

A KISHANGIRI MANGALGIRI GOSWAMI

v.

STATE OF GUJARAT
(Criminal Appeal No. 169 of 2009)

JANUARY 28, 2009

B

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

- Penal Code, 1860 – ss.306, 498A, 109 – Dowry Prohibition Act, 1961 – s.3 – Abetment of suicide, dowry demand – Torture for not bringing sufficient dowry – Letters on record written by husband demanding money – Trial Court convicted accused on the ground that letters established demand of dowry and that suicide was abetted by acts and conduct of accused – Held: In view of background facts, conviction under s.306 cannot be sustained – However, letters demonstrate commission of offence under ss.498A and s.3 of DP Act – Conviction thereunder sustained – However, sentence in respect of s.3 of DP Act reduced to 3 years – Crime against women.*

Words and phrases: 'abtetment' – Meaning of – Discussed – Penal Code, 1860 – s.109.

- Prosecution case was that the accused was married to the deceased. Soon after two years of marriage, accused started inflicting mental and physical torture on her for not bringing sufficient dowry in marriage. He even wrote letters to parents of deceased and demanded Rs.40,000 for purchasing a house. All this prompted the deceased to commit suicide by burning herself. The trial court found that the letters written by the accused clearly established the demand of dowry and further the suicide was clearly abetted by the acts and conduct of the appellant. The conviction was recorded under ss.306 and**

498A IPC and s.3 of Dowry Prohibition Act, 1961 and sentences of 3 years, 10 years and 5 years were imposed. High Court upheld the conviction and sentences.

In appeal to this Court, appellant contended that the letters whereby the alleged demand of dowry was made were not signed by him and even were not addressed to anyone; that there was no material to show that the appellant subjected the deceased to such cruelty and harassment so as to instigate her to commit suicide; and that the evidence on record showed that the appellant maintained good relations with the deceased and purchased valuable silver ornaments for her and she was shown to be his nominee in his insurance policy.

Partly allowing the appeal, the Court

HELD: 1. A person, abets the doing of a thing when he instigates any person to do that thing; or engages with one or more other persons in any conspiracy for the doing of that thing; or intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of s.107 IPC. S.109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offences. 'Abetted' in s.109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the

- A husband treated the deceased-wife with cruelty is not enough. [Paras 11 and 12] [678-D-H; 679-A]

Mahinder Singh v. State of M.P. (1995) AIR SCW 4570, relied on.

- B *State of West Bengal v. Orilal Jaiswal* AIR (1994) SC 1418, referred, to.

2. The conviction so far as it relates to s.306 IPC, cannot be sustained in view of the background facts and is set aside. But the materials on record particularly the letters on which specific emphasis has been led by the trial Court and the High Court amply demonstrate the commission of offences punishable under s.498-A IPC and s.3 of DP Act. The convictions are sustained. But the sentence in respect of s.3 of DP Act is reduced to three years. [Para 14] [679-C-D]

- Kishori Lal v. State of M.P.* (2007) 10 SCC 797; *Randhir Singh and Anr. v. State of Punjab* (2004) 13 SCC 129 and *Sohan Raj Sharma v. State of Haryana* 2008(5) SCR 1200, relied on.

Case Law Reference:

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|---|---------------------|-------------|---------|
| | AIR (1994) SC 1418 | referred to | Para 10 |
| F | (1995) AIR SCW 4570 | relied on | Para 12 |
| | (2007) 10 SCC 797 | relied on | Para 13 |
| | (2004) 13 SCC 129 | relied on | Para 13 |
| G | 2008(5) SCR 1200 | relied on | Para 13 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 169 of 2009.

- From the Judgment and final Order dated 30.10.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal

No. 1103 of 2003.

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H. Ahmadi, Ejaz Maqbool, Vikas Singh, Taruna Singh and
P. Gohil for the Appellant.

Hemantika Wahi, Pinky, K. Enotoli Sema and Somonath
Pradhan for the Respondent.

B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division
Bench of the Gujarat High Court upholding the conviction of the
appellant for offences punishable under Sections 306 and 498-
A of the Indian Penal Code, 1860 (in short the 'IPC') and
Section 3 of the Dowry Prohibition Act, 1961 (in short 'DP Act').
Learned Additional Sessions Judge, Court No.9, Ahmedabad
City imposed sentences of 3 years, 10 years and 5 years
respectively for the aforesaid offences and fine of Rs.5,000/-,
Rs.20,000/- and Rs.20,000/- with default stipulations.

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3. Prosecution version in a nutshell is as follows:

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The accused married Kantaben (hereinafter referred to as
the 'deceased') in 1989. Soon after two years of his marriage,
the accused started inflicting mental and physical torture on her
and she was taunted by the accused for not bringing sufficient
dowry in the marriage. He also demanded from the victim an
amount of Rs.40,000/- for the purpose of purchasing a house.
He even wrote letters to the in-laws and demanded Rs.40,000/
- for purchasing the house. The demand was persistent. Even
threats were administered to the deceased and her family
members. Thus, the accused inflicted mental and physical
torture on the victim which prompted her to commit suicide by
burning herself on 23-03-1999 after pouring kerosene on her
body. Thus, as per the prosecution case, the appellant has
committed the offence punishable under Section 498A and 306
IPC read with Sections 3 and 7 of DP Act.

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A The complaint was given by Dhulagiri Gumangiri Goswami on 17.5.1999. On the strength of the complaint given by the complainant investigation was carried out. The place where the suicide was committed by the victim was visited and the panchnama of the place of incident was prepared in the presence of the panch-witnesses. Statements of the witnesses from the neighbourhood were recorded. The injured was immediately rushed to the hospital for providing necessary treatment. Muddamal seized was sent to Forensic Science Laboratory for the purpose of detailed analysis. On the death of the victim, the inquest panchnama was prepared and the dead body was sent for autopsy. The appellant was arrested during the course of investigation. On receipt of the report from FSL, the post-mortem report along with other material, the appellant was charge-sheeted for the offences punishable under Sections 498A and 306 of IPC as well as Sections 3 and 7 of the DP Act. He was produced before the Metropolitan Magistrate, Ahmedabad, who in turn committed the case to the Sessions Court under Section 209 of the Code of Criminal Procedure, 1973 (in short the 'Code') as the case was exclusively triable by the Sessions Court.

E As the accused persons pleaded innocence trial was held. Seventeen witnesses were examined to further the prosecution version. The trial court found that the letters written by the accused clearly established the demand of dowry and further the suicide was clearly abetted by the acts and conduct of the appellant. Accordingly, the conviction was recorded and sentences were imposed as afore-stated.

G In appeal, the High court concurred with the views of the trial Court.

H 4. In support of the appeal, it was submitted that the letters whereby the alleged demand of dowry was made has not been signed by the appellant and even has not been addressed to anyone. There was no material to show that the appellant had subjected the deceased to such cruelty and harassment as to

instigate her to commit suicide. The evidence on record shows that the appellant had purchased valuable silver ornaments for the deceased and in his insurance policy, the deceased was shown to be his nominee. Their relation was otherwise cordial. Since the substratum of the allegations of dowry and harassment were letters, their authenticity having not been established the trial Court and the High Court should not have relied upon the same.

5. It is pointed out that the accused himself had taken the deceased to the hospital and from his conduct it clearly shows that the accused was not guilty. In essence, it is submitted that the commission of alleged offences has not been established by the prosecution.

6. In response, learned counsel for the respondent-State supported the judgment.

7. We shall first deal with the plea relating to applicability of Section 306 IPC.

8. Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

"306 ABETMENT OF SUICIDE.

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

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

A 10. In *State of West Bengal v. Orilal Jaiswal* (AIR 1994 SC
1418) 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
B induced her to end her 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
C 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.

D 11. Section 107 IPC defines abetment of a thing. The
offence of abetment is a separate and distinct offence provided
in the Act as an offence. A person, abets the doing of a thing
when (1) he instigates any person to do that thing; or (2)
engages with one or more other persons in any conspiracy for
the doing of that thing; or (3) intentionally aids, by act or illegal
E omission, the doing of that thing. These things are essential to
complete abetment as a crime. The word "instigate" literally
means to provoke, incite, urge on or bring about by persuasion
to do any thing. The abetment may be by instigation, conspiracy
or intentional aid, as provided in the three clauses of Section
F 107. Section 109 provides that if the act abetted is committed
in consequence of abetment and there is no provision for the
punishment of such abetment, then the offender is to be
punished with the punishment provided for the original offence.
'Abetted' in Section 109 means the specific offence abetted.
G Therefore, the offence for the abetment of which a person is
charged with the abetment is normally linked with the proved
offence

H 12. In cases of alleged abetment of suicide there must be
proof of direct or indirect acts of incitement to the commission

of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. [See *Mahinder Singh v. State of M.P.* (1995 AIR SCW 4570)]. A

13. The aforesaid aspects were highlighted in *Kishori Lal v. State of M.P.* (2007 (10) SCC 797), *Randhir Singh and Anr. v. State of Punjab* (2004 (13) SCC 129) and Criminal Appeal No. 1464 of 2007 (*Sohan Raj Sharma v. State of Haryana* disposed of on April 7, 2008). B

14. The conviction so far as it relates to Section 306 IPC, therefore, cannot be sustained in view of the background facts and is set aside. But the materials on record particularly the letters on which specific emphasis has been led by the trial Court and the High Court amply demonstrate the commission of offences punishable under Section 498-A IPC and Section 3 of DP Act. The convictions are sustained. But the sentence in respect of Section 3 of DP Act is reduced to three years. C D

15. The appeal is allowed to the aforesaid extent.

D.G.

Appeal partly allowed.