

**Surendra Kumar Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/765808](http://sooperkanoon.com/765808)

**Court :** Rajasthan

**Decided On :** Jan-25-2002

**Reported in :** 2002(3)WLC295; 2002WLC(Raj)UC676; 2002(4)WLN118

**Judge :** Sunil Kumar Garg, J.

**Acts :** Indian Penal Code (IPC) - Sections 306 and 498A

**Appeal No. :** S.B. Criminal Appeal No. 254 of 1987

**Appellant :** Surendra Kumar

**Respondent :** State of Rajasthan

**Advocate for Def. :** Panne Singh, Public Prosecutor

**Advocate for Pet/Ap. :** M.L. Garg and; M.K. Garg, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**Garg, J.**

1. This appeal has been filed by the accused appellant against the judgment and order dated 27.7.1987 passed by the learned Addl. Sessions Judge No. 1, Sri Ganganagar in Sessions Case No. 32/86, by which he convicted the accused appellant for the offence under Section 306 IPC and sentenced him to undergo

seven years RI and to pay a fine of Rs. 2000/-, in default payment of fine, to further undergo one year RI.

2. By the same judgment, the learned Addl. Sessions Judge No. 1, Sri Ganganagar acquitted another accused Saraswati and Kanta of the charges for the offence under Sections 306 and 498A IPC and also acquitted present accused appellant of the charge for the offence under Section 498A IPC.

3. The facts giving rise to this appeal, in short, are as follows:-

On 10.2.1986, PW-1 Jai Narain lodged an oral report Ex.P/1 with the Police Station Kotwali Sri Ganganagar stating inter alia that his daughter Bimla (hereinafter referred to as the deceased) aged about 18 years was married two years back with the accused appellant Surendra Kumar and in the marriage, as per his capacity, he gave articles in dowry, but the accused appellant and other accused persons were not happy and they used to demand more articles in dowry and they also demanded double bed and the same was given by him. But, in spite of that, the accused appellant and other accused persons used to harass and torture deceased for not bringing sufficient dowry and deceased also used to make complaint for that to him and her mother PW-8 Khajani, but he and PW-8 Khajani always tried to make deceased understand so that peaceful life between deceased and her husband accused appellant might pass. It was further stated in the report that on 29th May, 1985 when there was marriage of his son Maniram, the accused appellant came to his house to attend the marriage and for some incident, the accused appellant beat deceased, but she was saved by Kedarnath (PW3), Devi Chand (PW2) and Preetam and the accused appellant also threatened for dire consequences. However, later on, the accused appellant was persuaded the deceased was sent with him. It was further stated in the report that deceased was not so much literate lady and the accused appellant and other accused persons used to torture and harass her. It was further stated in the report that a day before the lodging of the report, he came to know from police that deceased had died and, thereafter, he came to Sri Ganganagar and he came to the conclusion that either deceased was killed by the accused persons or she committed suicide because of torture and harassment by the accused persons.

On this report, police registered the case and started investigation. During investigation, post mortem of the dead body of the deceased was got conducted by the Medical Board and the post mortem report is Ex.P/21, where the Medical Board opined that the cause of death of the deceased was suffocation due to extensive burns over the body and shock also. The accused appellant was arrested through arrest memo Ex.P/24.

After usual investigation, police submitted challan against the accused appellant and two more accused in the Court of Magistrate and from where the case was committed to the Court of Session.

On 19.7.1986, the learned Addl. Sessions Judge No. 1, Sri Ganganagar framed charges for the offence under Sections 306 and 498A IPC against the accused persons. The charges were read over and explained to the accused persons, who pleaded not guilty and claimed trial.

During trial, the prosecution in support of its case examined as many as 11 witnesses and got exhibited some documents. Thereafter, statements of the accused persons under Section 313 Cr.P.C. were recorded. In defence, one witness was produced by the accused persons.

After conclusion of trial, the learned Addl. Sessions Judge No. 1, Sri Ganganagar through his judgment and order dated 27.7.1987 acquitted the accused Saraswati and Kanta of the charges for the offence under Sections 306 and 498A IPC and also acquitted accused appellant of the charge for the offence under Section 498A IPC, but convicted the accused appellant for the offence under Section 306 IPC and sentenced him in the manner as indicated above holding inter-alia:-

1. That learned trial Judge found the case of suicide on the basis of suicidal note Ex.D/3.

2. That after analysing the evidence of witnesses, namely, PW1 Jai Narain, PW2 Devi Chand, PW3 Kedarnalh, PW5 Preetam, PW6 Raghuveer Sharan and PW7 Kashmirilal, learned trial Judge came to the conclusion that prosecution has failed to prove its case that deceased was being tortured and harassed by the accused

appellant and other accused for not bringing sufficient dowry.

3. That statement of PW-11 Ramjilal, IO that it was a case of dowry demand on the part of accused persons was not found reliable by the learned trial Judge as that fact was not supported by any of the prosecution witnesses including the father and mother of the deceased, namely, PW1 Jai Narain and PW8 Khajani respectively,

4. That learned trial Judge came to the conclusion that deceased committed suicide not because of torture and harassment by the accused persons on account of dowry demand.

5. That learned trial Judge placed reliance on the suicidal note Ex.D/3 and placing reliance on it alone, he came to the conclusion that the wordings of suicidal note Ex.D/3 are sufficient to make out a case of abatement only against the present accused appellant and thus, he convicted the accused appellant for the offence under Section 306 IPC on the basis of that suicidal note Ex.D/3 and acquitted rest accused persons of the charges framed against them.

Aggrieved from the said judgment and order dated 27.7.1987 passed by the learned Addl. Sessions Judge No. 1, Sri Ganganagar, this appeal has been filed by the accused appellant.

4. In this appeal, the learned counsel appearing for the accused appellant has made the following submissions:-

(1) That from the suicidal note Ex.D/3, no case of abatement can be said to have been made out against the accused appellant, as the suicidal note Ex.D/3 merely states that she has committed suicide with heavy heart and since her mother-in-law, namely, Saraswati had a doubt upon her, therefore, she committed suicide. In these circumstances, the contents of the suicidal note Ex.D/3 are not sufficient to make out a case of abatement against the accused appellant, especially when Saraswati had been acquitted of the charge under Section 306 1PC.

(2) That when the basic case of dowry demand was not found proved by the learned trial Judge, therefore, the conviction of the accused appellant for the

offence under Section 306 1PC only on the basis of suicidal note Ex.D/3 cannot be sustained and thus, the findings of conviction for the said offence recorded by the learned trial Judge against the accused appellant are erroneous one and they should be set aside.

Hence, it was prayed that this appeal be allowed and the impugned judgment and order passed by the learned Addl. Sessions Judge No 1., Sri Ganganagar be set aside and the accused appellant be acquitted of the charge for the offence under Section 306 IPC also.

5. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Addl. Sessions Judge No. 1, Sri Ganganagar.

6. I have heard the learned counsel for the accused appellant and the learned Public Prosecutor and perused the record of the case.

7. To prove the charge of the offence under Section 306 IPC, the prosecution has to prove the following two facts:-

1. The commission of suicide by a person; and

2. The accused abetted the commission thereof.

8. So far as the fact that deceased committed suicide is not in dispute in the present case and for that reliance was placed by the learned trial Judge on suicidal note Ex.D/3. Thus, from the suicidal note Ex.D/3, it is well proved that deceased committed suicide by burning her body and the fact that she died because of burns is well proved by the statement of PW9 Dr. R.K. Gupta and for that post mortem report Ex.P/21 may be referred to, where it was opined that cause of death of the deceased was suffocation due to extensive burns over the body.

9. Hence, it can be said that death of the deceased was unnatural one in the shape of suicide.

10. Now, the most important question that arises for consideration in the present case is whether by his acts and deeds, the accused appellant has made that situation which resulted in the commission of suicide by deceased or not or in other words, whether accused appellant abetted the commission of suicide by deceased or not.

11. What is abatement, it has been defined in Section 107 IPC, which reads as under:-

'107. Abatement of a thing. A person abets the doing of a thing, who First - Instigates any person to do what 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 of the doing of that thing; or

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

12. The intention to aid the commission of the crime, is the gist of the offence of abatement by aid. In case of demand of dowry or ill-treatment and beating, the case would be covered in first category i.e. instigating any person to do that thing.

13. In order to constitute abatement, the abettor must be shown to have 'intentionally' aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor, is not enough compliance with the requirements of Section 107 IPC.

14. To make out a case of abatement there must be instigation which in common parlance would mean, 'to go' to urge forward or to provoke, incite or encourage to do an act.

15. For attraction of Section 306 IPC, the Court must be satisfied that the accused persons by their conduct created such an un-human situation or were subjecting the deceased to such cruelty which amounted to abatement and led to the death either in unnatural form or as a suicide.

16. Keeping the above legal principles in mind, now it is to be seen whether the findings of the learned trial Judge convicting the accused appellant for the offence under Section 306 IPC are liable to be confirmed one or not.

17. The contents of the suicidal note Ex.D/3 as mentioned by the learned trial Judge at page 17 of his judgment are being reproduced hereinbelow:-

^esjs ejrk firK HkbbZ cgu dks esjk vk[kjhueLdkj ckdh lcls dkQh pkgrh gwaA esjs lue esjs lklksa esa clus okys esjk vk[kjhiz.kke eSa cgqr nq[kh gks dj viuh vkRegR;k dj jgh gwa vkius esjs dks cnuke djKukFkk og djK fn;k vkSj dqN eSaus dgk Hkh ugha esjs og Hkh uke yxk;s tk jgs gSa eSavkids jklrs ls gV jgh gwa vkidh eka dks esjs is ld Fkk blfy;s eSa ej jgh gwa vcrks vkidh eka dk dguk ekuysuk tc rks eSa vkidks fl[kk;k djrh Fkh vc vkidks dksufl[kk;sxk vkSj eSa tks ckr vkidks eqg ij dg nsrh Fkh og eSa eqgs dgrs FkhA

xyrh ekQ djukA

vkidh fceyKA

18. From perusing the contents of suicidal note Ex.D/3 it appears that deceased committed suicide because she was being defamed and since her mother-in-law Saraswati had suspicion over her, therefore, she committed suicide.

19. The learned trial Judge placing reliance on the said suicidal note Ex.D/3 came to the conclusion that contents of that suicidal note Ex.D/3 show that there was mental torture of the deceased and thus, that was sufficient to constitute abatement on the part of the accused appellant and that is why, he convicted the accused appellant for the offence under Section 306 JPC.

20. As already stated above, the case of the prosecution as found in the report Ex.P/1 was that there was persistent demand of dowry by the accused appellant and other accused persons and for that, deceased was being tortured, harassed and humiliated and in the report Ex.P/1, nowhere the fact that the character of the deceased was being impeached by accused appellant or his mother Saraswati (another accused) was mentioned.

21. PW-1 Jai Narain, who is father of the deceased, has clearly admitted in his cross-examination that in his presence, the deceased herself and the accused appellant and other accused persons never doubted the character of the deceased, nor such type of talks had ever taken place with him in which the character of the deceased was ever discussed.

22. In my considered opinion, looking to the entire facts and circumstances of the case, the conviction of the accused appellant for the offence under Section 306 IPC solely on the basis of suicidal note Ex.D/3 cannot be sustained because of the following reasons:-

(1) That from perusing the report Ex.P/1, it does not appear that the character of the deceased was ever a fact in issue or was ever a cause of dispute among PW1 Jai Narain, deceased, accused appellant and his other family members, as this fact was not mentioned in the report Ex.P/1 and further, PW1 Jai Narain has categorically stated that such matter was never discussed with him either by deceased or any other members of her in-laws'.

(2) That even in suicidal note Ex.D/3, there is a mention of the fact that her mother-in-law Saraswati had suspicion over her character and, therefore, she committed suicide and in that suicidal note Ex.D/3, it was further stated that now (accused appellant) should act upon the advice of his mother, who used to teach him against deceased and these contents go to show that main grievance of the deceased was not against the accused appellant, but was against her mother-in-law Saraswati, who has been acquitted by the learned trial Judge and thus, from the wordings of suicidal note Ex.D/3, it cannot be inferred that the accused appellant by his conduct created such an un-human situation which amounted to abatement and led to the death of the deceased either in unnatural form or as a suicide.

(3) That in the suicidal note Ex.D/3, there is a mention of the fact that deceased felt or took the matter seriously as her mother-in-law Saraswati had suspicion over her character, but from this fact, to infer that her husband (accused appellant) abetted commission of suicide cannot be accepted, especially when there is no evidence against the accused appellant except suicidal note Ex.D/3 of deceased.

(4) That in the case of stray domestic quarrels, perfunctory abuses by mother-in-law towards her daughter-in-law, the husband may be a silent spectator, but such things would not go to form and constitute abatement and from this point of view, the conduct of the accused appellant cannot be regarded as abetting the offence of suicide by deceased.

(5) That there is no evidence that the accused appellant at the time of commission of suicide by the deceased, instigated or abetted her to commit suicide and when there is no evidence that she was being ever tortured or harassed by the accused appellant and other accused persons for not bringing sufficient dowry, in such a situation, if the deceased had committed suicide, the accused appellant could not be convicted for the offence under Section 306 IPC.

(6) That abatement can be express, direct, indirect or implied, but mere must be close proximity between the alleged abatement and the effect. In the present case, there is absence of reasonable nexus between suicide and abatement on the part of the accused appellant. From this point of view also, the conviction of the accused appellant for the offence under Section 306 IPC cannot be sustained.

(7) That remote nexus between the act of committing suicide and abatement is not sufficient to make out a case of abatement and from this point of view also, in this case, from perusing the suicidal note Ex.D/3, it appears that at the most there was remote nexus between the act of committing suicide and abatement and that is not sufficient to make out a case of abatement on the part of the accused appellant.

(8) That the act of mother-in-law of deceased suspecting about character of the deceased and talking about it in a taunting manner by her mother-in-law could be the reason for the deceased to take the extreme step of committing suicide, but the said act even itself would not be sufficient to constitute abatement to commit suicide. From this point of view also, the conviction of the accused appellant for the offence under Section 306 IPC cannot be sustained.

(9) That PW1 Jai Narain, father of the deceased, has clearly admitted that the matter about character of deceased was not in dispute and, therefore, this matter cannot be made basis for abatement for committing suicide by deceased and in

such circumstances, it cannot be said that the accused appellant abetted the commission of suicide by deceased.

(10) That there is no dependable evidence in regard to actual abatement by the accused appellant for the deceased to commit suicide.

(11) That the opening words of suicidal note Ex.D/3 by which deceased referred her husband accused appellant as esjs lue esjs lkalksa esa clus okys esjk vk[kjhiz.kke also go to show how much deep love she had with her husband accused appellant and these words reflect that actually the grievance which she had was against her mother-in-law and not against the present accused appellant.

(12) That from the evidence on record, it cannot be inferred that the accused appellant created such circumstances, which provoked or forced deceased to take the extreme step of committing suicide.

23. To substantiate the above reasoning, the law laid down by the Hon'ble Supreme Court in State of West Bengal v. Orilal Jayaswal (1) may be referred to. In that case, the Hon'ble Supreme Court has held that 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 transpires to the Court that a victim committing suicide was hyper sensitive 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. For the reasons stated above, the findings of conviction for the offence under Section 306 IPC recorded by the learned Addl. Sessions Judge No. I against the accused appellant cannot be sustained and the same are liable to be set aside and this appeal deserves to be allowed and the accused appellant is entitled to acquittal for the offence under Section 306 IPC. Accordingly, the appeal filed by

the accused appellant Surendra Kumar is allowed and the impugned judgment and order dated 27.7.1987 passed by the learned Addl. Sessions Judge No. 1, Sri Ganganagar are set aside and the accused appellant is acquitted of the charge for the offence under Section 306 IPC.

Since the accused appellant is on bail, he need not surrender and his bail bonds stand cancelled.

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