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TABLE OF CONTENTS

INTRODUCTION: 2
BACKGROUND OF THE CASE:..... 3
CASE COMMENT: 6
CONCLUSION: 10

PAWAN KUMAR V. STATE OF HIMACHAL PRADESH¹

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.

INTRODUCTION:

The case of *Pawan Kumar v. State of H.P.* is a perfect example to show the plight of women in our country. This case depicts how our society becomes blindfolded when rights and individual liberty of women are compromised. We have built a society which creates certain circumstances for women and such circumstances have become unbearable and compel them to think that their life is not worth living. Similar was the perplexity of a young girl in the above-mentioned case who felt peace in dying than living in disharmony. The constant and routine eve teasing by the accused-appellant necessitated the girl to take such a radical step but death does not visit instantly and she is taken to a nearby hospital where her dying declaration is recorded, which, is the hub of the matter in this case. The Supreme Court,

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through its judgment dated 28.04.2017 upheld the Himachal Pradesh High Court judgment and dismissed the appeal of the accused against his conviction.

BACKGROUND OF THE CASE:

This case depicts a mournful story of a young girl named Shalu, who fell in love with the accused-appellant. Driven by the madness of love, she elopes with him, undeniably with complete trust and faith. After which the accused is booked under Sections 363², 366³ and 376⁴ of the Indian Penal Code (IPC). In all odds, she might have realized that the accused

² 363. *Punishment for kidnapping: Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

³ 366. *Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].*

⁴ [376. *Punishment for rape.—*

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women's or children's institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for

should not be punished because she was equally at fault and had eloped with him with her own will and therefore stood behind the accused like a colossus, supporting and helping the accused in every possible manner which subsequently resulted in acquittal of the accused from the above-mentioned charges. All the aid and assistance by Shalu towards the accused goes in vain when the accused feels that he is betrayed by Shalu and thus the story takes a new and different beginning.

Having felt cheated, the accused started threatening the young girl that he would abduct her again and elope with her. The accused also started eve teasing the young girl by showing obscene gestures and eventually eve teasing became a matter of routine. In this regard, the father of Shalu had made oral complaints to the president of the Gram Panchayat. The president on perusal of the complaint directed the accused to mend his ways but to no avail. On 18.07.2008 the accused came to the house of Shalu threatening and abusing her and her family members that he would kidnap the girl and run away.

Devastated by the constant eve teasing and humiliation from the person she loved so much that she felt easier to commit suicide rather to face humiliation and disrespect daily. The next day i.e. 19.07.2008 when parents of Shalu were working in the fields, she poured kerosene on her body and set herself ablaze. The fire was extinguished by her father who informed the president of the Gram Panchayat. Thereafter, Shalu was taken to a private Hospital, in Daulatpur since she had sustained burn injuries.

After her examination at Daulatpur Hospital she was referred to Chandigarh for further medical treatment and assistance as she had suffered 80% burns but her father brought her back since he had the paucity of funds to go to Chandigarh for further treatment. In the evening Pradhan of the village visited the house of Shalu where she gave one written document to the Pradhan stating that the accused was solely responsible for her condition. Thereafter police was informed and statement of the deceased's father was recorded for further investigation 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 that every effort by the doctors and the prayers of friends and family bowed down to the atrocities committed against her and even the almighty

the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

felt that she would be safe in heaven rather than on earth and finally she succumbed to her injuries. The post-mortem was conducted and an F.I.R. 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. Thereafter the trial began at learned Sessions Judge, Fast Track Court, Kangra at Dharamshala where the accused abjured his guilt and pleaded false implication and not guilty. The prosecution in order to establish the charge and prove their case examined 14 witnesses. Whereas the defence chose 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 the accused under Section 306 of IPC beyond the scope of all reasonable doubts?”

And answered the question in the negation and consequently acquitted the accused vide judgment and order dated 16th July 2010.

Being aggrieved by the above-mentioned judgment, the State preferred the appeal before the Hon’ble High Court of Himachal Pradesh at Shimla. The Double Bench of the Himachal Pradesh High Court, after re-appreciating the evidence and going through the file of the trial court, reversed the judgment of acquittal rendered by the trial court and convicted the accused-appellant under Section 306⁵ 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. Being aggrieved by the judgment of the Hon’ble High Court accused preferred an appeal to the Hon’ble Supreme Court of India through Special Leave Petition. The Supreme Court after hearing the counsel of both the parties and after carefully scrutinizing the record file from the trial court and going through the judgment of the High Court came to the conclusion that the High Court has rightfully reversed the judgment of the Ld. Trial Court which was full of summarizes and conjectures and consequently dismissed the appeal against the judgment of the High Court being devoid of any merit.

⁵ 306. 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.

CASE COMMENT:

The main issues which were put forth before the Hon'ble Supreme Court of India were:

- 1) The nature of the jurisdiction of the High Court while exercising its power as an appellate court on reversing the judgment of acquittal to that of conviction.
- 2) Whether the Dying Declaration is to be treated as a reliable source of evidence or not?
- 3) The ambit and scope of section 306⁶ of IPC.

The Supreme Court while deciding the first issue has clearly said that in an appeal against the acquittal, the High Court has full power to review at large all the evidence and to reach the conclusion that upon such evidence the order of acquittal should be reversed. The Supreme Court has rightly decided the issue because while acting as an appellate court the High Court has to decide whether the findings of the trial court were erroneous and based on conjectures and to do so it is very necessary to re-appreciate all the evidence and reach on a logical conclusion.

To further support this argument Section 378 of Code of Criminal Procedure, 1973 has to be closely examined. According to Section 378 sub-section (1):

Save as otherwise provided in sub-section (2) and subject to the provisions of sub-section (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court.

Clearly, section 378 empowers the High Court to entertain matters against the acquittal and nowhere in the section are the powers of High Court limited or curtailed to review the entire evidence.

Further in the case of Jaswant Singh v. State of Haryana⁷ the principle for the appellate court to interfere was given. The said principle is enumerated below:-

“The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference”.

⁶ Ibid.

⁷ A.I.R. 2000 S.C. 1833 (India).

In our case the trial court has disbelieved the evidence of PW-1, Sukh Dev, the father of the deceased, on the principal ground that though the accused, after his acquittal 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. 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. He has also disbelieved the testimony of the material witnesses. Hence these were sufficient and compelling reasons for the High Court to review the entire evidence.

Further, the power of High Court in an appeal against the acquittal was clearly stated in the case of **Ajit Savant Majagvai v. State of Karnataka**⁸. The said powers are quoted below:

“The High Court has the power to reconsider the whole issue, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record or in other words, perverse”.

Hence, according to The Code of Criminal Procedure, 1973 and the precedents of the Hon’ble Supreme Court, the High Court has rightly exercised its jurisdiction while trying and reversing the order of acquittal of the Trial Court and the same has been rightly reiterated by the Supreme Court in its judgment.

The second issue before the Hon’ble Supreme Court was that, whether the dying declaration can be treated as a reliable source of evidence or not? To this, the Supreme Court found no reason to disregard the dying declaration and considered it as reliable evidence. We concur with the findings of the Supreme Court as a person on his deathbed sees no light of hope and when the mind is certainly induced to speak the truth in that scenario a situation so solemn and so lawful is considered by law as creating a duty imposed by an oath administered in a Court of Law.

A legal maxim *Nemo moriturus praesumitur mentire* i.e. a man will never meet his maker with a lie in his mouth, is the principle on which the dying declarations are admitted in evidence.

⁸ A.I.R. 1997 S.C. 3255 (India).

To further support our argument section 32 sub-section (1) of The Indian Evidence Act, 1872 is to be considered:

“When it relates to cause of death: When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes in question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under the expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.”

In our case statement given by the deceased i.e. Shalu was under the expectation of death and was also related to her cause of death which according to The Indian Evidence Act, 1872 is a reliable source of evidence.

Further, in the case of **Deep Chand v. State, (Delhi Administration)**⁹ it was decided that:

“It is not the requirement of law that the dying declaration must necessarily be recorded by a Doctor or a Magistrate. This will always depend upon the variety of factors. If the patient is dying and is fit for making a statement how can a police officer postpone the recording of the dying declaration? If this proposition were to be accepted, it will have serious consequences”.

The same was also upheld in a case titled **State of Karnataka v. Sheriff**¹⁰ by the Hon'ble Supreme Court.

Hence in our case, dying declaration recorded by PW-13 Sub- Inspector Surjeet Singh in the presence of PW-10 Dr. Sanjay is a reliable source of evidence and has been rightly taken into consideration by both The High Court and The Supreme Court.

On the question of obtaining a certificate of fitness of the declarant by a medical officer, reliance can be sought from the authority in the case of **Gulzari Lal v. State of Haryana**¹¹ which stated that a valid dying declaration may be made without a certificate of fitness of the declarant by a medical officer.

⁹ Crimes 13 1986 (1) p.18 Delhi

¹⁰ A.I.R. 2003 S.C. 1074 (India).

¹¹ A.I.R. 2016 (4) S.C.C. 583 (India).

Hence the dying declaration of the deceased Shalu passes all tests laid down by law and thus the courts have rightly re-appreciated the evidence.

The last question before the Hon'ble Supreme Court was that whether the allegation of the deceased comes under the ambit and scope of section 306 of The Indian Penal Code, 1860. To which the Supreme Court rightly remarked that the acts of the accused beyond doubt prove that there were circumstances created by the accused which indeed abetted the deceased to commit suicide and hence it falls under the ambit of section 306.

Nowhere in the case is it stated by the accused or from material on record we can come to the conclusion that victim committed suicide because of hypersensitivity to ordinary discord or discomfort in domestic life to which the deceased was part of. The routine eve teasing and the acts are done by the accused tarnished the self-respect and self-esteem of the victim which forced her to commit suicide.

To further prove our point Section 306 IPC be read 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.”

The meaning of abetment is not mentioned in section 306 but can be traced under section 107 IPC.

Sector 107 of 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”.

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

Hence from the above definitions, we can safely suggest that the constant and intentional interference of the accused in the life of the victim to harass and tease her created such circumstances which instigated the victim to end her life. Thus the acts of accused come under that of abetment and hence accused tried and punished under section 306 of the IPC is justified.

Thus the courts have rightly decided all the issues pertaining to our case the conviction of the accused was not done only on the reliance of the dying declaration but the entire evidences and testimonies of the witnesses are considered and all the questions have been satisfactorily answered but one question may be the most important one relating to the serious offence of eve teasing finds just one paragraph in the whole judgment and that to as a *obiter dictum*.

CONCLUSION:

The Supreme Court, in this case, has taken a firm stand for women’s rights. The minute technicalities did not make the Supreme Court compromise with the justice. The fact that the deceased had 80% burns, or, that the Medico-Legal Certificate testifying deceased’s capability of giving the dying declaration was not there, did not hamper delivery of justice. The case illustrates that the laws of the land cannot be evaded by exploiting the loopholes in it. The Court rather than relying upon appellant’s case that dying declaration has lost its validity because of incapacity of the victim and for the absence of MLC, gave the declaration its due credit after taking into consideration the circumstances. This shows that the judicial system of the country has developed to an extent, where the custodians of justice go a step further and analyse the case in its entirety.

This judgement is also a step towards protecting the dignity of women. The Court made a mention of ‘male chauvinism’, ‘egoism’ and so-called ‘masculinity’; all of which are a threat to women’s rights. This case brings to light the fact that eve teasing, which is very common yet most ignored wrong against women can lead to something as serious as suicide. By bringing the acts of eve-teasing and threatening under the ambit of abetment to suicide, the Supreme Court has recognised the severity of these wrongs and the punishment which these acts may invite. The court has held them to be violative of women’s right to equality and their right to dignity.

LAW AUDIENCE JOURNAL

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Although the accused in the present case has been punished, but, however, there are many more Shalu's who are undergoing a similar phase. There's a need to curb the growing number of eve-teasing incidents before any other Shalu takes her own life. The Supreme Court has failed to provide any directions in this respect. A stringent law on the issue is the need of the hour.