

A

SURENDER

v.

STATE OF HARYANA

NOVEMBER 22, 2006

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

C

*Penal Code, 1860—Sections 306/34 and 498 A/34—Conviction under—Correctness of—Suicide by wife within 7 years of marriage due to dowry demand and cruelty meted out to her by her husband and in-laws—Evidence substantiating the same—Wife pregnant at the time of suicide, and ordinarily such women would commit suicide only under compulsion—Also for offence under s. 306 not necessary that express words to be used to show instigation—Thus, conviction of husband by courts below justified.*

D

According to the prosecution case, P was married to the appellant in the year 1994. She was harassed by the appellant and his parents on account of demand of dowry and was also beaten up which compelled her to commit suicide by hanging in 2002. Appellant and his parents were convicted and sentenced under s. 306/34 and 498A/34 IPC. High Court acquitted the parents but upheld conviction of the appellant. Hence the present appeal.

E

Dismissing the appeal, the Court

HELD: 1. Both the courts below have held against the accused and the reasoning given in the judgment by the courts below are concurred with.

[302-D-E]

F

2.1. It cannot be said that no offence has been made under section 306 IPC because there is nothing to show any intention to abet or urge the deceased to commit suicide. High Court observed that "to instigate means to goad, urge, provoke, incite or encourage someone to do an act. It is not necessary that express words should be used in order to instigate. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted". [301-F-G]

G

2.2. It has come in the evidence of PW 2- mother of the deceased, PW4-maternal uncle of the deceased, and PW 10-father of the deceased that the deceased P had been harassed due to the demands of dowry. Two and a half

H

years after marriage, P gave birth to girl child and that time also her father gave sufficient gifts but the appellants were not satisfied. About six months prior to the occurrence, the appellant visited the house of the maternal uncle of the deceased and demanded money. However, when PW-4 refused to pay the amount, appellant started beating the deceased and ultimately she was turned out of the matrimonial house and went to her parents' house where she stayed for about three months. Thereafter she was taken back by the appellant with the assurance that he will treat P well, but ten days thereafter she committed suicide. PW 4 has produced a letter which was received by PW 2, perusal of which shows that P's father-in-law and mother-in-law had stopped saying anything to P but her husband had given severe beating to her to the extent that she had become incapacitated and was unable to walk. It has also come in evidence of PW-10 that when the demand for dowry was not met, P was beaten and she had injury marks when she came to her father's house.

[301-G-H; 302-A-D]

2.3. The deceased was pregnant at the time of the suicide. High Court rightly held that a young pregnant women having a child in the womb would not ordinarily commit suicide unless she was compelled to do so; and that she would not have felt depressed if she had not been harassed on account of demand for dowry. [302-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1262 of 2005.

From the Final Judgment and Order dated 24-2-2003 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 1827-SB/2002.

B.S. Mor, Gian Singh and Mahinder Singh Dahiya for the Appellant.

Manjit Singh, Addl. Adv. Gen., Harikesh Singh and T.V. George for the Respondent.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** This appeal has been filed against the impugned judgment of the Punjab & Haryana High Court dated 24.2.2003 in Criminal Appeal No. 1827 of 2002.

Heard learned counsel for the parties and perused the record.

Briefly stated, the prosecution case is that the deceased Pushpa was the third daughter of PW-10 Dilbag Singh. She was married to appellant

A Surrender in village Aasan in the year 1994 according to Hindu rites and ceremonies. At that time, Dilbag Singh had given sufficient dowry but the appellants were not satisfied with the dowry given. They started harassing her. In order to make them happy, PW-10 Dilbag Singh used to give some money to his daughter Pushpa whenever she visited him but the demand of the appellants remained always on the increasing side. They used to beat her.

B Smt. Pushpa used to tell to her father about the atrocities committed upon her, whenever she visited him. After about two and half years of the marriage, Pushpa had given birth to a daughter, namely, Garima and at that time also, PW-10 Dilbag Singh had given sufficient gifts but the appellants were not satisfied.

C About three months back, the appellant Surrender went to PW-4 Sombir, maternal uncle of Pushpa, with a demand of Rs. 80,000/- for purchase of a tractor, but PW-4 Sombir refused to oblige him and informed about it to Dilbag Singh, who also told him not to oblige Surrender as he and his father would spend the amount on liquor.

D It was further averred that after their demand was not fulfilled, the appellant and his relatives became more harsh towards Pushpa and started beating her. Pushpa then came to village Khudan and apprised about the cruelty of her in-laws towards her to her father PW-10 Dilbag Singh. She remained in her parental house for about three months and was then taken back by Surrender, appellant, only ten days prior to the occurrence, after giving assurance that she would be treated nicely in the matrimonial home.

E On 23.4.2002, PW-2 Prem wife of Dilbag Singh received a telephonic message at about 6/7 P.M. through PW-3 Krishan that Pushpa had ended her life by committing suicide by hanging.

F Upon receipt of this information, PW-10 Dilbag Singh along with his wife, PW-2 Prem, brother-in-law Sombir PW-4 and others reached village Aasan and found the dead body of Pushpa lying in the room of first floor of their house. Broken pieces of her bangles and her chappals were also lying there.

G An FIR, Ex. PH, was registered upon the statement, Ex. PG of PW-10 Dilbag Singh. PW-12 Ram Kishan, ASI, investigated the case. He got the dead body of Pushpa photographed by PW-7 Raj Pal, photographer. He also prepared inquest report, Ex.PC. He took into possession the broken bangles

H in a box, Ex. P7 and chappals Exs. P-5 and P-6 by making separate sealed

parcels vide recovery memo Ex. PD. He also prepared a rough site plan, Ex. PK of the place of occurrence and sent the dead body for post mortem examination with police application, Ex. PA. A

PW-1 Dr. Mahesh Parkash, Medical Officer, conducted autopsy on the dead body of Smt. Pushpa and gave his report, Ex. PB. He stated that the cause of death of Smt. Pushpa was due to asphyxia and congestion as a result of hanging, which was ante-mortem in nature and the time between injury and death was within few minutes and between death and post mortem examination was within 12 to 48 hours. He further stated that Smt. Pushpa was carrying pregnancy of 28 weeks and on cutting, a male foetus had come out. B

PW-5 Constable Samit Kumar prepared scaled site plan, Ex. PF. The appellants were arrested. After completion of the investigation, the challan was put up by PW-6 ASI Vijay Singh. Challan was initially put up in the Court of Judicial Magistrate 1st Class, Rohtak, who vide her order dated 2.8.2002, committed the case to the Court of Sessions. C

Having made out a *prima facie* case, the appellants were charged under Sections 498A and 306/34 IPC vide order dated 23.8.2002, to which they pleaded not guilty. D

In order to prove the allegations, the prosecution examined 13 witnesses. E

After closure of the prosecution evidence, the statements of the appellants were recorded under Section 313 Cr.P.C. wherein they denied the allegations of the prosecution and pleaded false implication. Surrender, appellant, in his statement stated that he and his wife Pushpa lived separately from his parents and Pushpa had committed suicide as she was mentally perturbed due to pregnancy. He next stated that he did not harass her on account of demand of dowry. He further stated that there was no demand of dowry from his parents. Vikram and Sahbo wife of Vikram, in their statements under Section 313 Cr.P.C. also denied the allegations of the prosecution and pleaded that their son Surrender and their daughter-in-law Pushpa were living separately from them and they had never harassed Pushpa on account of dowry, nor any demand of dowry was ever made from her and Pushpa committed suicide due to mental tension owing to pregnancy. However, they did not lead any defence evidence. F G

After hearing learned PP for the State and the defence counsel, the learned Additional Sessions Judge, Rohtak, vide his judgment dated 19.10.2002 H

A found the appellant and his parents Vikram and Sahbo guilty and convicted them under Sections 306/34 and 498-A/34 IPC and sentenced them vide order of even date.

B Aggrieved by the aforesaid judgment, the appellant filed an appeal in the High Court. The High Court allowed the appeal of Vikram and Sahbo and acquitted them, but it upheld the conviction of the appellant. Hence this appeal.

C It is an admitted fact that Smt. Pushpa was married to Surender, appellant, in the year 1994 and she committed suicide by hanging on the night of 23.4.2002. The case of the prosecution is that Pushpa was being harassed by the appellants on account of demand of dowry and due to that harassment, she was compelled to commit suicide. PW-2 Prem wife of Dilbag Singh stated that her daughter Pushpa was married with Surender son of Vikram, resident of village Aasan in the year 1994 and they gave dowry to him according their capacity. After about two years of her marriage, Pushpa had given birth to D a daughter. She further stated that the appellants, namely, Vikram, Surender and Sahbo started harassing her daughter, Pushpa for bringing inadequate dowry. About 3-4 months prior to the occurrence, Vikram had sent his son Surender to her brother PW-4 Sombir at village Ritholi, asking him to make payment of Rs. 80,000/- as they wanted to purchase a tractor, but her brother did not fulfill their demand and he sent information to her. She further stated E that when her brother Sombir failed to fulfil the demand of Surender, appellant, then they started harassing Pushpa more vigorously and even started giving beating to her. When the appellants gave Pushpa severe beating, Pushpa left for her parental house and stayed with her parents for about three months, and at that time she was pregnant. She further stated that thereafter Surender, F appellant, came to take Pushpa with her and he promised not to harass Pushpa. On his assurance, Pushpa was sent with him and after ten days of sending Pushpa with him, she received a telephonic message at the residence of Krishan at about 6/7 PM that Pushpa had committed suicide by hanging. She further stated that on 24.4.2002, she along with Krishan, Sombir and her husband Dilbag went to village Aasan and found Pushpa hanging in the room G of the first floor and her bangles were broken and chappals were also lying there.

H PW-4 Sombir stated that Smt. Prem was his sister and she was married in village Khudan with Dilbag Singh. He further stated that Pushpa was the daughter of his sister Prem and had studied upto middle class and was

married to Surrender in the year 1994. He further stated that Surrender, appellant, along with his parents started harassing Pushpa on account of bringing inadequate dowry and she was being taunted that she was not taking interest in the household affairs. He next stated that she was shunted out of her matrimonial house on one or the other pretext. She gave birth to a female child after two and half years or three years of her marriage. He further stated that the appellants used to raise demand for bringing cash from her parents and about five to six months prior to her death, Surrender, appellant, had come to him and demanded Rs. 80,000/- for purchasing a tractor. He consulted his brother-in-law, Dilbag Singh, who told him that he would not be responsible for re-payment as Surrender and his father were habituated to take liquor. He next stated that when demand of Rs. 80,000/- was not met, then they started harassing Pushpa and beating her and she was thrown out of the matrimonial home and she lived with her parents for 3 months and then ten days prior to the occurrence, she was sent to the matrimonial home with Surrender, appellant, on his assurance that they would not harass Pushpa. To the same effect is the statement of PW-10 Dilbag Singh, father of the deceased.

The letter, Ex. PE, has been produced on record during the cross-examination of PW-4 Sombir. He stated that his sister had received this letter and she had handed over this letter to him about 2-3 days of its receipt. A perusal of this letter shows that her father-in-law and mother-in-law had stopped saying anything to Pushpa but her husband, Surrender, had given severe beating to her to the extent that she had become incapacitated and was unable to walk.

It was submitted by learned counsel for the appellant that no offence has been made under Section 306 IPC because there is nothing to show any intention to abet or urge the deceased to commit suicide. We do not agree. As observed by the High Court in the impugned judgment, "to instigate means to goad, urge, provoke, incite or encourage someone to do an act. It is not necessary that express words should be used in order to instigate. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted".

It has come in the evidence of PW-2 Prem, PW-4 Sombir and PW-10 Dilbag Singh that the deceased Pushpa had been harassed due to the demands of dowry. About six months prior to the occurrence, the appellant visited the house of Sombir, the maternal uncle of the deceased where Pushpa had

- A studied upto class VIII, and demanded Rs. 80,000/- for purchase of a tractor. However, when PW-4 Sombir refused to pay the amount, Surrender started beating the deceased and ultimately she was turned out of the matrimonial house and went to her parents' house where she stayed for about three months. Thereafter she was taken back by the appellant with the assurance that he will treat Pushpa well, but ten days thereafter she committed suicide.
- B It has come in evidence that Surrender gave beating to Pushpa to such an extent that she became unable even to walk.

- C The deceased Pushpa was pregnant at the time of the suicide and we agree with the High Court that a young pregnant women having a child in the womb would not ordinarily commit suicide unless she was compelled to do so. We also agree that she would not have felt depressed if she had not been harassed on account of demand for dowry.

- D It has also come in evidence of PW-10 Dilbag Singh, father of deceased Pushpa, that when the demand for dowry was not met, Pushpa was beaten and she had injury marks when she came to the house of her father.

Both the courts below have held against the accused and we fully agree with the reasoning given in the judgment by the courts below.

- E There is, thus, no merit in this appeal. Hence it is dismissed accordingly.

N.J.

Appeal dismissed.