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Crl.A.No. 519 OF 2000

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ITEM No.102

Court No. 1

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRL. APPEAL NO. 519 OF 2000@@  
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Bipin Kumar Rai & Anr.

Appellant (s)

VERSUS

State of Bihar  
(With office report)

Respondent (s)

Date : 27/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI  
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant (s) Mr. P S Mishra, Sr. adv.  
Mr. R K Khanna, adv.  
Mr. Chandra Shekhar, adv.  
Mr. Vishnu Sharma, adv.  
Mr. Upendra Mishra, adv.  
Ms. Ritu Jalali, adv.

For Respondent (s) Mr. Irshad Ahmed, adv.  
Mr. Rashid Saeed, adv.  
Mr. B B Singh, adv.

UPON hearing counsel the Court made the following  
O R D E R

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.SP2

The appeal is allowed in terms of the signed order. The conviction of the accused appellants under Section 306 IPC and the sentence passed thereunder by the trial court and the High Court are set aside. Bipin Kumar Rai, accused appellant No. 1 is in jail. He shall be set at liberty forthwith. Meera Devi, accused appellant No. 2 is on bail. She need not surrender to her bail bonds which shall stand discharged.

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(Kanchan Jain)  
AR-cum-PS

(Prem Prakash)  
Court Master

Signed order is placed on the file.

.PA

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 519 OF 2000@@  
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Bipin Kumar Rai & Anr. ....Appellants

VS.

State of Bihar ....Respondent

O R D E R@@  
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.SP2

The accused appellants, respectively the son and the mother, were charged for offences under Sections 3 and 4 of Dowry Prohibition Act, 1961 and Section 306 of the Indian Penal Code. The trial court found them guilty. On appeal the High Court has found charge under Sections 3 and 4 of Dowry Prohibition Act not substantiated against the accused appellants and acquitted them by allowing the appeal in that regard. However, the conviction under Section 306 IPC has been maintained alongwith sentence of four years R.I. each. Feeling aggrieved, the accused appellants have filed this appeal by special leave.

The deceased Shanti Kumari Rai was married to accused appellant - Bipin Kumar Rai in the month of May, 1984. According to the prosecution, articles worth Rs. 4,000/- and cash to the tune of Rs. ...2/-

2.

15,000/- were given by way of dowry to the in-laws. However, the in-laws persisted in demanding further dowry. The deceased - Shanti Kumari was not allowed to go back to her parents' house by the in-laws unless and until an amount of Rs. 5,000/- in cash and a new motorcycle was given to them. On 20th April, 1986, the marriage of brother of the deceased was fixed. For that purpose, Ram Dev Rai - P.W.-8, father of the deceased; Ram Charitar Rai - P.W.-1, father's uncle of the deceased; Ram Narayan Rai - P.W.-2, a neighbour of P.W.-8; and Ram Bishesh Rai - P.W.-3, son-in-law of Ram Dev Rai had gone to take the deceased so that she could participate in her brother's marriage. The two appellants did not allow her to go. On the same day, Shanti Kumari died an unnatural death. The factum of death was reported to police. At the time of death, the two appellants and their servant Sant Lal Mahto were to be found in the house. All the three were arrested. After investigation the challan, complaining of commission

of offences under Sections 3 and 4 of Dowry Prohibition Act and under Section 306 of the Indian Penal Code was filed. On trial, Sant Lal Mahto was acquitted by the trial court.

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3.

Insofar as charge under Sections 3 and 4 of Dowry Prohibition Act is concerned, the accused appellants have been acquitted of the charge and therefore, we need not deal with the facts and the evidence relating thereto. We will confine ourselves to dealing with the charge under Section 306 of the Indian Penal Code. The evidence relevant to this charge consists of statements of four witnesses i.e. P.W.-1, 2, 3 and 8. Taking the statements of these four witnesses at their face value, all that these witnesses have stated is that they had gone to take Shanti Devi but she was not allowed to go with them by the accused appellants. The exact reason for which the deceased was not allowed to accompany her father and others is doubtful inasmuch as according to Ram Dev Rai, P.W.-8, himself the two accused appellants had refused the deceased Shanti Kumari to accompany them by saying that she was ill and having said so the two appellants and their servant - Sant Lal Mahto had closed the door. They were not allowed to meet the deceased and, therefore, they returned back.

Having carefully perused all the evidence adduced by the prosecution we are satisfied that a

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4.

case under Section 306 I.P.C. cannot be said to have been made out on the evidence adduced. Under Section 306 I.P.C. if any person commits suicide, whoever abets the commission of such suicide is liable to be punished in accordance therewith. Abetment is defined in Section 107 of the I.P.C. as under:

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"107. Abetment of a thing - A person@  
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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.

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."

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.SP2

There is no evidence adduced on behalf of the prosecution, nor any facts and circumstances are available on record, from where it can be inferred that the deceased was instigated by any of the accused appellants into committing suicide or any of the accused appellants had engaged in any conspiracy for committing of suicide by the deceased or any one of them had intentionally aided, by any act or illegal omission, in the committing of suicide by the deceased.

The post mortem on the dead body of the deceased was performed by Dr. Ved Bhanu Prasad. According to him, there was an abrasion over left wrist of the deceased of 1" x 1/6" size and except this minor injury there was no other external or internal injury found on the body of the deceased. Viscera was preserved for chemical analysis. Dr. Ved Bhanu Prasad stated that cause of death could not be ascertained and depended on the report of chemical examination of viscera. What happened to chemical examination of viscera and whether any report was received or not, is not clear from the record. The investigation officer has also not been examined by prosecution.

...6/-

6.

The trial court as also the High Court have built up a hypothesis of the deceased having committed the suicide by reference to the evidence of two defence witnesses who are neighbours of the accused-appellants and who had collected at the door of the appellants after the incident. They had seen Shanti Devi, the deceased, lying on a cot stating that she had consumed some tablets of insecticides in the morning. According to Ram Dev Rai - P.W.-8, a plastic bottle was lying near Shanti Devi in which in Hindi and English word 'sulphos' was written, but this bottle does not appear to have been seized and sent for examination by chemical examiner.

On the record, there is no material available to record a positive finding whether Shanti Kumari had suffered a suicidal death. The death could have been suicidal or accidental. As neither it is proved that the deceased died a suicidal death nor it is proved that any of the accused appellants had abetted the commission of suicide - assuming that if it was a case of suicide, in our opinion, the accused appellants could not have been held guilty of an offence punishable under Section 306 of the Indian Penal Code.

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7.

From the singular fact of the deceased having died an unnatural death whilst in the house of her in-laws an inference as to her having been abetted into committing suicide cannot be drawn more so when charge under Sections 3 and 4 of Dowry Prohibition Act has failed and not appealed against by State or the complainant.

For the foregoing reasons, the appeal is allowed. The conviction of the accused appellants under Section 306 IPC and the sentence passed thereunder by the trial court and the High Court are set aside. Bipin Kumar Rai, accused appellant No. 1 is in jail. He shall be set at liberty forthwith. Meera Devi, accused appellant No. 2 is on bail. She need not surrender to her bail bonds which shall stand discharged.

.SP1

.....J.  
(R. C. LAHOTI)

.....J.  
(ASHOK BHAN)

New Delhi  
September 27, 2001.