

In Chamber.

Case :- CRIMINAL APPEAL No. - 627 of 2004

Appellant :- Dilip Kumar Tiwari @ Pappu

Respondent :- State of U.P.

Counsel for Appellant :- Ashok Kumar Srivastava

Counsel for Respondent :- Govt. Advocate

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri Ashok Kumar Srivastava, learned counsel for the appellant, Sri Anurag Singh Chauhan, learned A.G.A for the State and perused the material available on record.

2. The instant criminal appeal under Section 374 (2) Cr.P.C has been filed by the appellant against the judgement and order dated 03.03.2004 passed by learned Sessions Judge (FTC – IV), Pratapgarh, in Sessions Trial No. 162/96, Case Crime No. 77/94, under Sections 498-A, 304-B I.P.C, Police Station Nawabganj, District Pratapgarh *State of U.P. Versus Shyam Bihari and others*, for convicting the appellant and awarding the sentence under Section 306 I.P.C for seven years Rigorous Imprisonment and 10,000/- fine and further to undergo for two years rigorous imprisonment and Rs. 2000/- fine under sections 498-A I.P.C. The sentences were to run concurrently.

3. The applicant has taken ground that the impugned judgment and order of the Court below is unjust, illegal and improper and also perverse. The prosecution has failed to prove its case beyond reasonable doubt, there is no independent witness in support of the prosecution case. The finding of the learned trial court does not find support with the oral and medical evidence on the record. The trial was proceeded against the three accused persons under Section 498-A and 304-B and the learned Trial Court has found that no case was made out against the appellant under Section 304-B I.P.C. On the

same evidence the learned Trial Court has acquitted the accused – Shyam Bihari Tiwari (father-in-law), Smt. Ambo alias Chandra Kali (mother-in-law). No case is made out under Sections 498-A, 306 I.P.C against the appellant. The trial court has committed manifest error of law while integrating the provisions of law.

4. On the above grounds the appellant has prayed for quashing the order of conviction and sentenced passed as above.

5. In brief, facts of the case are that the informant – Mangala Dutt Mishra, moved a written complaint to the Superintendent of Police, Pratapgarh, that marriage of his daughter Radha Devi was solemnized with Dilip Kumar six years ago.

6. Sri Shyam Behari Tiwari, father-in-law and his son Dilip Kumar Tiwari were demanding scooter and fridge. He was unable to fulfil the said demand. Being angry, his daughter was killed on 20.09.1994 by the accused persons. After receipt of the said application dated 21.09.1994, an F.I.R under Section 498-A & 304-B I.P.C (Ex.K-13) was lodged in P.S. Nawabganj, District Pratapgarh, which was also entered into G.D (Ex.K-4) and investigation started.

7. Before registration of this F.I.R, the accused - Shyam Behari Tiwari (father-in-law) of the deceased had also moved an application in Police Station Nawabganj, stating therein that his daughter in law Radha Devi wife of Dilip Kumar Tiwari has burnt herself to death by setting her fire. This information was recorded on 20.09.1994 at 16:00 – 17:00 p.m. in G.D and a request was made to S.D.M. Kunda, Pratapgarh for inquest. Thereafter, the S.H.O. with his other police companions alongwith Additional *Tehsildar* Nizamuddin, P.S Kunda, reached on the spot.

8. On the direction of *Tehsildar* Nizamuddin, inquest report (Ex. Ka-4) was prepared by Sri R. N. Singh, (S.O) before Panchan, Roop Narain Mishra, Mangala Dutt Mishra, Vijai Bahadur, Anand Vijay Pandey and Shyam Bihari.

9. Inquest related papers i.e. Ex. Ka-5, and Ex. Ka-6 were also prepared. The dead body was sealed in a *markin* cloth and was sent to the Post-Mortem House, District Pratapgarh for post-mortem report. Infront of the *Upper Tehsildar*, Kunda, the dead body, burnt cloth, ashes, handle rod were sealed and recovery memo was prepared.

10. Dr. Dig Vijay Singh P.W. 4 conducted the Post Mortem on 21.09.1994 at 3:15 p.m. and found following facts in -

External Examination of the dead body.

11. The deceased was a lady of whitish complexion, average height, eyes were closed, mouth of the deceased was half opened, blood was also coming from the mouth and nose, stomach and chest were speared. The hand's fingers were bent and the rigour mortis was in passing stage, the upper part of the body was burnt above the stomach and the hair were scorched. At the some parts of the body blisters were present with liquid and some blisters were bursted. The bottom of the blisters were red. Line of the redness was also present.

12. There was burnt on the front side of both the thighs up to both the legs. There was burn injury on the head and neck, membranes, head, brain, chestwall and other parts were congested, the pharynx, larynx and trachea were also congested and carbon particles were present. Lungs were congested. The chambers of heart were filled with blood and dark red colour was coming out. Stomach, peritoneum were congested. There were 14/14 teeth in the mount. The stomach was empty. The kidneys were empty, uterus was normal. The cause of death was suffocation due to burn injuries sustained before the death. The Dy. S.P. Har Bajan Singh started investigation and submitted charge-sheet. Ex. Ka-2, under Sections 498-A, 304-B of the I.P.C

against the father-in-law and mother-in-law and husband of the deceased.

13. The case was committed to the Court of Sessions, where the Sessions Judge framed the charges against the accused persons under Sections 498-A, 304-B of I.P.C from which they denied and sought trial.

14. During the trial following witnesses have been examined by the prosecution :-

1. P.W. 1. Sri Mangal Dutt Mishra,
2. P.W. 2. Sri Sada Shiv Dubey.
3. P.W. 3. Sri K. K. Srivastava, the then Dy. S.P.
4. P.W. 4. Dr. Dig Vijay Singh.
5. P.W. 5. Sri Nizamuddin, S.D.M.
6. P.W. 6. Sri Har Bhajan Singh, Retired Dy. S.P.

15. After closure of the prosecution evidence the statement of accused persons were recorded under Section 313 Cr.P.C, in which they denied the allegations and stated that the marriage between the accused Dilip Kumar Tiwari and deceased - Radha Devi was solemnized on 09th May, 1987 and on 11th May, 1987 the bride had gone to her marital house.

15.(a). An information had already been given to the concerned police station regarding death of the deceased. The charge-sheet has wrongly been submitted. P.W – 1 and P.W – 2 have given false evidence regarding demand of dowry and rest of the witnesses have also given false evidence. After marriage, the deceased used to live separately. The informant has no son except two daughters, the deceased was elder daughter, due to paralysis, her face had been crooked, but the deceased got married in the hope of getting the property. On the date of incident, Syam Behari had gone for teaching as usual to *Antamau*,

Pre-Secondary School, which is about two kilometers away from his village. Veeru, Son of Dilip Kumar was ill, he was going to Unchahar to get some medicines for him. The deceased also wanted to go with him and had planned to watch cinema. On this Dilip rebuked him. In a fit of anger, the deceased locked her in the room and set her on fire. Pramod and Santosh Mishra informed Shyam Behari about the incident at his School at Antamau. He moved casual leave application and returned to home. His wife Amboz Kumari @ Chandra Kali had gone to field for cutting sugar-cane, on information, she returned to home.

16. In brief, statement of the witnesses are reproduced here in below:-

P.W. 1 – Mangala Dutt Mishra, informant, has deposed that the marriage between his daughter Radha Devi with Dilip Kumar Mishra @ Pappu had been solemnized on 28th April, 1990. Shyam Behari Tiwari is the father and Chandrawati is mother of the Dilip Kumar Mishra, he has given dowry in marriage as per his capacity. His daughter's farewell had been conducted in marriage.

17. On 29th April, 1990 she was bidden farewell, after 2 – 2 ½ months when his daughter came to the parental house, she informed that her husband, father-in-law and mother-in-law were demanding fridge and scooter. He stated that at present he was unable to meet the demand. After being capable he will meet the demand. Further, his daughter went to her in-laws house and lived five – six months where from she used to complain. He explained the matter to her mother-in-law. His daughter informed that for not providing fridge and scooter, her husband and father and mother in-law used to beat and torture her. She had came to her parental house 2 – 3 times before her death and whenever she came she repeated the same complaint. Whenever Shyam Behari came with the deceased, he repeated the same demand of scooter and fridge. His daughter was burnt to death by the accused

persons. Two to two and a half years ago P.W 2 Sada Shiv of his village had also gone with him to the house of Shyam Behari, where he had said that keep calm he will provide the scooter and fridge very soon, on which Shyam Behari got angry and said that even after being able, he is not providing the same. He had also threatened in his inland letter, which had been provided to the I.O. his son-in-law has also sent a letter without stamp, which had also been provided to the I.O. In both the letters they had threatened him and have scolded for not providing anything in marriage. He had been informed about the incident on 20.09.1994, through the Police Station Kokhraj, on which he, Sada Shiv, Vijai Bahadur, Ram Pal and others had gone to the in-laws house of the deceased. It was apparent that she was burnt to death. When his complaint was not entertained by the Police Station, Nawabganj, he had given a letter (Ex.Ka-1), to the Superintendent of Police, Pratapgarh, on which F.I.R was lodged.

During the course of examination, the witnesses admitted letters (Ex.Kha-1 and Ex. Kha-2) written and posted by him. He admitted that he had no son except two daughters. He had 4 – 4 ½ *Bighas* agricultural land and was a Teacher in a Primary School. He further deposed that Shyam Behari is also a Primary Teacher, he had only 2 ½ *Bighas* land. He denied to promise that he shall provide half of the property to elder daughter (deceased) and half to his younger daughter, he denied that deceased had fallen from the roof and her mouth had been crooked. According to him he had provided Rs.5,100/- at the time of marriage engagement and not only Rs.501/-. He had provided Rs.11,000/- cash and not only Rs.4,001/-in tilak ceremony. He had given Rs. 200/- at the time of *Kheechadi* meal and his son-in-law had taken gold ring from him. He denied the marriage of deceased had been solemnized on 11th May, 1987. He admitted that he has written in his statement that the marriage had been solemnized six years before.

18. When for the first time Radha Devi came to her parental house, she informed about the demand of scooter and fridge. He has neither

written that scooter and fridge had been demanded at the time of marriage nor has stated it before the I.O. as it was not asked. He further deposed that it is true that when her daughter used to live in her in-laws house, her parents used to go to pick her up and when she used to stay at her parental house, her in-laws used to go to pick her up. There was no quarrel between her-in-laws and him about the farewell of the deceased. She has two sons Dheeru and Beeru. she had gone from her parental house ten days before her death after staying about one month there, when she went to her in-laws house he said to keep calm, he will provide scooter and fridge, when he reached at the in-laws house of the deceased, *Chaukidaar* was guarding the dead-body, the inquest was not conducted before him. He and his neighbour Vijai Bahadur had signed it. He had not given any written complaint to the Magistrate or Police Officer there. After seeing the dead body he knew that her in-laws must have killed her. He did not know how the incident happened. He does not know whether accused had gone to Dr. Amar Nath at Unchahar for the treatment of his younger son, he does not know as to whether at the time of incident Shyam Behari was in his school or not. He does not know that when Dilip was going to Unchahar, a quarrel took place between him and the deceased. He does not know that due to the same quarrel, the deceased had committed suicide or not.

P.W 2 – Sada Shiv has given similar testimony as informant P.W 1.

P.W 3 – K. K. Srivastava Dy. S.P. has reported that he had conducted the investigation after the transfer of I.O. Dy. S.P. Har Bhajan Singh. He prepared Paper No. 8, recorded the statement of Upper Tehsildar Nizamuddin and submitted the charge-sheet (Ex.Ka-2). The witness has proved this charge-sheet. In cross-examination, this witness has deposed that he had relied on the evidence collected by the Ex. I.O. and has submitted the charge-sheet on the basis of collected evidences. He had not interrogated any person of the village.

P.W. 4 - Dr. Dig Vijay Singh had conducted the post-mortem of the deceased, which has already been mentioned above. This witness

has proved the post mortem report (Ex. Ka-3). During the cross examination, this witness admitted that he did not find any sign of beating, tying up or any injury inflicted by any sharp edged weapon over the dead body. He has not found smell of kerosene oil there, he could not say in what circumstanced the deceased had burnt.

P.W. 5 – Nizamuddin, S.D.M. has deposed that on 21.09.1994 he was working as Additional *Tehsildar*, Kunda and had conducted the inquest after appointing Panchan and on his direction related papers were prepared. The dead body was sealed before him, letter to R.I and C.M.O were prepared on his directions. This witness has proved these papers as Ex. Ka-4 to Ex. Ka-9. This witness admitted that during the course of inquest, the informant had not given any written complaint to him regarding torturing his daughter for dowry even he had not complained orally.

The witness deposed that if the informant would have made an oral complaint, he would have directed the S.O. He had inquired about the incident before writing his opinion. If the demand of dowry or torturing would have come to his knowledge, he would had mentioned his opinion in this regard or would not have mentioned. It is true he had not mentioned his opinion regarding the demand of dowry and torture. He admitted that the inquest was not in his writing but had been written on his direction.

P.W. 6 – Har Bachan Sigh, I.O. / Retired Dy. S.P. has deposed that he had initiated the investigation and had copied the complaint, recorded the statement of H.M. Rajendra Singh, accused Shyam Behari, and Dilip. He had taken the materials in possession and had mentioned in C.D. *Parcha* 1-A. He searched the house of the accused, inspected and prepared the map/site plan, copied the inquest, post-mortem report, recorded the statement of the informant, attached the copies of the marriage card and inland letter and attached with C.D, recorded the statement of Shyam Behari Mishra, Sada Shiv (uncle of the deceased), Vijay Bahadur Dwivedi, Ram Pal Shukla, Dinesh Chandra Mishra, Roop Narain Mishra, Anand Bhan Pandey, Constable

Jitendra Kumar Singh and *Chaukidar* Kandhai Lal. On 10.09.1995, C.O. K.K. Srivastava started the investigation. During his investigation an offence under Sections 498-A, 304-B, I.P.C had been proved against the accused – Shyam Behari, Dilip Kumar and Smt. Amboz Kumari @ Chandrakali. This witness has proved the marriage card and inland letter and unstamped letter Ex. Ka-11. Site plan (Ex.Ka-12) and *Chik* F.I.R (Ex.Ka-13), *Kaimi* J.D. and G.D, *Rapat* No. 10 as Ex. Ka-14 as Ex. Ka-15. During the course of cross examination, this witness has admitted that the original letter of the Photostat letters were not before him. The Photocopies are not certified by him. He further deposed that he had recorded the statements of Ram Dular Yadav, Balram and others, none of the witnesses of the village had confirmed torturing for dowry or that the deceased was set ablaze by the accused persons. They had not given any specific mode of harassment and any incidence except general torturing and demand of dowry.

19. **From the side of defense.**

D.W 1 – Santosh Kumar @ Pappu deposed that he had given information to Sri Shyam Behari Mishra at Pre-Secondary School, Antamau, at about 2:00 p.m. thereafter he had gone to the clinic of Dr. Amarnath Singh, at Unchahar to inform Dilip Kumar at about 03:00 p.m. During the course of examination, this witness had admitted that Shyam Behari is his maternal uncle, he used to go to his house. Dilip Kumar had gone to Dr. Amarnath Singh Clinic for the treatment dysentery of his son. Shyam Behari used to go to school by cycle.

D.W. 2 – Makkoo barber, had assisted in the marriage ceremony of the accused and the deceased. According to him no quarrel had taken place regarding transaction in the marriage. The deceased was never tortured about the demand of dowry. The occurrence had occurred at about 11:30 a.m. and after hearing the commotion he had gone to the house of Shyam Behari, where he saw that people were extinguishing the fire, but she died and could not survive. At the time of incident Shyam Behari had gone to the school and Dilip Kumar had

gone to Unchahar for the treatment of his son, wife of Shyam Behari had gone to the field. After the incident these persons came on calls.

Smt. Radha Devi wanted to go to Unchahar with her husband but he did not allow her, being angry she committed suicide.

This witness had given the intact evidence during the course of examination in favour of the accused persons.

D.W 3 – Jai Prakash, Peon of the College had proved the Attendance Register (Ex.Kha 1/1), and the fact that on the day of occurrence accused Shyam Behari was present in the concerned school.

In the cross – examination, this witness had given similar statement.

Smt. Amboz Kumari, accused wife of accused Shyam Behari has denied the allegations in her statement under Section 313 Cr.P.C and has stated that at the time of incident her husband Shyam Behari has gone to the school for teaching as usual, which is about five kilometer away from his house. Dilip Kumar was going to Unchahar for treatment of his son, the deceased also insisted to go with him for watching cinema and when Dilip Kumar scolded, in a fit of anger she closed the door and set ablaze herself. She had gone to the field for cutting the crops and had come after getting information about the incident.

20. Shyam Behari Dwivedi has given similar statement to the statement of his wife Smt. Amboz Kumar @ Chandrakali.

21. It is noteworthy that accused accused Amobz Kumari and Shyam Behari had acquitted from the charges and no any appeal or revision has been preferred against the judgement and order of acquittal either by the informant or by the State. Hence, the case of these two accused persons are not in question before this Court.

22. Accused Dilip Kumar has stated under Section 313 Cr.P.C that his marriage was solemnized with Smt. Radha Devi on 09.05.1987 and the farewell (*Bidai*) had taken place on 29.04.1990. After four and five months of the farewell he started living separately with the deceased. The informant had no son, except two daughters. Deceased's mouth was crooked due to paralysis, but in the hope of property this marriage had been solemnized. At the time of the incident his father had gone to school for teaching as usual and he had gone to Unchahar for the treatment of his son. His wife also wished to go with him for watching cinema, upon which he had scolded him. In a fit of anger she had closed the door and had set ablaze, his brothers Pramod and Santosh had informed his father at his School, Antamau. After endorsement his father had come back, her mother had gone to the field for cutting the crops and had come after getting the information.

23. In this case, the learned trial court has concluded that since there was no demand of dowry at the time of marriage, therefore Sections 3 and 4 of the D.P. Act would not attract. He has also concluded that since there was no evidence of torturing and cruelty soon before the death of the deceased by the accused persons, therefore no case or charge under Sections 3 and 4 of the D.P. Act is made out against the accused persons. It was also concluded that that the father and mother-in-law of the deceased had gone to the school and field respectively and they were living separately soon after their son's marriage.

24. On the basis of aforesaid conclusion, the learned trial court acquitted the accused Shyam Behari Dwivedi and Smt. Amboz Kumari @ Chandrakali. From the charges under Sections 498-A, 304-B I.P.C. The learned trial court has also not found that it was a commission of crime under Section 304-B I.P.C, but has concluded that Dilip Kumar, husband of the deceased is the accused of commission of crime under Section 306 I.P.C. It is noteworthy that neither the informant Mangla

Dutta Mishra nor the State have preferred any revision against the order of acquittal of these two accused persons. Hence, this Court is confined to decide the case of accused Dilip Kumar, husband of the deceased as to whether he committed any offence under Section 306 of the I.P.C or not. In this regard the findings of the learned trial court is to be scrutinised as to whether the conclusion of the learned trial court regarding commission of crime by the accused Dilip Kumar under Section 306 I.P.C is factually and legally correct or not?

25. The learned trial court has recorded the findings in this regard, which is mentioned at page nos. 13 and 14 of the judgement. For this the learned trial court has also relied on the statement of the accused, in which the accused Dilip Kumar has stated that the mouth/face of the deceased Radha Devi was crooked due to paralysis, but in the hope of property, the marriage had been solemnized. About this fact suggestions have been given to the informant P.W – 1, who has denied this fact.

26. The learned trial court has stressed on the facts that in the statement under Section 313 Cr.P.C, accused Dilip Kumar has stated that the deceased has also wished to go and watch cinema there with them on which accused Dilip had scolded her, thereafter in a fit of anger she closed the door and set herself ablaze.

27. The learned trial court has concluded that such act of accused Dilip would be treated to be an instigation to the deceased for abetment for committing suicide. The learned trial court has also accepted this fact on the basis of site plan that accused Dilip Kumar was living with his wife separately in the same house from the portion of his parents. The learned trial court has also accepted the facts to be proved that at the time of incident all the accused persons were out of the house as alleged above, but the learned trial court has concluded that after solemnization of marriage, accused Dilip Kumar demanded scooter and fridge and beaten her and also scolded and

prevented her while she wanted to go with her. Thus, the accused created such atmosphere, which forced the deceased for committing suicide.

28. The learned counsel argued that the learned trial court has wrongly concluded that any demand of dowry had been made by the accused Dilip Kumar and he had beaten the deceased for dowry. He further argued that only scolding for not allowing the deceased for going to Unchahar along would not be an abetment to commit suicide on the part of accused Dilip Kumar Tiwari and on such a petty matter, if the deceased has committed suicide, it would not be attracted under Section 306 of the I.P.C.

29. At the outset it is necessary to look into the relevant provisions of law in this regard.

Section 107 in The Code Of Criminal Procedure, 1973 is 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.
Explanation 1.—A person who, by wilful misrepresentation, or by wilful 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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. 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.”***

Section 306 of Indian Penal Code, 1860 is as under : -

“306. Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

30. In view of the provision of Section 107 I.P.C. it can not be said that an accused had abetted an offence, unless the accused instigates another by way of provocation, incitement, urging or encouraging for doing an act. Abetment involves mental process of instigating or intentionally, aiding person to do certain thing. Some positive act by the accused is essential to constitute abatement. Thus, it has to be seen as to whether accused Dilip Kumar had instigated or made any conspiracy or intentionally added so that the deceased could commit suicide.

31. In ***Kishori Lal Vs. State of M.P. AIR 2007 Supreme Court 2457***, the accused was convicted under Section 306 I.P.C for the offence of abetting his wife to commit suicide and was sentenced to five years imprisonment. The facts of the case were that the accused was married ten years before the incident. On the fateful day when he returned from work, he found that the door of his house was closed from inside. He called his wife, but there was no response from inside, he, therefore apprehended some mishap and immediately informed the Police. When the Police opened the door, the body of the wife of the accused was found hanging from the ceiling as she had committed suicide. On investigation, the accused was found guilty of abetting his wife to commit suicide by the trial court and was sentenced accordingly. It was also upheld by the High Court of M.P. On appeal, before the Supreme Court, it was held that there was evidence to show that the main cause of suicide was that the deceased was under heavy

mental strain craving for a child. The court also noted that prosecution had failed to prove the charges against the accused as there were no injury or signs of violence found on her body. According to post-mortem report. The accused was therefore, acquitted by the Court.

The first element of abetment by instigation is that a person is said to instigate another to act, when he actually suggest or stimulates him to act directly or indirectly. The word **“instigate”** means to provoke, incite, urge or encourage someone to do an act. Mere **“advice”** does not necessarily amount to instigation unless **it cannot some** active support or stimulation to the commission of the act itself.

32. In ***Rang Naik Vs. State, (2004) 12 S.C.C 521***, it has been held that in the order to hold a person guilty of abetment by instigation it is necessary to prove that such instigation was with reference to the offence that was committed and the offence that was likely to be committed by the person, who was so instigated.

33. In ***Sanju @ Sanjai Singh Sengar Vs. State of M.P. AIR 2002 Supreme Court 1998***, the accused (appellant) and deceased had a quarrel on July 25, 1998 during which the accused used abusive language against the deceased and in a fit of excitement told him **“go and die”**. The prosecution alleged that because of these in-sighting words, the deceased committed suicide on July, 27 and therefore those abusive words were proximate cause of the suicide. It was held that the words uttered in anger for incitement cannot be said to have been intended with malice and there being no *mens rea*, the provisions of Section 107 are not attracted, more so when the suicide was committed by the deceased two days after the incident.

34. In ***Cyriac Vs. S.I Police Kaduthuruthy 2005 Cr.L.J. 4322 (Keral)***, the deceased owed a debt of Rs. 200/- to the accused. While asking on payment of his money, the accused addressed these words to the deceased in public **“Why you are remaining a burden to earth, and why don’t you go and die”**, where upon the deceased

committed suicide. The accused was charged of abetment by instigation under Section 107 I.P.C. The court acquitted the accused of the charges and observed that the words uttered by the accused person may be insulting or abusive but certainly not instigative to stimulate the deceased to commit suicide.

35. In this case, it has to be noted that no mark of injury or previous torture or cruelty soon before death has been found on the person of the deceased by the Dr., who has conducted the post-mortem. There was no letter by the deceased that she was subjected to cruelty for demand of dowry or for any other reason. Two letters sent by the informant have been proved in defence, which do not contain any statement regarding demand of dowry from the side of accused persons, though two photocopy of the letters are attached with the file sent by the accused Dilip Kumar, which contain some matters regarding money transaction or wish to get some money from the informant, but there is no threatening that if it is not done, the deceased would be killed or would be forced to commit suicide. During these six years after the marriage two sons had been born out of the wedlock of the deceased and the accused Dilip Kumar. There is no evidence that the deceased was not provided necessary food and cloths etc. There is no evidence that sons of the deceased were tortured ever by the accused Dilip Kumar. There is no evidence that any problem had been created during the farewell (*bidai*) of the deceased from her in-laws house to her parental house or from her parental house to her in-laws house. It has been proved from the evidence of P.W. 1 and P.W. 2 that in usual course the deceased used to visit her parental house and come as per her own wish. She was never forced to live in her parental house for an indefinite period.

36. P.W No. 1 Mangla Dutt Mishra, has deposed in cross examination that as soon as he went for marriage, it was settled same day and the dowry was not fixed in marriage. He had not stated to the I.O that scooter and fridge was demanded in the marriage. He has

admitted that there was no dispute or quarrel regarding *Bidai* of the deceased either from the paternal house or from the in-laws house. The witness has expressed ignorance about the absence of all the accused persons at the time and place of occurrence. He has not deposed that accused persons were present on the spot at the time of commission of crime. Even he has also expressed ignorance regarding quarrel between the accused Dilip and deceased when the accused was going to Unchahar with his son. This witness has also not denied the suggestions that the deceased had committed suicide due to the said quarrel with the accused Dilip Kumar Tiwari.

37. So far as the second ingredient regarding abatement by conspiracy is concerned, it is very much clear that there is no iota of evidence regarding conspiracy for committing suicide by the deceased on the part of the accused persons. There is third ingredient of abatement as to whether the abatement had been done by aiding in this regard. From the perusal of the record, it is very much clear that the accused had not intentionally aided to the deceased for committing suicide neither they provided match-box nor closed the door, nor facilitated the commission of suicide in any other mode. There is no illegal omission on the part of the accused persons.

38. It has not been proved that at the time of occurrence, the accused persons were present on the place of occurrence and they did not try to prevent the deceased from committing suicide. It has also not been proved that accused persons attempted to abatement, which is punishable under Sections 109 and 110 of the I.P.C.

39. In ***Sharda Bhai Jeevan Lal Vaniya Vs. State of Gujarat A.I.R 2012 Supreme Court 925***, the appellant was tried for the offence under Sections 498-A and 304-B read with Section 114 of the I.P.C, where his wife had committed suicide by setting herself to fire only two years after her marriage with the appellant. The learned A.S.J Rajkot acquitted the appellant as there was no evidence of cruelty or harassment in connection with demand of dowry. The appeal

preferred by the State was allowed by the High Court and the appellant was convicted and sentenced for five years rigorous imprisonment.

40. On appeal the Apex Court found that the letters written by the deceased to her sister-in-law regarding beating her and for forcing her to take a divorce had not been proved. Hence, the benefit of doubt was given to the accused and order of acquittal was passed.

41. In ***Gurucharan Vs. State of Punjab (2017) 1 SCC 433***, the Apex Court held that essential ingredients for constituting the offence of abatement of suicidal death under Section 306 of the I.P.C are intention and involvement of accused to aid and instigate commission of suicide.

42. Any severance or absence of any of these constituents would mitigate against the said indictment remoteness of culpable life or omissions rooted in intention of accused or actualizing the suicide would fall short of offence of abatement of suicide essential to attract Section 306 of the I.P.C. Contiguity, continuity, culpability and complicity of indictable acts or omissions or concomitant indices of abatement under Section 306 I.P.C. In the instant case, the family members of the husband were convicted for the offence under Section 306 I.P.C in commission of suicide by wife together with two daughters, but these ingredient remained unproved. Therefore the appellants were acquitted.

43. On the basis of above discussions, this Court is of the considered view that the prosecution has not been able in proving the essential ingredients of abatement for committing suicide by the deceased on the part of the appellant accused Dilip Kumar Tiwari. Mere not permitting the deceased to go to Unchahar for watching the

cinema along is not a ground to conclude that the accused had abated the deceased to commit suicide.

44. On the basis of above discussions, this Court is of the considered view that the judgement and order of conviction, sentencing passed by the learned trial court is bad in the eyes law and is not liable to sustained.

ORDER

45. The appeal is **allowed**. The judgement and order of conviction and sentencing of the appellant dated 03.03.3004 passed by learned Sessions Judge (FTC – IV), Pratapgarh, in Sessions Trial No. 162/96, Case Crime No. 77/94, under Sections 498-A, 304-B I.P.C, Police Station Nawabganj, District Pratapgarh, *State of U.P. Versus Shyam Bihari and others*, is set aside.

46. The accused is set free, bail bonds and personal bond are cancelled. Sureties are discharged.

47. A certified copy of this judgement and order be sent to the trial court alongwith original lower courts record for consignment.

Order Date :- 27.07.2023.

Vinod.

(Umesh Chandra Sharma, J.)