

(1990) 11 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Criminal A. No. 81 of 1981 & Criminal Appeal No. 81 of 1981

State of Himachal Pradesh

APPELLANT

Vs

Tara Singh and Others

RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174(3), 176, 313
Evidence Act, 1872 — Section 113A
General Clauses Act, 1897 — Section 6
Penal Code, 1860 (IPC) — Section 107, 198A, 306, 498A
Prevention of Corruption Act, 1988 — Section 5(2), 5(3)

Citation : (1991) 1 ShimLC 243

Hon'ble Judges : V.K. Mehrotra, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : M.S. Chandel, Asstt. Advocate General, for the Appellant; S.S. Kanwar and Om. Parkash Sharma, for the Respondent

Judgement

Kamlesh Sharma, J.—This is an appeal at the instance of the State of Himachal Pradesh against the judgment dated June 2, 1981 of Sessions Judge, Kangra Division at Dharamshala, passed in Sessions Case No. 24 of 1981 and Sessions Trial No. 23 of 1981, whereby the Respondents have been acquitted of the charge u/s 306 of the Indian Penal Code.

2. Smt. Bholi committed suicide by drowning herself in a well She was a married woman and her marriage had taken place with Respondent No. 2, Kishan Singh, about 1-1/2 years before the date of her death, that is, September 8, 1979 Respondents No. 1, 3 and 4 are the father-in-law, mother-in-law and sister-in-law of the deceased. They were charged for the offence of abetment of suicide by Smt. Bholi. The prosecution case, in brief, is that the Respondents humiliated and harassed Smt. Bholi for not bringing dowry to their expectations thereby instigating her to commit suicide

3. On September 8, 1979, Sh. Babu Ram (PW 2) sent Rukka (Ex P-B) to the Station House Officer, Police Station, Nurpur, that the wife of Kishan Singh son of

Tara Singh had died by drowning herself in the well of village Barot and her dead-body was found floating in the well. He requested for further action in the matter. As per the Inquest Report (Ex. P-C), the Police party reached at the spot at 12-30 p.m. and took out the dead-body of Smt. Bholi from the well. In the Inquest Report, the apparent cause of death had been stated to be by drowning.

4. An FIR was lodged on the same day at 9.00 p.m. in Police Station, Nurpur, by Sh. Faquir Chand (PW 1) who was uncle of the father of the deceased, Smt. Bholi. Faquir Chand was aged about 74/75 years. As stated by him in the F.I.R., it was he who performed the Kanya-Dan of Smt. Bholi deceased and also bore the entire expenditure of marriage. He also gave some articles of dowry. The father of Smt. Bholi deceased. Shri Mast Ram (PW 7) had given dowry articles besides Rs. 1,500 in cash in lieu of a buffalo. Respondents No. 1 and 2, S/Shri Tara Chand and Kishan Singh, did not find the dowry sufficient and showed their un-happiness at the time of marriage itself. They started maltreating and harassing Smt. Bholi deceased on account of insufficiency of dowry and also pressurizing her to bring more dowry from her parents. This was reported by Smt. Bholi deceased to Sh. Faquir Chand when she visited him after about 2/3 months from the date of her marriage. Sh. Faquir Chand called his nephew, Sh. Mast Ram, from Jagadhari, where he was working, to look into the matter. Sh. Mast Ram took his daughter and son-in-law to Jagadhari and got him employed there Sh. Kishan Singh, however, returned to his native village after a few days leaving Smt. Bholi deceased with her parents.

5. Two/three days thereafter, Sh. Mast Ram, sent Smt. Bholi along-with his son, Sh. Jai Singh (PW 8) to leave her at the house of the Respondents. It was further reported by Sh. Faquir Chand that the Respondents did not allow Smt. Bholi and her brother Jai Singh to enter their house and directed Smt. Bholi not to come back again. Sh. Faquir Chand again summoned Sh. Mast Ram who somehow left Smt. Bholi deceased at the house of her in-laws. This did not work long and after a few days, Sh. Kishan Singh Respondent No. 2 again brought Smt. Bholi deceased back to the house of Sh. Faquir Chand and left her there with the remarks that he was not willing to keep her with him.

6. It has further been stated in the F.I.R. that in the above stated background, Sh. Faquir Chand reported the matter to Sh. Babu Ram, Pradhan, Gram Panchayat, Barot, who convened a meeting of the Panchayat to persuade Respondents No. 1 and 2 not to harass Smt. Bholi deceased on account of insufficiency of dowry and to accept her back in their house. The Panchayat people were successful in persuading Sh. Tara Singh to take back Smt. Bholi to his house, but he alongwith other Respondents continued treating her with cruelty as before. Ten/twelve days before the date of her death. Smt. Bholi deceased sent a message through one Sh. Kamal to Sh. Faquir Chand to take her back to his house, as it had become difficult for her to live with the Respondents. Sh Faquir Chand did visit Smt. Bholi deceased at her in-laws' house and she informed him weepingly that her husband, father-in-law and mother-in-law had

been maltreating and harassing her to compel her to withdraw the amount of Rs. 1,000 which stood deposited in her name out of the amount of Rs. 1,500 paid at the time of marriage in lieu of a buffalo. Sh. Faquir Chand consoled Smt. Bholi deceased and returned to his house. Thereafter on 8-9-1979, he was informed that the dead body of Smt. Bholi was lying in the well of Barot village. According to him the acts and conduct of the Respondents had instigated Smt. Bholi to commit suicide.

7. In support of the above allegations made by Sh. Faquir Chand in the F.I.R., the prosecution produced as many as sixteen witnesses besides documentary evidence. The Respondents in their statements u/s 313 Code of Criminal Procedure, denied the allegations that they were unhappy with Smt. Bholi deceased on account of insufficiency of dowry and also that they maltreated or harassed her in any manner on this account. They have not denied that Kishan Singh and Smt. Bholi were taken by Sh. Mast Ram to Jagadhari alongwith him for settling them there and also that Panchayat was held to persuade Respondents No. 1 and 2 to take back Smt. Bholi deceased to their house. They have tried to make counter-allegations that Smt. Bholi deceased was not of good character and for that reason they were not inclined to accept her in their house. Sh. Kishan Singh, husband of Smt. Bholi, has given specific instances of illicit relations of Smt. Bholi with S/Sh. Kamal and Onkar Singh. Their defence is that Smt. Bholi left their house one day earlier to the incident. To this, Sh. Kishan Singh has further added that Smt. Bholi had left for the house of her parents for delivery of her child as he had told her that since she was not carrying his child, he would not permit her to deliver the child at his house.

On the evidence on record, the learned Sessions Judge did not believe the prosecution story of maltreatment and harassment of Smt. Bholi on account of insufficiency of dowry and acquitted the Respondents of the charge of abetment to suicide by giving them benefit of doubt. We are aware that criminal charge must be brought home and proved beyond all reasonable doubt. But doubt must be of reasonable man and standard of proof depends upon the facts and circumstances of each case. As said by Lord Denning in *Bater v. Bater* (1950) 2 AER 458 :

In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear....The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter.

His Lordship further observed that in a criminal case a high degree of probability is required as compared to a civil case but it must be commensurate with the occasion.

8. Referring to the above observations of Lord Denning, Sabyasachi Mukharji, J. (now C.J.) in *Gurbachan Singh Vs. Satpal Singh and others*, observed that:

...Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.

The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated.

In order to arrive at our conclusions, we will scan the evidence brought on record by the prosecution, keeping the above in view.

9. Sh Faquir Chand (PW 1) in his statement in the Sessions Court had reiterated all what he had reported to the Police in the F.I.R. When Smt. Bholi deceased visited him a few month after her marriage, she told him that "all the four accused were maltreating her." The reason for maltreatment was that less dowry was given and the accused wanted her (the deceased) to "give them the money which she had brought in dowry for redeeming some land as told by her..." He has stated that Babu Ram Pradhan told Sh. Tara Singh Respondent No. 1 in the Panchayat held at his instance that, "if he was interested in dowry or keeping the deceased in the company of her husband." On the intervention of the Panchayat though Respondents No. 1 and 2 took Smt. Bholi deceased to their house yet after a few days she sent a message through one Sh. Kamal that she was very unhappy and there was danger to her life at the hands of the Respondents. On receiving this message, Sh. Faquir Chand visited Smt. Bholi deceased and advised her to stay with her in-laws as they could not put an end to her life. During cross-examination, the Respondents have not been able to contradict this part of the statement of Sh. Faquir Chand. He has made it clear that Sh. Kamal, through whom he got the message, was the second son-in-law of Sh. Mast Ram.

10. Sh. Babu Ram (PW 2) was the Pradhan of Gram Panchayat Barot. He has proved Rukka (Ex PB). He has deposed that at the instance of Sh. Faquir Chand he did hold Panchayat in which a number of villagers of village Barot participated to consider the complaint of Sh. Faquir Chand that Smt. Bholi deceased was not being kept by the Respondents in their house. He has clearly stated that, "Tara Singh accused had come in my presence when I told him to collect his daughter-in-law and not to insist on more dowry. Three/four days thereafter Tara Singh collected the deceased and took her to Barot." There is no cross-examination on this part of the statement of Sh. Babu Ram that he told Sh. Tara Singh not to insist on more dowry.

11. Sh. Prem Singh (PW 3) was a resident of village Barot, that is, the village of the Respondents. He has stated that Sh. Tara Singh showed his resentment about the insufficiency of dowry at the time of marriage. He has further stated that Smt. Bholi deceased met him on 3-9-1979 at the village tap and told him

that, "All the accused are maltreating her on the quantum of dowry. Her husband also joined hands with them." In cross-examination, he has explained that prior to 3-9-1979, Smt. Bholi deceased never made any complaint to him about her maltreatment. There is some inconsistency in this part of his statement as he further stated that Smt. Bholi deceased used to come to his house off and on and used to complain about maltreatment by the Respondents. Sometimes she used to complain to his wife. In our opinion, this inconsistency is not enough to object his earlier part of the statement.

12. Sh. Krishan Singh (PW 4) was resident of the village of Smt. Bholi deceased. He is a witness to the resentment shown by Sh. Tara Singh, father-in-law of Smt. Bholi, to insufficient dowry at the time of marriage. He has further deposed that at the house of Sh. Faquir Chand, Smt. Bholi deceased had said that her in-laws were maltreating her and had made it difficult for her to stay with them. This statement was made by Smt. Bholi when she visited the house of Sh. Faquir Chand a few months after her marriage. This witness had accompanied Sh. Faquir Chand to Sh. Babu Ram Pradhan for requesting him to hold a Panchayat to persuade Sh. Tara Singh to take back Smt. Bholi. He also participated in the Panchayat. He has stated that Kishan Singh accused had declined to keep Smt. Bholi with him in the presence of the Panchayat and later on Sh. Tara Singh was persuaded to take Smt. Bholi to his house. This witness was ex-Pradhan of Lohara Panchayat. Though he has stated that Smt. Bholi deceased did not disclose to him the acts of her maltreatment by her in-laws, yet in the cross-examination he has reiterated that Sh. Tara Singh had expressed his unhappiness on insufficiency of dowry at the time of marriage.

13. Sh. Onkar Singh (PW 5) was resident of village Barot and his house was at a distance of one furlong from the house of the Respondents. He was also cultivating the land which was adjacent to the house of the in-laws of Smt. Bholi. He has stated that the Respondents used to maltreat Smt. Bholi deceased and demand more dowry. He has also narrated the incidents of taking Smt. Bholi and her husband to Jagadhari by Smt. Mast Ram ; return of Sh. Kishan Singh after a few months leaving Smt. Bholi with her parents ; sending of Smt. Bholi deceased alongwith her brother Sh. Jai Singh to the house of the Respondents and the Respondents not keeping Smt. Bholi with them and holding of Panchayat by Sh. Babu Ram, Pradhan, and persuading of Sh. Tara Singh to accept Smt. Bholi deceased in his house. He is also a witness to the quarrel which, according to him, took place between Smt. Bholi and the Respondents one day earlier to her death. He heard the Respondents abusing Smt. Bholi and saying: "They were not interested in her. She may die or go anywhere as the dowry given was much less." According to him, the quarrel took place in the house of the Respondents and he heard it when he was working in his fields which were adjacent to the house of the Respondents. In his cross-examination he has further stated that, for the first time, he had heard the quarrel between Smt. Bholi deceased and the Respondents fifteen days or a month after the marriage of Smt. Bholi. He has further added that he heard their quarrel about 2/3 times. This witness by his

statement has brought another important fact on record that Sh. Kishan Singh, husband of Smt. Bholi deceased, had left for Purgol village which was at a distance of about 20 Kilometres, at 7.00 a.m. on 8-9-1979 and he was brought back by him on the following day. Except showing that this witness has tried to improve his statement from whatever he had stated u/s 161 Cr. PC, the Respondents have not been able to contradict his version.

14. Sh. Kanshi Ram (PW 6) is the real brother of Sh. Tara Singh Respondent. He was 71 years of age at the time he gave his statement in the Sessions Court. He has stated that he was himself hearing about the quarrels between Smt. Bholi and her husband and her in-laws on quantum of dowry. He has further deposed that 1-1/2 months prior to her death, Smt. Bholi deceased met him at the village tap where she had come to fetch water and told him that, "She was very much upset due to maltreatment by the accused" and she wanted him to intervene. He showed his inability to intervene and advised her to inform her parents and grand-father who might call the Panchayat. This witness has also deposed that one day prior to the death of Smt. Bholi, while he was sitting in his Verandah, he heard the Respondents quarreling with her. According to him, Smt. Bholi was not speaking and he could not make out what the Respondents were saying to her. In his cross-examination, this witness had admitted that there was no love lost between him and his brother for the last 8/10 years and he was living separately from him. Further he has affirmed in his cross-examination that the quarrel did occur between Smt. Bholi and her in-laws one day prior to her death at 9.00 p.m. to 10 30 p.m. Though admittedly this witness, who was brother of Sh. Tara Singh, did not have good relations with his brother, yet his statement inspires confidence and cannot be rejected on this ground alone.

15. Sh. Mast Ram (PW 7) is the father of Smt. Bholi deceased. He has corroborated the version of Sh. Faquir Chand (PW 1) on all material aspects. He has stated that at the time of marriage, the bridegrooms party expressed some resentment on insufficiency of dowry. He has further stated that his daughter Smt. Bholi had told him after 2/ 3 months of her marriage that she was maltreated by the Respondents and they were demanding more money for redeeming their land. According to him, when he took Smt. Bholi and Kishan Singh along with him to Jagadhari, Sh. Kishan Singh told him that he was fed up with his parents who were compelling him to ask Smt. Bholi to bring more money for redeeming their land. From his statement it is clear that being father, he tried his level best to persuade the Respondents to allow Smt. Bholi to live in their house as their daughter-in-law knowing well that they were maltreating and harassing his daughter, Smt. Bholi. In the Indian Society especially in the middle class, perhaps, the father of a married daughter has no other alternative. This witness has deposed that his daughter Smt. Bholi was carrying full time child in her womb at the time of her death. This is confirmed by Dr. A.R. Dutta (PW 12) who conducted the post mortem examination. According to him, the uterus contained a foetus of thirty-six weeks duration. The cause of death appeared to the doctor by drowning. From the trend of cross-examination of this witness it

seems that besides insufficient dowry, Sh. Kishan Singh husband of Smt. Bholi was suspicious of her fidelity. Sh. Mast Ram has denied in so many words that Sh. Kishan Singh ever told him that he saw one Madan in his quarter as Jagadhari with Smt. Bholi deceased one night when he returned from his duty. He has further denied that Kishan Singh accused ever disclaimed that the child borne by Smt. Bholi deceased at the time of her death was not his and for this reason he had told Smt. Bholi to deliver her child somewhere else and not at his house. From the tenor of other questions asked in cross-examination, it is clear that another cause of the ill-treatment of Smt. Bholi deceased by her husband, Sh. Kishan Singh, was his suspicion about the character of his wife.

16. Sh. Jai Singh (PW 8) is the brother of Smt. Bholi deceased. Besides corroborating the statement of Sh. Faquir Chand (PW 1) and Sh. Mast Ram (PW 7) he has stated that he and Smt. Bholi were not allowed to enter their house by the Respondents when he had gone to leave Smt. Bholi there at the instance of his father. He has further deposed that Smt. Bholi deceased used to tell him that she was being maltreated by the Respondents they demanded more money from her and wanted her to pay Rs. 1,000, which were lying in deposit in her name, for redeeming their land. He has produced one letter of Smt. Bholi, Ex. P-J This letter is dated 8-5-1979 and the postal stamp is of 10-9-1979. It was not signed by Smt. Bholi. In this letter she had requested her father to visit the place of her in-laws immediately in order to decide something important which she would narrate to him personally. It is evident from this letter that Smt. Bholi was upset about something very serious and she wanted it to be resolved in the presence of her father. Very much like Indian girls, Smt. Bholi deceased did not want to disturb her father by disclosing the cause of her worries and woes in her letter to her father. Sh. Kishan Singh in his statement u/s 313, Code of Criminal Procedure. has also admitted that Smt. Bholi deceased wrote this letter to her father and the address on it was written by him. During the cross-examination of this witness, the Respondents have not been able to contradict the material aspects of the statement of this witness except that they have tried to show that he has improved upon his statement u/s 161, Code of Criminal Procedure.

17. Sh. Gagan Singh (P.W. 9) was resident of the village of the Respondents. He had participated in the marriage of Smt. Bholi deceased and Kishan Singh. He has corroborated the other witnesses that at the time of the marriage, S/Sh. Tara Singh and Kishan Singh showed their unhappiness on the insufficiency of dowry. He has corroborated the other witnesses that Smt. Bholi deceased was being maltreated by the Respondents and they were demanding more dowry and money for redeeming their land. His land was adjacent to the house of the Respondents. Therefore, he happened to see them quarreling with Smt. Bholi deceased. He has stated that Smt. Bholi had told him that she was very much unhappy at the house of her in-laws because they had been taunting her for bringing insufficient dowry and they wanted her to go away from their house. This witness has also corroborated the statement of Sh. Onkar Singh (P.W. 5) that Sh. Kishan Singh had left for village Purgol on the morning of 8-9-1979 and

had stayed along with him in the house of his maternal uncle. He has further corroborated the version of Sh. Onkar Singh that Sh. Kishan Singh was informed about the death of Smt. Bholi by him and Sh. Kishan Singh had come along with Sh. Onkar Singh and others to his village Barot on the next day. According to him, Sh. Kishan Singh accused was not expressing any sorrow on the death of his wife and he took his meals at the house of his maternal uncle after hearing the news. In reply to the court question, this witness has quoted the exact words which the Respondents used to till to Smt. Bholi which clearly show that they were harassing and compelling her to leave their house because they were unhappy due to insufficiency of dowry brought by her. This witness has further stated that Smt. Bholi deceased was pregnant at the time of her death. She was of good character as nothing was heard against her in the village He has denied, during his cross-examination, the suggestion made to him that he collected Kishan Singh accused from his house at 7.00 a.m. on 8-9-1979 to accompany him to village Purgol in order to visit his ailing uncle. Many more suggestions were put in cross-examination to show that this witness was related to Smt. Bholi deceased and for that reason he had deposed against the Respondents but without any success. This witness was also present in the Panchayat held by Sh. Bahu Ram Pradhan and he has denied that Kishan Singh had told the Panchayat that Smt. Bholi deceased was not of good character An attempt has been made to show that this witness has also improved his version from the statement made by him u/s 161, Code of Criminal Procedure but his statement, on all material aspects, has not been shattered in any manner.

18. Another material witness is Sh. Bir Singh (P W. 1) who was produced to establish that land was mortgaged with him by Sh. Tara Singh accused 9/10 years back for Rs. 1,000 He has stated that the possession of land continued to be with him as Sh. Tara Singh did not pay the mortgage money to him. In cross-examination, this witness has stated that Sh. Kishan Singh accused happened to meet him four months before the death of Smt. Bholi and told him that he (Kishan Singh) was not bringing Smt. Bholi to his house because she was pregnant by some other person. The Public Prosecutor had requested to cross-examine this witness on the ground that he had gone against the prosecution version but permission was not granted to him by the Sessions Judge. We do not find anything in the cross-examination which goes against the prosecution story. The prosecution version that the land of Sh. Tara Singh was mortgaged with this witness has been affirmed by him in his cross-examination His statement in respect of suspicion of Sh. Kishan Singh that Smt. Bholi deceased was pregnant by some other person, has advanced the prosecution story further that Smt. Bholi deceased was being harassed by her in-laws and false allegations were being levelled against her character by her husband, Kishan Singh, which instigated her to commit suicide.

19. The other witnesses are formal witnesses and their statements, need not be referred to. Besides the oral evidence and letter (Ex. P-J), the material documents which need to be referred to are three letters Ex. D-1, Ex. D-2 and

Ex. D-3, written by Smt. Bholi deceased to her husband. Sh. Kishan Singh. These letters are dated 23-5-1978, 4-6-1979 and 29-6-1978, that is, about three to three and a half months before her death. It is correct that she has not mentioned anything about her maltreatment and harassment at the hands of her husband and her in-laws in these letters. These seem to be formal letters written by a wife to her husband expressing her affection as well as grievance that the husband had not written to her for the last many days and had not reciprocated her gesture of love and affection. Despite this, from the tenor of these letters it is clear that there was something simmering between Smt. Bholi and her husband, Sh. Kishan Singh, due to which their relations were not cordial.

20. After going through the evidence and analysing it, we find ourselves unable to agree with the conclusion arrived at by the learned Sessions Judge who has not cared to refer to the material parts of the statements of P.Ws. 1 to 9 and P.W. 14. He has dealt with the statement of a few of these witnesses in a most cursory manner. He has rejected the prosecution Version that Respondents No. 1 and 2 showed their unhappiness on insufficiency of dowry at the time of marriage itself on the ground that they knew about the dowry articles which were carried by them and kept at the house of Gagan Singh P.W. Therefore, there was no question of display of dowry articles at the time of marriage. This reason is not enough to reject the direct evidence of P.W. 1, P.W. 3, PW 4, PW 7, PW 8 and PW 9 in whose presence S/Sh. Tara Singh and Kishan Singh expressed their resentment and unhappiness on insufficiency of dowry at the time of marriage. The finding of the Sessions Judge that, "No witness excepting the grand-father of the deceased had come forward to say that the deceased was being maltreated for want of dowry" is factually wrong. The statement of Sh. Faquir Chand (PW 1) has further been corroborated by PW 2, PW 3, PW 5, PW 6, PW 7, PW 8 and PW 9. He is further wrong in saying that in the Panchayat which was held at the instance of Sh. Faquir Chand, there was no mention of demand of more dowry. The Sessions Judge has absolved the in-laws of Smt. Bholi of their misconduct on the ground that Sh. Tara Singh, father-in-law took her back to his house on the intervention of the Panchayat once and at the persuasion of the father of Smt. Bholi deceased on another occasion. His conclusion of not finding the Respondents guilty is further influenced by the fact that in the letters brought on record there was no mention of maltreatment of Smt. Bholi deceased on account of insufficient dowry or demand of more dowry. He has rejected the evidence of quarrel between Smt. Bholi deceased and the Respondents stated to have taken place one day prior to her death on the ground that it does not fit in with the medical evidence that the body floats after 24 to 48 hours from the time of drowning. It is correct that Dr. A.R. Dutta (PW 12) did opine in his cross examination that, "Body will come to the surface within 24 to 48 hours." His medical opinion only tells us about the probability and is not a final opinion. The learned Sessions Judge was not justified in disbelieving the direct evidence. In fact, the whole approach of the learned Sessions Judge to the prosecution case was not proper as the totality of all the acts and conduct of the Respondents was

required to be seen for coming to the conclusion whether they instigated Smt. Bhols to commit the offence of suicide. It is pertinent to note here that abetment is a separate and distinct offence provided what is abetted is an offence. Admittedly, Smt. Bholi deceased committed the offence of suicide. It is not to be seen whether the Respondents involved themselves in the actual commission of the crime abetted, that is, suicide, but what is to be seen is that by their acts and conduct, the ingredients of the offence of abetment, as defined in Section 107 read with Section 306 of the Indian Penal Code are proved.

21. In our opinion, on the basis of the evidence on record, the ingredients of abetment given in Section 107 First are duly satisfied. Section 107, First, lays down that:

A person abets the doing of a thing, who--First,--Instigates any person to do that thing;

Instigation, as in the present case, may take the shape of creating a situation which impels the victim to put an end to her life.

And Section 306 I.P.C. reads as under:

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

By the Criminal Law (Second Amendment) Act, 1983, (Act No. 46 of 1983), far reaching amendments have been made in the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act in respect of offences committed against married women. A new Section 498-A has been added in the Indian Penal Code, whereby cruelty to a married woman by her husband or the relatives of the husband has been made punishable. Section 498-A reads as under:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation--For the purposes of this Section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; Or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

22. Act No. 46 of 1983 further amends Sub-section (3) of Section 174 of the

Code of Criminal Procedure. It provides for forwarding of the dead body for post-mortem examination, in case of a suicide or death of a married woman within seven years of her marriage. Corresponding amendments have been made by amending Section 176, adding Section 198A and amending the First Schedule in the Code of Criminal Procedure. Further, Section 113-A has been incorporated in the Indian Evidence Act which has a great bearing on the present case. Section 113-A of the Indian Evidence Act reads as follows:

113-A Presumption as the abetment of suicide by a married woman.--When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation---For the purpose of this section, "cruelty" shall have the same meaning as in Section 198-A of the Indian Penal Code.

23. Admittedly, Smt. Bholi deceased had committed suicide within seven years from the date of her marriage, that is, about 1-1/2 years from the date of her marriage. We have already considered and weighed the evidence above which points to the only conclusion that the husband, father-in-law and mother-in-law of Smt. Bholi deceased subjected her to cruelty. Therefore, by application of Section 113-A of the Indian Evidence Act, it can be presumed that the husband, father-in-law and mother-in-law of Smt. Bholi deceased had abetted in the commission of suicide by her. As per explanation to Section 113-A, cruelty has been given the same meaning as in Section 498-A of the Indian Penal Code which has been reproduced hereinabove. The present case falls under Explanation (b) to Section 498-A, I.P.C. in view of our findings that Smt. Bholi deceased was harassed by her husband, father-in-law and mother-in-law on account of her failure to bring dowry to their satisfaction or to meet their demand to give Rs. 1,000 which was lying deposited in her Savings Bank account.

24. Mr. S.S. Kanwar appearing on behalf of the Respondents has urged that the above stated amendments, especially Section 113-A of the Indian Evidence Act do not apply to the present case. According to him, the amended provision came into force on and with effect from 26-12-1983 and is prospective whereas the offence u/s 306 of the I.P.C. was committed on September 8, 1979 and judgment of acquittal was recorded by the Sessions Judge on June 2, 1981. In support of his contentions, he has relied upon the decision of the Supreme Court in Nani Gopal Mitra Vs. The State of Bihar, In that case, the issue before the Supreme Court was whether the case of the Appellant who stood convicted u/s 5(2) of the Prevention of Corruption Act was required to be re-opened and decided in appeal before the High Court without applying Section 5(3) of the Prevention of Corruption Act which was deleted from the statute book during the

pendency of the appeal. The Supreme Court answered the issue in the negative on the ground that conviction of the Appellant was ordered long before the amending provision was promulgated. It was held in para 5 at page 638 that:

...It is true that as a general rule alterations in the form of procedure are retrospective in character unless there is some good reason or other why they should not be...

25. For these observations, Ramaswami, J. speaking for the Court, relied upon the observations of Lord Blackburn in *James Gardner v. Edward A. Lucas* (1876) 3 AC 582. His Lordship, further referring to two English decisions *In re a Debtor* 1936 Ch. 237 and *In re Vernazza* 1960 AC 365 observed that:

It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force...

According to his Lordship, this principle is embodied in Section 6 of General Clauses Act.

26. Mr. Kanwar has referred to a few more decisions of other High Courts to persuade us that Section 113-A is substantive law and cannot be applied retrospectively. We need not refer to all these decisions as, according to us, the matter stands concluded by the Supreme Court in *Gurbachan Singh's* case (supra). In Para 35 at page 218, B.C. Ray, J. has observed that:

The provisions of the said section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in this connection to *Halsbury's Laws of England* (Fourth Edition), Volume 44 page 570 wherein it has been stated that:

The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature.

His Lordship further proceeds in Para 37, by referring to *Halsbury's Laws of England*:

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

His Lordship relying upon two English cases *Blyth v. Blyth* 1966 AC 643 and *Herridge v. Herridge* (1966) ALL ER 93, said that presumption arising u/s 113-A

of the Indian Evidence Act had been rightly taken into consideration by the trial court in the case before it in which an offence u/s 306 I.P.C. was committed earlier to the coming into force of this section.

27. Mr. Kanwar has also relied upon 8913 Cri LJ 706 Chanchal Kumari and Others Vs. Union Territory, Chandigarh, Padmabai Vs. State of Madhya Pradesh, Smt. Padmabai v. State of M.P. to urge that ingredients of Section 107 of the Indian Penal Code are required to be proved strictly to hold the Respondents guilty for abetment to suicide committed by Smt. Bholi. In our opinion, these decisions are of no assistance to him due to change in law. Change in law has been brought to meet the present day alarming situation arising out of large scale happenings of bride burning, dowry deaths and suicide by married women. In such cases, direct evidence is generally not available. To bring home the guilt to the accused persons, the prosecution is left to establish preceding and attendant circumstances leading to the conclusion of culpability of accused persons. In the present case, the prosecution has succeeded in establishing such preceding and attendant circumstances, as we have already discussed above.

28. Mr. Chandel, learned Assistant Advocate-General, appearing on behalf of the State, has suggested a few more circumstances from which it can safely be presumed that the Respondents are guilty of the charge they are facing. He has successfully demonstrated that there is not even an iota of evidence on record to show that Smt. Bholi deceased was having suicidal tendencies or there was any other reason for her to commit suicide. She was at the prime of her youth and carrying a full time child in her womb. In these circumstances, she must have had a keen desire to live. Had the Respondents not made her living impossible by their cruel behaviour and conduct, she would not have taken this extreme step of taking her own life. If there was anything else due to which Smt. Bholi committed suicide, it was within the special knowledge of the Respondents and it was for them to bring it on record. But they have not. Instead, they have pleaded ignorance. On the other hand, Mr. Kanwar, learned Counsel for the Respondents, has pointed out that the prosecution story in respect of maltreatment of Smt. Bholi deceased by the Respondents on account of dowry is not worthy of credence. He submits that no prosecution witness has stated that what was the maltreatment meted out to Smt. Bholi; that there was no question of expecting dowry by the Respondents because they knew very well the financial position of the parents of Smt. Bholi and that out of the amount of Rs. 1,500, Rs. 1,000 was already deposited by the Respondents in the name of Smt. Bholi deceased. In our opinion, these circumstances are not enough to over-ride the other direct and conclusive evidence on record which we have discussed above.

29. The present is not a case of two possible views. The only reasonable view possible, on proper consideration of the evidence on record, is that cruel behaviour and harassment caused by Respondents No. 1 to 3 led Smt. Bholi to commit suicide.

30. Therefore, from the totality of evidence on record, it is proved beyond any reasonable doubt that Respondents No. 1 to 3 are guilty of abetment to suicide.

31. The case of the fourth Respondent, sister-in-law of Smt. Bholi deceased is distinguishable. It has come on record that she was married and was living with her husband and her in-laws. It is true that at the time of the death of Smt. Bholi she happened to be in the house of her parents, yet, even the prosecution has not imputed to her any specific act which could be construed as instigation on her part to the deceased to commit suicide. There is no allegation that she was a party to any incident of harassment and maltreatment of the deceased.

32. Coming now to the question of sentence. We have considered the submissions of the learned Counsel about it we feel ends of justice will be met if we sentence the first three Respondents to undergo imprisonment till the rising of the court and to pay a sum of Rs. 2,000 each by way of fine. We order accordingly.

33. We have taken this view having regard to the peculiar circumstances of the present case when the incident took place nearly ten years back and during this long period the parties must have reconciled to the fait accompli.

34. The amount of fine may be paid within a period of three months from today failing which each of the convicted Respondents will undergo rigorous imprisonment for a period of six months.

35. Out of the amount of fine a sum of Rs. 5,000 shall be paid to Mast Ram, father of deceased Smt. Bholi.