
Shriram Pandey and Others Vs State of Madhya Pradesh (now State of C.G.)

Criminal Appeal No. 632 of 1995

Court: Chhattisgarh High Court

Date of Decision: March 22, 2013

Acts Referred:

Constitution of India, 1950 " Article 134, 136#Criminal Procedure Code, 1973 (CrPC) " Section 161, 222, 313, 370, 379#Dowry Prohibition Act, 1961 " Section 2, 4, 7#Penal Code, 1860 (IPC) " Section 107, 109, 120A, 120B, 149#Prevention of Corruption Act, 1988 " Section 13, 13(1)(e)

Citation: (2013) 1 CG.L.R.W. 416 : (2013) 3 CGLJ 28 : (2013) 4 MPHT 85

Hon'ble Judges: T.P. Sharma, J

Bench: Division Bench

Advocate: Renu Kochar, Nos. 1 to 3, Mr. Goutam Bhaduri with Mr. Santosh Kumar Tiwari and Mr. Abhijit Majorwar, No. 4, for the Appellant; Sumesh Bajaj and Shri Sushil Dubey, Government Advocates, for the Respondent

Final Decision: Partly Allowed

Judgement

T.P. Sharma, J.

Their Lordships in the Division Bench could not reach a consensus as to the degree of culpability of Nagnarayan Sinha,

appellant No. 4, and therefore, by order dated 16-1-2013 Decision of Division Bench, containing difference of opinion reported in 2013(1)

CG.L.R.W. 383 (DB), the appeal was directed to be laid before third Judge in terms of Sections 370 and 392 of the Code of Criminal Procedure,

1973 (for short "the Code"). Order of reference reads thus,

There is a difference of opinion between us regarding Nagnarayan Sinha (A-4), whether he should be convicted and sentenced u/s 4 of the Dowry

Prohibition Act or u/s 109, IPC for abetting crime u/s 304-B, IPC. In the light of Sections 370 and 392, Cr.P.C. our opinions in respect of

Nagnarayan Sinha (A-4) be placed before third Judge for his opinion.

By order dated 6-2-2013, Hon"ble the Chief justice directed the matter to be placed before this Bench.

2. Section 392 of the Code reads as--

392. Procedure where Judges of Court of Appeal are equally divided.--When an appeal under this Chapter is heard by a High Court before a

Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge,

after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so

requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

3. Law relating to the scope of powers and jurisdiction of third Judge in reference u/s 392 of the Code is no longer res integra as the same has

been settled by the Supreme Court in catena of decisions.

4. While dealing with the question of jurisdiction of the Bench hearing the appeal u/s 392 of the Code, the Supreme Court in the case of Tanviben

Pankaj Kumar Divetia Vs. State of Gujarat, has held that in case of reference to third Judge u/s 392 of the Code, the third Judge is free to decide

the appeal in the manner he thinks fit and he is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of

one of the Judges. The Supreme Court has observed in paras 5, 6 and 7 of the said judgment that:--

5. The plain reading of Section 392 clearly indicates that it is for the third Judge to decide on what points he shall hear arguments, if any, and it

necessarily postulates that the third Judge is free to decide the appeal by resolving the difference in the manner, he thinks proper. In Babu and

Others Vs. State of Uttar Pradesh, , it has been held by a Constitution Bench of this Court that where the third Judge did not consider it necessary

to decide a particular point on which there had been difference of opinion between the two Judges, but simply indicated that if at all it was

necessary for him to come to a decision on the point, he agreed with all that had been said about by one of the two Judges, such decision was in

conformity with law. That the third Judge is free to decide the appeal in the manner he thinks fit, has been reiterated in Hethubha alias Jithuba

Madhuba and Others Vs. The State of Gujarat, and Union of India (UOI) and Another Vs. B.N. Ananti Padmanabiah etc., . In State of Andhra

Pradesh Vs. P.T. Appaiah and Another, it has been held by this Court that even in a case when both the Judges had held that the accused was

guilty but there was difference of opinion as to the nature of offence committed by the accused, it was open to the third Judge to decide the appeal

by holding that the accused was not guilty by considering the case on merit.

6. Where a case is referred to a third Judge u/s 392, Cr.P.C. such Judge is not only entitled to decide on what points he shall hear the arguments, if

any, but his decision will be final and the judgment in the appeal will follow his decision. Precisely for the said reason, it has been held by the

Allahabad High Court that if one of the Judges, who had given a different opinion ceases to be Judge, the judgment may be pronounced by another

Bench of the High Court, the reason being that the ultimate decision in the appeal is to abide by the decision of the third Judge and pronouncement

of the decision in conformity with the decision of the third Judge is only a formality Balku Vs. Emperor,

7. Section 392, Cr.P.C. clearly contemplates that on a difference of opinion between the two Judges of the Division Bench, the matter is to be

referred to the third Judge for his opinion so that the appeal is finally disposed of on the basis of such opinion of the third Judge. In the scheme of

Section 392, Cr.P.C. the view that the third Judge, as a rule of prudence or on the question of judicial etiquette, will lean in favour of the view of

one of the Judges in favour of acquittal of the accused, cannot be sustained. The Calcutta High Court has held in Nemai Mondal and Others Vs.

State of West Bengal, that the third Judge need not as a matter of fact, lean in favour of acquittal even if one of the Judges had taken such view. It

has been held that benefit of doubt may be given only if third Judge holds that it is a case where accused is to be given benefit of doubt. There is no

manner of doubt that the Judge has a statutory duty u/s 392, Cr.P.C. to consider the opinions of the two Judges whose opinions are to be laid

before the third Judge for giving his own opinion on consideration of the facts and circumstances of the case. In Dharam Singh and Others Vs. The

State of Uttar Pradesh, this court has indicated that it is the duty of the third Judge to consider the opinion of his two colleagues and to give his

opinion. Therefore, the learned third Judge has rightly discarded the contention that as a rule of prudence or on the score of judicial etiquette, he

was under any obligation to accept the view of one of the Judges holding in favour of acquittal of the accused appellant.

5. While dealing with the same question, the Supreme Court in the case of State of U.P. Vs. Dan Singh and others, has held that in reference of

appeal to third Judge u/s 392 of the Code, the appeal as a whole must be laid before the third Judge. The Supreme Court has observed in para 23

of the said judgment that:--

23. According to this section if there is a difference of opinion amongst the Judges of the Bench, then their opinions are laid before another Judge.

It is only after the third Judge gives his opinion that the judgment or order follows. It is clear from this that a judgment or order which can be

appealed against, under Article 136 of the Constitution, is only that which follows after the opinion of the third Judge has been delivered. What

B.N. Katju and Rajeshwar Singh, JJ. wrote was not their judgments but they were their opinions. Due to disagreement amongst them, Section 392

of the Code of Criminal Procedure required the appeal as a whole to be laid before the third Judge (V.P. Mathur, J. in this case) whose opinion

was to prevail. The first order of 15-4-1987 was clearly not contemplated by Section 392 of the Code of Criminal Procedure and is, therefore,

honest.

6. While dealing with the same question, the Supreme Court again in the case of Sajjan Singh Vs. State of Madhya Pradesh, , has held that third

Judge to whom the case is referred to, u/s 392 of the Code is required to examine independently the entire case including the points on which the

two Judges of the Division Bench had concurred. His position is not that of a Judge sitting in a three-Judge Bench where majority opinion prevails.

The Supreme Court has observed in para 10 of the said judgment that:--

10. Statement of law is now quite explicit. It is the third Judge whose opinion matters; against the judgment that follows therefrom that an appeal

lies to this Court by way of SLP under Article 136 of the Constitution or under Article 134 of the Constitution or u/s 379 of the Code. The third

Judge is, therefore, required to examine whole of the case independently and it cannot be said that he is bound by that part of the two opinions of

the two Judges comprising the Division Bench where there is no difference. As a matter of fact third Judge is not bound by any such opinion of the

Division Bench. He is not hearing the matter as if he is sitting in a three-Judge Bench where the opinion of majority would prevail....

7. Law on the subject of reference u/s 392 of the Code has thus been settled by the Supreme Court, that while making reference of appeal to third

Judge, the appeal as a whole is required to be laid before the third Judge. The third Judge is required to examine independently the entire case

including the points on which the two Judges of the Division Bench had concurred. The third Judge is not bound by the opinion of the Division

Bench. His position is not that of a Judge sitting in a three Judge Bench where majority opinion prevails. The third Judge is free to decide the

appeal by resolving the differences in the manner he thinks proper. His opinion is rather the material one and against the judgment that follows

therefrom an appeal lies. The third Judge is not obliged, either as a rule of prudence or on the score of judicial etiquette, to accept the view of

either or both of the Judges, even on points where there is no difference of opinion.

8. In the light of aforesaid proposition of law, I have heard the appeal filed jointly by appellants No. 1 to 3 husband and relatives of husband of the

deceased and appellant No. 4 the person not the relative of husband of the deceased.

9. The appeal has been filed jointly, but at subsequent stage, appellants No. 1 to 3 and appellant No. 4 got represented by different counsel.

Appellants No. 1 to 3 got represented by Mr. Arun Kochar and Associate Advocates and appellant No. 4 got represented by Mr. Goutam

Bhaduri and Associate Advocates.

10. After reference of the appeal to this Bench u/s 392 of the Code, the appeal was first heard on 15-2-2013 on which date, appellants No. 1 to

3 were not represented by their counsel, only appellant No. 4 and the State/respondent were represented. On subsequent dates of hearing i.e. on

4-3-2013 and 5-3-2013 also, appellants No. 1 to 3 were not represented when arguments relating to appellant No. 4 were advanced and

concluded. Thereafter, the case was again posted for arguments for appellants No. 1 to 3 which were advanced and concluded on 6-3-2013 and

7-3-2013, and thus the appeal was reserved for judgment.

11. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24-4-1995 passed by the 4th Additional Sessions Judge,

Durg in Sessions Trial No. 164/1990, whereby and whereunder the Additional Sessions Judge after holding appellants No. 1 to 3 namely Shriram

Pandey, Smt. Kamla Pandey and Alok Pandey guilty for commission of offence under Sections 304-B and 498-A of the IPC and appellant No. 4

Nagnarayan Sinha guilty for commission of offence u/s 304-B read with Section 109 of the IPC, convicted and sentenced each of them as under:--

Section 304-B read with Section Imprisonment for life 109 of the IPC

12. Conviction is impugned on the ground that without there being sufficient evidence, the trial Court has convicted and sentenced the appellants in

the aforesaid manner and thereby has committed illegality.

13. As per case of the prosecution, unfortunate deceased Asha Pandey was married to appellant No. 3 Alok Pandey on 9-3-1988 and she died

due to asphyxia as a result of hanging in the house of appellants No. 1 to 3 at Khursipar, Zone-2, Bhilai on 3-4-1988 i.e. within one month of her

marriage. As per the allegations, she was subjected to cruelty and harassment by all the appellants in connection with demand of dowry and she

died in otherwise than under normal circumstances. FIR was lodged on 3-4-1988 vide Ex. P-1 and morgue was recorded vide Ex. P-3. Articles

found in the house of the appellants were seized vide Ex. P-2. The Investigating Officer reached the scene of occurrence and after summoning the

witnesses, prepared inquest over the dead body of the deceased vide Ex. P-4. Body of the deceased was brought to Sector-9 Hospital, Bhilai and

was examined by Dr. V.V.B. Rao (PW-11) vide Ex. P-8 who noticed that she was dead and ligature marks were present over her neck. Dead

body was sent for autopsy vide Ex. P-5. Dr. M.C. Mehnot (PW-10) conducted autopsy vide Ex. P-6 and found following injuries and

symptoms:--

~ Saliva coming out from right side of mouth.

~ 1/2" width ligature mark with abrasion was found over neck.

~ Ligature mark was ante-mortem in nature.

~ Bronchial and trachea were congested.

~ Internal organs were also congested.

~ Cause of death was asphyxia as a result of hanging.

14. A query was made to the doctor and it was answered vide Ex. P-7. Mobile forensic unit also examined the spot and submitted its report vide

Ex. P-11.

15. Statements of the witnesses were recorded u/s 161 of the Code. After completion of investigation, charge-sheet was filed in the Court of Chief

Judicial Magistrate, Durg who in turn, committed the case to the Court of Sessions, Durg, from where learned Additional Sessions Judge received

the case on transfer for trial.

16. In order to bring home the guilt of the accused persons, the prosecution has examined as many as fifteen witnesses. The accused persons were

examined u/s 313 of the Code in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime

in question. Defence has examined Prabhat Pasine (DW-1) and Digvijay Dubey (DW-2) who have deposed that to their information there was no

quarrel between the deceased and the appellants and behaviour of the appellants was not cruel or abnormal with the deceased.

17. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as

aforementioned.

18. Learned counsel for appellants No. 1 to 3 submitted that in order to convict appellants No. 1 to 3, husband and relatives of husband of the

deceased namely father-in-law and mother-in-law for the offence of dowry death and commission of torture and cruelty to the bride punishable

under Sections 304-B and 498-A of the IPC, the prosecution was under obligation to prove the essential ingredients of the offence viz., (1)

bride/deceased Asha Pandey, wife of appellant Ashok Pandey, died within seven years of her marriage; (2) she died in abnormal circumstances as

a result of burns or other injuries; (3) she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with

demand for dowry; and (4) such demand was soon before her death.

19. In the present case, deceased Asha Pandey was married to appellant Alok Pandey on 9-3-1988 and she died on 3-4-1988 as a result of

hanging in the house of the appellants, in other words, Asha Pandey, wife of appellant No. 3 Alok Pandey and daughter-in-law of appellants No. 1

and 2 died within one month i.e. within seven years, of her marriage otherwise than under normal circumstances, but these circumstances and

undisputed facts by itself are not sufficient to establish the fact that appellants No. 1 to 3 have committed cruelty and harassed her in connection

with demand for dowry that too soon before her death.

20. Abnormal death of the deceased within one month of her marriage cannot be considered as dowry death due to torture and cruelty committed

by the appellants without any cogent and reliable evidence. The deceased died within one month of her marriage, therefore, it was natural to her

parents and maternal relatives to depose against the appellants due to their love and affection towards the deceased. Their evidences are required

to be scrutinized. The prosecution has examined Siddhnath Dubey (PW-1)-brother of the deceased, Dashrath Dubey (PW-3)-father of the

deceased, Prahlad Singh (PW-4)-neighbour, Chandrawati @ Meera (PW-5)-mother of the deceased, Milindra Kumar (PW-6), Mohd. Mustafa

(PW-8) and Ashok Kumar Singh (PW-9), but they have not deposed any definite incident which could be considered as demand of dowry. Their

bald statements not indicating any particular instance and regular demand are not sufficient for drawing inference that the deceased was subjected

to cruelty and harassment in connection with demand for dowry soon before her death. Mere simple demands cannot be considered to be cruelty

and harassment in connection with dowry for the purpose of dowry death entailing severe consequences.

21. Learned counsel for appellant No. 4-Nagnarayan Sinha vehemently submitted that appellant No. 4 is not relative of appellant No. 3 Alok

Pandey or other appellants. Offence of dowry death punishable u/s 304-B of the IPC is a specific offence which may be committed by husband or

relatives of husband. For conviction of husband or relatives of husband of the bride u/s 304-B of the IPC the factum of common intention,

common object, instigation, aid and other elements of vicarious liability are already included in the aforesaid offence relating to husband and

relatives of husband of the deceased, therefore, any of the relatives may be independently convicted u/s 304-B of the IPC without the aid of

Sections 34, 35, 149, 107 and 120-B of the IPC. Offence of dowry death cannot be committed by a stranger or person other than relative of

husband. Therefore, appellant No. 4 could not be convicted u/s 109 of the IPC for abetment of the offence of dowry death. Even otherwise, when

material witnesses Siddhnath Dubey (PW-1)-brother of the deceased, Dashrath Dubey (PW-3)-father of the deceased and Chandrawati @ Meera

(PW-5)-mother of the deceased, have specifically deposed that appellant No. 4 Nagnarayan Sinha has demanded dowry and the deceased died

within seven years of her marriage under abnormal circumstances, then had appellant No. 4 been the husband or relative of husband, then he may

have been justifiably convicted u/s 304-B of the IPC, but as such, he has neither demanded dowry for appellants No. 1 to 3 nor abetted appellants

No. 1 to 3 in demand of dowry, therefore, he cannot be convicted for the offence with the aid of Section 109 of the IPC. The Division Bench has

discussed the evidence adduced on behalf of the prosecution and the role attributed to appellant No. 4 in paras 30 and 31 of the judgment which

shows that appellant No. 4 by himself has demanded dowry inter alia, he has not instigated or aided appellants No. 1 to 3 for demand of dowry or

for commission of cruelty and harassment in connection with demand of dowry. Therefore, in absence of any evidence of instigation or aid to

appellants No. 1 to 3 for demand of dowry, cruelty and harassment in connection with demand of dowry, appellant No. 4 cannot be convicted u/s

109 of the IPC for abetment of the offence punishable u/s 304-B of the IPC, however, his case may be considered for demand of dowry

punishable u/s 4 of the Dowry Prohibition Act, 1961 (for short "the Act"), though the prosecution has utterly failed to adduce evidence against

appellant No. 4 to prove the fact that he has demanded dowry punishable u/s 4 of the Act also. Learned counsel further submitted that in order to

convict the appellant u/s 109 of the IPC, intention for commission of the offence of dowry death is required to be proved by the prosecution.

Demand of dowry is an offence punishable u/s 4 of the Act. The prosecution has not adduced evidence to show that appellant No. 4 was having

any intention for causing dowry death or having knowledge that by his act, the deceased would commit suicide or that the offence of dowry death

would be committed. Nothing has been proved by the prosecution to show that appellant No. 4 has abetted the offence of dowry death and in

consequence of appellant No. 4, dowry death has been committed by appellants No. 1 to 3.

22. Learned counsel for appellant No. 4 placed reliance in the matter of U. Suvetha Vs. State by Insp. of Police and Another, in which the

Supreme Court has held that offence punishable u/s 498-A of the IPC cannot be committed by girlfriend or concubine not being a relative.

Learned counsel further placed reliance in the matter Ashok Kumar Vs. State of Haryana, in which the Supreme Court has held that the expression

soon before her death"" in Section 304-B of the IPC implied a reasonable time gap indicating a proximate link between cruelty inflicted for or in

connection with demand of dowry and death of the woman. Penal provision should be strictly construed and provision should be read in

conjunction with other relevant provisions so as to avoid absurd results. Learned counsel also placed reliance in the matter of Durga Prasad and

Another Vs. State of M.P., in which the Supreme Court has held that bald statements of mother and brother of the deceased are not sufficient to

prove dowry death or offence punishable under Sections 304-B, 498-A and 306 of the IPC. Learned counsel relied upon the matter of M.

Mohan Vs. The State represented by The Deputy Superintendent of Police, in which the Supreme Court has held that 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 u/s 306 of the IPC. Learned counsel further relied upon the matter of Amalendu Pal @

Jhantu Vs. State of West Bengal, in which the Supreme Court has held that in case of abetment of suicide there must be proof of direct or indirect

acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time

of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of the IPC is not

sustainable. Learned counsel also relied upon the matter of State of Punjab Vs. Sanjiv Kumar @ Sanju and Others, in which considering "common

object" and the expression "in prosecution of common object" used in Section 149 of the IPC, the Supreme Court has held that "common object"

and "common intention" are not one and same, it does not require a prior concert and a common meeting of minds before the attack. It is enough if

each has the same object in view. Even common intention can be developed during the course of incident at the spot eo instanti. Learned counsel

placed reliance in the matter of Biswajit Halder @ Babu Halder and Others Vs. State of West Bengal, . In which the Supreme Court has held that

commission of cruelty and harassment must be shown to be for or in connection with the demand for dowry in case of dowry death and in absence

of such evidence, conviction of the appellant u/s 304-B of the IPC is not sustainable. Learned counsel further placed reliance in the matter of

Bachan Singh Vs. State of Punjab, in which the Supreme Court has held and observed in para 125 of its judgment that ""judicial opinion does not

necessarily reflect the moral attitudes of the people. Judges should not take upon themselves the responsibility of becoming oracles or spokesmen

of public opinion"". Learned counsel also placed reliance in the matter of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, in which the

Supreme Court has held that mere utterance of some words in a fit of anger itself does not constitute the ingredient of "instigation" for mens rea of

the offence u/s 306 of the IPC. Learned counsel relied upon the matter of M/s. New Savan Sugar and Gur Refining Co. Ltd. v. Commissioner of

New Savan Sugar and Gur Refining Co., Ltd. Vs. Commissioner of Income Tax, Calcutta, in which the Supreme Court has observed in para 9 of

its judgment that the duty of the Court is to interpret the words that Parliament has used, it cannot supply the gap disclosed in an Act or to make up

the deficiencies.

23. Learned counsel for appellant No. 4 also submitted that in absence of any intention and motive on his part for instigation or aid to appellants

No. 1 to 3 for commission of dowry death that too he being a stranger and not relative of husband of the deceased, appellant No. 4 cannot be

held liable for commission of the offence of abetment u/s 109 of the IPC.

24. On the other hand, learned State counsel vehemently opposed the appeal as also the submissions of counsel for the appellants and submitted

that there is concurrent finding of the Division Bench relating to conviction and sentences of appellants No. 1 to 3 under Sections 304-B and 498-

A of the IPC, but the Division Bench could not reach a consensus relating to conviction of appellant No. 4 only that whether he should be

convicted u/s 4 of the Act or u/s 109 of the IPC for abetment of the offence of dowry death. Therefore, the only question remains for

consideration is whether appellant No. 4 could be convicted u/s 109 of the IPC or not. Learned State counsel further submitted that facts of the

case and evidence have been considered by the Division Bench and in para 77 of its judgment, the Division Bench has specifically held that

appellant No. 4 Nagnarayan Sinha has abetted the conduct of the husband and his relatives that drove the deceased to commit suicide. Appellant

No. 4 has aided and instigated appellants No. 1 to 3 for commission of dowry death and the deceased died as a result of such cruelty and

harassment committed by appellants No. 1 to 3 soon before her death in connection with demand of dowry. Appellant No. 4 has instigated or

aided appellants No. 1 to 3 for commission of such dowry death. He is neighbour of appellants No. 1 to 3, regular visitor of the house of

appellants No. 1 to 3, he was present at the time of marriage, at the time of negotiation and at the time of demand of dowry, and he himself has

demanding dowry and has told the consequences of not giving dowry to the maternal relatives of the deceased and has also provoked appellants

No. 1 to 3 that maternal relatives of the deceased will not give dowry and they are be-fooling. These evidences clearly establish the fact that

appellant No. 4 has instigated, provoked and aided appellants No. 1 to 3 to harass and commit cruelty in connection with demand of dowry to the

deceased and as a result of such harassment and cruelty, the deceased died unnatural death within one month of her marriage. By adducing

evidence, the prosecution has proved all essential ingredients of the offence against appellants No. 1 to 4. The prosecution has also proved the

abetment of the offence of dowry death against appellant No. 4. Abetment punishable u/s 109 of the IPC is an independent offence and only

dependent on main offence for the purpose of sentence. Even in case the substantive offence is not committed, the abettor is liable for conviction

u/s 109 of the IPC.

25. Learned State counsel placed reliance in the matter of Aman Kumar, Om Parkash and Satbir Singh Vs. State, in which the High Court of Delhi

has held that offence committed by one accused in presence of other two accused in same room is sufficient to establish the fact that other person

who has not committed the offence has abetted the commission of offence. Learned State counsel further placed reliance in the matter of Ram

Kumar Vs. State of Himachal Pradesh, in which the Supreme Court has held that custodial rape by co-accused and accused keeping watch over

husband of prosecutrix while she was being raped by co-accused is abetment by the accused who was keeping watch over husband in terms of

Section 107 of the IPC.

26. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the parties.

27. In the present case, marriage of deceased Asha Pandey with appellant Alok Pandey on 9-3-1988 and her death in the house of appellants No.

1 to 3 on 3-4-1988 as a result of hanging other than in normal circumstances within one month, in other words within seven years, of her marriage

has not been disputed and same is also otherwise established by evidence of Siddhnath Dubey (PW-1)-brother of the deceased, Dashrath Dubey

(PW-3)-father of the deceased, Prahlad Singh (PW-4)-neighbour, Chandrawati @ Meera (PW-5)-mother of the deceased, Dr. M.C. Mehnot

(PW-10), autopsy report Ex. P-6, Dr. V.V.B. Rao (PW-11) and reports Exs. P-8 and P-9.

28. In order to attract the provisions of Sections 498-A and 304-B of the IPC, following questions require consideration, which have been jointly

considered in the latter part of the judgment:--

(a) Whether deceased Asha Pandey was subjected to cruelty and harassment by appellants No. 1 to 3?

(b) Whether aforesaid cruelty and harassment were in connection with demand for dowry?

(c) Whether such demand, cruelty and harassment were soon before the death of the deceased? and

(d) Whether appellants No. 1 to 3 have committed torture and cruelty upon the deceased?

29. As per evidence of Siddhnath Dubey (PW-1)-brother of the deceased, Dashrath Dubey (PW-3)-father of the deceased, Prahlad Singh (PW-

4)-neighbour, Chandrawati @ Meera (PW-5)-mother of the deceased, Milindra Kumar (PW-6), Mohd. Mustafa (PW-8) and Ashok Kumar

Singh (PW-9), appellants No. 1 to 3-father-in-law, mother-in-law and husband of the deceased, respectively, have demanded dowry i.e. Rs.

20,000/-, one fridge, one colour TV, one Hero Honda motorcycle and one VCR. Appellants No. 1 to 3 have frequently demanded aforesaid

articles and money since before the date of marriage till the death of the deceased and on some occasions, the deceased used to weep before her

brother on account of such harassment and finally she committed suicide. Defence has cross-examined these witnesses at length, but they have

very specifically deposed that appellants No. 1 to 3 have demanded dowry and harassed the deceased till her death.

30. Their Lordships in the Division Bench scrutinized the evidence of aforesaid witnesses and reached to concurrent conclusion that appellants No.

1 to 3 have demanded dowry and have harassed and committed cruelty upon the deceased regularly till before her death. Their Lordships in the

Division Bench have categorically held that appellants No. 1 to 3 have committed dowry death of deceased Asha Pandey and have also

committed torture and cruelty upon the deceased punishable under Sections 304-B and 498-A of the IPC.

31. On careful examination of evidence, I do not find any scope for disagreement from the view taken by the Division Bench relating to

commission of the offence punishable under Sections 304-B and 498-A of the IPC. by appellants No. 1 to 3.

32. As regards the question of commission of the offence of abetment of dowry death or in alternative, the crime of demand of dowry committed

by appellant No. 4 Nagnarayan Sinha, who is not relative of husband of the deceased and is a stranger, though neighbour of appellants No. 1 to 3,

firstly it has to be seen whether a non-relative of husband, who is not mentioned in the wordings of Section 304-B or 498-A of the IPC, can be

punished for abetment of said offences with the aid of Section 109 of the IPC or that even with the aid of Section 109 of the IPC his culpability in

case of dowry death of a woman would be limited for offence u/s 498-A of the IPC.

33. In order to convict husband or relative of husband of a woman for dowry death, the scope and ambit of the provision of Section 304-B of the

IPC is by itself sufficient without any aid of Sections 34, 35, 149, 107 or 120-B of the IPC.

34. Abetment by itself is a substantive offence. Abetment does not involve the actual commission of crime abetted, it is a crime apart as held in

AIR 1925 1 (Privy Council) . Abetment of a thing is defined in Section 107 of the IPC to mean firstly, instigating any person to do that thing,

secondly, engaging with one or more other person in any conspiracy for doing that thing if an act or illegal omission takes place in pursuance of that

conspiracy and in order of doing that thing, and thirdly, intentionally aids by any act or illegal omission the doing of that act. Punishment for"

abetment is laid down in Section 109 of the IPC. However, in cases of abetment by aiding under third clause of Section 107 of the IPC, the

offence abetted should have been committed in order to make such aiding an offence as held in Central Bureau of Investigation Vs. v.C. Shukla

and Others,

35. Sections 107 and 109 of the IPC read thus,

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.

Explanation 1.--A person who, by willful misrepresentation, or by willful 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.

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 facilitate the commission thereof, is said to aid the doing of that act.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.--

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code

for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.--An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in

pursuance of the conspiracy, or with the aid which constitutes the abetment.

36. Thus the first issue requiring consideration whether a non-relative who is not mentioned in the wordings of Sections 304-B and 498-A of the

IPC can be punished with the aid of Section 109 of the IPC arises because Sections 304-B and 498-A of the IPC specify only the husband

and/or his relatives to be the class of person whose conduct (commission/omission) would be a punishable offence.

37. Section 498-A of the IPC reads thus,

498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a

woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to

fine.

Explanation.--For the purposes of this section, ""cruelty"" means--

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of, the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

38. Section 304-B of the IPC reads thus,

304-B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal

circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her

husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ""dowry death""; and such

husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this sub-section, ""dowry"" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28

of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend

to imprisonment for life.

39. For resolution of this issue it would be beneficial to refer to a similar provision u/s 13 of the Prevention of Corruption Act, 1988 and its

interpretation because Section 13 of the Prevention of Corruption Act, 1988 also specifies the class of person whose conduct would be punishable

offence.

40. Section 13 of the Prevention of Corruption Act, 1988 reads thus:--

13. Criminal misconduct by a public servant.--(1) A public servant is said to commit the offence of criminal misconduct,--

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification

other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without

consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to

be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of

himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so

concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a

public servant or allows any other person so to do; or

(d) if he,--

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public

servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.--For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has

been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but

which may extend to seven years and shall also be liable to fine.

41. As per Section 13 of the Prevention of Corruption Act, 1988, only a public servant can be convicted for commission of criminal misconduct.

42. While dealing with the issue of commission of the offence of abetment of aforesaid criminal misconduct of a public servant by private person,

the Supreme Court in the matter of P. Nallammal Etc. Vs. State Rep. by Inspector of Police, 6 has held that the offence u/s 13(1)(e) of the

Prevention of Corruption Act 1988 can be abetted by other persons who may not be public servants. The Supreme Court has observed in paras

21, 22, 23 and 24 that:

21. There is no force in the contention that the offences u/s 13(1)(e) cannot be abetted by another person. "Abetment" is defined in Section 107 of

the Penal Code 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.

For the ""First"" clause (i.e. instigation) the following Explanation is added to the section:

Explanation 1.--A person who, by willful misrepresentation, or by willful 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.

For the ""Thirdly"" clause (i.e. intentionally aids) the following Explanation is added:

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.

22. Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses

in Section 107 of the Penal Code vis-à-vis Section 13(1)(e) of the P.C. Act. The first illustration cited is this:

If A, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and A persuades

the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any

doubt that A has abetted the offence by instigation.

Next illustration is this:

Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to

keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.

The last illustration is this:

If a public servant tells A, a close friend of him, that he has acquired considerable wealth through bribery but he cannot keep them as he has no

known source of income to account, he requests A to keep the said wealth in A's name, and A obliges the public servant in doing so. If it is a

proved position A is guilty of abetment falling under the ""Thirdly"" clause of Section 107 of the Penal Code.

23. Such illustrations are apt examples of how the offence u/s 13(1)(e) of the P.C. Act can be abetted by non-public servants. The only mode of

prosecuting such offender is through the trial envisaged in the P.C. Act.

24. For the aforesaid reasons we are unable to appreciate the contentions of the appellants that they are not liable to be proceeded against under

the P.C. Act. Accordingly we dismiss these appeals.

43. Thus applying the same analogy it can be concluded that non-relative of husband can also be prosecuted and punished for abetment of

offences under Sections 304-B and 498-A of the IPC u/s 109 of the IPC and it would not be a defence that as non-relatives of the husband are

outside the purview of the wordings of Sections 304-B and 498-A of the IPC, therefore, these offences cannot be abetted by non-relatives.

44. The Supreme Court has approved in the matter of *Lalu Prasad @ Lalu Prasad Yadav Vs. State of Bihar* through CBI (AHD), Patna, that

abetment of offence u/s 13(1)(e) of the Prevention of Corruption Act 1988, is punishable under Sections 107 and 109 of the IPC and private

person other than public servant can also be prosecuted for it. The Supreme Court observed in para 4 of the said judgment that:--

4. It is to be noted that in *Lalu Prasad Yadav's* case the sanction had been given by the Governor. The prosecution did not obtain the sanction

separately so far as the appellant *Rabri Devi* is concerned as she was only a housewife and not a public servant during the relevant period. In the

sanction accorded in respect of the appellant *Lalu Prasad Yadav*, it has been expressly mentioned that the acts of *Smt. Rabri Devi* amounted to

aiding and abetting the commission of offence u/s 13(1)(e) by her husband *Lalu Prasad Yadav* and she was thus liable to be prosecuted for offence

punishable under Sections 107 and 109 of the Indian Penal Code, 1860 (in short "IPC").

45. In the matter of *Ranganayaki Vs. State by Inspector of Police*, the Supreme Court has held that abetment of the offence punishable u/s 109 of

the IPC is an independent offence, and has observed in para 11 as follows:--

11. u/s 109 the abettor is liable to the same punishment which may be inflicted on the principal offender: (1) if the act of the latter is committed in

consequence of the abetment, and (2) no express provision is made in the IPC for punishment for such an abetment. This section lays down

nothing more than that if IPC has not separately provided for the punishment of abetment as such then it is punishable with the punishment provided

for the original offence. Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by

conduct. Whether there was instigation or not is a question to be decided on the facts of each case. It is not necessary in law for the prosecution to

prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the

offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as

the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person

who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Further the act abetted should be

committed in consequence of the abetment or in pursuance of the conspiracy as provided in the Explanation to Section 109. Under the Explanation

an act or offence is said to be committed in pursuance of abetment if it is done in consequence of (a) instigation, (b) conspiracy, or (c) with the aid

constituting abetment. Instigation may be in any form and the extent of the influence which the instigation produced in the mind of the accused

would vary and depend upon facts of each case. The offence of conspiracy created u/s 120-A is bare agreement to commit an offence. It has been

made punishable u/s 120-B. The offence of abetment created under the second clause of Section 107 requires that there must be something more

than mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by Section 107

(secondly), ""engages... in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy"". The

punishment for these two categories of crimes is also quite different. Section 109, IPC is concerned only with the punishment of abetment for

which no express provision has been made in IPC. The charge u/s 109 should, therefore, be along with charge for murder which is the offence

committed in consequence of abetment. An offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable u/s

120-B for which a charge u/s 109 is unnecessary and inappropriate. [See Kehar Singh and Others Vs. State (Delhi Administration), Intentional

aiding and active complicity is the gist of the offence of abetment.

46. Likewise, only husband of the deceased and relatives of husband of the deceased may be liable for commission of the offence of dowry death

punishable under Sections 304-B and 498-A of the IPC, but other persons not specified under aforesaid sections may be prosecuted and

punished if they are found guilty of instigation, aiding or abetting the offence under Sections 304-B and 498-A of the IPC, and merely because the

class of persons mentioned in Sections 304-B and 498-A of the IPC is restrictive, the separate and specific offence u/s 109 of the IPC will not get

obliterated in relation to offences under Sections 304-B and 498-A of the IPC.

47. Thus, it is clear that offence under Sections 304-B and 498-A of the IPC is punishable for husband and/or relatives of husband of the

deceased (bride), but abetment of said offence by persons other than the relatives of husband would also be punishable u/s 109 of the IPC

because offence u/s 109 of the IPC is an independent substantive offence.

48. Next, apparently, the only ingredient of Section 304-B of the IPC dependent on the conduct (commission or omission) of the accused is

cruelty and as such, a person abetting the offence may be said to abet only the cruelty to the bride which attracts penalty u/s 498-A of the IPC,

therefore, the issue whether abetment of cruelty to a bride, who soon after dies unnatural death, would be punishable as abetment of offence u/s

498-A of the IPC or as abetment of dowry death. In other words, it has to be seen that whether cruelty for the purpose of Section 304-B of the

IPC is the same as is for Section 498-A of the IPC or it is distinct and different.

49. Offence punishable u/s 498-A of the IPC relates to commission of torture and cruelty by husband or relative of husband of a woman and such

torture or cruelty is not restricted to demand of dowry.

50. For commission of dowry death punishable u/s 304-B of the IPC, the persons accused of the offence must inter alia, be guilty of harassment

and cruelty in connection with demand for dowry. Thus harassment and cruelty for the purpose of Section 304-B of the IPC would be a specie of

the genre of torture and cruelty defined u/s 498-A because torture and cruelty for the purpose of Section 498-A of the IPC can be for any

purpose or motive but harassment and cruelty for the purposes of Section 304-B of the IPC has to be necessarily motivated by demand of dowry.

51. Thus, cruelty for the purpose of Section 304-B of the IPC being distinct by specific and aggravated than for the purpose of Section 498-A of

the IPC, it is concluded that abetment of cruelty to bride who dies unnatural death soon after may be abetment of dowry death u/s 304-B of the

IPC or abetment of cruelty u/s 498-A of the IPC depending on the facts and circumstances of each case.

52. Allegation against appellant No. 4 Nagnarayan Sinha is that he is neither husband of the deceased nor relative of husband of the deceased, so,

he was not in a position to demand dowry for himself and the demand of dowry made by him was only for appellants No. 1 to 3.

53. In the light of aforesaid proposition of law, I have examined the evidence adduced on behalf of the parties.

54. The prosecution has lead evidence against appellant No. 4 to prove abetment instigation and aiding for demand of dowry, harassment and

cruelty soon before the death of the deceased by appellants No. 1 to 3 i.e. husband and"" relatives of husband.

55. Siddhnath Dubey (PW-1) has deposed in para 2 of his evidence as follows:--

He has further deposed in para 15 that

56. Father of the deceased Dashrath Dubey (PW-3) has deposed in para 2 of his evidence that he has further deposed in para No. 3 that

57. Prahlad Singh (PW-4)-neighbour, has deposed in para 2 of his evidence that . He has specifically deposed about demand of dowry by all

accused including appellant No. 4. In para 4 of his evidence he has specifically deposed that

58. Chandrawati @ Meera (PW-5)-mother of the deceased, has deposed that the appellants have demanded dowry. In para 2 of her evidence

she has deposed that

59. Milindra Kumar (PW-6) has deposed in para 1 of his evidence that . He has further deposed in para 3 of his evidence that He has also

deposed in para 3 that

60. Mohd. Mustafa (PW-8) has deposed in para 1 of his evidence that

61. Ashok Kumar Singh (PW-9) has deposed in para 1 of his evidence that

62. Defence has cross-examined these witnesses at length. In their cross-examination, they have specifically deposed the active presence of

appellant No. 4 and the role attributed to him. As per their evidence, appellant No. 4, neighbour of other appellants, was present along with other

appellants since negotiation of marriage and dowry, he has demanded dowry and has provoked other appellants by saying that parents of the

deceased will not give anything and they are be-fooling them [para 2 of the evidence of Sidhnath Dubey (PW-1)].

63. As per evidence of Prahlad Singh (PW-4), appellant No. 4 has threatened the parents of the deceased that the deceased would be harassed

till demand for motorcycle and VCR is met and fulfilled.

64. Siddhnath Dubey (PW-1), Dashrath Dubey (PW-3) and Chandrawati @ Meera (PW-5) are relatives of the deceased, but their evidence

cannot be discarded only on the ground of relation. As held by the Supreme Court in catena of decisions, relatives are the last persons to spare the

real culprit and implicate the innocent person falsely, their evidence only requires minute scrutiny before accepting it. Prahlad Singh (PW-4),

Milindra Kumar (PW-6), Mohd. Mustafa (PW-8) and Ashok Kumar Singh (PW-9) are not relatives of the deceased, but they were present at the

time of some incident. Defence has cross-examined them in detail, but has not been able to elicit anything in their cross-examination to discredit

their testimony. Even otherwise, their evidences well corroborated by evidence of other witnesses inspire confidence and they are trustworthy.

65. Evidences of aforesaid witnesses are sufficient to prove the fact that appellant No. 4 has actively participated in demand of dowry since the

time of negotiation of marriage and dowry, to after marriage of Asha Pandey till her death. Appellant No. 4 is neighbour of other appellants and he

used to visit the house of other appellants frequently. It appears that at all points of aforesaid demand and negotiation, he was present and has

actively participated, he has provoked other appellants by saying that parents of the deceased will not give the dowry demanded and they are be-

fooling them. Further, he has threatened that they are required to satisfy the demand of dowry, otherwise, the deceased will be harassed till the

demand is fulfilled. Appellant No. 4 is not matrimonial relative of the deceased, he was not in a position to demand dowry from parents of the

deceased for himself or commit cruelty or harassment in order to satisfy such demand for himself, but as a neighbour and active person of other

appellants, he was very much in a position to demand dowry for other appellants, and commit cruelty and harassment in connection with demand

of dowry for other appellants.

66. Evidence adduced against appellant No. 4 clearly reveals that he has demanded dowry for other appellants, he has provoked other appellants

for such demand, commission of cruelty and harassment. He has further threatened the parents of the deceased by showing the consequences of

failing to satisfy such demand. These evidences are sufficient to establish the fact that appellant No. 4 was having clear intention for abetment,

instigation and aiding the demand of dowry, commission of cruelty and harassment by other appellants and as a result of such instigation, aiding and

abetment, other appellants aggravated their demands of dowry, cruelty and harassment to the deceased resulting into her untimely and abnormal

death that too within one month of her marriage.

67. Demand of dowry is itself a cruelty. Most of the meetings for demand of dowry were held in the house of accused/appellants No. 1 to 3 in

which appellant No. 4 was regularly present and was active participant. It has come in evidence that during these meetings deceased Asha Pandey

was also present in the same house and was aware about the demand, and threatening. Further, it also appears from the testimony of Siddhnath

Dubey (PW-1) that they used to meet the deceased also whenever they went for meeting and negotiation to the house of appellants No. 1 to 3.

Even the deceased had told Siddhnath Dubey (PW-1) about harassment in connection with dowry demand when Siddhnath Dubey (PW-1) had

met her in the house of appellants No. 1 to 3 during meeting for demand of dowry.

68. Conduct of appellant No. 4 and participation in the transaction for demand of dowry was cruelty and harassment to the deceased in whose

presence and knowing, demands were pushed. Not only appellant No. 4 has caused direct harassment and cruelty to the deceased but also he

gave unnecessary and grave impetus to appellants No. 1 to 3 to continue with cruelty and harassment to the deceased by his forceful instigatory

remarks and provocations.

69. As regards motive/intention for abetment by appellant No. 4, motive is the emotion which impels a man to do a particular act. Though, it is a

sound presumption that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is

proved. After all, motive is a psychological phenomenon and it is rightly said that devil knoweth not the mind of a man. Mere fact that prosecution

failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the

assailants. In some cases it may be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances

may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental

transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused

worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead to an

inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to the aid of the accused.

70. In the matter of U. Suvetha (supra), the Supreme Court has held that relative includes any person related to blood or marriage or adoption.

Therefore appellant No. 4 will not fall under the category of relative. Undisputedly, appellant No. 4 is not relative. The trial Court has not

convicted him u/s 304-B or 498-A of the IPC. The case of U. Suvetha (supra) is distinguishable on facts to that of the present case.

71. As held by the Supreme Court in the matter of Ashok Kumar (supra), husband and relatives shall be liable for causing death of the deceased

and the Court is required to attach specific consequence to time of alleged cruelty and time of death and whether alleged demand was in

connection with the marriage. In the present case, appellant No. 4 is not relative, but there is specific consequence to time of alleged cruelty and

time of death. The period of marital life of the deceased was very short i.e. below one month.

72. In the matter of Durga Prasad (supra), the Supreme Court has held that only proof of subjecting victim to cruelty and harassment prior to her

death is not sufficient, the prosecution is also required to prove that she committed suicide on account of such cruelty and harassment. In the

present case, appellant No. 4 has been levelled of the charge punishable u/s 109 of the IPC for commission of dowry death by other appellants.

The prosecution was under obligation to prove the fact that whether appellant No. 4 has aided, instigated or abetted the aforesaid offence of

dowry death. Evidence adduced on behalf of the prosecution is sufficient to infer the aforesaid element of the offence. Therefore, the case of Durga

Prasad (supra) is also distinguishable on facts to that of the present case.

73. As held by the Supreme Court in the matter of M. Mohan (supra), 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 u/s 306 of the IPC. In the present case, appellant No. 4 has demanded dowry for other appellants, he has provoked other appellants for

demanding dowry and committing cruelty and harassment and has threatened the maternal relatives of the deceased in respect of non-satisfaction

of dowry demand. These evidences and the act attributed to appellant No. 4 is sufficient to prove the fact that he has intentionally aided, instigated

and abetted other appellants for demanding dowry and committing cruelty and harassment soon before the death of the deceased.

74. As held by the Supreme Court in the matter of Amalendu Pal (supra), in the present case, the prosecution has not adduced mere allegation of

harassment without any positive action proximate to the time of occurrence on the part of appellant No. 4, but has adduced evidence to prove

positive action proximate to the time of occurrence against appellant No. 4 for abetment.

75. In the matter of Biswajit Haider (supra), the Supreme Court has held that in order to convict the accused persons u/s 304-B of the IPC, the

prosecution is required to prove the essential ingredients of the offence. In the present case, specific evidence has been produced by the

prosecution against appellants No. 1 to 3 and specific evidence of abetment by appellant No. 4 has also been proved by the prosecution.

76. As held by the Supreme Court in the matter of Bachan Singh (supra), judicial opinion does not necessarily reflect the moral attitudes of the

people. Judges should not take upon themselves the responsibility of becoming oracles or spokesmen of public opinion. In the present case, the

trial Court is not influenced by the factum of moral attitude, the trial Court has rightly considered the evidence admissible under the law.

77. As held by the Supreme Court in the matter of Sanju alias Sanjay Singh Sengar (supra), mere utterance of some words in a fit of anger itself

does not constitute the ingredient of "instigation". In the present case, appellant No. 4 has not uttered the words in a fit of anger, but has regularly

demanding dowry and has provoked other appellants and also threatened maternal relatives of the deceased in connection with demand of dowry,

cruelty and harassment. The case of Sanju alias Sanjay Singh Sengar (supra) is also distinguishable on facts to that of the present case.

78. As held by the Supreme Court in the matter of M/s. New Savan Sugar (supra), the duty of the Court is to interpret the words that Parliament

has used, it cannot supply the gap disclosed in an Act or to make up the deficiencies. In Section 304-B of the IPC, the Parliament has used the

words "husband or relatives of the husband" for commission of aforesaid offence, however, the Parliament did not intend that "persons not

relatives of husband" cannot be held liable for abetment for the offence of dowry death or that other substantive offences of group liability will not

be attracted with Section 304-B of the IPC.

79. As held by the Supreme Court in the matters of Aman Kumar (supra) and Ram Kumar (supra), relied upon by learned State Counsel, positive

act of the appellant is sufficient to constitute abetment of the offence committed by other accused/appellants. In the present case, the prosecution

has adduced evidence to show the positive act of appellant No. 4 for abetting other appellants to commit aforesaid offence.

80. Defence has also examined Prabhat Pasine (DW-1) and Digvijay Dubey (DW-2) who have deposed that in their knowledge and information,

there was no quarrel between the appellants and the deceased. This shows that neither they were having personal knowledge nor they were having

any information. Consequently, their evidence is of no use to any of the parties.

81. After appreciating the evidence adduced on behalf of the parties, the trial Court has convicted and sentenced the appellants in the manner

mentioned above. The trial Court has also convicted appellant No. 4 u/s 304-B read with Section 109 of the IPC.

82. On the question of conviction of appellant No. 4 u/s 304-B read with Section 109 or u/s 109 of the IPC for abetting the offence of dowry

death punishable u/s 304-B of the IPC, it is held that offence punishable u/s 109 of the IPC is an independent substantive offence and a person

other than the relative of husband may be held guilty for commission of offence u/s 109 of the IPC. Evidence adduced on behalf of the prosecution

is sufficient to prove the fact that appellant No. 4 has aided and instigated appellants No. 1 to 3 who are the husband and relatives of husband for

harassment and cruelty to the deceased which continued till soon before her death. The essential ingredients of offence u/s 304-B of the IPC are:--

- (1) Death of a married woman occurs in otherwise than under normal circumstances;
- (2) Such death was within seven years of her marriage;
- (3) She was subjected to cruelty or harassment by her husband or relatives of her husband;
- (4) Such cruelty or harassment must be in connection with demand of dowry;

(5) Such cruelty is meted out to the woman soon before her death.

83. Presence of ingredients No. 1 and 2 do not form part of disputed questions in the case. For ingredient No. 3 the unequivocal conclusion has

been recorded on scrutiny of material on record in preceding paragraphs that there has been active and culpable abetment by appellant No. 4. It is

proved beyond all doubts that the cruelty meted out to the deceased was in connection with demand of dowry which continued till soon before her

unnatural death.

84. Thus, so far as appellant No. 4 is concerned, his role in the commission of instant crime is proved beyond doubt to be that of an abettor whose

conduct aided and instigated the commission of ingredients of Section 304-B of the IPC by the relatives of husband and husband of the deceased.

85. On the question of appellant No. 4's guilt for offence punishable u/s 4 of the Act, without delving into the controversy as to whether

punishment for offence u/s 4 of the Act can be awarded to an accused in trial for offence punishable u/s 304-B of the IPC in terms of Section 222

of the Code, I do not deem it necessary to dilate on the issue because neither specific charges were framed in the trial for offence u/s 4 of the Act,

nor the circumstances aggregating to the ingredients of punishable offence u/s 4 of the Act were put in the examination u/s 313 of the Code to the

accused/appellant No. 4 nor any opportunity to rebut the allegations specifically constituting offence u/s 4 of the Act was afforded to the

accused/appellant No. 4.

86. For the foregoing reasons, I partly allow the appeal, agreeing with concurrent views of the Division Bench, uphold the conviction under

Sections 304-B and 498-A of the IPC and sentence imposed on appellants No. 1 to 3 namely Shriram Pandey, Smt. Kamla Pandey and Alok

Pandey u/s 498-A of the IPC, modifying their sentences u/s 304-B of the IPC and sentencing each of them to undergo rigorous imprisonment for

ten years. Further, on the question of culpability of appellant No. 4 namely Nagnarayan Sinha, I convict him for abetment of offence of dowry

death u/s 109 of the IPC and sentence him to undergo rigorous imprisonment for eight years, thus agreeing with the opinion of My Lord Hon"ble

the Chief Justice on the question of conviction and sentence of appellant No. 4 while respectfully disagreeing with the opinion of His Lordship

Hon"ble Mr. Justice Sunil Kumar Sinha. The appellants shall be entitled for set off of their period of detention in terms of Section 428 of the Code.