REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 775 OF 2017
(arising out of S.L.P. (Crl) No. 8998 of 2016)

Pawan Kumar **...Appellant**

Versus

State of H.P. **...Respondent**

J U D G M E N T

Dipak Misra, J.

The present appeal, by special leave, depicts the sorrowful story of a young girl, in the middle of her teens, falling in love with the accused-appellant and driven by the highest degree of youthful fixation, elopes with him, definitely in complete trust, and after the accused is booked for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code (IPC), she stands behind him like a colossus determined to support which consequently leads to his acquittal. In all possibility, she might have

realized that the accused should not be punished, for she was also equally at fault. Be that as it may, as per the prosecution version, he was extended the benefit of acquittal.

2. The sad story gets into a new and different beginning. The accused feels that he has been prosecuted due to the prosecutrix and gets obsessed with idea of threatening the girl and that continues and eventually eve-teasing becomes a matter of routine. Here, as the exposition of the prosecution uncurtains, a situation is created by the accused which becomes insufferable, where the young girl feels unassured and realizes that she could no more live in peace. The feeling gets embedded and the helpless situation compels her to think that the life is not worth living. Resultantly, she pours kerosene on her body and puts herself ablaze but death does not visit instantly and that is how she was taken to a nearby hospital, where in due course of investigation, her dying declaration is recorded, but she ultimately succumbs to her injuries and the *"prana"* leaves the body and she becomes a "body" – a dead one.

3. The question that is required to be answered is whether the accused can be convicted under Section 306 IPC. The case of the prosecution as projected is that deceased was the daughter of the informant, PW-1, Sukh Dev, and after acquittal in the case under Sections 363, 366 and 376 IPC, the accused-appellant used to threaten the girl that he would kidnap her, and had been constantly teasing her. It is the case of the prosecution that on 18.07.2008 at 9.00 p.m., appellant came to the house of informant and threatened him that he would forcibly take her. As the narration further unfolds on 19.07.2008 about 10.00 a.m. when the informant alongwith his wife was working outside in the field, the deceased poured kerosene oil on her and set herself ablaze which was extinguished by the father, and immediately *Pradhan* of Gram Panchayat was informed. The injured girl was taken to the private hospital at Daulatpur where she was referred to Chandigarh for further medical treatment but the informant could not take her to Chandigarh due to paucity of money and in the evening *Pradhan* of the village visited the house of the informant and the deceased gave one written document to the *Pradhan*

stating that the accused-appellant was responsible for her condition whereafter police was informed and statement of the informant was recorded and the victim was medically examined. On 24.07.2008, the dying declaration of the girl was recorded by the Head Constable in the presence of Medical Officer and after the victim expired the post-mortem was conducted and an FIR was registered. After the criminal law was set in motion, the investigating agency after completing the investigation laid the charge sheet before the competent court which, in turn, committed the case to the Court of Session.

4. The accused abjured his guilt and pleaded false implication. The prosecution in order to establish the charge examined 14 witnesses. The defence shoes not to examine any witness. The learned Sessions Judge, after hearing the arguments, posed the following question:

> "Whether the prosecution has successfully proved the liability of accused under Section 306 of IPC beyond the scope of all reasonable doubts?";

and answered the question in the negative and consequently acquitted the accused-appellant vide judgment and order dated 16th July, 2010.

5. Being aggrieved by the aforesaid judgment, the State preferred the appeal before the High Court. The Division Bench of the High Court, after reappreciating the evidence, reversed the judgment of acquittal rendered by the trial court and convicted the accused-appellant under Section 306 IPC and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs. 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

6. We have heard Mr. Sanchar Anand, learned counsel for the appellant and Mr. D.K. Thakur, learned Additional Advocate General for the respondent-State.

7. It is submitted by Mr. Anand, learned counsel for the appellant that the judgment rendered by the learned trial Judge is absolutely flawless since he has analysed the evidence in great detail and appreciated them in correct perspective. It is his further submission that the trial court scrutinizing the medical evidence and the burn injuries sustained by the victim has appositely discarded the dying declaration, Ex.PW-10/A. It is further put forth that when cogent reasons have been ascribed by the trial court for not

placing reliance upon the dying declaration and the testimony of the prosecution witnesses, the High Court, in such a fact situation, should have been well advised not to interfere with the judgment of acquittal. It is also canvassed by him that when the appreciation of evidence by the trial court is not perverse and the view expressed by it is a plausible one, the High Court should not have interfered with the judgment of acquittal.

8. Mr. D.K. Thakur, learned Additional Advocate General appearing for the respondent-State, in support of the impugned judgment, would contend that the High Court has reappreciated the evidence and on such reappraisal has found the conclusion pertaining to medical condition of the victim is wholly incorrect and accordingly opined that the acquittal recorded by the learned trial Judge is unsupportable and, therefore, this Court should give the stamp of approval to the same.

9. First we shall deal with the nature of jurisdiction the High Court exercises when it reverses a judgment of acquittal to that of conviction in exercise of appellate jurisdiction. It is put forth by the learned Additional

Advocate General that the prosecution has been able to establish the active role played by the accused by adducing cogent evidence and hence, the reversal of the judgment of acquittal by the High Court is absolutely flawless. In ***Jadunath Singh and others v. State of Uttar Pradesh***[1], a three-Judge Bench of this Court has opined:-

> "22. This Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in *Sheo Swarup v. King Emperor*[2] and *Nur Mohammad v. Emperor*[3]. These two decisions have been consistently referred to in the judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals (see *Surajpal Singh v. State*[4] and *Sanwat Singh v. State of Rajasthan*[5])."

10. In ***Shivaji Sahabrao Bobade v. State of Maharashtra***[6], the Court has ruled that there are no fetters on the plenary power of the appellate Court to review the whole evidence on which the order of acquittal is founded

[1] (1971) 3 SCC 577
[2] AIR 1934 PC 227
[3] AIR 1945 PC 151
[4] AIR 1952 SC 52
[5] AIR 1961 SC 715
[6] (1973) 2 SCC 793

and, indeed, it has a duty to scrutinise the probative material *de novo*, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal, the homage the jurisprudence owes to individual liberty constrains the higher court not to upset the finding without very convincing reasons and comprehensive consideration.

11. In ***State of Karnataka v. K. Gopalakrishna***[7], it has been held that where the findings of the court below are fully unreasonable or perverse and not based on the evidence on record or suffer from serious illegality and include ignorance and misreading of record, the appellate court will be justified in setting aside such an order of acquittal.

12. In ***Girja Prasad (dead) by LRs. v. State of M.P.***[8], it has been observed that in an appeal against acquittal the appellate court has every power to reappreciate, review and reconsider the evidence as a whole before it. The Court further stated that it is, no doubt, true that there is a presumption of innocence in favour of the accused and that

[7] (2005) 9 SCC 291
[8] (2007) 7 SCC 625

presumption is reinforced by an order of acquittal recorded by the trial court, but that is not the end of the matter, for it is for the appellate court to keep in view the relevant principles of law, to reappreciate and reweigh the evidence as a whole and to come to its own conclusion in accord with the principles of criminal jurisprudence.

13. In ***State of Uttar Pradesh v. Ajai Kumar***[9], the principles stated in ***State of Rajasthan v. Sohan Lal***[10] were reiterated. It is worth noting that in ***Sohan Lal*** (supra), it has been stated thus:-

> "3. ... This Court has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal."

[9] (2008) 3 SCC 351
[10] (2004) 5 SCC 573

14. In ***Chandrappa and others v. State of Karnataka***[11], this Court culled out the general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal. The said principles are enumerated below:-

> "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of

[11] (2007) 4 SCC 415

his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

15. In ***Shivaji Sahabrao Bobade*** (supra), taking note of the contemporary context, the Court held:-

"....The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through 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[12] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a

[12] Glanville Williams in '*Proof of Guilt'*.

> 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 innocence must be moderated by the pragmatic need to make criminal justice potent and realistic."
>
> [emphasis supplied]

16. Keeping in view the principles laid down in the aforesaid authorities, we shall scan the approach of the learned trial Judge and scrutinize the correctness of deliberation of the High Court and adjudge he ultimate reversal of the judgment of the trial court.

17. On a careful examination and close study of the judgment of the trial court, it is perceivable that the learned trial Judge, after enumerating the facts, has analysed the evidence and come to the conclusion that the prosecution has failed to prove the culpability of the accused under Section 306 IPC. He has disbelieved the evidence of PW-1, Sukh Dev, the father of the deceased, on the principal ground that though after acquittal of the accused in the criminal case instituted for offence under Sections

363/364/376 IPC, teased his daughter, yet he only made an oral complaint to the Gram Panchayat and did not file a written complaint before it. That apart, the learned trial Judge has noted that though PW-1 had stated in the FIR that the accused had threatened to forcibly take away his daughter, he had not so stated in his deposition. The dying declaration, that is, Ex. PW-10/A, has not been given credence to on the ground that the victim was not in a position to speak and had sustained 80% burn injuries and further as her both hands were burnt, she could not have written what has been alleged to have written by her in the said document. On that ground, the learned trial Judge arrived at the conclusion that it would not be safe to rely on the said dying declaration. Be it noted, Ex. PW-10/A was written by the deceased on 24.07.2008. He has also disbelieved the testimony of the material witnesses on the same ground.

18. As is evincible, the learned trial Judge has also not found Ex. PW-10/A, which had been recorded on 24.07.2008 by the investigating officer, PW-13, as reliable as the victim was under treatment and the medical officer

PW-10, Dr. Sanjay, who had deposed that he had appended his endorsement in PW-10/B, but not issued any certificate that the victim was mentally fit to give her statement. Leaned trial Judge has observed that barring the aforesaid evidence, there is no other evidence on record to connect the accused with the crime. It is worthy to note that he has referred to the post- mortem report which recorded that the victim had suffered burn injuries and finally arrived at the conclusion that there is no specific evidence to record a conviction against the accused.

19. The High Court, as is noticeable, has taken note of the fact that PW-1 has testified that the accused had earlier faced trial for the offences under Sections 363, 366 and 376 IPC and remained in jail for eleven months and, therefore, he threatened the victim that he would again kidnap her. That apart, PW-1, Sukh Dev, father of the deceased, had also deposed that the accused used to tease her daughter by gestures and his daughter used to narrate these facts to him and his wife. He had also stated that that he had made an oral complaint to the President of the Gram Panchayat, Bathra who, in his turn, had admonished the accused and

told him to mend his ways. The High Court further took note of the fact that PW-1 has vividly described the burn injuries sustained by his daughter and the reason for the same.

20. PW-2, Jai Singh, as his evidence would show, which has also been taken note of by the High Court, is the *Pradhan* of the village. He has testified about the conduct of the accused and how he had asked him to understand the situation. He has also deposed about the victim being taken to the hospital and the nature of treatment administered to him. The High Court has also dealt with the evidence of PW-3, Dr. Kulbhushan Sood, who had issued MLC, Ex. PW-3/B and admitted that the victim had suffered 80% burn injuries and opined that the same is sufficient to affect the mental capability of the patient. The High Court has also analysed the evidence of PW-9, Sawarna Devi, mother of the deceased, who has deposed about the whole incident. PW-10, Dr. Sanjay, on whom the High Court has placed heavy reliance, was posted as Senior Resident in the Department of Surgery in RPGMC, Tanda. The police had orally requested him to accompany them as the statement of

the victim was to be recorded and 24.07.2008 and he went to the ward where the victim was and the statement of the injured was recorded by the police, Ex. PW-10/A, in his presence. The High Court has also appreciated the fact that in the cross-examination, treating doctor had admitted that he had not issued any certificate that the victim was mentally fit to make a statement. It is pertinent to mention that the said witness has denied the suggestion that the victim was not fit to make statement and Ex. PW-10/A was not her statement.

21. After analyzing the evidence, the High Court has found that the trial court has acquitted the accused on the ground that the deceased was not fit to write Ex. PW-10/A and PW-10, Dr. Sanjay, had not issued the certificate that the deceased was in a fit mental condition to give the statement on 24.07.2008. The High Court has observed that it had perused Ex. PW-10/A wherefrom it was reflectible that the victim had written that the accused would be responsible for her death. The analysis of the High Court is as follows:-

> "It is evident from the handwriting that Shalu was in tremendous pain and agony when she was writing that accused would be responsible for her

death. This was written on 19.7.2008. It is also written in Ext. PW-2/A by the Pradhan that Shalu had received burn injuries and she told him that accused used to tease her. Thus she has taken this extreme step. It has come in the statement ofPW-1 Sukh Dev and his wife (PW-9) Sawarna Devi that the accused used to tease their daughter even after his acquittal in criminal case. They had informed this fact to the Pradhan of Gram Panchayat, PW-2 Jai Singh. Jai Singh (PW-2) has also admitted that complaint was lodged with him and he has told the accused to mend his way."

And again:-

"PW-13 SI Surjeet Singh has recorded the statement of deceased vide Ext. PW-10/A on 24.7.2008. PW-10 Dr. Sanjay has deposed that the police had recorded the statement of Shalu in his presence. He attested the same vide endorsement Ext.PW-10/B. Police has written the same version in Ext. PW-10/A, which was told by Sahlu. Statement Ext. PW-10/A would constitute a dying declaration under Section 32 of the Evidence Act. Merely that the Doctor has not issued certificate that Shalu was fit to make statement would not in any way affect the dying declaration made by deceased on 24.07.2008, that too in the presence of PW-10 dr. Sanjay. It is duly proved by the prosecution that the accused alone was responsible for abetting suicide committed by the deceased. She received 80-85% superficial ante-mortem burns. She might have received 80-85% burns but still she had sufficient strength to write Ext. PW-2/A."

The High Court has relied on the decision in ***Gulzari Lal v. State of Haryana***[13], and come to hold that a valid dying declaration may be made without obtaining a certificate fitness of the declarant by medical officer.

22. It is demonstrable that the trial court has acquitted the accused by disregarding the version of parents of the deceased and other witnesses and treating the dying declaration as invalid and the High Court, on the contrary, has placed reliance on the testimony of the parents of the deceased, and the evidence of the village *Pradhan* and also given credence to the dying declaration.

23. As is seen, the non-reliance on the dying declaration by the learned trial Judge is founded on the reason that the deceased was not in a position to speak and there was no medical certificate appended as regards her fitness. That apart, the learned trial Judge has regarded the dying declaration as unacceptable and unreliable on the base that the deceased had sustained 80% burn injuries. The High Court has found the said approach to be absolutely erroneous.

[13] (2016) 4 SCC 583

24. The hub of the matter is whether the dying declaration Ex. Pw-10/A is to be treated as realiable or not. To appreciate the validity of the dying declaration, we have requisitioned the original record and had perused the same. On a careful scrutiny of the same, we find that the Head Constable had written what the deceased had spoken and thereafter the deceased had written that the accused alone was responsible for her death. The dying declaration, as has been recorded by the Head Constable, eloquently states about the constant teasing of the victim by the accused. PW-10, Dr. Sanjay, has stood firm in his testimony that the victim was in a fit condition to speak. Despite the roving cross-examination he has not paved the path of tergiversation. The trial court, as mentioned earlier, has disregarded the testimony of PW-10 on the ground that there is no certificate of fitness. In this context, reference to the Constitution Bench decision in ***Laxman v. State of Maharashtra***[14] would be absolutely seemly. In the said case, the larger Bench, while stating the law relating to the dying declaration, has succinctly held:-

[14] (2002) 6 SCC 710

> "3. … A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

25. In ***Atbir v. Government of NCT of Delhi***[15], the Court, after noting earlier judgments, has laid the following

[15] (2010) 9 SCC 1

guidelines with regard to admissibility of the dying declaration:-

> "22. The analysis of the above decisions clearly shows that:
>
> (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
>
> (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
>
> (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
>
> (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
>
> (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
>
> (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
>
> (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
>
> (viii) Even if it is a brief statement, it is not to be discarded.
>
> (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
>
> (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal

> impediment to make it the basis of conviction, even if there is no corroboration."

26. Recently, in ***Gulzari Lal*** (supra), the Court confirmed the conviction by placing reliance on the statement made by the deceased and recorded by the Head Constable on the basis of the principles stated in ***Laxman*** (supra). The analysis in the said case is as follows:-

> "23. In reference to the position of law laid down by this Court, we find no reason to question the reliability of the dying declaration of the deceased for the reason that at the time of recording his statement by the Head Constable Manphool Singh (PW 7), he was found to be mentally fit to give his statement regarding the occurrence. Further, evidence of Head Constable Manphhol Singh (PW 7) was shown to be trustworthy and has been accepted by the courts below. The view taken by the High Court does not suffer from any infirmity and the same is in order.
>
> 24. The conviction by the High Court was based not only on the statements made by Maha Singh (deceased) but also on the unshattered testimony of the eyewitness Dariya Singh (PW 1) and the statement of the independent witness Rajinder Singh (PW 11)."

27. Tested on the anvil of the aforesaid authorities, we find that there is no reason to disregard the dying declaration. The Head Constable has recorded it as narrated by the deceased and the deceased has also written few words

about the accused. The same has been recorded in presence of the doctor, PW-10, who had appended his signature. A certificate of fitness is not the requirement of law. The trial court has been swayed away by the burn injuries. It is worthy to note that there cannot be an absolute rule that a person who has suffered 80% burn injuries cannot give a dying declaration. In ***Vijay Pal v. State (Government of NCT of Delhi)***[16], the Court repelled the submission with regard to dying declaration made by the deceased who had sustained 100% burn injuries stating that:-

> "22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW 1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.
>
> 23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we

[16] (2015) 4 SCC 749

> may profitably refer to the decision in *Mafabhai Nagarbhai Raval* v. *State of Gujarat*[17] wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance."

28. Quite apart from the above, her dying declaration has received support from the other witnesses. In view of the corroborative evidence, we are of the considered opinion that the High Court has correctly relied upon this aspect and has reversed the finding of the trial court.

29. As far as reliability of evidence of PW-1 and PW-9, the parents of the victim are concerned, the reasons for not treating their version as reliable is based on the fact that they had not reported the incident in writing to the Gram Panchayat. On a perusal of the evidence in entirety, we find that the High Court has appropriately dislodged the analysis made by the trial court. The evidence has to be appreciated regard being had to various circumstances. It is to be noted that the accused has been acquitted in the earlier offence

[17] (1992) 4 SCC 69

and he has become a constant nuisance for the victim. In such a situation, the poor parents had no other option but to make a complaint to the Gram Panchayat. To hold that their evidence is reproachable as the complaint was not given in writing manifestation of perverse approach. On a perusal of the evidence in entirety, we find that the testimonies of the parents are absolutely unimpeachable and deserve credence.

30. The next aspect which is required to be addressed is whether Section 306 IPC gets attracted. Submission of the learned counsel for the appellant is that even assuming the allegation is accepted to have been proved, it would not come within the ambit and scope of Section 306 IPC as there is no abetment.

31. Section 306 IPC reads as under:-

> "Section 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."

32. The word 'abetment' has not been explained in Section 306 IPC. In this context, the definition of abetment as

provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element. Such a requirement can be perceived from the reading of Section 107 IPC. Section 107 IPC reads as under:-

> "Section 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."

"Abetment", thus, means certain amount of active suggestion or support to do the act.

33. Analysing the concept of "abetment" as found in Section 107 IPC, a two-Judge Bench in ***Chitresh Kumar Chopra v. State (Government of NCT of Delhi)***[18] has held:-

> "13. As per the section, a person can be said to have abetted in doing a thing, if he, *firstly*, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.
>
> x x x x x

[18] (2009) 16 SCC 605

> 15. As per clause Firstly in the said section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in IPC. The meaning of the said word was considered by this Court in *Ramesh Kumar* v. *State of Chhattisgarh*[19]."

In the said authority, the learned Judges have referred to the pronouncement in ***Ramesh Kumar v. State of Chhattisgarh***.

34. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

35. The word "urge forwards" means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter

[19] (2001) 9 SCC 618

with the intention to provoke, incite or encourage the doing of an act with a latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

36. Analysing further, in ***Randhir Singh and another v. State of Punjab***[20], the Court has observed thus:-

> "12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."
>
> [emphasis supplied]

37. In ***Praveen Pradhan v. State of Uttaranchal & another***[21], it has been ruled:-

> "18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been

[20] (2004) 13 SCC 129
[21] (2012) 9 SCC 734

> instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. …"
>
> [emphasis is ours]

38. In ***Amalendu Pal alias Jhantu v. State of West Bengal***[22], the Court, after referring to the authorities in ***Randhir Singh*** (supra), ***Kishori Lal v. State of M.P.***[23] and ***Kishangiri Mangalgiri Goswami v. State of Gujarat***[24], has held:-

> "12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to

[22] (2010) 1 SCC 707
[23] (2007) 10 SCC 797
[24] (2009) 4 SCC 52

commit suicide, conviction in terms of Section 306 IPC is not sustainable."

39. A two-Judge Bench in ***Netai Dutta v. State of W.B.***[25], while dwelling the concept of abetment under Section 107 IPC especially in the context of suicide note, observed:-

"6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings

[25] (2005) 2 SCC 659

initiated against the appellant and accordingly allow the appeal."

40. At this juncture, we think it appropriate to reproduce two paragraphs from ***Chitresh Kumar Chopra*** (supra). They are:-

> "16. Speaking for the three-Judge Bench in *Ramesh Kumar case* (supra), R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. *Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred*. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.
>
> x x x x x
>
> 19. As observed in *Ramesh Kumar* (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

> (*i*) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
>
> (*ii*) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

This Court again observed:-

> "20. … The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, *which may either be an attempt for self-protection or an escapism from intolerable self*."

41. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a

person to commit suicide, a conviction in terms of Section 307 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.

42. In the instant case, the accused had by his acts and by his continuous course of conduct created such a situation as a consequence of which the deceased was left with no other option except to commit suicide. The active acts of the accused have led the deceased to put an end to her life. That apart, we do not find any material on record which compels the Court to conclude that the victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged. On the other hand, the accused has played active role in tarnishing the self-esteem and self-respect of the victim which drove the victim girl to commit suicide. The cruelty meted out to her has, in fact, induced her to extinguish her life-spark.

43. As is demonstrable, the High Court has not reversed the judgment of acquittal solely on the basis of dying declaration. It has placed reliance on the evidence of the parents and also other witnesses. It has also treated the version of the *Pradhan* of the Gram Panchayat as credible. All these witnesses have deposed that the accused after his acquittal engaged himself in threatening and teasing the girl. He did not allow her to live in peace.

44. The harassment caused to her had become intolerable and unbearable. The father had deposed that the girl had told him on number of occasions and he had complained to the *Pradhan*. All these amount to active part played by the accused. It is not a situation where a person is insulted on being asked to pay back a loan. It is not a situation where someone feels humiliated on a singular act. It is a different situation altogether. The young girl living in a village was threatened and teased constantly. She could not bear it any longer. There is evidence that the parents belong to the poor strata of the society. As the materials on record would reflect, the father could not afford her treatment when case of his daughter was referred to the hospital at Chandigarh.

The impecuniosity of the family is manifest. It is clearly evident from the materials brought on record that the conduct of the accused was absolutely proactive.

45. Eve-teasing, as has been stated in ***Deputy Inspector General of Police and another v. S. Samuthiram***[26], has become a pernicious, horrid and disgusting practice. The Court therein has referred to the Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) which has categorized eve-teasing into five heads, viz. (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. The present case eminently projects a case of psychological harassment. We are at pains to state that in a civilized society eve-teasing is causing harassment to women in educational institutions, public places, parks, railways stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as

[26] (2013) 1 SCC 598

guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve-teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with a dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognized. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject.

46. In a civilized society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescendation. A man should not put his ego or, for that

matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the *summum bonum* of the constitutional principle in this context. The instant case portrays the deplorable depravity of the appellant that has led to a heart breaking situation for a young girl who has been compelled to put an end to her life. Therefore, the High Court has absolutely correctly reversed the judgment of acquittal and imposed the sentence. It has appositely exercised the jurisdiction and we concur with the same.

47. Consequently, the appeal, being devoid of any merit, stands dismissed.

.....J.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

.....J.
[Mohan M. Shantanagoudar]

New Delhi
April 28, 2017.