

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 465 of 2009

Judgment reserved on 24<sup>th</sup> March 2017

Date of Decision 31<sup>st</sup> March 2017

---

*State of Himachal Pradesh*

*....Appellant*

*Versus*

*Mohar Singh and others*

*....Respondents*

---

*Coram*

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

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

Whether approved for reporting?<sup>1</sup>

---

For the Appellant:

Shri D.S. Nainta and Mr. M.A.Khan,  
Additional Advocates General.

For the Respondents:

Shri N.S. Chandel, Advocate.

---

*Vivek Singh Thakur, J.*

State has preferred present appeal against acquittal of respondents by learned Additional Sessions Judge (1), Kangra at Dharamshala, vide judgment dated 26.3.2009, passed in sessions trial No. 32-K of 2005, title State vs. Mohar Singh and

---

<sup>1</sup> *Whether Reporters of Local Papers may be allowed to see the judgment? Yes*

others, in case FIR No. 8 of 2005, dated 2.1.2005 registered at Police Station Kangra, under Sections 498-A and 306 read with Section 34 of Indian Penal Code.

2. In memo of parties of impugned judgment, five accused persons have been reflected, whereas, as a matter of fact, Sandeep Kumar accused had expired during the pendency of trial on 6.11.2005. However, his name has been reflected in the impugned judgment and as a result of which, same was arrayed as party in present appeal, as respondent No.2, whose name was deleted in appeal herein.

3. Case of the prosecution is that investigating agency was set in motion on telephonic information received in police station from Up-Pardhan Surender Billa, Gram Panchayat, Tarsuh whereby he informed that daughter-in-law of respondent No. 1, Mohar Singh, had committed suicide by hanging. The said information was recorded in DDR No. 38 dated 1.1.2005 Ext.PW2/A and PW11 SI Daya Nand rushed to spot along with other police officials and found dead body of deceased Puja @ Kanta Devi hanging with ceiling fan in her room. PW3 Karam Chand, paternal uncle of deceased, had made his statement Ext.PW1/A under Section 154 of Code of Criminal Procedure stating therein that father of deceased namely PW8 (Jamna Dass)

was serving at Ropar and her mother had also gone there. He further stated in his statement that his niece Puja Devi was married to Davinder Kumar (son of respondent No.1 and serving in army) on 4.12.2003, whose mother namely Subhadra Devi (respondent No.4) had been continuously harassing deceased by saying that she will solemnise second marriage of her son Davinder Kumar and about one and a half months ago, respondent Subhdra Devi did not send deceased to attend the marriage of her cousin and today (day of occurrence) at about 7.30 AM deceased telephonically wished him for New Year and at about 6.30 PM a telephonic information was received that deceased Puja has died by hanging with fan, whereupon he along with approximately fifty persons of his village including Sushil Kumar, Trilok Chand and Madan Lal etc. came respondents' village and found Puja Devi hanging with ceiling fan and there was no noticeable injury on dead body of Puja but blue spots on her private parts were there. It was alleged that deceased Puja Devi had committed suicide due to harassment of her in-laws i.e. respondents. This statement was sent to police station as ruka and pursuance to which, FIR Ext.PW1/A was recorded and case file was sent to spot and further investigation was carried out. Dead body of deceased was sent for post mortem and PW10

Dr.A.K. Sharma along with Dr. Anju Puri had conducted post mortem of dead body of deceased and found injuries on and around neck of deceased. He found no mark of struggle i.e. scratches etc. on face, neck and other parts of body. On completion of investigation, prima facie finding complicity of respondents in committing offence under Sections 498-A and 306 read with Section 34 of Indian Penal Code challan was presented in Court.

4. Prosecution has examined twelve witnesses to prove its case. Statements of respondents were recorded under Section 313 of Code of Criminal Procedure. No defence witness was examined on their behalf. On conclusion of trial, respondents stand acquitted.

5. PW3 is paternal uncle of deceased, PW7 Sudershna Devi is paternal aunt (wife of PW3), PW6 Samrita Devi is mother of deceased, PW8 Jamna Dass is father of deceased and PW9 Mandeep Kumar is real brother of deceased Puja @ Kanta Devi. PW4 Mohinder is relative of deceased who is a resident of village of her in-laws. PW5 Madan Lal is villager, who is amongst those villagers, who visited her in-laws house after her death. PW10 Dr.A.K. Sharma has conducted post mortem of deceased. PWs 1 and 2 are official witnesses, who recorded DDR and registered

FIR in present case. PW11 SI Dayanand and PW12 Inspector Sanjeev are investigating officers in present case.

6. PW8 Jamna Dass, father of deceased, was serving at Ropar in Punjab and his wife PW6 Samrita Devi had been shuttling between Ropar and native village and in their absence PWs 3 and 7 were attending deceased on her visits in her parental village and deceased also used to stay with them.

7. In his statement under Section 154 of Code of Criminal Procedure, PW3 has alleged continuous harassment, threat of solemnising second marriage of husband of deceased and not allowing the deceased to attend marriage of cousin by mother-in-law and there is sweeping allegation against other respondents that deceased committed suicide on account of harassment by all accused by naming them in the said statement. During examination in Court, prosecution witnesses alleged harassment of deceased for insufficient dowry, intervention of mother-in-law in telephonic conversation of deceased and not allowing deceased to use telephone by mother-in-law, demand of Rs.40,000/- and further demand of money after payment of Rs.40,000/-.

8. In his statement Ext.PW11/A, PW3 Karam Chand had alleged harassment by respondent Subhdra Devi stating that

deceased was not sent to attend marriage of her cousin and was being threatened to solemnise second marriage of her son by respondent Subhdra Devi. However, in his deposition in Court, not only this witness but also PW6 Samrita Devi, mother of deceased, stated that deceased was being harassed by respondents for insufficient dowry. Both of them also stated that respondent Subhdra Devi did not allow deceased to interact on telephone calls. PW3 and PW6 though have alleged harassment of deceased by demanding dowry, but PW4 is silent about said demand and PW8 Jamna Dass, father of deceased, has also not alleged harassment on account of dowry, but he alleged that deceased Puja told him that her mother-in-law used to keep her in room and also did not allow her to make telephone calls. PW9 Mandeep Kumar, brother of deceased, is also silent about harassment of her sister on account of dowry. He only alleged that deceased had been telling him that her mother-in-law and father-in-law had been harassing her.

9. It has come in statement of PW6 that respondents Mohar Singh and Subhdra Devi had raised demand of Rs.40,000/- which was paid to them and thereafter more money was demanded by respondents. So far as harassment of deceased for insufficient dowry is concerned, there is no such allegation in his

statement under Section 154 of Code of Criminal Procedure. This statement was made by PW3 who is paternal uncle of deceased residing in her parental village and whose house was regularly visited by deceased for the reason that her parents were not available in village for all the time as her father was serving at Ropar in Punjab. Therefore, deceased was having intimacy with PW3 and had there been harassment on account of insufficient dowry, the deceased definitely would have disclosed the said fact to him. But, at the time of making complaint at first instance immediately after death of deceased, no such allegation was levelled by him in his complaint and except the sweeping allegation, there is no allegation against other family members except respondent Subhdra Devi (mother-in-law of deceased) by stating that respondent Subhdra Devi was harassing deceased continuously by extending threats of solemnisation of second marriage of her son and also not allowing her to attend the marriage of her cousin.

10. PW6 mother has alleged demand of dowry. However PW8 Jamna Dass, father of deceased, is silent about demand of dowry but only deposed about demand of Rs.40,000/- by respondents and further demand of money in December, 2004. No other demand has been disclosed by him in his statement,

whereas his wife PW6 alleged demand of dowry, demand of Rs.40,000/- and also demand of further money after receiving Rs.40,000/- but on *Bhai Duj*. PW9 Mandeep Kumar, who is real brother of deceased, is also silent about demand of dowry. He only stated that when he was returning from house of respondents on 22/23<sup>rd</sup> December, 2004 after inviting his sister, she had asked him to arrange money. He also made sweeping statement that after marriage respondents used to harass his sister. As per him, he visited house of in-laws of deceased 4/5 times to leave her there. He only referred one demand of money on 22/23<sup>rd</sup> December, 2004. Except this, he is completely silent about insufficient dowry, threat of solemnisation of second marriage, not allowing the deceased to attend the marriage of her cousin and also demand of Rs.40,000/- and payment thereof by his parents. He, real brother of deceased, in his cross examination has stated that his sister had not disclosed to him the purpose for which she demanded money and no payment of money was made in his presence by his father to the respondents. Despite being real brother of deceased, he has shown his ignorance about the fact that his sister and her husband had purchased a tractor. He further told that he had never made any complaint to his brother-in-law about alleged



harassment of his sister by respondents. He has stated that deceased had visited their house for 4/5 times.

11. With respect to payment of Rs.40,000/- to the respondents, PW6 Samrita Devi firstly deposed that amount was paid to father-in-law of deceased, but thereafter she stated that the said amount was paid to mother-in-law of deceased. Whereas PW8 Jamna Dass stated that at the time of payment of amount, his daughter and her mother-in-law were present and amount was given by him to his daughter, who had paid the said amount to her mother-in-law. PW6 has shown her inability to say that whether a sum of Rs.40,000/- was paid in cash or through cheque. PW3 and PW7 are totally silent about payment of Rs.40,000/- and also about payment of said amount to the respondents. PW9, brother of deceased, has not uttered a single word of payment of Rs.40,000/- to the respondents or any other demand by respondents. As per PWs 3 and 4, an amount of Rs.40,000/- was demanded during visit of their daughter in the month of August/September, 2004 which they have referred in their statements as a black month (Kala mahina, a customary name), which, is month of Bhadrapad of Indian calendar. PW9 deposed about request of his sister to arrange money but thereafter he stated that his sister had not disclosed to him the

purpose for which she was demanding money. As per PW6, demand of further amount was alleged to be made during visit of deceased on the occasion of *Bhai Duj*, which comes immediately after two days of Diwali. But in her cross examination PW6 was confronted with her statement recorded under Section 161 of Code of Criminal Procedure, wherein it was not recorded that respondents had demanded a sum of Rs.40,000/- which was told to her by deceased when she had come to parental house during *Kala* month (*Bhadrapad*) i.e. in August/September, 2004. She was also confronted with her statement made to police wherein she had not stated that amount of Rs.40,000/- was paid to mother-in-law of deceased. According to PW8, further amount was demanded in the last week of December i.e. one week prior to committing suicide by deceased. PW8 in cross examination stated that he had not got recorded in his statement under Section 161 of Code of Criminal Procedure that respondents had demanded money during *Kala* month when his daughter had visited their house. He further stated that he did not remember that whether he had disclosed to police that his daughter had handed over Rs.40,000/-, given to her by him, to her mother-in-law. He further stated that he had not disclosed to police in his statement that respondents had demanded money from him. He

had explained it by saying that he did not disclose this fact because he wanted his daughter to be settled in house of respondents. But he admitted that his statement was recorded only after the death of daughter. In these circumstances, the facts regarding demand of Rs.40,000/-, payment thereof and further demand of another amount are under clouds of suspicion.

12. PW8, father of deceased, only alleged that deceased disclosed to him during *Kala Mahina* (*Barsata* period i.e. rainy season) that her father-in-law and mother-in-law used to demand money and he had visited house of respondents to make payment of Rs.45,000/- to his daughter, which was handed over by his daughter to her mother-in-law and as both of them were present in house at that time and he alleged that this amount was demanded for purchase of tractor by respondents. PW6 and PW8 alleged that on the eve of *Bhaiduj* again deceased told that respondents are harassing her and are making demand of money. PW9 has also introduced a new incident of demand of money by respondents after payment of Rs.40,000/- in the month of December, 2004 from deceased. They also alleged that on 1<sup>st</sup> January, 2005, they made telephonic call to respondents for greeting for New Year and the said phone was attended by mother-in-law of deceased but mother-in-law did not allow their

daughter to talk with them and on that day, they again tried to contact their daughter on telephone, which was attended by her father-in-law, who also did not allow their daughter to talk with them and disconnected the call. PW6 stated that second call was also attended by respondent Subhdra and again she did not allow her to talk with her daughter. There is contradiction in statements of PW6 and PW8 on this issue. Further, prosecution has also not placed on record any record of telephonic details so as to corroborate the said fact.

13. Though in statement under Section 154 Cr.P.C., Ext.PW11/A, PW3 had not alleged harassment on account of insufficient dowry but in his statement in Court he alleged harassment on account of insufficient dowry. PW6 is silent about harassment on account of insufficient dowry but has alleged demand of money only and she stated that deceased had also disclosed to her that respondents were harassing her by taunting her. PW6, who is mother of deceased, had alleged harassment of deceased by taunting and not for want of sufficient dowry. PW7, who is wife of PW3, also remained silent about demand of dowry. She stated that deceased told her about harassment by respondents, whereupon she (this witness) had asked her to bear with such small matters as such things happen in the family.

Deposition of PW7 indicates that deceased was feeling harassed not for insufficient dowry but for adjustment with her in-laws on small matters for which she was advised by PW7 to reconcile, who was real paternal aunt of deceased. PW8, father of deceased, in deposition in Court is also silent about harassment of her daughter for want of sufficient dowry. He only stated that deceased had told him about her harassment by her mother-in-law Subhdra. He is silent about harassment by father-in-law or other members of family and manner of harassment as per him as disclosed by deceased was that her mother-in-law used to keep her in a room and also did not allow her to make calls on telephone. PW8 deposed that he had asked mother-in-law of deceased not to harass deceased in such a way. The allegations of keeping deceased in a room have not been made by any other witness. PW9 brother of deceased has only stated that after marriage respondents used to harass her sister. He had not disclosed manner of harassment or reason for subjecting his deceased sister to harassment. Every witness is telling a different story contrary to statements of other prosecution witnesses. Therefore, allegation of harassment of deceased for insufficient dowry is also not inspiring confidence.

14. PW3, in his statement Ext.PW11/A and also in deposition in Court, alleged that mother-in-law of deceased used to threaten deceased Kanta that she would arrange second marriage of her son Davinder. But none of other witnesses including his wife PW7 and parents as well as brother of deceased (PW6, PW8 and PW9) had corroborated this allegation. In their statements there is not even a murmur about such threatening extended by mother-in-law of deceased.

15. PW3, in his statement Ext.PW11/A as well as in his deposition in Court, alleged that deceased was not allowed to attend marriage of her cousin by respondents posing that there were restrictions on the movement of deceased amounting to her harassment. In his own statement in examination-in-chief in Court he stated that respondents had never refused deceased Puja to visit their house but they did not send her to attend the marriage. The restriction on movements is also falsified from statements of PW6, PW7, PW8 and PW9 in which it has come on record that during first year of her marriage deceased had visited her parental village from five to seven times and also during the month of *Bhadrapad* (August-September), she stayed in her parental village for one or two months. Further, PW7 who is wife of PW3 is silent about not sending deceased to attend the

marriage. PW9 is also silent about this restriction alleged to be imposed by respondents upon his sister. Not only this, her parents i.e. PW6 and PW8 are also conspicuously silent on this issue. Therefore, this allegation also seems to be untrue.

16. PW3, in his examination in chief, alleged that deceased had complained intervention in telephonic calls by her mother-in-law alleging that she was not allowing deceased to have telephonic conversation. But in his statement Ext.PW11/A, no such allegation was made. PW7 also stated that respondents did not allow deceased to have telephonic talk with them. Brother of deceased PW9 also remained silent on this issue. PW6 alleged that during telephonic conversation of deceased her mother-in-law used to stand with her and was not allowing deceased to talk freely as a result of which deceased was not able to talk with her relatives on parental side. PW6 further alleged that on the occasion of New Year i.e. 1.1.2005 she called her daughter in the morning but telephone was picked up by her mother-in-law who did not allow her to talk with her daughter and during day time between 11 AM to 12 Noon the same behaviour was repeated by mother-in-law of deceased. In her cross examination she admitted that at that time there was no telephone in their house. PW8 also alleged that on 1.1.2005 he

made telephonic call to his daughter to greet for New Year but call was attended by mother-in-law of deceased and despite his request, she did not allow his daughter to talk with him and on the same day at about 3 PM the same thing was repeated by father-in-law of deceased. This version of these witnesses also does not inspire confidence as it is the case of prosecution itself as deposed by PW3 and PW7 that deceased had greeted them on occasion of New Year in the morning of 1<sup>st</sup> January 2005. It is specifically stated by PW3 that on 1.1.2005 in the morning at about 7.30 AM deceased Puja telephonically greeted them for New Year. PW6 stated that there was no telephone in their house at that time. PW3 Karam Chand, in his cross examination, admitted that Devender, husband of deceased Puja, had provided a mobile phone to deceased but self stated that it was used to be kept by her mother-in-law who had snatched it from her. PW6 denied that husband of deceased had purchased telephone for deceased 5/6 days before her death. PW8 expressed his ignorance about the fact that his son-in-law had provided one mobile phone to his daughter. From these depositions of these witnesses, the only inference which can be drawn is that they are not telling the truth.



17. PW4 Mohinder Singh, a resident of village of in-laws of deceased, was relative of deceased. He was called by mother-in-law of deceased when deceased had confined herself in a room bolting it from inside. This witness opened the door by using force and found deceased hanging with ceiling fan. He claimed that he had come to know from villagers that respondents were harassing and torturing the deceased and once or twice he had also prevailed upon respondents not to harass and torture the deceased. But respondents had not paid any heed to his advise resulting into suicide of deceased. He stated that deceased was regular visitor to his house but admitted that she never told him about any dispute. He further admitted that parents of deceased, her uncle, her aunt and villagers had never told him about harassment or torture of deceased.

18. PW5 Madan Lal, a co-villager of parents, deposed on the basis of hear-say information claimed to be received from them. In cross examination, he admitted that he had not disclosed in his statement to police that it was told to him and neighbours by parents of deceased that respondents had been harassing and torturing the deceased. He stated that except

1.1.2005 and at the time of marriage of deceased, he had never visited house of respondents.

19. It has also come in evidence as admitted by prosecution witnesses including investigating officers that respondents had provided a separate room to deceased in which articles belonging to her, gifted by parents during marriage, were also kept. Parents, PW3 and PW4 admitted this fact whereas brother PW9 denied the said fact and PW7, despite claiming that she had visited with deceased to her in-laws house, expressed ignorance about providing separate room by respondent. PW2 Investigating officer also admitted that articles belonging to deceased were returned to parents of deceased and a separate room was provided to deceased by her in-laws.

20. PW4 a relative of deceased was a resident of village of her in-laws. PW3 admitted that they had many relatives in village of in-laws of deceased. PW8 admitted that his aunt Kesari Devi, who is grand-mother of deceased in relation, was also resident of village of in-laws of deceased. However, for the reasons best known to PW6, she refused to have any relative residing in village of in-laws of deceased. PW3, PW5 and PW6 also admitted that within five to seven days after death of

deceased respondents had returned the articles of dowry of deceased to parents of deceased.

21. In his statement Ext.PW1/A and deposition in Court, PW3 claimed that there were blue spots of injury on private parts of deceased. However, other prosecution witnesses did not allege so in their statements. PW10 Dr.A.K. Sharma conducted post mortem of deceased had noticed injuries on and around neck of deceased but he specifically stated that no mark of struggle i.e. scratches, abrasions, finger nails marks were present on face, neck and other parts of body. Perusal of his statement made in Court and also post mortem report, it is found that there was no injury on body of deceased except the injury on and around the neck. Therefore, this claim of PW3 is also negated.

22. PW11 SI Dayanand admitted that it had come in their investigation that deceased had telephonic conversation with her parental family members in the morning of day of incident and that husband of deceased had gone back to his place of service one day before the death of deceased after spending his holidays. PW12 Inspector Sanjeev Chauhan another investigating officer admitted that as per his investigation no complaint was made by parents of deceased to husband of deceased about

alleged harassment and parents of deceased were having cordial relations with her husband.

23. Respondents were chargesheeted under Sections 498-A and 306 read with Section 34 of Indian Penal Code for abetting deceased Kanta to commit suicide by subjecting her cruelty and harassment for their demands and also on account of willful conduct for driving her to commit suicide. However, it is not a case of prosecution that suicide by deceased was dowry death punishable under Section 304-B IPC. Sections 498-A and 306 of Indian Penal Code 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 wilful 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.*

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

24. Cruelty, as explained in Explanations (a) and (b) of Section 498-A of Indian Penal Code, is an essential ingredient for punishing the accused under Section 498-A of Indian Penal Code. Under Explanation (a), there must be willful conduct of accused so as to either drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of a woman, whereas under Explanation (b), cruelty is explained as harassment for unlawful demand from a woman by her in-laws or harassment on failure to fulfill such demands. Section 306 of Indian Penal Code provides punishment for abetment to commit suicide. Abetment has been defined in Section 107 of Indian Penal Code, 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.*

*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.”*

25. For holding an abetment in commission of a crime, it is necessary that accused either instigates to do a thing or engages with someone else in conspiracy for doing an act or for illegal omission or intentionally aids any act or illegal omission. So far as engaging with someone else or intentionally aiding any act or illegal omission is concerned, in such eventuality, that act or omission must have taken place.

26. Legislature has also enacted Sections 113-A and 113-B of Indian Evidence Act permitting presumption as to abetment of suicide by a married woman when suicide is committed within a period of seven years and her in-laws had subjected her to cruelty (Section 113-A) and also as to dowry death when it is shown that soon before death of a woman, she had been subjected to cruelty or harassment for or in connection with any demand for dowry (Section 113-B). In Section 113-A by using

words 'Court may presume' discretion to the Court has been provided to presume, having regard to all other circumstances of the case, that such suicide had been abetted by in-laws of a woman, whereas in Section 113-B, if cruelty or harassment soon before death for or in connection with any demand of dowry is proved, then Court shall presume that accused had caused dowry death which is punishable under Section 304-B IPC for which respondents have not been charge sheeted. However, provisions of these Sections are attracted only whence necessary ingredients required in these Sections are proved by prosecution beyond reasonable doubt. In present case, prosecution has miserably failed to discharge its onus.

27. Hon'ble Apex Court in recent judgment titled as *Gurcharan Singh vs. State of Punjab, (2017)1 SCC 433* 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)*<sup>13</sup> SCC 129, and the relevant excerpts therefrom are set out hereunder.

*“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.”* (emphasis supplied)

*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."* (at pages 441-443)

28. Present case is of no evidence against respondent No.3 and respondent No.5 for subjecting deceased with cruelty except vague assertions that all respondents used to harass deceased. No allegation of any kind of physical torture against respondents. Prosecution witnesses have alleged demand of money and also restrictions on telephonic calls by respondent No. 1 and respondent No. 4, but there are lot of material contradictions and discrepancies in their depositions hitting trustworthiness of prosecution witnesses. These allegations find no mention in elaborate statement of PW3 recorded under Section 154 Cr.P.C. It has also been alleged that mother-in-law snatched mobile phone and did not allow deceased to make telephonic calls but the said fact has really not established. Evidence led by prosecution to prove demand of money, payment thereof and re-demand, more particularly subjecting deceased to cruelty on that account is not satisfactory but cloudy. Though prosecution has also failed to establish restrictions on movement and telephonic calls of deceased by leading credible and convincing evidence. The evidence brought on record against respondents with regard to cruelty is

absolutely sketchy and not convincing. Prosecution has failed to bring reliable evidence on record to show that respondents had conducted in such a manner to drive deceased to commit suicide. There is no evidence on record that soon before incident of suicide or even otherwise, respondents subjected deceased to cruelty. Facts and circumstances brought on record do not make out a case to bring it in ambit and scope of Section 113-A and/or 113-B of Indian Evidence Act. Before inferring presumptions, involving these Sections, prosecution has to prove the cruelty on part of accused and also nexus of conduct of accused with suicide committed by deceased. There is no evidence on record that respondents anyway instigated deceased to commit suicide or engaged with someone else or with each other in conspiracy or intentionally aided to any act or illegal omission so as to drive the deceased to commit suicide.

29. In view of above discussion the only inference which can be drawn is being aggrieved by suicide committed by deceased, her parents and other relatives from parental side had lodged the complaint firstly against mother-in-law and thereafter involved all the respondents. There is not an iota of evidence, ever murmur in statements of prosecution witnesses about harassment of deceased by her brother-in-laws. The evidence

with regard to allegations levelled against mother-in-law and father-in-law is also not trustworthy and credible. On scrutiny of evidence on record, version of prosecution witnesses does not inspire confidence. Therefore, learned trial Court has committed no error in arriving at a conclusion that prosecution has failed to prove its case beyond reasonable doubt. Learned trial Court has completely and correctly appreciated the evidence on record and no ground for interference has been made out in present appeal. The view taken by learned trial Court is plausible and warrants no interference.

30. Acquittal of respondents has strengthen the presumption of innocence in favour of them and to rebut the same onus lies heavily on prosecution. From evidence on record it cannot be said that acquittal of respondents has caused miscarriage of justice or resulted into travesty of justice. Therefore, appeal is dismissed being devoid of any merit including all pending miscellaneous application(s), if any. Bail bonds furnished by respondents are discharged and record of learned trial Court be sent back forthwith.

(Dharam Chand Chaudhary)  
Judge

March 31, 2017.  
*ms*

(Vivek Singh Thakur),  
Judge