

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 399 OF 2009

RANVIR SINGH Appellant (s)

VERSUS

STATE OF UTTARAKHAND Respondent(s)

(With appln(s) for bail)

Date: 26/11/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE DEEPAK VERMA

For Appellant(s) Mr. Sanjay Ghose,Adv.
Ms. Anitha Shenoy,Adv.
Mr. Rasmi Nand Kumar,Adv.

For Respondent(s) Mr. Abhay Kumar Sahay,Adv.
Mr. Jatinder Kumar Bhatia,Adv.

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

Appeal is allowed, setting aside the judgment and order passed by the High Court and acquit the appellant of the charge under Section 306 of the Penal Code.

The appellant is directed to be released from jail forthwith, in case he is not wanted in any other case.

(Arvind)
Sr. P.A.

(Savita Sainani)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 399 OF 2009

RANVIR SINGH ..APPELLANT

VS.

STATE OF UTTARAKHAND ..RESPONDENT

O R D E R

The appellant, Ranvir Singh, stands convicted under section 306 of the Indian Penal Code for having abated the commission of

suicide by his wife, Shushila. He is sentenced by the High Court to undergo rigorous imprisonment for seven years.

The deceased Shushila was married to the appellant in the year 1986. On the morning of January 22, 1989 Shushila was missing from the appellant's house in village Kiyari and his father Shyam Singh (arrayed as one of the accused before the trial court) went to look for her at her brother's village, Rotu Ki Beli. Shyam Singh informed Shushila's brother Balbir Singh (PW-4) about her disappearance and said that he had come looking for her at his place. On the following day, January 23 at about 12.00 - 1.00 in the noon one Suman Singh, PW-6 found Shushila's body hanging from a tree at a distance of about 2.5 kms. from village Kiyari. It was initially thought that she had committed suicide by hanging herself from the tree.

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Information about the discovery of the body also reached her brother Balbir Singh and he also came to village Kiyari and then on January 24 the body was brought down from the tree in his presence. There were marks of violence on the body of the deceased indicating that it was a case of homicide and not suicide. Balbir Singh lodged a FIR with the Patwari of the village who also exercised some police powers. The body of Shushila was sent for medical examination and the post mortem was conducted on January 25, 1989. The post mortem report noted certain ante mortem injuries on the person of the deceased and disclosed that death was caused due to asphyxia as a result of hanging. The SDM, Tehri visited the place of occurrence and got the statements of the appellant and his brother Jaibir recorded under section 164 of the Code of Criminal Procedure in which they purported to have confessed killing Shushila for her extra-marital relationships. After investigation the police submitted charge sheet against the appellant and his brother Jaibir and their father Shyam Singh. All the three accused were put on trial on charges under sections 498A, 304B and 302/34 of the Penal Code. The trial court (Sessions Judge, Tehri Garhwal) by its

judgment and order dated April 16, 1993 in Sessions Trial No.24/1989 acquitted the appellant's father Shyam Singh of all the charges. It also acquitted the appellant and his brother Jaibir of the charge under section 304B of the Penal Code. It, however,
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convicted the appellant and Jaibir under section 302/34 of the Penal Code and sentenced them to undergo rigorous imprisonment for life. The appellant was additionally convicted under section 498A of the Penal Code and was sentenced to undergo rigorous imprisonment for three years for that offence.

Both the appellant and Jaibir preferred an appeal before the Allahabad High Court which after the re-organisation of the State was transferred to the High Court of Uttarakhand and was registered there as Crl. Appeal No.288/2001 (old No.797/1993). The High Court by its judgment and order dated April 24, 2008 acquitted Jaibir of the charges under section 302/34 of the IPC. It also acquitted the appellant under section 498A of the IPC. The High Court found that the confessional statements of the appellant and his brother Jaibir recorded by the S.D.M. (PW-9) were extracted by subjecting them to beatings and physical torture and those were therefore, completely inadmissible in evidence. On the basis of the finding that the confessional statements were not voluntary but were extracted from the appellant and Jaibir under duress the High Court acquitted them also of the charge of murder. In this regard the High Court observed as follows:

"In these circumstances, we are of the view that the conviction based on their alleged statements recorded under Section 164 of Cr.P.C., recorded by the trial court of accused/appellants Ranvir Singh and Jaibir Singh under Section 302 of I.P.C., is erroneous in law and cannot be sustained."

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Having thus acquitted the appellant of the charge of murder the

High Court proceeded to convict him rather abruptly under section 306 of the IPC. The relevant portion in this regard is in paragraph 11 and partly paragraph 12 of the High Court judgment which are reproduced below:

"11) However, the act of accused Ranvir Singh on the basis of circumstantial evidence on record, clearly makes out a case of offence punishable under Section 306 of I.P.C. We have already mentioned above, that admittedly the deceased was wife of accused Ranvir Singh. As to the cruelty committed by accused Ranvir Singh against his wife is not only proved by P.W. 4 Balbir Singh, but also corroborated from the ante mortem injuries (other than ligature mark around the neck). P.W. 5 Kunwar Singh, who is witness of the inquest report has clearly stated that when the dead body of the deceased was brought down from the tree there were burn injuries on her head and the blood was dripping through the legs. This fact has also been corroborated by P.W. 10 Patwari Padam Singh, the Investigating Officer, who prepared the inquest report. No doubt, from the injury No.3 mentioned in the ante mortem injuries read with the above circumstance, what appears to have been proved beyond reasonable doubt is that the deceased after being tortured by her husband Ranvir Singh committed suicide. That is why the team of Medical Officers also opined that the deceased has died of asphyxia as a result of hanging. The prosecution case that the two accused /appellants after torturing the deceased in an unconscious condition took her to jungle and hanged her, doesn't appear to be natural story, as it is not clear how the deceased was taken to a long distance of 2-1/2 Km. in the jungle by them. There is no linking evidence on record in this regard. As far as the story of suicide is concerned, P.W.7 Dr. R.K. Pant also does not rule out that the deceased might have committed suicide.

12) For the reasons as discussed above, we find accused / appellant Ranvir Singh guilty of offence punishable under Section 306 of I.P.C.

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for abetting the commission of suicide by his wife. He is liable to be convicted accordingly."

We have heard Mr. Sanjay Ghose, learned counsel appearing for the appellant and Mr. Abhay Prakash Sahay, learned counsel appearing for the respondent-State, and we have gone through the records of the case very carefully but we completely fail to see how the appellant can be convicted of abatement in the commission of suicide by his wife.

At this stage it will be appropriate to refer to the medical evidence and the injuries found on the person of the deceased Shushila in the post mortem report. The High Court in paragraph 5 of

the judgment has taken note of the ante-mortem injuries on the body of Shushila. These were as under:

"i) Circular burn mark 0.5 cm in diameter on forehead at midline just below hairline, margins clearly defined, skin deep.

ii) Burn mark 0.5 cm in diameter right side of forehead, margins clearly defined, skin deep, 1 cm lateral to injury No.1.

iii) Ligature mark around the neck directed obliquely upwards, following the line of mandible interrupted at the back. Ligature mark is 2 cms broad, superficial.

iv) one abrasion 2 X 0.5 cm on right leg just below knee which is vertically lying.

v) One abrasion 0.5 X 0.5 cms on right leg 2 cms below injury No.4.

vi) abrasion 1 cm on left knee.

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vii) One abrasion 0.5 cm X 0.5 cm, 1 cm below injury No.6 on left leg.

viii) Lacerated wound 1.5 cm X 0.5 cm X 0.5 cm on left vulva vertical in direction, margin irregular, clotted blood present in the wound and has also dripped down to both legs. Vagina clean.

ix) Tongue compressed between cleansed teeth.

x) Saliva (dried) present on right angle of mouth."

Injuries Nos. 1, 2 and 8 were plainly ante mortem and were inflicted by unfriendly hands. Doctor R.K. Pant who held post-mortem on Shushila's body alongwith Dr. Rawat was examined as P.W.7 before the trial court. He was categorical in his statement before the trial court that those three injuries were superficial in nature and were not the cause of death. The cause of death was injury No.3 to which also correspond injuries at serial. nos. 9 and 10 enumerated above. He further stated before the Court that it was not possible for him to say whether the cause of death was homicidal hanging or suicidal hanging. In reply to a question by the counsel he said that the death of Sushila might have been homicidal and it was possible that she was hanged in an unconscious state.

In view of the medical evidence and the other evidences on record there is no basis to hold that the death of Sushila was suicidal. The High Court seems to have overlooked the simple point that for abetting the commission

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of suicide there must first be a suicide. The charge under section 306 can not be sustained against anyone unless it is established beyond doubt that death has taken place by suicide. In this case unfortunately there is no material to come to the finding that the death of Sushila was suicidal. The mere fact that the prosecution failed to establish the charge of murder against the appellant will not necessarily lead to the inference that the death of Shushila was not homicidal and that she had committed suicide.

We may note here that Mr. Sahay tried to press into service the provisions of Section 113A of the Evidence Act which reads as follows:

"113A. Presumption as to 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."

From the plain language of the section it is evident that the presumption under it would be attracted only when it is shown that a married woman committed suicide within a period of seven years from the date of her marriage. In this case, as stated above, there is nothing to show that it was a case of suicide and the death of Shushila was not homicidal.

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We are also unable to see how the High Court could observe

that the cruelty committed against Shushila by the appellant was not only proved by PW-4, but it was also corroborated by the ante mortem injuries on her person. We have gone through the evidence of PW-4, Balbir Singh very carefully. All that he stated in his evidence is that Shushila used to tell him that her husband harassed her and subjected her to beating in connection with his demands for dowry. It is noted above that the High Court disbelieved the case of demand of dowry and acquitted the appellant under section 498A of the Penal Code. We found nothing in the evidence of PW-4 Balbir Singh on the basis of which it can be held that the appellant's cruelty towards her wife drove her to commit suicide and thereby the appellant was guilty of abetting the commission of suicide by Sushila. As a matter of fact the evidence of PW-4 is aimed at fastening the charge of murder on the appellant but the High Court acquitted him of that charge and to that extent did not accept his evidence.

The High Court has again observed that "from the injury No.3 mentioned in the ante mortem injuries read with the above circumstance, what appears to have been proved beyond reasonable doubt is that the deceased after being tortured by her husband Ranvir Singh committed suicide." We are unable to come to any such inference. Injury no. 3 is the ligature mark around the neck caused by hanging but as

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rightly stated by the doctor PW 7 that in itself does not indicate whether Sushila hanged herself or she was hanged by others. It is no good even to suggest that the hurt and pain caused by injuries nos. 1, 2 & 8 drove Sushila to commit suicide because there is no evidence on record to connect the appellant with those three injuries.

For all these reasons, we are satisfied that the appellant's

conviction under section 306 of the Penal Code is completely

untenable in law. We, accordingly, allow the appeal, set aside the judgment and order passed by the High Court and acquit the appellant

of the charge under Section 306 of the Penal Code.

The appellant is directed to be released from jail forthwith, in case he is not wanted in any other case.

.....J
(AFTAB ALAM)

.....J
(DEEPAK VERMA)

NEW DELHI
November 26, 2009.