
(2015) 2 DMC 809

Gujarat High Court

Case No: Criminal Appeal No. 951 of 1997

Rakesh Babulal Patel
and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision: Jan. 30, 2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 313#Dowry Prohibition Act, 1961 - Section 3,
4#Penal Code, 1860 (IPC) - Section 107, 304B, 306, 498(A), 498A

Citation: (2015) 2 DMC 809

Hon'ble Judges: Kaushal Jayendra Thaker, J.

Bench: Single Bench

Advocate: M.B. Gandhi, for the Appellant; C.M. Shah, APP, Advocates for the Respondent

Final Decision: Allowed

Judgement

Kaushal Jayendra Thaker, J.

At the outset, it may be noted that the original accused No. 1-appellant No. 1, herein, expired pending

appeal, and hence, this appeal stands ABATED qua him and same is taken-up for hearing and disposal qua original accused No. 2-appellant No.

2, herein, only.

2. This is an appeal by the original accused No. 2-appellant No. 2, herein, seeking to challenge the judgment and order of the learned Addl.

Sessions Judge, Ahmedabad City, Court No. 6, Ahmedabad, Dated : 30.09.1997, rendered in Sessions Case No. 44 of 1993, whereby, the trial

Court convicted and sentenced both the original accused as under;

(1) For the offence under Section 306 of the IPC to undergo rigorous imprisonment for five years and to pay fine of Rs. 500/- each and in default

to undergo further rigorous imprisonment for six months;

(2) For the offence under Section 498(A) of the IPC to undergo rigorous imprisonment for two years and to pay fine of Rs. 500/- each and in

default to undergo further rigorous imprisonment for six months.

3. The brief facts of the case of the prosecution, as set out before the trial Court, are that the deceased Kalavatiben was married to the brother of

the original accused Nos. 1 and 2, namely Rajubhai, and after marriage she came to reside with her husband in a joint family at bungalow No. 54,

Kailashnagar, Rajendrapark, Ahmedabad. It is alleged in the complaint that the accused Nos. 1 and 2 had usurped pan stall of the husband of the

deceased and they used to harass the deceased and her husband with a view to see that they vacate the aforesaid premises. It is also alleged that

accused Nos. 1 and 2 also used to ill-treat the deceased physically and on account of that the deceased, on 08.04.1992, set herself ablaze.

Pursuant thereto, the D.D. of the deceased came to be recorded and a complaint was also registered by the Amraiwadi Police Station in that

regard. On 09.04.1992, the deceased succumbed to her injuries. On registration of the offence, police carried out investigation into the same and

on finding sufficient evidence against the accused, filed charge-sheet against them. At the time of trial, since, the accused did not plead guilty and

claimed to be tried, the case was committed for trial.

4. Before the trial Court, to bring home the charges leveled against the accused, the prosecution examined the following witnesses;

5. Over and above the oral evidence, the prosecution also produced the following documentary evidences in support of its case;

6. At the end of the trial, the further statement of the accused under Section 313 of the Cr.P.C. came to be recorded, and then, the trial Court

passed the judgment and order, as referred to in Paragraph-2, herein above. Hence, the present appeal.

7. Mr. Gandhi, learned Advocate for the appellant-original accused No. 2, submitted that the trial Court committed an error in convicting the

accused, inasmuch as it failed to appreciate the material on record in its proper perspective. He, further, submitted that taking into consideration

the contradictions in the D.D. of the deceased and the complaint given by her, the trial Court ought to have acquitted the accused. He, then,

submitted that in view of the fact that the D.D. was defective, the trial Court ought not to have relied upon the same, especially, when there is no

endorsement on the same with regard to the condition of the patient. He, therefore, prayed that the present appeal be allowed.

8. On the other hand, Ms. Shah, learned APP, supported the order of the trial Court and submitted that the trial Court passed the impugned

judgment and order, after taking into consideration the material on record, in the form of oral as well as documentary evidence, and hence, no

interference is called for at the hands of this Court and the appeal be dismissed.

9. Heard, learned Advocate for the appellant-accused No. 2 and the learned APP for the respondent-State and perused the material on record.

10. To establish the guilt of the accused persons, the prosecution examined the brother of the deceased as P.W.-1. P.W.-1, in his deposition

(Exhibit-8), stated that the deceased and her husband both were handicap and they were married about one year prior to the alleged incident.

P.W.-1, further, stated that he does not know the name of the brothers-in-law of her sister or her mother-in-law. P.W.-1 stated that after marriage

deceased used to come to her parental home, but, she never complained of anything. This witness in clear terms stated that, in his presence, the

deceased did not complaint about anybody. He, then, stated that on receiving the news of the tragedy, when he went to the hospital and inquired

from the deceased, she told him that she had set herself ablaze. Thus, this witness did not support the case of the prosecution, and hence, he was

declared hostile. In his cross-examination he denied that, in his statement before the police, he has stated that the deceased had complained him

about ill-treatment at the hands of the accused and due to that she set herself ablaze.

11. P.W.-2, who happened to be a neighbor of the deceased and a panch witness, partly supported the said panchnama. This witness, at the time

of his deposition (Exhibit-9), though, identified the muddamal article Nos. 1, 2 and 6, he refused to have seen muddamal article Nos. 3, 4, 5, 7. In

his cross-examination, this witness stated that at the time of incident, accused No. 2 was not residing there.

12. P.W.-3, who happened to be the husband of the deceased, in his deposition (Exhibit-10), stated that he is handicap and, at the place of

offence, he was residing with his handicap wife, i.e. the deceased, his younger brother, i.e. accused No. 1, and his mother. This witness stated that

there was no harassment to either him or to the deceased by any member of his family. P.W.-3 stated that, on the date of the alleged incident,

while he was doing his work, he saw the deceased setting herself ablaze, he, therefore, made an attempt to save her on his own, instead of

shouting. This witness, thus, did not support the case of the prosecution and was declared hostile. In his cross-examination by the learned PP, this

witness denied that, in his statement before the police, he stated that there was harassment to them and that the accused used to tell them to live

separately and that the deceased used to tell him that she is fake-up and wants to end her life. On cross-examination by the learned Advocate for

the accused, P.W.-3 also stated that the accused No. 2 was not residing with them at the time of offence.

13. P.W.-4 was the doctor, who had performed PM on the body of the deceased. P.W.-4, in his deposition (Exhibit-11), stated that the

deceased had sustained 66 per cent of burn injuries all over her body, which were sufficient enough to cause death of a person in normal course of

nature. According to P.W.-4, if, someone sets him/herself ablaze, then, the injuries found by him on the deceased could be caused. In his cross-

examination, this witness admitted that, in P.M. note, they did not mention the percentage of burn injuries sustained by the deceased.

14. P.W.-5 was the Executive Magistrate, who had recorded the D.D. of the deceased. P.W.-5, in his deposition (Exhibit-13), stated that on

receiving the memorandum for recording the D.D. of the deceased, when he reached hospital, he was introduced to the deceased by a doctor and

a nurse. The deceased was conscious and was able to speak and understand the questions. According to this witness, with regard to the fitness of

the deceased, the doctor had made an endorsement on Mark "A". In his cross-examination by the learned Advocate for the accused, P.W.-5

admitted that he did not take endorsement of the doctor on the D.D. This witness, further, stated that it is true that there is no mention of the name

of the doctor, who stated about the fitness of the deceased, and that there is no mention about the condition of the deceased by the Social

Worker, Shantaben, prior to signing the D.D.

15. P.W.-6 was the I.O., who carried out investigation into the alleged offence. P.W.-6, in his deposition (Exhibit-15), narrated the entire

procedure of investigation undertaken by him, stating that on received the papers of the case, he recorded the statements of the parents and

brother of the deceased, carried out the panchnama of the place of offence and also recorded the statements of the neighbours of the accused. He,

then, narrated as to how he arrested the accused and on finding sufficient evidence against them, as to how he filed charge-sheet against them. In

his examination-in-chief, this witness stated that the brother and husband of the deceased, in their respective statements given before him, stated

that the accused used to harass the deceased and her husband. In his cross-examination, this witness stated that he does not know, as to whether

any pan stall was lying near the place of offence or not, since, that was not a part of the place of offence. He, further, stated that he had not seen

the deceased in personally.

16. P.W.-7 was a Medical Officer, who was discharging duties as Shardaben Hospital, where the deceased was taken after the alleged incident.

P.W.-7, in his deposition, stated that his colleague, Dr. Bijal Parikh, had attended the deceased and since, she had gone abroad, this witness

appeared before the Court with the medical case papers of the deceased. P.W.-7 stated that, since, he has worked with Dr. Parikh, he recognizes

her handwriting. This witness, then, stated that as per the papers, the deceased had sustained over all 60 per cent of burn injuries of second and

third degree. P.W.-7, then, identified the endorsement, stating that the patient is conscious, made on Mark-A, i.e. memorandum received by

P.W.-5, the Executive Magistrate, from police to record D.D. of the deceased. In his cross-examination, this witness admitted that in the complaint

it is not mentioned, whether the patient is conscious or not. This witness also accepted the suggestion put forward by the learned Advocate for the

accused, due to lowering of water level in the body, a person can become unconscious.

17. P.W.-8, who was discharging PSI at Amraiwadi Police Station at the time of offence, in his deposition (Exhibit-22), stated that on receiving

the information about the incident, I went to the hospital and recorded the statement of the deceased, which was in the form of complaint. This

witness, then, sent a memorandum to the Executive Magistrate to get the D.D. of the deceased recorded. This witness stated that before sending a

memorandum to the Executive Magistrate to record D.D. of the deceased, he had obtained the endorsement of a doctor, thereon. In his cross-

examination, this witness stated that it is not true that by the time he reached hospital, the deceased was given the primary treatment. This witness,

further, stated that it is true that he had not obtained the endorsement of a doctor on the complaint and then he send a memorandum to the

Executive Magistrate to record the D.D. of the deceased. This witness stated that incident took place at about 10:30 a.m. and he recorded the

complaint in the hospital. This witness, after referring the complaint, Exhibit-24, stated that the offence was registered at 16:10 p.m.

18. Having gone through the oral as well as the documentary evidences adduced by the prosecution before the trial Court, if, the case of the

prosecution is examined, then, it cannot be said that the prosecution has succeeded in establishing its case beyond doubt. To prove the allegations

with regard to Section 498(A) of the IPC, the prosecution examined the brother of the deceased as P.W.-1 and her husband as P.W.-2, but, none

of them supported the prosecution either on aspect of offence under Section 498(A) or Section 306 of the IPC. P.W.-1 in his evidence, in clear

terms, stated that neither in the past nor in the proximity of the incident, the deceased complained of any harassment at the hands of any of her in-

laws, including the original accused. According to P.W.-1, the deceased had come to her parental house three-four times after marriage, but, on

none of the occasions, she complained of any harassment at the hands of the accused or anybody else. Further, P.W.-1 stated that when he

inquired from the deceased about the incident, the deceased told him that she set herself ablaze. However, this witness is totally silent on the

aspect, as to why the deceased set herself. P.W.-3, husband of the deceased and who, according to the complaint given by the deceased was also

being harassed by the accused persons, also did not support the prosecution on the aspect of harassment. P.W.-3 stated that on the date of the

alleged incident, while he was working, he found the deceased setting herself ablaze, and therefore, he tried to save her. Thus, this witness is also

totally silent over the aspect as to why deceased set herself ablaze. Further, P.W.-3, who was present at the time of incident, also does not state

anything which would throw light on the circumstances, which compelled the deceased to put an end to her life. From the evidence of P.W.-1 and

P.W.-3, nothing is coming which would constitute an offence either under Section 498(A) or Section 306 of the IPC.

19. In this regard, now, if we examine the D.D. of the deceased, which was recorded by P.W.-5, the deceased in answer to question No.-9, i.e.

whether anybody was present in the house when the incident took place?, the deceased replied ""No"". Then, in answer to question No. 12, i.e. to

narrate the incident in brief, the deceased answered that ""As her mother-in-law, Laxmiben, brother-in-law, Rakesh-accused No. 1, were driving

her out of the house, she set the house on fire and during the process she sustained burn injuries"". Further, in answer to question No. 16, i.e.

whether you had any quarrel with anybody? If yes, then with whom, the deceased replied that ""Yes, with my mother in law"". Then, in an answer to

question No. 17, i.e. Whether do you have any complaint against anybody?, the deceased replied that ""Yes, against my mother in law and two

brothers-in-law"". Further, when the deceased was asked by P.W.-3, Whether she would like to say anything else vide question No. 18, the

deceased replied ""No"".

20. Now, if, we examine the D.D. given by the deceased minutely, then, it hardly throws any light on the circumstances under which the deceased

set herself ablaze, since, in answer to question No. 11, she stated that nobody was present at the time of incident, whereas, in answer to question

No. 16, she stated that she had quarrel with her mother-in-law, which is contradictory to her answer to question No. 11. Further, in answer to

question No. 8, i.e. as to who resides with you in your house, the deceased stated that she resides with her brothers-in-law and her husband.

However, the deceased do not mention her mother-in-law. Then, as per the evidence of P.W.-2, who happened to be a neighbour of the

deceased, and P.W.-3, who happened to be the husband of the deceased, accused No. 2 was not residing at the place of offence, at the time of

its commission. Further, in answer to question No. 13, as to who brought her the hospital, the deceased replied that she does not know. Thus,

answer of the deceased to question No. 13 raises a doubt, as to whether she was fully conscious, when she was being taken to the hospital and or

whether she was fit to give a statement. From the record it appears that the incident took place in the morning at about 10:30 a.m., whereas, the

D.D. came to be recorded at about 14:05 p.m., i.e. nearly about three and half a hour of the alleged incident. It is an admitted position that the

doctor had made endorsement with regard to the deceased being conscious on the memorandum, Mark-A, which was sent by P.W.-8 to P.W.-5

and that there is no endorsement with regard to the fitness of the deceased on her D.D. According to the complaint, the offence was disclosed at

01:00 p.m. and it is pursuant to this that the D.D. of the deceased came to be recorded. Thus, there is considerable time gap between obtaining of

endorsement from a Medical Officer by P.W.-8 and recording of D.D. of the deceased by P.W.-5. Therefore, there appears to be force in the

contention of the learned Advocate for the original accused that it cannot be said with certainty that at the time of lodging complaint by P.W.-8 and

recording of D.D. by P.W.-5, the deceased was fully conscious.

21. Now, if, the complaint given by the deceased is perused, she has stated therein that accused No. 2 had taken away the pan stall run by her

husband. She has, further, stated that her mother-in-law and both the accused used to harass her and her husband with a view to drive them out of

the house in which they were residing so that the accused can usurp the same. However, if, we examine the panchnama of the place of offence, i.e.

Exhibit-31, then, there is no mention of any pan stall, therein. In this regard, if, we examine the evidence of P.W.-8, who had recorded the said

panchnama, this witness also does not state that he had seen any pan stall in the vicinity. Thus, the story of the prosecution and the allegation made

by the deceased, in her D.D. as well as the complaint, with regard to usurping of pan stall of her husband by accused No. 2 remains

unsubstantiated. Then, the deceased has, in her complaint, made general allegation about the harassment at the hands of her in-laws. However,

there is no mention of any incident, much less any particular incident, which would satisfy the ingredients of commission of offence either under

Section 498(A) or Section 306 of the IPC. Neither from the D.D. given by the deceased nor her complaint, it is coming out as to how and in what

manner the accused used to harass the deceased. As per the evidence of the deceased, herself, as nobody was present at the house at the time of

incident, the circumstances under which she committed suicide remains shrouded in mystery. No doubt, the deceased in her D.D. stated that she

had quarrel with her mother-in-law, but, at the same time, it is not coming out from her D.D., as to when and why such quarrel had taken place.

Under the circumstances, when it is not coming out either from the complaint given by the deceased nor from her D.D. as to how and in what

manner she used to be harassed by the accused and her in-laws, which led her to put an end to her life, this Court is of the opinion that the trial

Court was not justified in holding the accused guilty for the offence under Sections 498(A) and Section 306 of the IPC. Even otherwise, in view of

the fact that the brother of the deceased, P.W.-1, and her husband, P.W.-3, do not support the say of the deceased with regard to harassment by

the accused persons and her mother-in-law and when there is no incident or reason coming out in the proximity of the incident, which would

support the say of the deceased with regard to harassment, the judgment and order of the trial Court cannot be sustained. In above view of the

matter, here, it would be relevant to refer to the various decisions of the Apex Court in regard to Section 306 of the IPC.

22. In the case of S.S. Chheena Vs. Vijay Kumar Mahajan and Another, , the Apex Court observed as under in Paragraph Nos.-19 to 27:

19. ""Abetment"" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which reads as under:

107. Abetment of a thing.--A person abets the doing of a thing, who-

First.--Instigates any person to do that thing; or

Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place

in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing.

20. Explanation 2 which has been inserted along with Section 107 reads as under:

Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act,

and thereby facilitates the commission thereof, is said to aid the doing of that act.

21. The learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh and Another, Gayatribai Vs. State of

M.P., . In Mahendra Singh, the allegations levelled were as under: (SCC p. 731, para 1)

1....My mother-in-law and husband and sister-in-law (husband"s elder brother"s wife) harassed me. They beat me and abused me. My husband

Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to

die by burning.

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the

statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the

aforementioned allegation of harassment of the deceased is unsustainable in law.

22. The learned counsel also placed reliance on another judgment of this Court in Ramesh Kumar Vs. State of Chhattisgarh, . In this case, a three-

Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant

husband uttered ""you are free to do whatever you wish and go wherever you like"". Thereafter, the wife of the appellant Ramesh Kumar committed

suicide. The Court in para 20 has examined different shades of the meaning of ""instigation"". Para 20 reads as under: (SCC p. 629)

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not

necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the

consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the

accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other

option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending

the consequences to actually follow cannot be said to be instigation.

In this case, the court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-

accused having abetted commission of suicide by Seema may necessarily be drawn.

23. In *State of West Bengal Vs. Orilal Jaiswal and another*, , this Court has cautioned that:

17....The court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the

purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court

that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to

which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given

society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of

suicide should be found guilty.

24. This Court in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, had an occasion to deal with this aspect of abetment. The Court

dealt with the dictionary meaning of the words ""instigation"" and ""goadings"". The Court opined that there should be intention to provoke, incite or

encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-

esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on

the basis of its own facts and circumstances.

25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part

of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases

decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It

also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push

the deceased into such a position that he committed suicide.

26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-

today life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

27. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious

that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge

under section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face

a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 IPC against the appellant is

quashed and all proceedings pending against him are also set aside.

23. From the material on record, it is clear that the conviction of the original accused is based on dying declaration and the complaint of the

deceased and there is no other evidence to indicate that the accused were causing mental and physical harassment to the deceased. The question

of reliability of the dying declaration is considered by Hon"ble Supreme Court in the case of Gopal Vs. State of M.P., While deciding the said

case, the Supreme Court observed as under in Paragraph Nos. 8 to 10:

8. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the

dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and

made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had

several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See:

Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh, . However, if some inconsistencies are noticed between one dying

declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the

contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and

circumstances.

9. It is to be noted that the High Court had itself observed that the dying declaration (Exh.P11) scribed by the Executive Officer, (PW9) at about

0435 hours in the same night was not in conformity with the FIR and the earlier dying declaration (Exh.P3) scribed by ASI Balram (PW 8) as

different motives have been described. That is not the only variation. Several other discrepancies, even as regards the manner in which she is

supposed to have been sprinkled with kerosene and thereafter set on fire.

10. Therefore, the discrepancies make the last declaration doubtful. The nature of the inconsistencies is such that they are certainly material. That

being so, it would be unsafe to convict the appellant. The conviction is set aside and appellant is acquitted of the charges. He be set at liberty

forthwith.

24. From the above observations, it is clear that if a dying declaration is found to be voluntary, reliable and made in fit state of mind, then only, it

can be relied upon without any corroboration. In the present case, except, the allegation of the deceased of mental and physical harassment at the

hands of her in-laws including the original accused in her D.D. and her complaint, there is no other evidence to substantiate the same. Even,

recording of the complaint and D.D. of the deceased also raises doubt with regard to the fitness of the deceased, at the time of recording of the

same. Not only that, the prosecution is not even in a position to demonstrate as to how the accused abetted the offence.

25. From the observations of the Apex Court in ""S.S. CHHEENA"" (supra), it is clear that without a positive act on the part of the accused to

instigate or aid an act of suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Apex

Court is clear that in order to convict a person under Section 306 of the IPC there has to be a clear mens rea to commit the offence. It also

requires an active act or direct act which led the deceased to commit suicide, seeing no other option and that act must have been intended to put

the deceased into such a position that she is compelled to committed suicide. Therefore, even on the touchstone of the latest decision of the Apex

Court, as referred to herein above, the prosecution has not even brought home the charge that the conduct of the accused was such, which

perpetrated and fastened the death of the deceased. Admittedly, the deceased and the accused No. 2 were not residing together, and therefore, it

cannot be said that the accused No. 2 was responsible for the death of the deceased, who was not even present at the place of incident, when it

took place.

26. The Apex Court in the case of Kuldeep Kaur Vs. State of Uttarakhand, , observed as under in Paragraph Nos. 11 to 15:-

11. Mr. Ahmadi contended that the finding of the trial court holding the petitioner guilty under Section 306, IPC is on the basis of surmises and

conjectures. The trial court in its judgment pertaining to the appellant has reproduced a line from the diary of the deceased, which reads as ""Still

she wants me to work till late."" It is contended that the trial court erred in presuming that when the deceased writes the above line in her diary she

is referring to the appellant. It is further contended that conviction of the appellant deserves to be set aside as both the courts below failed to

appreciate that the prosecution did not led any evidence on record to show that there was direct reasonable nexus between suicide and alleged

cruelty. As both the courts below gave findings that there was no demand of dowry or any cruelty committed with the deceased in connection with

demand of dowry and acquitted the appellant from charge under Sections 304B, 498A IPC and under sections 3 and 4 of the Dowry Prohibition

Act, the courts below could not have come to a contradictory view that the deceased committed suicide due to cruelty committed by the appellant.

Even in the diary, deceased has not written even a single word against the appellant. Perusal of the diary only shows, as also observed by the trial

court in its decision in the trial of other accused persons including deceased"s husband, that the deceased was depressed and has left no interest in

life.

12. Learned counsel appearing for the State has not disputed that although against the judgment of acquittal passed by the trial court acquitting the

husband, father-in-law, brother-in-law and two sisters-in-law, the State preferred appeal but the same was dismissed by the High Court.

However, no further appeal has been filed by the State before this Court. Learned counsel submitted that the conviction of the appellant under

Section 306 IPC is fully justified.

13. We have perused the judgment passed by the trial court as also by the High Court. We have also gone through the judgments by which the

husband, father-in-law, brother-in-law and two sisters-in-law have been acquitted by the trial court and affirmed by the High Court. So far this

appellant is concerned, she has also been acquitted against the charges of dowry harassment but she has been convicted under Section 306 IPC.

14. A perusal of trial court judgment pertaining to deceased"s husband would show that PW1, father of the deceased, in his cross examination

stated that no dowry was demanded by the accused persons from the day of alliance till solemnization of marriage. Whatever stridhan was given

was as per the custom and as per his will in the form of gift to his daughter. He further stated that his daughter had not told him that in the absence

of Upkar Singh she remained dejected in her matrimonial house because of her mother-in-law, father-in-law, sister-in-law and husband and elder

brother-in-law on the issue of dowry. Witness himself stated that only God knows why her daughter committed suicide without any reason. This

witness has stated that it is true to say that neither the accused persons abetted his daughter to commit suicide nor they harassed her.

15. We have given our anxious consideration in the matter and analyzed the evidence of the prosecution witnesses. In our considered opinion, the

evidence adduced as against the appellant does not establish the case under Section 306 of the Code. On the basis of evidence of the prosecution

witnesses, conviction of the appellant only cannot be sustained. Having regard to the fact of the case and the evidence of the prosecution

witnesses, the trial court acquitted all the accused persons except the present appellant and the said judgment was affirmed by the High Court. We

do not find any strong reason to agree with the judgment of conviction passed by the trial court and affirmed by the High Court as against the

appellant.

27. In view of the aforesaid observations of the Supreme Court and the factual scenario which emerges from record, it cannot be said that the

accused, more particularly, accused No. 2 meted out cruel treatment to the deceased so as to see that the deceased commits suicide. In light of

aforesaid observations of the Apex Court and considering the evidence on record, it cannot be said that the prosecution successfully proved the

offence under Section 498(A) and Section 306 of IPC. This Court is, therefore, of the opinion that the judgment and order passed by the trial

Court requires interference at the hands of this Court.

28. In the result, present appeal is ALLOWED. The judgment and order of the trial Court, Dated : 30.09.1997, convicting accused No. 2 for the

offence under Section 498(A) and Section 306 of the IPC, is QUASHED and set aside and the accused No. 2 is ACQUITTED of the aforesaid

charges. The bail bonds of the accused No. 2 stands discharged. The amount of fine, if any, paid by accused No. 2, be refunded to him. RandP be

sent back to the concerned trial Court, forthwith.