

Ramphal Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/768299

Court : Rajasthan

Decided On : Nov-14-2000

Reported in : 2001(1)WLC553; 2007(2)WLN120

Judge : Sunil Kumar Garg, J.

Appeal No. : S.B. Criminal Appeal No. 274 of 1998

Appellant : Ramphal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. The abovenamed accused appellant has preferred this appeal against the judgment and order dated 18.2.1998 passed by the learned Judge, Special Court (Women Atrocities & Dowry Cases), Bhilwara in Sessions Case No. 229 of 1997, by which he acquitted the accused appellant of the charge under Section 498A, IPC, but convicted him under Section 306, IPC and sentenced to undergo seven years' RI and to pay a fine of Rs. 2,000/-, in default of payment of fine, to further undergo six months' SI.

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

On 28.12.1994 (from 5.15 P.M. to 6.00 P.M.), P.W. 5 Mahaveer Prasad Sharma, A.D.M., Bhilwara recorded the statement of Smt. Chandrakala (hereinafter referred to as the deceased) W/o Ramphal (accused appellant), aged 17 years, resident of 3E-19. New Housing Board, Shastri Nagar Bhilwara, in the MG Hospital, Bhilwara, in which she stated as follows:

1. That deceased was married with Ramphal (accused appellant) before four years back and out of four years, she has remained at her parents' house for three years and she has one child.
2. That her husband used to come to house after taking liquor and thereafter, her husband used to torture and humiliate her and for the last four months, she was in her parents' house and she came on 20th December, 1994 to her in-law's house and her husband (accused appellant) promised to her father P.W. 3 Ramavtar that accused appellant would keep her properly and happily. But, thereafter also, her husband (accused appellant) used to come to house after taking liquor and make quarrel, harass and humiliate her and, therefore, she wanted to die and her Jeth also abetted.
3. That her son, after her death, be handed over to her parents and her dead body be also handed over to her parents and age of her son is one year six months.
4. That when she put fire on her body, accused appellant was there, but he did not save her.

On this report, police registered the case and started investigation and on the same day, deceased died at about 10.10 P.M. After death, post mortem of her dead body was got conducted on 29.12.1994 through Medical Board and the post mortem report is Ex. P. 5. where the cause of her death opined by the Medical Board is that she died of shock which could be because of 100% burn on all parts of body. The panchnama of the dead body of the deceased is Ex. P. 1. The site plan is Ex. P. 2. The Fard of seizure of stove with kerosene, clothes and slipper etc. is Ex. P. 3. Thereafter, accused appellant was arrested.

After usual investigation, police submitted challan against the accused appellant in the Court of Magistrate and from where the case was committed to the Court of Session and, thereafter, the case was transferred to the Special Court (Women Atrocities & Dowry Cases), Bhilwara.

The learned trial Judge on 14.5.1997 framed charges under Sees. 498A and 306 IPC against the accused appellant. The charges were read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as seven witnesses and got exhibited several documents. Thereafter, statement of the accused appellant under Section 313, Cr PC was recorded, where he took the following plea:

eSus ifRu dks u rks ty;k u rks mls rax fd;k A eSusa rks mYV k oks ty x;h Fkh rks cpk;k Fkk A o eS Loa; 40% ty x;k Fkk A

No evidence in defence was produced. However, some documents were got exhibited by accused appellant in defence.

After conclusion of trial, the learned Judge, Special Court (Women Atrocities & Dowry Cases), Bhilwara through his judgment and order dated 18.2.1998 acquitted the accused appellant of the charge under Section 498A, IPC but convicted him under Section 306, IPC and sentenced in the manner as stated above holding inter-alia:

1. That when dying declaration of the deceased Ex. P. 4 was recorded by P.W. 5 Mahaveer Prasad Sharma, ADM on 28.12.1994. deceased was in a fit state of mind to give the said statement and accordingly, he relied on dying declaration Ex. P. 4.
2. That from the statement of other witnesses, the fact that accused appellant was in habit of taking liquor and thereafter, he used to beat and torture deceased is proved. Thus, he draw the presumption that deceased committed suicide and for that, accused appellant abetted.

3. That at the time when deceased committed suicide, accused appellant was present there.

4. That the prosecution has proved its case beyond reasonable doubt against the accused appellant for the offence under Section 306, IPC.

Aggrieved from the said judgment and order dated 18.2.1998 passed by the learned Judge, Special Court (Women Atrocities & Dowry Cases), Bhilwara, the present appeal has been filed by the accused appellant.

3. In this appeal, the following submissions have been made by the learned counsel for the accused appellant:

1. That the prosecution has failed to establish any abetment or instigation by the accused appellant by cogent and reliable evidence and since the accused appellant was also having 40% burns in his hands, therefore, no abetment or instigation can be attributed on the part of the accused appellant.

2. That the learned trial Court has erred in relying on the dying declaration Ex. P. 4 as P.W. 5 Mahaveer Prasad Sharma, ADM did not take certificate from the doctor on duty to the effect whether she was able to give statement or not or at the time of recording alleged dying declaration, she was conscious or not.

3. That there are material contradictions in the statements of P.W. 2 Sundeep Kumar. P.W. 3 Ramavtar and P.W. 4 Urmila and thus, from the evidence on record, the findings of conviction recorded by the learned trial Judge against the accused appellant cannot be sustained and thus, he is entitled to acquittal.

Hence, it was prayed that this appeal be allowed and accused appellant be acquitted of the charge framed against him.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned trial Judge.

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

6. 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.

Point No. 1

7. To prove the first point, the medical evidence has to be looked into, which is found in the statement of P.W. 6 Dr. Avdhesh Mathur.

8. P.W. 6 Dr. Avdhesh Mathur states on oath that on 29.12.1994, he was Medical Jurist, in M.G. Hospital, Bhilwara and on that day, he conducted the post mortem of the dead body of the deceased and in the opinion of the Medical Board, she died of shock which could be because of 100% burn on all parts of body. He has proved the post mortem report Ex. P. 5.

9. Thus, from the statement of P.W. 6 Dr. Avdhesh Mathur, it appears that death of the deceased was unnatural one.

10. So far as the fact that deceased committed suicide is also not in dispute in the present case.

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

12. From the statement of Dr. Avdhesh Mathur, P.W. 6, it is also proved that accused appellant has also received burn injuries in his hands and for that he has proved injury report Ex. D. 3.

13. The learned trial Judge, in coming to the conclusion of guilt for the offence under Section 306, IPC, has relied on two sets of evidence (i) that is found in the dying declaration of the deceased Ex. P. 4; and (ii) that is found in the statements of P.W. 2 Sundeep Kumar, P.W. 3 Ramavtar and P.W. 4 Urmila.

14. 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.

15. What is abetment, it has been defined in Section 107, IPC, 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 of the doing of that thing; or

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

16. The intention to aid the commission of the crime, is the gist of the offence of abetment 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.

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

18. On plain reading of Section 113A of the Indian Evidence Act, it is obvious that if a wife is shown to have committed suicide within a period of seven years from the date of marriage and there is evidence that she was subjected to cruelty by her husband or his relative, it would be permissible for the Court to presume that such suicide was abetted by her husband or by such relative of her husband.

19. Before proceeding further and appreciating the evidence and findings of the learned trial Judge, something should be said about suicide.

On suicide

20. Normally one would not commit suicide unless there are strong and compelling reasons for it. Thus, ordinarily there has to be a very pressing motive behind every case of suicide. That is why emphasis should be made as to why a person commits suicide and in this case, it has also to be probed why deceased has committed the suicide.

21. The constant fact of wailing and weeping is one of the important symptoms of an intention to commit suicide as mentioned by George W. Brown and Tirril Harris in their books 'Social Origins of Depression' thus:

Symptom data

Depressed mood:

1. Crying
2. Feeling miserable/looking miserable, unable to smile or laugh.
3. Feelings of hopelessness about the future.
4. Suicidal thoughts
5. Suicidal attempts Fear/anxiety/worry
6. Psychosomatic accompaniments
7. Tenseness/anxiety
8. Specific worry
9. Panic attacks
10. Phobias/Thinking
11. Feelings of self-depreciation/nihilistic delusions
12. Delusions or ideas of reverence

13. Delusions of persecution/jealously

14. Delusions of grandeur

15. Delusions of control/influence

16. Other delusions, e.g. hypochondriacal worry

17. Auditory hallucinations

18. Visual hallucinations.

22. In Encyclopaedia of Crime and Justice (Vol. 4) by Sanford H. Kadish, the author mentions, thus:

Other psychologically oriented theories have viewed suicide as a means of handling aggressive impulses engendered by frustration.

23. Suicide is intentionally taking of one's life. In other words, suicide is the initiation of an act leading to one's own death. Conventional wisdom decrees that suicide is the escape route for the abnormal person who commits suicide; can adopt different methods in committing suicide; for example, use of fire arms, poisoning specially by drugs, over drugs, hanging, inhalation of gas etc. etc.

24. Hon'ble Supreme Court took the occasion to deal with the point in question in *Shard Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 and in that case quoted some passages of an eminent psychiatrist Robert J. Kastenbaum from his book 'Death, Society and Human Experience: Hon'ble Supreme Court enumerated the causes of suicide in the following manner in that judgment:

1. The fact is that some people who commit suicide can be classified as psychotic or severely disturbed.

2. If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder is a relevant variable to consider.

3. And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness.

4. Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the jungle-like struggle.

5. The individual does not destroy himself in hope of thereby achieving a noble post mortem reputation or a place among the eternally blessed. Instead he wishes to substract himself from a life whose equality seems a worse evil than death.

6. The newly awakened spirit of hope and progress soon shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow.

7. Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress.

8. People who attempt suicide for reasons other than revenge may also on the assumption that, in a sense, they will survive the death to benefit by its effect.

25. Psychologists have viewed suicide as a means of handling aggressive impulses engendered by frustration. The Hon'ble Supreme Court again deal with this aspect in P. Rathinam v. Union of India AIR 1994 SC 144 and there enumerated the causes responsible for committing suicide in the following manner:

Various social forces like the economy religion and socio-economic status are responsible for suicides. There are various theories of suicide, to wit, sociological, psychological, bio-chemical and environmental.

The causes of suicides are many and varying inasmuch as some owe their origin to sentiments or exaspertation, frustration and revolution, some are the result of feeling of burden, torture and sadness. Some are caused by loss of employment, reverse of fortune, misery due to illness, family trouble and thwarted love. Sometimes Killing is in opposition to society and sometimes in opposition to particular persons. This happens when the person committed suicide nurses a feeling of unjust treatment, maltreatment and cruelty.

26. The word 'suicide' has two facets in Indian Penal Code. One is an attempt to commit suicide which is punishable under Section 309, IPC and the second is abetment of suicide which is punishable under Section 306, IPC.

27. As to what would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore, in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case.

28. Before proceeding further, something should be said about the dying declaration, as the learned trial Judge has relied on dying declaration of the deceased Ex. P. 4 which was recorded on 28.12.1994 by P.W. 5 Mahaveer Prasad Sharma, ADM, Bhilwara.

On dying declaration

29. The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under Section 32 of the Indian Evidence Act in a case in which, the cause of that person's death comes into question. The Clause (1) of Section 32 of the Evidence Act makes relevant. What in English law are called dying declarations. The Indian law on the question of the nature and scope of dying declaration has made a different departure from the English law where only the statement which directly relate to the cause of death are admissible.

30. There are so many authorities of the Hon'ble Supreme Court on the aspect of dying declaration and the net result of these authorities can be summarized in the following manner:

1. That it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated.
2. That each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

3. That it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence;
 4. That a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;
 5. That a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character; and
 6. That in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man of remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control, that the statement has been consistent throughout If he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.
31. Now it is to be seen whether reliance on the so called dying declaration Ex. P. 4 can be placed or not.
32. P.W. 5 Mahaveer Prasad Sharma, ADM has been produced on behalf of the prosecution, who states that on 28.12.1994 (from 5.15 P.M. to 6.00 P.M.), as per the invitation of the District Magistrate Bhilwara, he went to M.G. Hospital, Bhilwara where deceased was admitted in the female surgical ward and he recorded the statement of deceased in the presence of Dr. Madhubala Chauhan, Medical Officer and whatever he has written as per the oral statement given by deceased and the same has been in his own hand writing and he started taking statement of deceased at 5.15 P.M. and it was concluded at 6.00 P.M. and that statement is Ex. P. 4 and he has proved his signatures on Ex.-P. 4 and the

endorsement of Dr. Madhubala Chauhan is at place 'C to D'.

The endorsement 'C to D' runs as follows:

Pt is conscious and she is in stage as to giving statement

33. It may be further stated here that Dr. Madhubala Chauhan, who has written above portion 'C to D' on Ex. P. 4 dying declaration has not been produced by the prosecution, but from the order sheet of the trial Court dated 28.11.1997, it appears that she was summoned so many times, but she did not appear and thus, her evidence was closed.

34. The learned counsel for the accused appellant has attacked this dying declaration Ex. P. 4 mainly on the following grounds:

1. That since in the present case Dr. Madhubala Chauhan has not been produced by the prosecution and furthermore, the so-called endorsement 'C to D' in Ex. P. 4 could not fulfil the conditions that deceased was conscious and in a position to give statement, therefore, in a absence of any certificate from the doctor, so called dying declaration Ex. P. 4 should not be acted upon.

2. That the contents of the so-called dying declaration Ex. P. 4 would further go to show that it is a tutored one and no one at the time of death could give so much details as are found in Ex. P. 4, especially when she was having 100% burns.

35. To appreciate the above contentions something more should be said about the dying declaration.

36. The dying declaration is generally accepted because of the following proverb:

Memo moriturus proesumitur mentiri--a man will not meet his maker with a lie in his mouth.

37. By the above proverb, it is meant that the person who is dying would not tell a lie.

38. However, before a dying declaration can be acted upon, it should also be kept in mind:

1. That dying declaration is not the result of coaching extra; and
2. That the declarant was in a fit state of mind to make the statement and made the same without any enmity.

39. It may further be stated that there is a difference between the oral evidence tendered in the Court and on dying declaration on the following points:

1. That the oral evidence given before a Court has three sanctions behind it:

(i) the witness is given oath,

(ii) he is cross examined by the adverse party; and

(iii) then he is liable to be prosecuted for perjury.

2. Since the dying declaration is made by the deceased in absence of the accused, therefore, there is no question of oath or fear for prosecution for perjury. Consequently, its evidentiary value should be much less than that of evidence given before the Court.

40. What matters may be proved in connection with proved statement relevant under Section 32 or 33. Section 158 of the Evidence Act speaks on this aspect like this:

Sections 32 and 33 of the Evidence Act permit the putting in of statements, oral or written, or statements made in a judicial proceedings, by a person who cannot be examined as a witness. The Legislature intends by this section to submit such statements to the tests of contradictions and corroboration, in the same way as if those statements were made by the witness in the box. No sanctity attaches to such statements simply because the person is dead or cannot be examined as a witness. His credibility may be impeached or confirmed in the same manner as in the case of a living witness.

41. In the light of the above discussion and observations, the dying declaration Ex. P. 4 is being critically examined here.

42. P.W. 5 Mahaveer Prasad Sharma, ADM, Bhilwara has clearly stated that what was stated by the deceased he has written in Ex. P. 4. In the last question, in Ex. P. 4, it is written that one of the causes of her problem was that her husband (accused appellant) did not allow her to join service, but this part was later on retracted by herself and deceased asked P.W. 5 Mahaveer Prasad Sharma, ADM to get this portion cut off. This aspect very well goes to show that whatever was dictated by deceased has been written by P.W. 5 Mahaveer Prasad Sharma. Therefore, to say that it was not voluntary or she was not in a fit state of mind, is wrong and on the contrary, since Ex. P. 4 has been reproduced in question answer form, therefore, it can be said that it is neither tutored one nor coerced one, but statement was voluntarily given by deceased to P.W. 5 Mahaveer Prasad Sharma.

43. The next question that arises for consideration is whether in the absence of separate medical certificate about the fitness of the deceased to give statement, veracity of dying declaration Ex. P. 4 can be taken for granted or not.

44. There is no dispute that dying declaration of the deceased Ex. P. 4 also bears the endorsement of Dr. Madhubala Chauhan, Medical Officer to the effect that patient was conscious and she is in the state as to giving statement.

45. The question is whether in the absence of statement of Dr. Madhubala Chauhan, this endorsement should be held proved or not.

46. In the present case, it is very much clear from the order sheets of the trial Court that Dr. Madhubala Chauhan was summoned, but she has not appeared and it is rather unfortunate on the part of the prosecution agency. It should have made more efforts to secure her attendance. Though dereliction on the part of concerned officer, it reflects, but this lapse on the part of prosecution agency would not make the statement of Ex. P. 4 as unproved.

47. Thus, the statement of P.W. 5 Mahaveer Prasad Sharma that Dr. Madhubala Chauhan made endorsement 'C to D' on Ex. P. 4 before him is liable to be accepted and thus, it is held that at the time when deceased gave statement Ex. P. 4 to P.W. 5 Mahaveer Prasad Sharma, ADM, she was in a fit state of mind.

48. The learned Counsel for the accused appellant has relied on the decision of the Hon'ble Supreme Court in Paparambaka Rosamma and Ors. v. State of Andhra Pradesh 1999 Cr LR (SC) 658, where it has been held:

Evidence Act, 1872--Section 32--Dying declaration. No certificate by doctor stating fit condition of injured- Deceased suffered 90% burn injuries. Recording of dying declaration by Magistrate. Subjective satisfaction of Magistrate. In the absence of proof of fit state of mind of injured impugned declaration is not admissible.

49. In my humble opinion, this ruling would not be helpful to the accused appellant for the simple reason that no doubt doctor's opinion has not been taken on separate paper nor there is a certificate of the doctor, but as stated above, there is endorsement C to D on Ex. P. 4 by Dr. Madhubala Chauhan and for placing reliance on the veracity of the statement of P.W. 5 Mahaveer Prasad Sharma, this endorsement would be helpful.

50. Another decision relied upon by the learned counsel for the accused appellant is Kanchy Komwamma v. State of Andhra Pradesh 1996 SCC (Cri.) 31, where it has been held that 'the prosecution did not examine the doctor who has made the endorsement on the dying declaration that the patient was in a fit state of mind to depose. No other witness was examined to prove the certificate of the doctor. This infirmity renders it unsafe to rely upon the dying declaration.'

51. In my humble opinion, the facts of that case are distinguishable from the facts of the present case, as in that case no other witness was examined to prove the certificate of the doctor, but in the present case, P.W. 5 Mahaveer Prasad Sharma, ADM, Bhilwara has himself proved the endorsement made on the dying declaration Ex. P. 4. Apart from this, the Hon'ble Supreme Court in Ganpcd Mahadeo Mane v. State of Maharashtra AIR 1993 SC 1180 has held that the dying declaration duly recorded by Executive Magistrate with endorsement by doctor

that patient was in condition of giving statement can be relied upon and the fact that the dying declaration was not recorded in question answer form was not material, whereas in the present case, the same has been recorded in question answer form. Thus, from all point of view, the truthfulness of the statement of the deceased recorded by P.W. 5 Mahaveer Prasad Sharma, ADM cannot be doubted. Hence, the decision in the case of Kanchy Komuramma (supra) would not be helpful to the accused appellant.

52. Another decision relied upon by the learned counsel for the accused appellant is Smt. Hushi v. State of Rajasthan 1995 Cr LR (Raj.) 234, where it has been held:

Evidence Act, 1872--Section 32--Dying declaration--Statement of deceased--No clearance of fitness of mental state of deceased was sought--Mental condition of deceased not known--Held, statement taken by Magistrate without seeking permission from medical attendant of patient is of no avail.

53. The facts of that case are different from the present case. In that case, no clearance of fitness of mental state of deceased was taken by the Magistrate while recording statement, but in the present case, as already stated above, there is an endorsement of the doctor 'C to D' on Ex. P. 4. Hence, this authority is also not helpful to the accused appellant.

54. It may further be stated here that before dying declaration can be acted upon by the Court, the Court has to be satisfied about the truthfulness of the dying declaration. In the present case, from the evidence just discussed above and as it would be further seen that the so-called statement of the deceased in dying declaration Ex. P. 4 would further get corroboration from the oral evidence which is found in the statements of P.W. 2 Sundeep Kumar, P.W. 3 Ramavtar and P.W. 4 Urmila and thus, from this point of view also, this Court is of the opinion that reliance can be placed on dying declaration Ex. P. 4.

55. The next question is whether part of dying declaration can be relied upon or not. For this, the decision of the Hon'ble Supreme Court in Godhu and Anr. v. State of Rajasthan : 1974 CriLJ1500 may be referred to where it has been held that where some part of statement is found false, use of other part when it is

separable, can be looked into.

56. In this case, as would be discussed later on, most important aspect which would be relevant whether accused appellant has abetted in commission of suicide by deceased or not has been restricted only to a very limited point i.e. accused appellant was in habit of taking liquor daily and after taking liquor he used to come to house and, thereafter, he used to beat, harass and humiliate deceased and for this aspect only, Ex. P. 4 would be referred to.

57. Now, the oral evidence of witnesses, namely, P.W. 2 Sundeep Kumar, P.W. 3 Ramavtar and P.W. 4 Urmila is being discussed here.

58. P.W. 2 Sundeep Kumar is the brother of the deceased. He has stated that he was told by deceased that her husband (accused appellant) used to come daily after taking liquor and, thereafter, he used to abuse, torture and humiliate her and because of this, she committed suicide.

59. P.W. 3 Ramavtar, father of the deceased states that deceased has a male child and whenever deceased came to his house, she used to tell as follows:

- (a) That accused appellant used to take liquor.
- (b) That after drinking liquor, he used to quarrel with her.
- (c) That accused appellant used to beat her.
- (d) That accused appellant used to demand money also.

P.W. 3 Ramavtar further states that he has also advised accused appellant not to do such things, but no heed was paid by the accused appellant. He has further stated that on 28.12.1994, accused appellant and deceased came to his house and deceased told to P.W. 3 Ramavtar about the incident which took place on the previous night at the house of her husband stating that accused appellant took liquor and made quarrel with her and, thereafter, accused appellant went to his house and her wife deceased also followed him. He further states that he received telephonic message from P.W. 2 Sundeep that she has committed suicide. He has further stated that deceased also told to him in the hospital about the above

incident i.e. drinking liquor; torturing, quarreling and beating etc. by accused appellant and because of this, she has committed suicide.

60. Similar is the statement of P.W. 4 Urmila, mother of the deceased. She has also narrated the story that took place on 28.12.1994 previous to committing of suicide by deceased. She has clearly stated that deceased used to tell her that accused appellant, after drinking liquor, used to beat deceased.

61. Thus, from the statements of these witnesses, the fact that accused appellant was in the habit of drinking liquor and, thereafter, accused appellant used to quarrel and beat deceased is well proved and thus, this evidence further gets corroboration from the dying declaration Ex. P. 4 or in other words, dying declaration Ex. P. 4 gets corroboration from the oral evidence which is found in the statements of P.W. 2 Sundeep, P.W. 3 Ramavtar and P.W. 4 Urmila on the point that accused appellant was in habit of taking liquor and, therefore, he used to beat, torture and humiliate deceased.

62. Thus, for the reasons mentioned above, it is held that reliance can be placed on dying declaration Ex. P. 4 and the learned trial Judge has rightly done so.

63. The next question is whether the facts found proved just above would make out a case that accused appellant abetted the commission of suicide by deceased or not.

64. In my opinion, the facts which have been established by cogent and reliable evidence are grave one and may lead to serious provocation enough for a ordinary woman in the Indian setup, to do what the deceased is alleged to have done in the present case.

65. The fact that accused appellant was in the house at the time of commission of suicide by deceased and the fact that he also received some burn injuries in his hands, would not make him innocent for the simple reasons that if accused appellant wanted to save deceased from committing suicide, he could have taken prompt steps to prevent commission of suicide by deceased, but after commission of suicide by deceased, if accused appellant takes any steps and gets some burn

injuries on his hands, it would make to difference.

66. The fact that deceased was having a child and, thereafter, she committed suicide would itself go to show that there must be strong compelling reasons in her mind which led her to commit suicide, since Indian women love their children so much and unless there are strong compelling circumstances, they would not commit suicide leaving their children in lurch.

67. There is evidence in the present case that relations between husband (accused appellant) and wife (deceased) were strained over drinking habit of the accused appellant and thereafter, beating, torturing and humiliating deceased by accused appellant and deceased had complained so many times to her parents and parents have also complained to accused appellant for that, but with no result and thereafter, on the fateful day i.e. 28.12.1994 deceased made a complaint to her father P.W. 3 Ramavtar about the conduct of her husband-accused appellant on the previous night. In these circumstances, it can be easily said that her husband (accused appellant) was responsible in creating circumstances which provoked or forced her into taking the extreme step of committing suicide.

68. Since the accused appellant (husband of the deceased) by his conduct created the situation which he knows would drive the deceased (wife) to commit suicide and she actually does so, therefore, the case would squarely fall within the ambit of Section 306, IPC. Hence, the conduct of the accused appellant would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide.

69. Thus, it is held that the prosecution has proved that the accused appellant had abetted the commission of suicide by the wife (deceased) on the fateful day i.e. on 28.12.1994.

70. Hence, the findings of the learned trial Judge convicting accused appellant under Section 306, IPC are liable to be confirmed.

71. To strengthen the case of the prosecution further, presumption as to abetment of suicide by a married woman as envisaged in Section 113A is also available in the present case.

72. In the present case, deceased committed suicide within seven years of her marriage and it is also held that accused appellant, who is husband of deceased, had Subjected her to cruelty in the manner that accused appellant used to take liquor and thereafter, beat, torture and humiliate her. In these circumstances, this Court can draw presumption against accused appellant that commission of suicide by deceased has been abetted by accused appellant, having regard to all the facts and circumstances of the present case.

73. This Court is conscious that before a presumption under Section 113A is drawn, it is to be proved that woman committed suicide and this point, as stated above, is not in dispute.

74. So far as the argument with regard to contradictions in the statements of prosecution witnesses is concerned, minor contradictions are bound to come if the witnesses are truth one and furthermore, oral statements of the witnesses get corroborated from the dying declaration Ex. P. 4. Hence, this argument is not helpful to the accused appellant.

75. Before parting with the judgment, something should also be said about theory of benefit of doubt and conscience of Court.

Benefit of doubt and conscience of Court.

76. The Hon'ble Supreme court in Shivaji Sahebrao Bobabe v. State of Maharashtra : 1973 CriLJ1783 has expressed the principles for benefit of doubt in the following manner:

The cherished principles of golden thread of proof beyond reasonable doubt which runs trot the web of our law should not be stretched morbidly to embrace, every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any

practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author Glanville Williams in 'Proof of Guilt' has sapiently observed, goes much beyond the simple fact that just of one guilty person has gone unpunished. If unmerited acquittals become general they tend to lead a cynical disregard of the law, and this in turn lead to a public demand for harsher legal presumptions against indicated, 'persons' and more severe punishment of those who are found guilty. Thus too, frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons, it is true to say with Viscount Simon that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent...', in short, our jurisprudential enthusiasm for presumed innocent must be moderated by pragmatic need to make criminal justice potent and realistic.

77. About conscience of the Court and benefit of doubt, the Hon'ble Supreme Court in *Gurbachan Singh v. Satpal Singh* : 1990 CriLJ562 observed as under:

The conscience of the Court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated.

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or Ingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to get hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

78. The above view is further approved by the Hon'ble Supreme Court in *State of West Bengal v. Orilal Jayaswal* : 1994 CriLJ2104 .

79. Thus, it does not appeal to the conscience of the Court that the accused appellant in the present case is innocent, but the conscience of the Court is satisfied that the accused appellant has abetted the commission of suicide by the deceased. Therefore, it is not a fit case where benefit of doubt can be given to the

accused appellant.

80. Thus, for the reason stated above the findings of the learned Judge, Special Court (Women Atrocities and Dowry Cases) Bhilwara convicting accused appellant for the offence under Section 306, IPC are liable to be confirmed and appeal of the accused appellant is liable to be dismissed.

In the result, the appeal filed by the accused appellant Ramphal fails and is hereby dismissed after confirming the judgment and order dated 18.2.1998 passed by the learned Judge, Special Court (Women Atrocities and Dowry Cases), Bhilwara.

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