

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : January 14, 2016*
Judgment Delivered on : February 10, 2016

+ **CRL. A. 333/2000**

STATE Appellant

Represented by: Mr.Varun Goswami, APP

versus

HARI PRASHAD Respondent

Represented by: Mr.Ghanshyam Sharma, Advocate
with Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. What happened sometimes past midnight, and most probably the time would be around 02:00 hrs of June 01, 1993 i.e. the night of May 31, 1993 and June 01, 1993 at the house of Hari Prashad has been described by Jaidev Sharma PW-5. Being the immediate neighbour, Jaidev's sleep was disturbed by the shrieks of Pushpa. Rising from the slumber and rubbing his eyes, he saw smoke emitting from Hari Prashad's house and this was obviously a summons for rescue. Awaking his wife, he rushed to Hari Prashad's house and saw Pushpa in a burnt condition in the varandah with Hari Prashad trying to extinguish the flames by pouring water on Pushpa's body. Thereafter Hari Prashad wrapped Pushpa in a sheet and rushed her to the hospital.

2. Hari Prashad took Pushpa to LNJP Hospital where Dr.Manoj Kumar

examined her and wrote on the MLC Ex-PW-15/A that Hari Prashad had brought Pushpa to the hospital at 02:20 Hrs on June 01, 1993 and that Pushpa told him that being harassed by her husband she poured kerosene oil on herself and thereafter set herself on fire. Primary and palliative required to be administered to a patient with burns was administered to Pushpa and the duty constable at the hospital informed P.S. Defence Colony of Pushpa having been brought by Hari Prashad to LNJP Hospital in a burnt condition, where the duty officer H.C.Hari Saran PW-10, recorded said fact vide DD No.28, Ex.PW-10/A. He handed over copy of the DD entry to SI Prem Singh PW-16 who left for investigation and reached the hospital. He collected Pushpa's MLC. He informed the Sub Divisional Magistrate of the area who reached the hospital at around 4:00 A.M. but Pushpa's statement could neither been recorded by SI Prem Singh nor by the Sub Divisional Magistrate because she was declared unfit. Pushpa's brother Hari Prashad Pandey PW-1 got information of Pushpa being burnt and removed to the hospital. He reached the hospital and met SI Prem Singh who recorded his statement Ex.PW-1/C in which Hari Prashad Pandey disclosed that Pushpa was married to Hari Prashad on February 02, 1990 and that Hari Prashad used to beat Pushpa under influence of liquor. He was dissatisfied with the dowry he was given. He used to turn out Pushpa from the house but would forcibly take her back thereafter. Pushpa made a complaint to the women cell at PS Nanakpura where in writing Hari Prashad agreed not to drink liquor and beat Pushpa. Hari Prashad used to look down upon their family and used to taunt Pushpa saying that she had got useless dowry articles. Tonight Hari Prashad gave beating to Pushpa as a result of which she poured kerosene on herself and set herself on fire. Making an endorsement beneath

the statement PW-1/C SI Prem Singh dispatched the tehrir and HC Hari Saran registered the FIR Ex.PW-10/B for an offence punishable under Section 306/498A IPC.

3. Returning to Pushpa's matrimonial house, SI Prem Singh summoned a photographer who took the photographs Ex.PA-1/3-124. He prepared the rough site plan Ex.PW-16/B of the place of the occurrence and lifted a glass bottle Ex.P-1, burnt clothes Ex.P-2 and burnt matchsticks Ex.P-3. He sealed the exhibits and drew up the seizure memo Ex.PW-13/A. Around 5:00 in the morning the constable on duty at LNJP Hospital informed the duty officer at PS Defence Colony that Pushpa had died which information was recorded vide DD No.13A. Pushpa's body was seized and sent for post-mortem. SI Prem Singh took Pushpa's brothers, Hari Prashad Pandey and Sanjay Pandey along with their mother Shashi Pandey to the Sub-Divisional Magistrate who recorded their statements. Post-mortem report Ex.PA and Ex.PB records death due to shock occasioned by burn consequent upon ante-mortem injuries. It records that scalp hair of Pushpa were preserved for analysis.

4. That Pushpa committed suicide is beyond the pale of any doubt and because the brothers and mother of Pushpa stated to the police that Pushpa was not only mentally but even physically tortured for bringing inadequate dowry Hari Prashad was sent for trial and on April 27, 1994 he was charged for having committed an offence punishable under Section 304B IPC and in the alternative for having committed an offence punishable under Section 306 IPC.

5. At the trial Hari Prashad Pandey deposed that his sister Pushpa was married to Hari Prashad on February 04, 1990 and was treated with respect

for only one month and then began the story of mental and physical torture inflicted by Hari Prashad on his sister. A month after the marriage Hari Prashad gave beating to his sister on account of dowry. On November 25, 1990 a male child was born. Many times, after consuming alcohol, Hari Prashad used to turn out his sister after beating her. On August 03, 1991 his sister was beaten so badly that she had to be given emergency treatment at Raj Clinic Kondli who referred her to GTB Hospital for an eye injury. (The MLC is in the judicial record and has been marked as 'Mark A'). Due to repeated assaults, vide Ex.PW-1/A, his sister had to make a written complaint to the crime against women cell on August 03, 1992. Hari Prashad apologized before the police and took back his sister. He agreed that he would take on rent a house near the office of his i.e. Hari Prashad's younger brother Sanjay Pandey and therefore Hari Prashad took on rent a house in Gol Market in January, 1993 but somewhere in May, 1993 he shifted to Andrews Ganj. A week prior Pushpa had told her parental family that Hari Prashad had started beating her.

6. Subjected to cross-examination we find that the credibility of Hari Prashad has not been destroyed.

7. Sanjay Pandey PW-3 and Shashi Pandey PW-4, the brother and mother of Pushpa have deposed in sync with the testimony of Hari Prashad.

8. In his statement recorded under Section 313 Cr.P.C. Hari Prashad stated that his wife used to wrongly suspect that he was having illicit relations with one Kanti Bhatt because he used to occasionally visit Kanti Bhatt's house for the reason both were residents of District Chamoli. That on the day of the incident he heard shrieks at midnight and as he rushed out he saw his wife on fire and he extinguished the fire and took his wife to the

hospital.

9. Noting that Pushpa was married with Hari Prashad on February 04, 1990 and she committed suicide on June 01, 1993 i.e. after 3 years and 4 months of her marriage, the learned Trial Judge has acquitted Hari Prashad of the charge punishable under Section 304B recording the finding that there was no evidence that soon before her death Pushpa was subjected to cruelty to force her to bring dowry. Highlighting that Hari Prashad removed Pushpa to the hospital negated the fact that Hari Prashad instigated Pushpa to commit suicide, because if he had done so, he would not have taken Pushpa to the hospital.

10. Regretfully, the learned Trial Judge has dealt with the evidence and has very narrowly construed what constitutes to incite a person very narrowly. Abetment has been defined in Section 107 of the Penal Code and includes '*instigation*'.

11. A perusal of the testimony of the witnesses and the documentary evidence brings out that Pushpa was repeatedly assaulted by Hari Prashad. So tormenting became Pushpa's life that within a year and six months of her marriage she had to make a complaint to the crime against women cell in which she wrote that dissatisfied by the dowry given by her parents her husband used to beat her after drinking. She was not given money to run the kitchen. Due to repeated assaults she was compelled many times to leave her matrimonial home and go to her parents. She had to get herself medically treated. She was physically and mentally traumatized. The physical and mental pain being unbearable. Since May, 1992 she was residing with her parents. For two months her husband did not contact her but over the last one month had been visiting her and requesting her to

return to her matrimonial home. The past conduct of Hari Prashad does not inspire any confidence in her that she would be safe in the company of her husband. Six times earlier Hari Prashad took her back to her matrimonial house on a promise to treat her with respect, but breached the promise. She made a request to the police to make arrangement for her comfortable stay in her matrimonial house and if she was assured by the police that Hari Prashad would be kept under watch she would return to her matrimonial house. Pushpa's attempt to find security by requiring Hari Prashad to shift their matrimonial house to a place near where her brother Sanjay Pandey had his office is evidence of the fact that so fearful was she of Hari Prashad that she found refuge at a residence near where her brother Sanjay Pandey worked because proximity of the work place of her brother near her matrimonial house was some kind of a reassurance to her that her husband would not torment her because she would be under the watchful eye of a loving and a caring brother. Hari Prashad did shift the matrimonial house to Gol Market but breached the understanding by shifting to the house where Pushpa was removed from the comforting care of her brother.

12. The evidence unerringly establishes that the vicious habits of Hari Prashad created destitute circumstances for Pushpa; the enormities callously inflicted, and silently borne by Pushpa obviously resulted in gloom throughout the day and darkness almost palpable throughout the night. It naturally gave birth to a conviction that no sunlight, pasturage or meadow can be found in her life. She was bound to be filled up with a conviction that the decay is endless – indeterminable. She was brutalized into worse than beast. After all, a home is a home, be it ever so low. It was certain that without some kind of extraordinary help, the helpless Pushpa, filled up with

the measures of her miseries; the oppressive loneliness in her life which was so chilling, led her to ask herself : *How long is this to last? Must I jog on day after day in the cheerless gloom and this joyless duskiness till I die?* The thought – years have I now passed of a most miserable and struggling existence, and I really cannot stand it anymore; I am completely worn out and see no bright prospect – no ray of hope. I can face this degradation no longer. I have done everything that one can possibly think of to avert the wicked deed which has entered my mind. But can't help it because I can discover no ray of hope. Endurance and persuasion has availed me nothing. Forgive me God for this heinous sin and have mercy on my sinful soul. My lot is caste and I must abide by it. I must go down inarticulate into the depths. I was not born into this world. I was damned into it.

13. Pushpa made a stand against the intemperance of the respondent who rendered her home wretched. Her complaint Ex.PW-1/A made to the crime against women cell shows that Pushpa made every attempt to salvage her marriage and herself. Drowning in the water, the only thing that Pushpa needed, no doubt, was to plant her feet firmly on terra firma. But how was she to get there. She was hoaxed. Her complaint establishes that six times earlier on Hari Prashad turned her out of her matrimonial house after beating her and on the false assurance that he would treat her with respect, took her back – only to breach his promise. Her protest and complaints went unheeded. She became hopeless. She was where she was, because she loved too utterly to calculate consequences and trusted to absolutely and suspected no evil when she accepted marriage with Hari Prashad. She made every endeavour to stand against the torture inflicted by Hari Prashad, but the increasing pressure of torture drove her to allow the iron laws of nature

to work themselves out – towards her destruction. Cursed from birth with the hereditary weakness of the body – when her home was destroyed because respondent's conscience was never quickened. Her sacrifices did not soften him. Her sacrifices did not enlighten Hari Prashad's mind. He did not change his behaviour. He did not try and make a true man of himself.

14. Like a parasite the negative thoughts, propelled by the brutality and bestiality inflicted by Hari Prashad grew inside her mind leaving the outer appearance wholesome, it tore her mind and enslaved it in an iron mesh. Faced with the prospect of repeated physical and psychological torture and the risk of certainty of serious injury, the battered Pushpa had two options. To kill Hari Prashad or to kill herself. She chose the latter because she could not indulge in a mutual combat with Hari Prashad. Not being an aggressor, in an encounter initiated by Hari Prashad, she would be justified in using a reasonable amount of force against Hari Prashad when she reasonably believed that she was in imminent danger of unlawful bodily harm from her adversary and the use of such force as was necessary to avoid the danger could be used by her. The presenting evidence of prior beating at the hands of Hari Prashad in this case would have justified Pushpa to maintain an action for self defence and her claim of so doing was perhaps justifiable based on the apprehension of an imminent danger caused Hari Prashad's otherwise trivial or seemingly innocuous conduct immediately preceding her act of committing suicide, because being a battered woman, having suffered battering relationship she understood that Hari Prashad's behaviour followed a cyclical pattern and based on experience one has to give her the advantage of being capable of predicting violence where an

outside observer might not perceive any danger. The battering episodes – cumulative terror – had consumed Pushpa and held her in constant fear of harm. This fear of harm continued even during the peaceful interlude between episodes of abuse. As the noted author on ‘*Battered Woman Syndrome*’ L.Walker in his treatise ‘*The Battered Woman Syndrome*’ opines, a battered woman experiences the growing tension of phase one, develops a fear of death or serious bodily harm during phase two, and, perceiving that she is unable to defend herself when the next attack comes, finally defends herself as her only opportunity by launching a counter assault on her spouse. But alas! Pushpa could not do so because biologically she was weaker. Unfortunately the law would not have come to her aid if she had killed her husband because the defence of sudden and grave provocation as a mitigating circumstance is based on anger and not fear and thus though a victim in her life, the legal system would have treated her as an offender. The provocation by Hari Prashad became her compulsion to end the domestic relationship and she did by taking the extreme step of suicide.

15. It is plain obvious that a decision taken by a person to end one’s life is the obvious and direct result of the immediacy of a present sense of hopelessness overwhelming the grudging eventualities of a future hope. When the present becomes bland and the future presents itself as something black, infinite and unbearable, in the cloudy depths of the troubled mind death emerges as an escape route i.e. the only release from the direness of situation.

16. Thus, relationship between life and death becomes reversed : Life becomes a problem and death emerges as the freedom.

17. A suicide is an act of colossal waste and wilful destruction of life that

it compels the society to try and pin responsibility on someone and in this endeavour one is left struggling to attach meaning to an act expressly designed to eliminate it. This is the society's way of affirming purpose to life and the society's faith in its preciousness. This explains the irony that if the suicide attempt ends in a failure, the person himself is prosecuted, but if it succeeds, we look to others.

18. Thus, it is apparent that every suicide asks questions of those immediately connected to the event, if not the society at large.

19. It is true that an act of suicide would normally be a matter of discretion for the reason it can be said that the person concerned had a choice, but there may be situations where a person is virtually left with no choice for example where the tormentors by way of a systematic campaign drive a person to commit suicide by leaving no other choice.

20. True, it was Pushpa's decision and before arriving at the conclusion she weighed the pros and cons. While recognizing that the primary responsibility would rest upon the shoulders of Pushpa for her action, law would be fair to insist that Hari Prashad, who by his conduct – acts of bestiality – having greased the slope down which Pushpa slid to perdition, must pay for his wrongs.

21. We hold Hari Prashad completely responsible for the suicide by Pushpa because he failed in his duty to provide a matrimonial home to Pushpa where she could live in peace and continued to batter her. Any prudent person could reasonably foresee that Pushpa who was sending out distress signals was likely to take the extreme step which she did and for no fault of hers. Abetment is defined : (i) incite, (ii) to set into motion, (iii) urge to action, (iv) stir up, and (v) rouse.

22. In its 91st Report, the Law Commission of India had the following to write to guide the legislature, and this resulted in the introduction of Section 304B of the Indian Penal Code in the statute book in November, 1986.

"1.3. If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise-

(i) either the facts do not fully fit into the pigeon-hole of any known offence; or

(ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.

The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognized by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that amounts to "abetment" of suicide. Though, according to newspaper reports, there have been judgments of lower courts which seem to construe "abetment" in this context widely, the position is not beyond doubt.

The second situation mentioned above finds illustration in those incidents in which, even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence.

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1.9. Given all these circumstances of the usual 'dowry death'. It will be conceded that even where there is in a particular case, moral certainty that the death is the result of murder, the circumstances would be hostile to an early or easy discovery of the truth. Punitive measures – such that can be pursued within the ambit of the existing law – may be adequate in their formal content. But their successful enforcement is a matter of difficulty. That is why there is need to supplement the punitive measures by appropriate preventive measures. This Report seeks to make a few modest suggestions as to what can be done in this regard.

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4.1. The amendments recommended in the preceding Chapters of this Report touch the criminal law and its periphery. Once a dowry death takes place, there is certainly need for inserting provisions designed to facilitate investigation and prosecution, if the case contains a criminal element. But the pressing need is for effective measures which have, as their objective, preventing the recurrence in society of situations that lead to dowry deaths, whether such deaths are the result of suicide or of murder. Close reflection will reveal that dowry deaths occur because the woman's relatives in the husband's family make a persistent and determined demand for dowry. In the mind of the woman, this builds up tension of an acute character. The tension is built up step by step. Ultimately, a stage comes when the woman does not see any way out of the situation, excepting suicide. Returning to the parents' home would hardly suggest itself to her as a permanent solution, though it is sometimes resorted to as a temporary expedient. Death becomes last refuge of the woman. Side by side with building up tension in the women's mind, the situation occasionally develops into one where the greed for money,

the aggressiveness provoked by resistance and the ease with which the weaker sex can be exploited; all culminate in the desire to take the woman's life. It is not a sudden or impulsive step; it is the final catastrophe to which each of the psychological and social factors mentioned above contributes..... "

23. Maintaining Hari Prashad's acquittal for the offence punishable under Section 304B IPC. We convict Hari Prashad for the offence punishable under Section 306 IPC holding him guilty for abetting suicide by Pushpa.

24. We are not listing the appeal to hear Hari Prashad on sentence because record shows that during trial Hari Prashad remained in judicial custody and the period spent by him in incarceration is five years and three months. We sentence him to undergo imprisonment for the period already undergone.

25. Copy of this order be sent to the Superintendent Central Jail Tihar for his record.

26. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 10, 2016
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