness, as it may be result of tutoring, prompting or product of imagination. The court has to be satisfied that the maker was in a fit state of mind and had a clear opportunity to observe and identify the assailant (s). (Vide: Smt. Kamla v. State of Punjab, AIR 1993 SC 374; Kishan Lal v. State of Rajasthan, AIR 1999 SC 3062; Lella Srinivasa Rao v. State of A.P., AIR 2004 SC 1720; Amol Singh v. State of Madhya Pradesh, (2008) 5 SCC 468; State of

Andhra Pradesh v. P. Khaja Hussain, (2009) 15 SCC 120; and Sharda v. State of Rajasthan, AIR 2010 SC 408).”

24. Discrepancy in two statements Ex. PW-2/D and Ex. PW-15/G made by deceased is not trivial in nature, but both the statements are in contrast to each other and such contradictory statements renders the version of deceased unreliable. In case first statement Ex. PW-2/D is not considered to be dying declaration and only statement Ex. PW-15/G is considered to be dying declaration, then also it is admitted case of prosecution that deceased had made statement Ex. PW-2/D recorded by Pw-2 Mohinder Singh and said fact stands also admitted by deceased in her statement Ex. PW-15/D, wherein she stated that she had no explanation about statement Ex. PW-2/D made by her in CHC Fathepur. Though PW-2 Mohinder Singh has tried to improve by stating that it appeared at that time that deceased was trying to save her mother-in-law and deceased seemed to be under some pressure, but his version does not find corroboration from his subsequent conduct. After going back to Police Post Fathepur he entered daily diary report Ex. PW-2/E and reproduced entire statement of deceased along with his comments in the said report. Perusal of contents of report Ex. PW-2/E reveals that he had nowhere recorded his observation that it was noticed by him that deceased was under pressure and was trying to save her mother-in-law. After finding the case fallen

in jurisdiction of Police Station Indora, information was sent to the said Police Station and it was conveyed in the information that statement of injured had been recorded. Again there was no reference of observation of PW-2 about saving of her mother-in-law by deceased under some pressure or otherwise. Therefore, improvement made by PW-2 Mohinder Singh is also of no help to the prosecution.

25. There are contradictory statements of deceased as well as relatives of deceased from parental side. Scrutiny of evidence on record, at the most can lead an inference that deceased may have put herself on fire on account of day to day quarrels with respondent and such inference can lead to conclusion only that cause of committing suicide by deceased may have been maltreatment by respondent. But suspicion however strong may not take place of conclusive proof. It is settled law that in absence of conclusive proof, conviction cannot be based merely on suspicion. There are self contradictory statements of prosecution witnesses and two divergent statements of deceased but for unexplained reasons, which leads to only conclusion that it cannot be said beyond all reasonable doubt that deceased had committed suicide on account of maltreatment and harassment by respondent. It is another aspect of the case that whether such taunting will amount a sufficient reason driving deceased to take drastic step to end her life by committing suicide. However,

statements of deceased and prosecution witnesses are not sufficient to prove beyond reasonable doubt that deceased committed suicide due to taunting by respondent for not giving birth to a male child or otherwise respondent abetted deceased to commit suicide.

26. Section 107 of Indian Penal Code defines abetment which reads as under:-

“107. Abetment 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.”

27. Legislature has also inserted Section 113-A in the Evidence Act, 1872 permitting Court to have presumption as to abetment of suicide by a married women by her husband or any his relative if suicide is committed within seven years of marriage and her husband or his relative had subjected her to cruelty. Cruelty in this Section has same meaning as expressed in Section 498-A IPC.

28. Section 498-A IPC reads as under:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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.”

29. For raising presumption under Section 113-A of the Evidence Act cruelty on the part of in-laws is sine qua non. In absence of cruelty as defined in Section 498-A IPC there cannot be any presumption of abatement of suicide.

30. In ***Gurcharan Singh Vs. State of Punjab (2017) 1 SCC 433***, Hon’ble Supreme Court has held as under:-

“26. Though for the purposes of the case in hand, the first limb of the explanation is otherwise germane, proof of the willful conduct actuating the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, is the sine qua non for entering a finding of cruelty against the person charged.

27. The pith and purport of Section 306 IPC has since been enunciated by this Court in Randhir Singh vs. State of Punjab (2004)13 SCC 129, and the relevant excerpts therefrom are set out hereunder. (SCC p. 134, paras 12-13)

“12. 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 is required

before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73, 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 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.”

28. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707.

29. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Chheena vs. Vijay Kumar Mahajan (2010) 12 SCC 190.

30. In Pinakin Mahipatray Rawal vs. State of Gujarat (2013) 10 SCC 48, this Court, with reference to Section 113A of the Indian Evidence Act, 1872, while observing that the criminal law amendment bringing forth this provision was necessitated to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry, it was underlined that the burden of proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That the prosecution as well has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC, was emphasised.”

31. In present case unnatural death of deceased has taken place within seven years of marriage and even if it is considered to be suicide, then also it is not a case of harassment for dowry but for alleged cruelty as explained in explanation (a) in Section 498-A IPC. For evidence on record, it cannot be said with certainty that there was willful conduct of respondent causing grave injury or danger to life, limb or health (mental or physical) of the deceased.

32. There is no other allegation against respondent, except that she was cursing deceased for not giving birth to male child and even the incident quoted in statement Ex. PW-15/G is considered to be true, quarrel within family on insignificant day to day matters cannot be treated sufficient for driving deceased to take a decision for committing suicide. It is stated in Ex. PW-15/G by deceased that she put kerosene upon her out of anger as respondent did not pay heed to her

requests to keep mum. For committing suicide by deceased in heat of anger of spur of moment, respondent cannot be held guilty for abetting deceased to commit suicide. There is nothing on record establishing that respondent either instigated or intentionally aided deceased to commit suicide or engaged with someone else in a conspiracy so as driving deceased to commit suicide. Ingredients necessary for abetting as defined in Section 107 IPC are missing in present case. On the contrary it has come on record in statements, Ex. PW-2/D as well as Ex. PW-15/G, that respondent tried to save deceased and in this process she herself also suffered burn injuries and remained admitted in hospital for 9 days.

33. In view of aforesaid discussion, prosecution has failed to establish beyond reasonable doubt that respondent is responsible for driving deceased to commit suicide on account of her maltreatment and harassment. There is no trustworthy, cogent and reliable evidence to prove the said allegation. The evidence on record does not inspire confidence to accept version of prosecution story and therefore, the view taken by trial Court is a plausible one, which cannot be termed to be perverse and the trial Court has appreciated the evidence correctly and completely.

34. Respondent has advantage of being acquitted by the trial Court which strengthens presumption of her innocence. Onus to rebut such presumption heavily lies upon

prosecution, to which prosecution has miserably failed. After considering arguments of respective counsel for the parties and minutely examining the testimonies of witnesses and other documentary evidence placed on record, we are of the considered view that no case for interference is made out.

35 Thus, present appeal, devoid of any merit, is dismissed and also pending applications, if any. Bail bonds, if any, furnished by or on behalf of respondent are discharged. Records of the Court below be immediately sent back.

(Dharam Chand Chaudhary)
Judge.

(Vivek Singh Thakur)
Judge

31st March, 2017
(KRS)