SATVIR SINGH AND ORS. A

v.

STATE OF PUNJAB AND ANR.

SEPTEMBER 27, 2001

[K.T. THOMAS AND S.N. VARIAVA, JJ.] B

Penal Code, 1860:

Section 306—Abetment—Conviction under—Victim survived attempt to commit suicide—Held, conviction not justified—Condition precedent for punishment is that the offence abetted should necessarily have been committed. C

Section 116 read with Section 306—Conviction under—Held, not justified—Since there cannot be abetment of an abetment.

Section 304B—Conviction under—Attempt to commit suicide on account of cruelty at nuptial home—Insufficiency of evidence to show that victim subjected to cruelty for demand of dowry soon before attempt to commit suicide—Held, conviction not justified—For invoking the section cruelty should have been caused 'Soon before her death'—If the interval between the cruelty and death is wide, the court is to decide the interval in the facts of the case. D

Sections 511 and 498 A—Conviction under—Cruelty to victim by accused—Victims' attempt to commit suicide—Held, conviction under Section 498 A justified but not under Section 511 since the act is covered under Section 498 A. E

Words and Phrases : 'Dowry'—Meaning of—In the context of Section 304 B IPC and Dowry Prohibition Act, 1961 'Soon before her death'—Meaning of—In the context of Section 304 B IPC. F

Victim (PW5) attempted to commit suicide on account of the cruel treatment suffered by her in her nuptial home. Appellants accused were convicted under Section 116 read with Sections 306 and 498 A IPC relying on the testimony of PW5. In her evidence PW5 stated that she was ill-treated for insufficiency of dowry after 4 of 5 months of the marriage, and that a sum of Rs. 20,000 was paid after three yeas of marriage but neither she nor her father testified that the said amount was paid as part of dowry. High Court concurred with Sessions Court. However, conviction under G H

A **Section 306 was substituted by Section 304 B read with Section 116 and sentence was enhanced.**

In appeal to this Court the victim contended that payment of Rs. 20,000 after three years of marriage should be presumed as part of old demand for further dowry.

B

Appellant-accused contended that Section 304 B could not apply to a case of suicide since Section 306 IPC is intended to cover all cases of suicide including dowry related suicide, in view of Section 113 A of the Evidence Act; and that the concept of abetment of an offence under Section 304 B is C **inconceivable in the absence of death of a woman within the statutory period.**

Disposing of the appeal, the Court

HELD : 1. Section 306 IPC renders the person who abets the D **commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide. [358-F; G]**

E

2. Sessions Judge went wrong in convicting the appellants under Section 116 linked with Section 306 IPC. The former is "abetment of offence punishable with imprisonment - if - offence be not committed". But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under Section F **306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under Section 116 read with Section 306 IPC. Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by Sessions Court. [358-G-H; 359-A]**

G

3.1. Section 306 IPC when read with Section 113 A of the Evidence Act has only enabled the Court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498 A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused "soon H **before her death" or earlier. If it was caused "soon before her death" the**

special provision in Section 304 B IPC would be invokable, otherwise resort can be made to Section 306 IPC. [361-F; G] A

3.2. If death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even upto imprisonment for life/in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113 A of the Evidence Act) and made a separate offence. [362-A; B] B

C

Smt. Shanti & Anr. v. *State of Haryana*, [1991] 1 SCC 371 and *Kans Raj* v. *State of Punjab & Ors.*, [2000] 5 SCC 207, referred to.

4.1. Prosecution, in a case of offence under Section 304 B IPC cannot escape from the burden of proof that the harassment of cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304 B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. The dowry mentioned in Section 304 B should be any property or valuable security given or agreed to be given in connection with the marriage. [362-F; 363-D] D

E

4.2. There is dearth of evidence to show that (PW-5) was subjected to cruelty or harassment connected with the demand for dowry, soon before the attempt to commit suicide. [364-E]

4.3. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304 B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty F G H

A **and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death". [363-D-G]**

B **5. If the act of the accused asking PW 5 to go and commit suicide had driven her to proceed to the railway track for ending her life then it is expressly made punishable under Section 498 A IPC. When it is so expressly made punishable the act involved therein stands lifted out of the purview of Section 511 IPC. The very policy underlying Section 511 seems to be for providing it as a residuary provision. Therefore, the accused, in this case,**
C **cannot be convicted under Section 511 on account of the acts alleged against him. [360-C; D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1319 of 1998.

D From the Judgment and Order dated 27.10.98 of the Punjab and Haryana High Court in Crl. A. No. 415-SB of 1998.

WITH

Crl. Appeal No. 123/1999.

E R.S. Cheema and U.R. Lalit, Ms. Kanwaljit Kochar, Ms. Jyotsana Singh, S.C. Paul, H.S. Munjral, Sartej Narula for J.D. Jain, Ms. Neetu Sharma, Ujjal Singh, D.B. Vohra, Satinder S. Gulati and Rajeev Sharma for the appearing parties.

The Judgment of the Court was delivered by

F

THOMAS, J. A young mother of two kids, who is a double graduate, ran into the rail in front of a running train to end her life as well as her miseries once and for all. She was driven to that action on account of the cruel treatments suffered by her at her nuptial home. But the destiny also was cruel to her as the locomotive which she desired to be her destroyer, instead of snuffing her
G life out in a trice, converted her into a veritable vegetable. She lost her left hand from shoulder joint and got her spinal cord ruptured. She turned into a paraplegic. She herself described her present plight as "a living corpse". Thus the miseries she longed to end transformed into a monstrous dimension clutching her as long as she is alive.

H Her husband, father-in-law and mother-in-law (the appellants before us)

were convicted by the Sessions Court under Section 116 read with Section 306 IPC, besides Section 498A. On the first count they were sentenced to rigorous imprisonment for two and a half years and a fine of Rs.10,000/- each, and on the second count they were sentenced to imprisonment for two years and a fine of Rs.5,000/- each. When the appellants filed an appeal before the High Court in challenge of the said conviction and sentence the victim also made a motion before the same High Court as she felt that condign punishment has not been meted out to the guilty persons. Both were disposed of by the impugned judgment delivered by a Single Judge of the High Court of Punjab and Haryana. The findings made by the Sessions Court were concurred with by the High Court. However, an alteration was made by substituting Section 306 IPC with Section 304B IPC to be read with Section 116 IPC. Commensurate alteration was made in the quantum of sentence by escalating it to RI for five years each.

It was during the wee hours of 17.6.1996 that Tejinder Pal Kaur (PW-5) ran in front of a train. The events which culminated in the said tragedy have been set out by the prosecution like this:

Tejinder Pal Kaur (PW-5) daughter of Narender Singh (PW-6) obtained B.A. degree and B.Ed. degree before her marriage. On 15.11.1992 she was given in marriage to Satvir Singh (A-1), a businessman, and thenceforth she was living in her husband's house. Devinder Singh (A-2) and Paramjit Kaur(A-3) who are the parents of Satvir Singh(A-1) were also living in the same house. Though dowry was given at the time of marriage the appellants started harassing the bride after about 4 or 5 months of the wedding for not giving a car and a house as part of the dowry. They used to hurl taunts on her pertaining to the subject, including telling her that she had brought rags instead of wedding costumes. After about a year a male child was born to her and about one and a half years thereafter she gave birth to another male child.

In the month of November 1995 her father Narender Singh (PW-6) paid Rs.20,000/- to her husband Satvir Singh presumably for appeasing him so that he would desist from causing any harassment to Tejinder Pal Kaur. But that appeared to be only a modicum of pelf for abating the shower of abuses heaped up on the housewife.

The immediate cause for the tragic episode happened on the night of 16.6.1996. When food was served to Satvir Singh (A-1) in the night, it was noticed that one of the items in the meals (salad) contained excessive salt. (According to PW-5 the salt was added to the salad by her mother-in-law). After tasting the salad Satvir Singh became furious and he unleashed abuses

A on his wife and then he was profusely supported by his mother and later they were reinforced by his father. They went to the extent of suggesting to her "why not end your life in front of one of the trains as many such trains are running nearby".

On 17.6.1996 Tejinder Pal Kaur (PW-5) left the house all alone at about
B 4 A.M. and reached the railway line yonder, expecting the arrival of a train from Jallandhar. Within 15 minutes the expected train arrived and Tejinder Pal Kaur, standing on the track, was run over by that train. What happened thereafter need not be narrated in detail over again except pointing out that she was devastatingly maimed, yet survived. There is practically no dispute that she
C went to the railway track on that morning and in an attempt to end her life she allowed the train to pass over her. As the doctors expressed the opinion that the testimonial capacity of Tejinder Pal Kaur (PW-5) was not seriously impaired prosecution examined her as the prime witness in the case. The trial court and the High Court believed her testimony. There is no reason to dissent from the finding regarding reliability of her evidence.

D

At the outset we may point out that on the aforesaid facts no offence linked with Section 306 IPC can be found against any of the appellants. The said section penalises abetment of suicide. It is worded thus: "If any person commits suicide, whoever abets the commission of such suicide, shall be
E punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the
F commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.

G

Learned Sessions Judge went wrong in convicting the appellants under section 116 linked with Section 306 IPC. The former is "abetment of offence punishable with imprisonment - if offence be not committed". But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under Section 306 coming into
H play. It is inconceivable to have abetment of an abetment. Hence there cannot

be an offence under Section 116 read with Section 306 IPC. Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by Sessions Court.

Now, we have to see whether the appellants can be convicted under Section 511 read with Section 304B IPC. For that purpose it is necessary to extract Section 511 as under:

> "*511.Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.*- Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both."

The above section is the solitary provision included in the last chapter of the IPC under the title "Of Attempts to Commit Offences". It makes attempt to commit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are: (1) The offender should have done some act towards commission of the main offence. (2) Such an attempt is not expressly covered as a penal provision elsewhere in the Code.

Thus, "attempt" on the part of the accused is sine qua non for the offence under Section 511. Before considering the question as to what is meant by doing "any act towards the commission of the offence" as an inevitable part of the process of attempt, we may point out that the last act attributed to the accused in this case is that they asked Tejinder Pal Kaur (PW-5) to go to the rail track and commit suicide. That act of the accused is alleged to have driven the young lady to proceed to the railway line on the next morning to be run over by the train. Assuming that the said act was perpetrated by the appellants and that the said act could fall within the ambit of "attempt" to commit the offence under section 304B it has to be considered whether there is any other express provision in the Code which makes such act punishable. For this purpose we have to look at Section 498A which has been added to the IPC by

A Act 46 of 1983. That provision makes "cruelty" (which a husband of a woman or his relative subjects her to) as a punishable offence. One of the categories included in the explanation to the said section (by which the word cruelty is defined) is thus:

> B "(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;"

Thus, if the act of the accused asking Tejinder Pal Kaur (PW-5) to go and commit suicide had driven her to proceed to the railway track for ending her life then it is expressly made punishable under Section 498A IPC. When C it is so expressly made punishable the act involved therein stands lifted out of the purview of Section 511 IPC. The very policy underlying in Section 511 seems to be for providing it as a residuary provision. The corollary, therefore, is that the accused, in this case, cannot be convicted under Section 511 on account of the acts alleged against him.

D

Now, we have to consider whether the High Court was correct in convicting the appellants under Section 116 read with Section 304B IPC. Shri R.S. Cheema, learned senior counsel for the appellants advanced two contentions against it. First is that Section 304B cannot apply to a case of suicide at all, whether it is sequel to cruelty or harassment with the demand for dowry or not. Second E is that the concept of abetment of an offence under Section 304-B is inconceivable in the absence of death of a woman within the statutory period mentioned in that provision. In elaborating the first contention learned senior counsel submitted that Section 306 IPC is now intended to cover all cases of suicide in view of Section 113A of the Evidence Act (which was brought in by Act 46 of 1983).

F

Both the contentions are fallacious. The essential components of Section 304B are: (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, G who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances". It may appear that the former limb which is described by the words "death H caused by burns or bodily injury" is a redundancy because such death would

also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence. In the present context it is advantageous to read Section 113A of the Evidence Act. It is extracted below:

> "*113A.Presumption as to abetment of suicide by a married woman.*- When the question is whether the commission of suicide by a woman 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 had 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."

Learned senior counsel submitted that since the word "cruelty" employed therein is a virtual importation of that word from Section 498A IPC, the offence envisaged in Section 306 IPC is capable of enveloping all cases of suicide within its ambit, including dowry related suicide. According to him, the second limb of the Explanation to Section 498A which defines the word "cruelty" is sufficient to clarify the position. That limb reads thus:

> *"For the purpose this section, cruelty means-*
>
> (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."

At the first blush we thought that there was force in the said contention but on a deeper analysis we found that the contention is unacceptable. Section 306 IPC when read with Section 113A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused "soon before her death" or earlier. If it was caused "soon before her death" the special provision in Section 304B IPC would be invokable, otherwise resort can be made to Section 306 IPC.

No doubt Section 306 IPC read with Section 113A of the Evidence Act is wide enough to take care of an offence under Section 304B also. But the

A latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even upto B imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113A of the Evidence Act) and made a separate offence.

We are, therefore, unable to concur with the contention that if the dowry C related death is a case of suicide it would not fall within the purview of Section 304B IPC at all. In *Smt. Shanti and Anr.* v. *State of Haryana,* [1991] 1 SCC 371 and in *Kans Raj* v. *State of Pubjab and Ors.,* [2000] 5 SCC 207 this Court has held that suicide is one of the modes of death falling within the ambit of Section 304B IPC.

D Now we have to consider whether the appellants are liable to be punished under Section 116 linked with section 304B IPC. We have already noted above that according to the learned senior counsel for the appellants there is no question of considering Section 304B unless death of a woman had occurred. In the present case, death did not occur. Before considering that contention we E may delve into the question whether Tejinder Pal Kaur (PW-5) was subjected to cruelty or harassment in connection with the demand for dowry "soon before her death", on a hypothetical assumption that her attempt to commit suicide had succeeded.

Prosecution, in a case of offence under Section 304B IPC cannot escape F from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

G "In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

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

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

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies." A

Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage. B C D

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her harrasment or cruelty. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death". E F G

Applying the said principle in this case we have to refer to the evidence of the prosecution to know whether the findings made by the High Court on the facts warrant interference. PW-5 Tejinder Pal Kaur in her evidence said that 4 or 5 months after her marriage, she was ill-treated on the ground of insufficiency of dowry and then she reported the matter to her father. But PW-5 did not say H

A one word in her evidence regarding any other ill treatment relating to dowry thereafter. It is true, she said in her evidence that in November 1995, a sum of Rs.20,000/- was paid by her father. But neither PW-5 (Tejinder Pal Kaur) nor PW-6 (Narendra Singh) testified that the said amount was paid as part of the dowry or in connection with the marriage. We cannot overlook two important B events which had happened in the family during the said long interregnum of three years. One is the birth of the elder son on 12.11.1993 and the other is the birth of the second son on 10.6.1995. We have to bear in mind the payment of Rs.20,000/- was made five months after the birth of the second son. Even PW-6 had no case that his daughter was subjected to any ill treatment in connection with the demand for dowry on any day after she reported to him C about the demand for further dowry way back in the early 1993 months. All amounts paid by the in-laws of the husband of a woman cannot become dowry.

Shri U.R. Lalit, learned senior counsel for Tejinder Pal Kaur (PW-5) contended that payment of Rs.20,000/- in November 1995 should be presumed as part of the three year old demand for further dowry. When the very participants D in the deliberations have no such case it is not proper for the court to make an incriminating presumption against the accused on a very crucial ingredient of the offence, more so when it is quite possible to draw a presumption the other way around as well.

E Thus, there is dearth of evidence to show that Tejinder Pal Kaur (PW-5) was subjected to cruelty or harassment connected with the demand for dowry, soon before the attempt to commit suicide. When the position is such it is an unnecessary exercise on our part to consider whether Section 116 IPC can ever be linked with the offence under Section 304B IPC.

F We, therefore, conclude that appellants cannot be convicted under Section 116 IPC either by linking it with Section 306 or with Section 304B. Hence the conviction and sentence passed on them under Section 116 IPC is set aside.

We have no reason to interfere with the conviction passed on the appellants under Section 498A IPC. We do confirm the same. We are told that first G appellant Satvir Singh (A-1) has undergone the substantial portion of the sentence of imprisonment imposed on him and the remaining appellants have also undergone a long period of imprisonment by now in connection with this case. But we feel that the fine portion of the sentence imposed on the appellants is too insufficient, particularly when such fine was intended to be disbursed as H compensation to PW-5. In our view PW-5 Tejinder pal Kaur should get at least

three lakhs of rupees as compensation from the appellants. We are told that A-2 Devinder Singh and A-3 Paramjit Kaur have now become aged as both have crossed the age of 70. We therefore, modify the sentence under Section 498A IPC in the following terms: A

The sentence of imprisonment imposed on the appellants shall stand reduced to the period which they have already undergone. We enhance the fine part of the sentence for the offence under Section 498A IPC, to Rs. one lakh each for all the three appellants. They shall remit the fine amount in the trial court, within three months from today, failing which each of the defaulter shall undergo imprisonment for a further period of nine months. The appeals are disposed of in the above terms. B C

K.K.T. Appeals disposed.