

## PAWAN KUMAR V. STATE OF HIMACHAL PRADESH

**COURT:** The Supreme Court of India

**CITATION:** CDJ (2017) SC 510

**DECIDED ON:** 28 April, 2017

**BENCH:** Dipak Misra, A.M. Khanwilkar, Mohan M. Shantanagoudar

### **I. INTRODUCTION**

This decision passed by the Supreme Court of India paved the way for making the rights of women in the country stronger and more protective. Man centric society and other elements leads to the illusion of women being unequal to men and the practices used to implement these thoughts are still extensively existent all over India. This prompts the idea of male chauvinism or the evident dominance of men over women. The primary aspect spoken about is that of harassment by method of eve teasing and threatening. These at last contribute as components prompting cruelty against women which can in several instances add up to abetment of self destruction

The case of *Pawan Kumar v. State of Himachal Pradesh*<sup>1</sup> is an ideal example to show the predicament of women in our nation. This case portrays how our society becomes blindfolded when rights and individual freedom of women are undermined. We have built a society which makes certain conditions for women and such conditions have gotten terrible and compel them to believe that their life doesn't merit living. Similar was the perplexity of a young girl in the above-mentioned case who felt harmony in passing on than living in disharmony. The constant and routine eve teasing by the accused-appellant forced the girl to make such an extreme stride but death does not visit right away and she is taken to a nearby hospital where her dying declaration is recorded, which, is the hub of the issue in this case.

### **II. FACTS**

The deceased, in the middle of her teens, ran off with the appellant- accused, who was initially charged under Sections 363, 366 and 376 of the Indian Penal Code<sup>2</sup>, 1860 (herein referred to as IPC) and was acquitted for the same. The accused began threatening and harassing by way of teasing the victim on a normal premise, censuring the victim for his prosecution. The accused made a circumstance that was intolerable and horrendous for the victim. This circumstance

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<sup>1</sup> CDJ (2017) SC 510

<sup>2</sup> <https://indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>

eventually constrained the victim commit suicide by pouring lamp fuel on her body and setting herself on fire.

The victim capitulated to her injuries after her dying statement was recorded during the course of investigation. The appellant-accused was afterward charged under Section 306<sup>3</sup> of the IPC for Abetment of Suicide of the deceased. The Trial Court acquitted the accused and didn't acknowledge the statements provided by the witnesses and the guardians of the deceased and the withering assertion given by the deceased was precluded as invalid. The explanation given by the trial Judge was that the deceased was not in a situation to speak and there was no medical certificate appended as regards her fitness.

In a contradictory manner, the High Court considered the testimony given by the witnesses and furthermore gave due trustworthiness to the dying declaration by not giving a lot of significance to the medical condition prior to the victim's demise. The Appellate Court was of the belief that the High Court was right in turning around the findings of the Trial Court and conceded the dying declaration of the deceased. The Appellate Court expressed that there was to be sure a part of abetment of suicide in this present case. The explanation behind the same being the cruelty imposed on the deceased by the accused. The Court decided that threatening and harassing by method of eve-teasing adds up to abetment of suicide. **Article 14, 15 and 21** of the Constitution of India was likewise discussed in this case by the Appellant Court. The Court ruled that a woman has her own space as a man does and that a civilized society has no room for male chauvinism. The High Court in this case has appropriately practiced its jurisdiction and the Appellate Court abided by the same. Thus, the appeal was dismissed and the appellate-accused was convicted for abetment of suicide under Section 306 of the IPC.

### **III. ISSUES FOR CONSIDERATION**

The principle issues which were put forth before the 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 306 of IPC.

### **IV. RULE**

The Supreme Court while discussing the first issue has rightly said that in an appeal against the acquittal, the High Court has full authority to review at large all the evidence and to arrive at the conclusion that upon such evidence the order of acquittal ought to be turned around. The Supreme Court has appropriately 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

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<sup>3</sup> 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.

on conjectures and to do so it is extremely important to re-appreciate all the evidence and reach on a logical result.

To additionally support this argument **Section 378 of Code of Criminal Procedure**<sup>4</sup>, 1973 must be firmly analyzed. As per 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; regardless, 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.

Therefore, section 378 authorizes the High Court to entertain issues against the acquittal and nowhere in the section are the powers of High Court limited or curtailed to review the entire evidence.

The Apex court further discussed the case of *Jaswant Singh v. State of Haryana*<sup>5</sup> and the principle laid down in the same. 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”.

In our case<sup>6</sup> the trial court has repudiated the evidence of PW-1, Sukh Dev, the father of the deceased, on the principal ground that although 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 didn't file a written complaint before it. The dying declaration, that is, Ex. PW-10/A, hasn't 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 enough and compelling reasons for the High Court to review the entire evidence.<sup>7</sup>

Further, the authority of High Court in an appeal against the acquittal was precisely stated in the case of *Ajit Savant Majagvai v. State of Karnataka*<sup>8</sup>. 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”.<sup>9</sup>

Therefore, according to The Code of Criminal Procedure, 1973 and the precedents of the Supreme Court, the High Court has correctly practiced its jurisdiction while trying and overturned the order of acquittal of the Trial Court and the same has been rightly restated by the Supreme Court in its judgment.

<sup>4</sup> <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>

<sup>5</sup> A.I.R. 2000 S.C. 1833 (India)

<sup>6</sup> Pawan Kumar v. State of Himachal Pradesh

<sup>7</sup> <https://indiankanoon.org/doc/50939276/>

<sup>8</sup> A.I.R. 1997 S.C. 3255 (India)

<sup>9</sup> <https://indiankanoon.org/doc/1989251/>

The second issue before the Supreme Court was that, whether the dying declaration can be treated as a reliable source of evidence or not? To answer this issue, the Supreme Court found no reason to disregard the dying declaration and stated that it can be considered 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.

The court further discussed a legal maxim i.e. *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.

To further support our argument section 32 sub-section (1) of The Indian Evidence Act<sup>10</sup>, 1872 is to be considered:

“When it relates to cause of death: When the announcement is made by an individual as to cause of his death, or regarding any of the conditions of the transaction which brought about his death, in cases in which the cause of that person's death comes in question. Such proclamations are relevant whether the person who made them was or was not, when they were made, under the expectation of death, and whatever might 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 expecting her 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)*<sup>11</sup> it was decided that it isn't the prerequisite of law that the dying declaration should fundamentally be recorded by a Doctor or a Magistrate. This will consistently rely on the assortment of variables. 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 approved in a case titled *State of Karnataka v. Sheriff*<sup>12</sup> by the Supreme Court.

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

On the issue of acquiring a certificate of fitness of the declarant by a medical officer, reliance/dependence can be sought from the authority in the case of *Gulzari Lal v. State of*

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<sup>10</sup> <http://jowaiipolice.gov.in/Laws and References/ipl and acts/15-INDIAN-EVIDENCE-ACT-1872.pdf>

<sup>11</sup> Crimes 13 1986 (1) p.18 Delhi

<sup>12</sup> A.I.R. 2003 S.C. 1074 (India)

*Haryana*<sup>13</sup> which ruled that a valid dying declaration might be made without a certificate of fitness of the declarant by a medical officer.

Therefore, the dying declaration of the deceased Shalu passes all tests laid down by law and in this way the courts have appropriately re-valued the proof.

The last question before the Supreme Court was that whether the charge of the deceased falls under the ambit and extent of **section 306 of The Indian Penal Code, 1860**. To which the Supreme Court rightly commented that the acts of the accused beyond doubt prove that there were conditions created by the accused which in fact abetted the deceased to commit suicide and thus it falls under the ambit of section 306.

Nowhere in the case is it expressed by the accused or from material on record we can arrive to the conclusion that victim committed suicide as a result of hypersensitivity to common discord or discomfort in domestic life to which the deceased was part of. The regular eve teasing and the acts done by the accused tarnished the self-respect and self-esteem of the victim which constrained her to commit suicide.

To further prove its point, the court referred Section 306 IPC which states that 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 it can be traced under section 107 IPC which states that a person abets the doing of a thing, who:

- 1) Instigates any person to do that thing; or
- 2) 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
- 3) On purpose or intentionally aids, by any act or illegal omission, the doing of that thing.

The term “Abetment”, therefore, implies a certain amount of active suggestion or support to do the act.

Thus, from the above explanations, we can surely suggest that the accused constantly and intentionally interfered in the life of the victim. He harassed and teased her and therefore created such circumstances which instigated the victim to end her life. Thus, the acts of accused come under the definition of abetment and hence the decision where the accused was tried and punished under section 306 of the IPC is justified.

Thus, the courts have correctly decided all the issues belonging to our case. The conviction of the accused<sup>13</sup> was done not only on the reliance of the dying declaration but the entire evidences

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<sup>13</sup> A.I.R. 2016 (4) S.C.C. 583 (India)

and testimonies of the witnesses were considered and all the questions have been satisfactorily answered but one question might 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.

## **V. ANALYSIS**

This judgement can be analyzed as a precise one, particularly in accordance with rights of woman of this nation. Years of patriarchy, gender indifferences and other components, have added to woman continually being abused and considered beneath to that of men. Violence against women in basic terms implies any demonstration of gender-based violence. This prompts physical, mental and psychological agony or harm to women and is inclusive of a whole range of acts that deprives a woman of her freedom, respect and the right to a serene life.

Basically gender based violence is a sign of gender inequity and inequality and a supposed subordinate social status assigned to women in society. Outcomes of these acts are decimating and repulsive and can have short term and long-term effects on a woman's physical health and mental prosperity.

Thus, this sort of decision brings a ray of fresh hope to the women who have been suffering from time immemorial. It is step forward towards ensuring the dignity of the women. One perspective the decision focuses on is woman's right to her personal space and that she enjoys the same as that a man would as under Article 14, which provides for right to equality and Article 15, which prohibits discrimination on grounds of sex.

This additionally relates to the fundamental idea of gender sensitivity and equal rights and that justice is to be equally possessed by both men and women. Act of eve teasing deprives a woman of having equal rights as that of her male partner as he has no freedom, dignity and peace taken away as what a woman gets taken away from her life. Article 21 of the Constitution of India provides us with a right to life with human dignity. This right also includes the right to proper and comfortable livelihood. When a woman is eve teased or compelled to be in love or a relationship she doesn't want to be in it can in various ways deprive her of both physical as well as mental health. It stripes her from the opportunity to a trouble free and peaceful life.

It likewise intensely focuses on her right to choose which ought to be legally and socially considered and regarded. Her decision to reject love or advances from a man is her unquestionable right as it affects her right to life and no one, including her relatives or friends, can compel or urge her to do anything she does not want to do and this is the thing that the court also tries to put pressure on. Therefore the court has held "male chauvinism", "egoism" and so-called "masculinity" as a danger to the rights and dignity of women.

## **VI. CONCLUSION**

To conclude, it can be said that the court in its judgement has expressed the need to enforce the laws for the protection of women from violence inflicted upon them, such as threatening, harassment and eve teasing, which develop out of concepts of male chauvinism and egoism. The court sets out that a woman is entitled to enjoy all her indispensable rights and has the privilege of choice in all circumstances of her life. It also points out that when these rights are taken away, justice is to be dispensed to her and assailants are to be punished accordingly.

Eve teasing could be viewed as inconsequential on its own, but in reality, can prompt to higher degrees of brutality and crimes against women and as seen in this case can lead to abetment of suicide. Therefore, the need is to make fitting guidelines or laws and provisions regarding protection of women from eve teasing, making it a severely punishable act.

The court sets out that threatening and harassment by method of eve teasing adds up to cruelty and based on the varying degrees of its occurrence, it tends to be an element of abetment of suicide. Amendments in Criminal Rules of Practice and Circular Orders, 1990 and other laws, relating to admissibility of dying declaration in a Court of Law is also to be considered for the better comprehension of its legitimacy. Citizens of India enjoy fundamental rights and the mere distinction between a man and a woman, should not deprive anyone of their rights.

Despite the fact that the accused in the present case has been punished, but, however, there are many more victims like Shalu who are experiencing a similar phase. There is a need to control the developing number of eve-prodding episodes before some other Shalu ends her own life. The Supreme Court has failed to provide any proper directions in this regard. A strict law on the issue is the need of the hour.

JudicateMe