

Brij Lal vs Prem Chand & Anr on 20 April, 1989

Equivalent citations: 1989 AIR 1661, 1989 SCR (2) 612, AIR 1989 SUPREME COURT 1661, AIR ONLINE 1991 SC 38, (1990) SC CR R 37, (1990) 1 LJR 479, 1989 SCC (SUPP) 2 680, 1990 CHANDLR(CIV&CRI) 16, (1989) 2 CRIMES 192, (1990) 1 CRILC 199, (1990) 1 CHANDCRIC 14, (1989) 2 DMC 1, (1989) 3 JT 1 (SC), 1991 SCC (CRI) 394, (1995) 2 LABLJ 669, (1995) 30 ATC 218, (1995) 4 SCT 587, (1995) 4 SERVLR 772, 1995 SCC (L&S) 897, (2000) 5 JT 1 (SC), (2000) WLC(SC)CVL 427

Author: A.M. Ahmadi

Bench: A.M. Ahmadi

PETITIONER:

BRIJ LAL

Vs.

RESPONDENT:

PREM CHAND & ANR.

DATE OF JUDGMENT 20/04/1989

BENCH:

NATRAJAN, S. (J)

BENCH:

NATRAJAN, S. (J)

AHMADI, A.M. (J)

CITATION:

1989 AIR 1661 1989 SCR (2) 612

1989 SCC Supl. (2) 680 JT 1989 (3) 1

1989 SCALE (1) 1076

CITATOR INFO :

D 1990 SC 209 (41)

ACT:

Indian Penal Code--Sections 304B, 306 and 498A--Dowry Offences--Punishment for---What would constitute instigation for commission of offence---Would depend on facts of case---Act of abetment-To be judged in the conspectus of evidence of the case.

HEADNOTE:

Prem Chand, accused-respondent, had married Veena Rani, deceased, in the year 1973. Veena Rani was then employed in the State Bank of Patiala. Soon after their marriage the accused resigned his job as Prosecuting Sub-inspector and started his practice at Sangrur. Veena Rani got herself transferred to Sangrur and the couple set up house there. From the very beginning Veena Rani had an unhappy married life because the accused constantly tormented her to get more money from her parents. The accused was also given to heating her frequently.

Veena Rani gave birth to a male child. Even after child-birth the accused did not stop ill-treating her. Unable to bear the ill-treatment, Veena Rani took leave on loss of pay and went away to her parents. She later filed an application under section 9 of the Hindu Marriage Act in the Court at Patiala for restitution of conjugal rights. At this stage, a compromise was brought about between the parties and Veena Rani came back to live with the accused at Sangrur. But nothing changed, and the accused continued to torment her for money.

The immediate provocation for the accused stepping up his ill-treatment of Veena Rani was his demand of Rs. 1,000 to pay the balance amount of the scooter price which he had purchased. Veena Rani had no funds of her own. She, therefore, wrote to her brother and mother narrating her woes and requesting them to send Rs. 1,000. In spite of Veena Rani writing to her brother and mother, the accused did not relent in the immediate compliance of his demand.

On 15.9.1975, the day of the tragedy, the accused and Veena Rani had a quarrel and thereupon both of them went to the house of Shri Hari Om, Advocate, who advised the accused not to torment Veena Rani.

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There, in the presence of Hari Om, the accused went to the extent of saying that Veena Rani may go to hell but he should get the money forthwith. Veena Rani reacted by saying that she preferred death to such life. The accused, far from expressing regret for his conduct, drove her to despair by further saying that she can provide him relief quicker by dying on the very day. Thereafter, the accused left Veena Rani at their house and went to court at about 9.00 a.m. At 10.15 a.m. shrieks were heard from their house, and when people rushed in, they found Veena Rani lying on the ground with extensive burn injuries. Before her death in the hospital, Veena Rani told the doctor that she had been tortured at home and that she wanted to die as early as possible.

The Additional Sessions Judge found the accused guilty under section 306, I.P.C., and sentenced him to undergo R.I. for four years. The Judge held that the accused had been tormenting and also physically assaulting Veena Rani, and that Veena Rani had committed suicide by reason of the accused's instigation.

The High Court, on appeal, acquitted the accused holding

that even though Veena Rani had committed suicide on account of her unhappy married life, there was nothing on the record to show that the appellant in any manner instigated the deceased to commit suicide.

In this Court, two special leave petitions have been filed, one by the father of Veena Rani and the other by the State of Punjab. On behalf of the appellants it was contended that the High Court had completely erred in its appreciation of the evidence and in its application of the law. On behalf of the accused it was contended that even if the prosecution evidence was accepted in full, there was no material to show that the suicidal death of Veena Rani was abetted in any manner by the accused.

Allowing the appeals and restoring the conviction of the accused under s. 306, this Court,

HELD: (1) Veena Rani's death was undoubtedly due to suicide and not due to any accident or homicide. [621A]

(2) There is overwhelming evidence in the case to establish that Veena Rani's life was made intolerable by the accused by constantly demanding her to get him money and also beating her frequently. [620G]

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(3) Viewed in the background of Veena Rani's plight during the few days preceding her death and the events that took place on the morning of the tragedy, the utterances by the accused to the effect that she can provide him relief quicker by dying on the very same day would have certainly been seen by Veena Rani as an instigation to her to commit suicide. [621D; 622B]

(4) No mother, however distressed and frustrated, would easily make up her mind to leave her young child in the lurch and commit suicide unless she had been goaded to do so by someone close to her [622B-C]

(5) When the evidence is of so compulsive and telling in nature against the accused, the High Court, it is regretted to say, has dealt with the matter in a somewhat superficial manner and acquitted the accused on the basis of imaginary premises. The High Court has failed to comprehend the evidence in its full conspectus and instead has whittled down the evidence by specious reasoning. [624E-F]

(6) As to what constitutes instigation would depend upon the facts of each case. Therefore, in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation. [627A-B]

(7) Such being the case, the instigative effect of the words used by the accused must be judged on the basis of the distraught condition to which the accused had driven Veena Rani. [627B-C]

(8) In the instant case, the abetment of the commission of suicide by Veena Rani is clearly due to instigation and

would therefore fail under the first clause of section 107 IPC. [626E-F]

(9) The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths of women has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113A and 113B in the Indian Evidence Act, and section 498A and 304B in the Indian Penal Code. [627E-G]

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(10) It is not a case where Veena Rani had wanted to commit suicide for reasons of her own and the accused had facilitated her in the commission of suicide, as would attract Explanation II to Section 107 IPC. [626A]

Sri Ram v. State of U.P., [1975] 2 SCR 622; distinguished.

(11) Taking all factors into consideration including the fact that more than 11 years have elapsed since the High Court acquitted the accused and the accused is now leading a settled life, the Court considered the plea of leniency, and while restoring the conviction of the accused under section 306 modified the sentence to the period already undergone and enhanced the fine to Rs.20,000, out of which Rs. 18,000 were to be given to the father of the deceased for being utilised for the maintenance of Veena Rani's son. [628E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 477 of 1978.

From the Judgment and Order dated 23.11.1977 of the Punjab and Haryana High Court in Criminal Revision No. 880 of 1976.

WITH Criminal Appeal No. 288 of 1989.

From the Judgment and Order dated 23.11. 1977 of the Punjab and Haryana High Court in Crl. A. No. 670 of 1976. S.K. Bisaria and J.K. Nayyar for the Appellant in Crl. Appeal No. 477 of 1978.

R.C. Kohli and R.S. Suri for the Appellant in Criminal Appeal No. 288 of 1989.

S.K. Mehta, Dhuru Mehta and Atul Handa for the Respondent. The Judgment of the Court was delivered by:

NATARAJAN, J. Appeal No. 477 of 1978 by Special Leave and Appeal No. 288 of 1989 by Special Leave arising out of Special Leave (Crl.) Petition No. 250 of 1980 are directed against a judgment of the High Court of Punjab and Haryana in Criminal Appeal No. 670 of 1976 whereunder a learned single Judge of the High Court had set aside the conviction of respondent Prem Chand and acquitted him of the charge under Section 306 I.P.C. The former appeal has been filed by the father of the deceased Veena Rani while the latter appeal has been filed by the State of Punjab. The facts of the case are in brief as under:

Deceased Veena Rani who died of burn injuries on 15.9. 1975 was married to the respondent Prem Chand (hereinafter referred to as accused) in the year 1973. Veena Rani, who had passed the M.A. and B .Ed. degree examinations was employed in the State Bank of Patiala and was earning about Rs. 600 to 700 per month. The accused, who had obtained a degree in law was a prosecuting Sub-Inspector and soon after marriage he resigned his job and set up practice in his native place Sangrur. When the accused resigned his job and set up practice in Sangrur, Veena Rani obtained a transfer to Sangrur from Patiala and the couple set up house in a building owned by PW 5 Krishan Dutt. From the very beginning Veena Rani had an unhappy married life because of the accused constantly demanding her to get more money from her parent's house. Even though the accused had joined the office of a senior advocate by name Shri O.P. Singhal, his earnings were meager and consequently the house-hold ex- penses were borne by her from out of her salary. Besides tormenting Veena Rani to get more money from her parents, the accused was also given to beating her frequently. Veena Rani complained to her parents, brother and brother-in-law about the cruel treatment meted out to her by the accused. PW 4 Shanti Devi and PW 14 Khem Chand, the mother and brother respectively of Veena Rani and PW 17 Kuldip Rai, her brother-in-law have deposed about Veena Rani telling them about the accused ill-treating her and physically assaulting her. Apart from them, PW 5 Krishan Dutt, the landlord has also testified that the accused was in the habit of beating Veena Rani and that on hearing her cries he used to intervene and advise the accused to stop beating her. Since the accused did not mend his ways and continued his beatings of Veena Rani. PW 5 Krishan Dutt asked the accused to vacate his house.

Veena Rani conceived and gave birth to a male child. But even after the child birth, the accused did not stop ill- treating her. Unable to bear the ill-treatment, Veena Rani took leave on loss of pay and went away to her parent's house at Patiala. The separation had no effect on the accused and hence Veena Rani filed an application under Section 9 of the Hindu Marriage Act in the Court at Patiala for restitution of conjugal rights. As a counter move, the accused also filed a similar petition in the Court at Sangrur. However, the enquiry of that petition was stayed by the Senior Sub Judge, Sangrur till the disposal of the earlier petition filed by Veena Rani at Patiala. At that stage of matters, Shri O.P. Singhal, who was acting as the counsel for the accused and PW 9 Shri Hari Om, another advocate at Sangrur who was appearing for

Veena Rani brought about a compromise between the parties and in terms thereof Veena Rani came back to Sangrur to live with the accused. The re-union, however, took place only after the accused's counsel Shri O.P. Singhal had personally assured that there would be no danger to Veena Rani's life at the hands of the accused. This time, the parties set up residence in a house belonging to PW 12 Nathu Ram. Nothing changed, however because the accused started tormenting Veena Rani almost from the day of re-union for money and continued beating her. PW 12 Nathu Ram was a witness to the accused quarrelling with Veena Rani and beating her. The immediate provocation for the accused stepping up his ill-treatment of Veena Rani was his purchase of a scooter for Rs.3,500 from one A.N. Jindal. The accused was able to obtain only Rs.2,500 from his father for buying the scooter and for the balance amount of Rs. 1,000 he asked Veena Rani to get the same from her parents. Veena Rani had no funds of her own because she had been on leave on loss of pay for several months and had joined duty at the Bank only on 13.8.1975. She was in a fix and therefore she wrote a letter on 10.9.75 to her brother PW 14 Khem Chand as under:

"Dear brother, the day I came here he is asking for Rs. one thousand from the same day to repay the loan of the scooter. He does not pay any expenses which are required by me. Because I will receive my pay only on 26th September and all things are as they were before." Again just one day before her death i.e. 14.9.1975, she wrote to her mother PW-4 Shanti Devi a pathetic letter as follows:

"Yesterday I was to come to see Saroj in the evening but there is a quarrel in the house. I have no money, if I have any requirement I must fulfil myself, otherwise no alternative than to go on weeping and crying.

Because he is saying that I am to repay the loan of Rs. 1,000 and I am to pay Rs. 100 for the house rent. Dear mother, you know it very well that I have not received my pay. It is therefore I am unable to pay anything for the household expenses. It is therefore, I am in a very bad condition at my house. I do not understand what to do. Whenever I talk to go to any place, the same day there is an uproar in the house and he does not turn up till 12.00 in the night and unhealthy atmosphere develops in the house. Dear mother, please send me Rs. 1,000 immediately through Bhupinder. Dear mother, I am very sad on this account and unhappy. The whole day I remain weeping.

Manish (the child) is alright. You do not worry but please send me Rs. 1,000 immediately."

In spite of Veena Rani, writing to her brother and mother for a sum of Rs. 1,000 being sent immediately, the accused did not relent in his insistence for immediate compliance of his demand. This led to a quarrel between the husband and wife on the 15th morning and thereupon both of them went to the house of PW-9 Shri Hari Om at 6.30 a.m. itself. After-PW-9 Shri Hari Om woke up, he made enquiries and Veena

Rani told him that the accused was "demanding money from her and annoying her on that account" in spite of her telling him that she had written letters to her brother and mother. He advised the accused not to torment Veena Rani for money but in spite of it the accused said he wanted immediate payment of the sum of Rs. 1,000. The accused went to the extent of saying that Veena Rani can go to hell but he should get his sum of Rs. 1,000 forthwith. Veena Rani reacted by saying that because of the accused quarrelling with her every day over the payment of money, she preferred death to life in this world. The accused, far from expressing regret for his conduct, drove her to despair by further saying that she can provide him relief quicker by dying on the very same day and that she need not postpone her death to the next day. PW-9 Shri Hari Om then sent the parties home saying that the matter can be talked over in the evening.

After things had gone to such a pitch the accused and Veena Rani left the house of PW-9 Hari Om at about 9.00 a.m. and went back to their house. After leaving Veena Rani in the house, the accused went to the Court. At about 10.15 a.m. PW-12 Nathu Ram was informed by one Keemat Rai, advocate that shrieks were heard coming from the house occupied by the accused and Veena Rani. Both of them rushed to the house and saw Veena Rani lying on the ground with extensive burn injuries on her body. At once PW-12 Nathu Ram rushed on his bicycle to the Court and informed the accused and 11 D.K. Jindal, about Veena Rani having sustained burn injuries. Thereupon all of them came to the house and the accused with the help of PW-11 D.K. Jindal removed Veena Rani to the Civil Hospital at Sangrur. PW-9 Hari Om on coming to know of Veena Rani having sustained burn injuries, had information sent to PW-17 Kuldip Rai and also made arrangements for a phone message being given to the parents of Veena Rani at Patiala. Thereafter he went to the hospital but by then Veena Rani had died.

Veena Rani was seen by Dr. B.R. Dular at the hospital at 10.45 a.m. and the doctor found her to have sustained severe burns and to be in a state of shock. Veena Rani who was given treatment by PW-19 Dr. J.K. Sharma told him that she had been tortured at home and that she wanted to die as early as possible. At 11.30 a.m. Veena Rani died. At the autopsy, it was noticed that she had sustained 19 burn injuries. Her death was certified to be due to shock result-

ing from the burn injuries.

On receipt of an intimation from the hospital entries were made in the general diary and subsequently a case was registered on the basis of representations made to PW-18, the Deputy Superintendent of Police by PW-16 Kuldip Rai and another relation. Investigation of the case resulted in a chargesheet being laid against the accused under Section 306 I.P.C.

In his statement under Section 313 Cr. P.C. the accused denied having ill-treated Veena Rani but admitted that he had asked her to give him a sum of Rs. 1,000 for payment of the balance money for

the scooter purchased by him. He however stated that he had offered to repay the amount as soon as he received his G.P.F., amount. He denied having told Veena Rani at the house of PW-9 Shri Hari Om that she may go to hell and that she can put at an end to her life the same day without waiting for the morrow. He has also stated that Veena Rani was of an irritable nature and would get agitated for no reason whatever. Lastly, he has stated that on coming to know of her having sustained burn injuries, he had rushed home and taken her to the hospital to save her life but unfortunately she could not be saved. After a detailed consideration of the prosecution evidence and the statement of the accused, the Additional Sessions Judge, Sangrur, found the accused guilty under Section 306 I.P.C. and sentenced him undergo R.I. for four years. The learned Addl. Sessions Judge held that the accused had been tormenting and also physically assaulting Veena Rani and that Veena Rani had committed suicide by reason of the accused's instigation.

The accused preferred an appeal to the High Court and a learned single judge of the High Court has acquitted the accused holding that even though Veena Rani had committed suicide on account of her unhappy married life "there is nothing on the record to show that the appellant in any manner instigated the deceased to commit suicide." Aggrieved by the judgment of the High Court the father of Veena Rani and the State have preferred the two appeals under consideration. Shri R.S. Suri, learned counsel for the State and Mr. S.K. Bisaria, learned counsel for the father of Veena Rani took us through the evidence in the case and the judgments of the Addl. Sessions Judge and the High Court and argued that the High Court has completely erred in its appreciation of the evidence and in its application of the law and therefore the appeals should be allowed and the conviction and sentence awarded to the accused should be restored. Shri S.K. Mehta, learned counsel for the accused contended that even if the prosecution evidence is accepted in full, there is no material to show that the suicidal death of Veena Rani was abetted in any manner by the accused and hence the judgment of the High Court does not call for any interference.

We have considered the evidence and the arguments of the counsel in great detail. The evidence brings out with telling effect the distressed life that Veena Rani was leading almost from the day of her marriage with the accused. Since the accused had resigned his job and set up practice as an advocate at Sangrur, she got herself transferred from Patiala to a branch of the Bank at Sangrur. The parties lived as tenants in a portion of the house of PW-5 Krishan Dutt and Veena Rani was meeting the household expenses from out of her salary because the accused had no income as a lawyer. In spite of Veena Rani spending her entire salary on the household, the accused was constantly demanding her for money and made her life miserable by frequently beating her. These matters have been spoken to by PW-4 Shanti Devi, PW-14 Khem Chand and PW-17 Kuldip Rai. Besides them, independent witnesses viz. PW-5 Krishan Dutt, PW-9 Shri Hari Om and PW-12 Nathu Ram have also spoken about the ill-treatment of Veena Rani and their evidence has gone unchallenged. There is thus overwhelming evidence in the case to establish that Veena Rani's life was made intolerable by the accused by constantly demanding her to get him money and also beating her frequently.

Before considering the question whether the accused had abetted Veena Rani in her committing suicide, we must point out that Veena Rani's death was undoubtedly due to suicide and not due to any accident or homicide. When Veena Rani had set fire to herself no one else except her one and

half year old son was in the house. Hearing her shouts PW-12 Nathu Ram and Keemet Rai rushed to the house and found her lying on the ground with burn injuries. The accused was at once informed in the court and he removed her to the hospital along with others. Despite treatment, she succumbed to her injuries by about 11.30 a.m. The autopsy revealed that her death was due to severe shock resulting from the burn injuries sustained by her. In such circumstance, the suicidal death of Veena Rani is an incontrovertible factor.

The crucial question for consideration is whether Veena Rani put an end to her life of her own will and volition or whether her committing suicide had been abetted in any manner by the accused.

To determine this question, we must see the plight of Veena Rani during the few days preceding her death and the events which had taken place on the morning of 15.9.75 itself. It is an admitted fact that the accused was wanting a sum of Rs. 1,000 for paying the balance of sale price for the scooter purchased by him and that he was demanding Veena Rani to get him the amount from her parents. The accused has himself admitted in his statement under Section 313 Cr. P.C. this fact but has stated that he wanted it only as a loan and not as a gift. Besides the letter, (annexure 3) written by Veena Rani to her brother and mother respectively throw considerable light on the matter. In the letter to the brother dated 10.9.75, Veena Rani has stated that even on the day she came to Sangrur the accused began demanding a sum of Rs. 1,000 for being paid for the scooter purchased by him. The accused would not wait and hence she had again to write a letter to her mother on 14.9.75. Therein she has stated that she was in a very bad condition and that her mother should send her Rs. 1,000 immediately. These two letters written in quick succession reveal fully the amount of pressure the accused must have been applying on Veena Rani to get him a sum of Rs. 1,000. So constant should have been his demand for money that on the morning of 15-9-75 even at about 6.30 or 7 a.m. the accused and Veena Rani had to go to the house of PW-9 Shri Hari Om to seek a solution. Even in front of PW-9 Shri Hari Om, the accused had insisted that Veena Rani should get him a sum of Rs. 1,000 forthwith. When Veena Rani pleaded inability to make immediate payment, the accused told her that he did not care even if she went to hell but he wanted immediate payment. When Veena Rani stated in despair that she had enough of torment and that she preferred death to living, the accused added fuel to fire by saying that she may put an end to her life the very same day and she need not wait till the next day to quit this world. Such an utterance by the accused would have certainly been seen by Veena Rani as an instigation to her to commit suicide. Otherwise, she would not have set fire to herself within a short time after she reached home. One significant factor to be noticed is that but for being spurred to action, Veena Rani would not have easily reconciled herself to forsaking her one and a half year old son and commit suicide. No mother, however distressed and frustrated, would easily make up her mind to leave her young child in the lurch and commit suicide unless she had been goaded to do so by someone close to her. Yet another factor to be borne in mind is that there is no evidence as to what transpired between the accused and Veena Rani after they had left the house of PW-9 Shri Hari Om. The only two persons who could speak about it are the accused and Veena Rani and since she is dead it is only the accused who can throw some light on the matter. Strangely enough, the accused has not said anything about it in his statement under Section 313 Cr. P.C. He has not said a word that he had assuaged the wounded feelings of Veena Rani before he left for Court. His silence on this aspect of the matter would therefore mean that he had not changed his stand subsequently.

We may now look to the relevant provisions of the law. Section 306 I.P.C. under which the accused was charged reads as under:

"306 I.P.C. 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."

Section 107 I.P.C. sets out as to what-

constitutes abetment. The Section reads as follows:

"107. 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 I.--A person who, by wilful mis- representation, 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. Illustration (omitted) Explanation II--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 facilitates the commission thereof, is said to aid the doing of that act."

The learned Additional Sessions Judge has in the course of his judgment observed that Explanation-II to Section 107 I.P.C. would also be attracted to the facts of the case.

The relevant portion in the judgment reads as under:

"Thus when the circumstances attending this case are read alongwith the aforesaid Explanation No. II given under Section 107 I.P.C., it is clear that the accused prior to the commission of the suicide by Veena Rani, had constantly committed certain acts and that has facilitated the commission of suicide and thus he had aided in the committing of that said act by Veena Rani."

A few lines below the Sessions Judge has given his finding as under:

"The question of abetment actually depends upon the nature of the act abetted and the manner in which the abetment was made. The offence of abetment is complete when the alleged abettor has instigated another to commit the offence. It is not necessary for the offence of abetment that the offence must be committed. It is only,

in the case of a person abetting an offence by intentionally aiding another to commit that offence and the uttering of hot words by the accused to his wife in the presence of Shri Hari Om PW 9 clearly indicates that the accused had abetted an act complained of."

From the portion extracted above, it may be seen that though the Addl. Sessions Judge has observed that Explanation II would have relevance to the case, he has in fact awarded conviction to the accused on the basis that the accused had instigated Veena Rani to commit suicide and had thereby abetted the commission of suicide by Veena Rani.

Having regard to the evidence in the case, there can be no doubt whatever that the Addl. Sessions Judge was perfectly right in holding that the accused had instigated Veena Rani to commit suicide and therefore he would be guilty under Section 306 I.P.C. A person can abet the commission of an offence in any one of the three ways set out in Section

107. The case of the accused would squarely fall under the first category, viz. instigating a person to do a thing. In such circumstances, the need to invoke Explanation I1 does not arise. Mr. Mehta contended that since Explanation II to Section 107 I.P.C. has no application to the facts of the case and since the Addl. Sessions Judge has convicted the accused on the premise that Explanation H is attracted, the High Court was right in setting aside the conviction of the accused. We are unable to accept this argument because the Addl. Sessions Judge: though he has referred to Explanation II, has actually found the accused guilty only on the ground he had abetted the commission of the offence by instigation. When the evidence is of so compulsive and telling a nature against the accused, the High Court, we regret to say, has dealt with the matter in a somewhat superficial manner and acquitted the accused on the basis of imaginary premises. The High Court has failed to comprehend the evidence in its full conspectus and instead it has whittled down the evidence by specious reasoning. To mention a few, the High Court has failed to give due weight to the letter Veena Rani wrote to her brother on 10.9.1975 merely because in the last line she has written "in any way there is nothing to worry. This time everything will be alright." This one sentence in the letter cannot efface the frantic nature of Veena Rani's appeal for money to satisfy the demand of the accused. As regards the last letter dated 14.9.75, the High Court has totally lost sight of it. The High Court has failed to see that unless Veena Rani was very desperate, she would not have written to her mother for money within four days of the letter to her brother. As regards the happenings on the morning of 15.9.75, the High Court has failed to grasp their gravity. Unless a serious quarrel had taken place, the accused and Veena Rani would not have gone to the house of PW 9 Shri Hari Om in the early hours of the morning itself to seek a solution to the problem. Despite PW 9 Shri Hari Om counselling patience, the accused refused to relent and insisted upon immediate payment of Rs. 1,000 and made it clear that the money was more important to him than Veena Rani's life and that if Veena Rani wanted to die, she may put an end to her life the very same day and give him relief forthwith. The High Court has viewed the accused's conduct and utterances as of no consequence because PW. 9 Shri Hari Om has stated in cross-examination that he thought it was "an ordinary quarrel between the husband and wife as they had been doing so previously also." The High Court has failed to realise that the effect of the accused's utterances on Veena Rani's mind should be assessed in the context of the overall evidence in the case and not on the basis of the opinion of PW

9 Shri Hari Om about the nature of the quarrel. PW 9 Shri Hari Om despite his having been the counsel for Veena Rani, could not have realised the effect of the utterances of the accused on the mind of Veena Rani. Furthermore the High Court has failed to notice that the accused has not thrown any light as to what transpired between him and Veena Rani after they had left the house of PW 9 Shri Hari Om. The fact that Veena Rani had forsaken her young son and had set fire to herself within a short time after reaching home will go to show that she would not have acted in that manner unless she had felt instigated to commit suicide by the utterances of the accused. The High Court, besides unfortunately failing to give due weight to the evidence in the case, has drawn certain inferences which are not at all warranted. For example, the High Court has stated that since Veena Rani was an earning member, the accused would not have stood to gain by instigating her to commit suicide. This inference is totally wrong because the clear evidence in the case is that the accused had placed greater value on the payment of the money demanded by him than upon the life of his wife. Then again, the High Court has remarked that Veena Rani was suffering from depression and a diseased mind and hence she would have committed suicide. We are at a loss to know wherefrom the High Court derived material to draw this conclusion. Far from there being any evidence, to show that Veena Rani was having a diseased mind, PW 5 Krishan Dutt and PW 12 Nathu Ram, have stated that Veena Rani was a woman of gentle and amiable disposition. She was working in the Bank without any complaint whatever about her mental condition. Even the accused has not stated that she was of diseased mind. We are, therefore, more than satisfied that the judgment of the High Court suffers from serious errors and infirmities and is therefore manifestly unsustainable.

Mr. Mehta relied upon the observations in *Sri Ram v. U.P. State*, [1975] 2 SCR 622 to contend that even if the accused had told Veena Rani that money was more important to him than her life and that she can put an end to her life the very same day instead of waiting for the morrow, it cannot be construed that the accused had done anything to facilitate the commission of suicide by Veena Rani as would attract Explanation II to Section 107 I.P.C. We do not find any merit in the contention. The facts in *Shri Ram's* case were entirely different. The question in that case was whether by shouting that "the Vakil has come", Violet, one of the accused, had abetted the commission of the offence of murder of one Kunwar Singh by the other accused persons who were hiding behind a shisham tree and coming out of their place of concealment and one of them shooting Kunwar Singh with a gun carried by him. Though the Sessions Judge and the High Court had held that Violet's act would amount to abetment of the commission of the offence of murder in terms of Explanation II to Section 107 I.P.C., this Court held that "apart from the words attributed to Violet, there is nothing at all to show that she was aware of the nefarious design of Sia Ram and his associates." It was in that context this Court observed as follows.

"Thus in order to constitute abetment, the abettor must be shown to have
"intentionally"

aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107."

In the instant case, we have already seen that the committing of suicide by Veena Rani was due to the accused's instigation. It is not a case where Veena Rani had wanted to commit suicide for reasons of her own and the accused had facilitated her in the commission of suicide. It was then urged by Mr. Mehta that since two views could be taken of the evidence we should not allow the appeals and set aside the acquittal of the accused solely on the ground that the view taken by the High Court does not commend itself for our acceptance. We are fully alive to the position in law that where two views could reasonably be taken of the prosecution evidence in a case, the Appellate Court should not interfere with the acquittal of an accused merely because the view taken by the Trial Court and/or the High Court was less acceptable than the other view which could have been taken on the evidence. This principle will however have no application where the evidence does not afford scope for two plausible views being taken but still the Trial Court or the High Court acquits an accused for reasons which are patently wrong and the error leads to an element of perversity pervading the judgment.

As to what would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation. Such being the case, the instigative effect of the words used by the accused must be judged on the basis of the distraught condition to which the accused had driven Veena Rani. Full well knowing her helpless state and frustration, if the accused had told her that he set greater store on the sum of Rs. 1,000 required by him than her life and that she can die the very same day and afford him early relief, it is not surprising that Veena Rani committed suicide a little later on account of the accused's instigation.

It would not be out of place for us to refer here to the addition of Sections 113A and 113B to the Indian Evidence Act and Sections 498A and 304B to the Indian Penal Code by subsequent amendments. Section 113A Evidence Act and 498A Indian Penal Code have been introduced in the respective enactments by the Criminal Law (Second amendment) Act, 1983 (Act 46 of 1983) and Section 113B of the Evidence Act and 304B Indian Penal Code have been introduced by Act No. 43 of 1986. The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113A and 113B in the Indian Evidence Act and Sections 498A and 304B in the Indian Penal Code. By reason of Section 113A, the Courts can presume that the commission of suicide by a woman has been abetted by her husband or relation if two factors are present viz. (1) that the woman had committed suicide within a period of seven years from her marriage, and (2) that the husband or relation had subjected her to cruelty. We are referring to these provisions only to show that the Legislature has realised the need to provide for additional provisions in the Indian Penal Code and the Indian Evidence Act to check the growing menace of dowry deaths. In the present case, however, the abetment of the commission of suicide by Veena Rani is clearly due to instigation and would therefore fail under the first clause of Section 107 I.P.C.

In the light of our conclusions, the appeals have to be allowed and the conviction of the appellant under Section 306 I.P.C. has to be restored. The question however arises as to whether the sentence of 4 years R.I. awarded by the Sessions Judge should also be restored. Mr. Mehta, learned counsel made a fervent plea for leniency on the ground that more than 11 years have elapsed since the High Court acquitted the accused and the accused is now leading a settled life and that he and his family members would be ruined if he is to be sent back to prison to serve any further term of sentence. Learned counsel also stated that the accused has undergone imprisonment in connection with the case for a period of about 10 months and, therefore, even if we are to restore the conviction, we may reduce the sentence to the period of imprisonment already undergone. Shri Suri, learned counsel appearing for the State submitted that the State was only anxious that the error committed by the High Court in acquitting the accused should be set right. He also added that in the event of the substantive sentence being reduced, the accused should be called upon to pay a heavy fine. Taking all factors into consideration, we think that the ends of justice would be met if we substitute the sentence awarded to the accused with the sentence of imprisonment for the period already undergone by him and enhance the sentence of fine from Rs.500 to Rs.20,000 with a direction that out of the fine amount, if paid, a sum of Rs. 18,000 should be paid to the father of Veena Rani for bringing up Veena Rani's minor son Manish.

The High Court judgment is accordingly set aside and the appeals are allowed and the conviction of the accused under Section 306 I.P.C. is restored but the sentence is modified to the period of imprisonment already undergone and fine of Rs.20,000 in default thereof to suffer R.I. for two years. Out of the fine amount if paid, Rs. 18,000 will be given to the appellant in Crl. Appeal No. 477 of 1978 for being utilised for the maintenance of Veena Rani's son, Manish. One month's time from today is given to the accused to pay the fine.

R. S. S.
allowed.

Appeals

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