

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
IQBAL SINGH AND ORS.

DATE OF JUDGMENT 10/05/1991

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
RAMASWAMI, V. (J) II
RAMASWAMY, K.

CITATION:
1991 AIR 1532 1991 SCR (2) 790
1991 SCC (3) 1 1991 SCALE (1) 923

ACT:

Indian Penal Code, 1860-Sections 107, 108-'Abetment'
Abettor'-Definition of.

Words and Phrases-"Instigate","aid"-Meaning of.

Indian Evidence Act, 1872-Sections 113-A and 113-B-
Dowry death-Presumption-Legislative intention of-Duty of
Court indicated.

Indian Penal Code, 1860-Sections 107-10, 30, 304-B, 306
and 498-A-Married woman, subjected to cruelty or harassment-
Death-Presumption of-Punishment of persons responsible.

HEADNOTE:

Respondent No. 1's wife setting herself and her three
children ablaze, died at her husband's house on 7.6.1983.
The marriage had taken place seven or eight years before the
incident. The deceased wife was working as a teacher while
her husband was a clerk.

Soon after the marriage there were disputes between
them on the question of dowry. The demand for extra dowry
strained the relations between them and the husband
began to ill-treat the deceased wife.

The deceased had written a letter to the Deputy
Superintendent of Police on 12.10.1977 complaining about the
ill-treatment meted out to her and apprehending danger to
her life and the lives of her children. When the police
came to inquire into the matter there was some
understanding, as a result of which she had informed the
police that no further action be taken for the present but
her application may be kept pending. Later, a divorce deed
was executed but not acted upon. The situation did not
improved.

On 7.6.1983, the very morning of incident, the deceased
wife wrote a letter addressed to Deputy Commissioner of
Police, wherein she narrated how she and her children were
ill-treated by her husband, narrated how she and her
children were ill-treated by her husband, mother-in-law and
sister-in-law for dowry and why she took the decision to put
an end to her life and the lives of her children. Another
letter

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of even date was addressed to her mother stating the reasons

for her such act.

A First Information Report was lodged against the Respondent No. 1 by the mother of the deceased. After investigation the Respondent No. 1, his mother and sister were put up for trial. The Trial Court on an examination of the prosecution evidence convicted all the three accused persons under Section 306, IPC and sentenced the husband to rigorous imprisonment for seven years and a fine of Rs.5,000, in default, rigorous imprisonment for one year and sentenced the two others to rigorous imprisonment for three years and a fine of Rs.1,000 each, in default, rigorous imprisonment for three months, against which order, accused persons preferred an appeal before the High Court.

The High Court on a reappraisal of the evidence and having regard to the language of Section 306, IPC came to the conclusion that there was no evidence to show that any of the accused was guilty of abetment and allowed the appeal.

The State has, therefore, approached this Court by way of special leave. In the meantime the Respondent No. 1's mother had passed away. The appeal was, therefore, limited to the Respondent No. 1 and his sister.

Allowing the appeal, this Court,

HELD: 1. 'Abetment' as defined by Section 107 comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for the doing of that thing and (iii) intentionally aiding by any act or illegal omission the doing of that thing. An abettor is a person who abets an offence or who abets either the commission of an offence of the commission of an act which would be an offence. [798C-D]

2. The word 'instigate' in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word, "aid" is to give assistance, help, etc. [798D-E]

3. Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relative for or in connection with any demand for dowry, such death is described as dowry under Section 304 B for which the

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punishment extends to imprisonment for life, but not less than imprisonment for seven years. By Section 113B, Evidence Act, the court has to raise a presumption of dowry death, if the same has taken place within seven years of marriage and there is evidence of the women having been subjected to cruelty and/or harassment. [800A-C]

4. The legislative intent is clearly to curb the menace of dowry deaths, etc., with a firm hand. Court must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing sections 113A and 113B in the Evidence Act tried to strengthen the prosecution's hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. [800D-E]

5. If a married woman is subjected to cruelty of

harassment by her husband or his family members section 498-A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304B IPC. [800E-F]

6. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, section 113B Evidence Act provides that the Court shall presume that such person had caused the dowry death. [800F-G]

7. In the present case section 113A or 113B, Evidence Act cannot be invoked as the prosecution has not brought the exact date of marriage on record. Yet where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of section 306, IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate act. In this case it would seem from past events that it was a carefully chalked out strategy to provoke the woman into killing herself. [800H-801A, 801E]

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8. In the peculiar facts and circumstances of the case, the trial court had rightly convicted the husband under section 306 IPC. The High Court committed an error in reversing the conviction. The plea for reduction of his sentence cannot be countenanced. [801F-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 325 of 1987.

From the Judgment and Order dated 9.11.1984 of the Punjab and Haryana High Court in Crl. Appeal No. 132-SB of 1984.

Amita Gupta and R.S. Suri for the Appellant.

R.L. Kohli, R.C. Kohli, G.S. Rao and Ms. C. Markandeya for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. Mohinder Kaur set herself and her three children ablaze on the afternoon of 7th June, 1983, at the residence of her husband Iqbal Singh. The marriage had taken place seven or eight years before the incident. She had given birth to two daughters and a son. The deceased was working as a teacher while her husband was a clerk in the Punjab State Electricity Board office at Amritsar. Soon after the marriage there were disputes between them on the question of dowry. The demand for extra dowry strained the relations between them and the husband began to ill-treat the deceased wife. It appears that in course of time there was further deterioration in their relationship as a result whereof the deceased had written a letter to the Deputy Superintendent of Police on 12th October, 1977 complaining about the ill-treatment meted out to her and apprehending danger to her life and the life of her children. She therefore, sought police protection. However, by the time the police came to inquire into the matter there was some understanding as a result of which has had informed the

police that no further action be taken for the present but her application may be kept pending. Then on 31st December, 1977 a divorce deed Exh. D-2 was executed but was not acted upon. It seems that the situation did not improve and as a result she took the extreme step of putting an end to her life as well as the lives of her three children since she apprehended that their fate would be worse after her death. However, before putting an end to her life she wrote a letter that very morning which has been reproduced in extenso in paragraph 13 of the judgment of the trial court. The text of that letter dated 7th June, 1983

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addressed to the Deputy Commissioner of Police, Public Dealing Branch, Amritsar, shows that her husband was demanding Rs.35,000 to Rs.40,000 by way of additional dowry and was ill-treating her under the influence of alcohol on that account. She also alleged that her mother-in-law and sister-in-law also conspired and made false accusations against her and instigated her husband to beat her if she refused to bring the additional dowry. She alleges that they had conspired to kill her on the night of 6th June, 1983 by sprinkling kerosene/petrol on her but their plan misfired. She was fed up on account of the beating given to her that night. She further alleged that her children were also ill-treated by her husband and his family members. On account of these developments she had taken the decision to put an end her life and the lives of her children to spare them of the present and future agony. At the foot of the letter she appended a note to the effect that even after their death she apprehended that her husband and his family members may try to cause physical harm to her mother and younger brother and requested the police to extend to them the necessary protection. She implores that her salary, G.P. Fund and other monetary benefits to which she may be entitled from the school authorities should not fall in the hands of her husband and his relatives and may be given to some school or orphanage and her ornaments, etc. may be recovered from her in-laws and be returned to her parents. Another letter of even date was addressed to her mother (her father having since died) stating that she was fed up of the continuous tension, suffering and agony that her mother had to go through on her account as she could not meet the demand for extra dowry. She also states that apart from her husband demanding extra dowry he has started making false accusations against her and beating her time and again on that account. She further alleges that her husband's mother and sister were privy to this beating by her husband but she had somehow survived. Then she adds 'today I alongwith three children am sacrificing by fire'. She ends the letter by stating that her mother need not think that her daughter was dead, in fact she will gain freedom from seven years of hell. In the letter addressed to the Deputy Commissioner of Police there is reference to the earlier application/letter dated 12th October, 1977 by which she had complained about possible risk to life. It appears from the said letter that the police had gone to inquire into the matter two months later on 11th December, 1977 but during that intervening period the relatives of her husband had intervened and had temporarily patched up the matter. It was for that reason that she informed the police that no action was immediately necessary but still she insisted that her application may be kept pending, Thus this subsequent letter contains intrinsic evidence about her

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previous application dated 12th October, 1977.

After the unfortunate incident which took place on the afternoon of 7th June, 1983 a First Information Report was lodged against the husband Iqbal Singh, by the mother of the deceased. After investigation the husband, his mother and sister were put up for trial. The Trial Court on an examination of the prosecution evidence convicted all the three accused persons under Section 306, IPC and sentenced the husband Iqbal Singh to rigorous imprisonment for seven years and a fine of Rs.5,000, in default, rigorous imprisonment for one year. So far as the other two accused were concerned, having regard to their role and the fact that the mother was an aged and frail woman, he sentenced them to rigorous imprisonment for three years and a fine of Rs.1,000 each, in default, rigorous imprisonment for three months.

Against this order of conviction and sentence all the three accused persons preferred an appeal before the High Court. The High Court on a reappraisal of the evidence and having regard to the language of Section 306, IPC came to the conclusion that the prosecution evidence did not establish the ingredients of the section, in that, there was no evidence to show that any of the accused was guilty of abetment. In this view that the High Court took, it allowed the appeal and set aside the order of conviction and sentence passed against the appellants. The State has, therefore, approached this Court by way of special leave. In the meantime the accused Manjit Kaur has passed away. The appeal is, therefore, limited to Iqbal Singh and his sister Kulwant Kaur.

Counsel for the State of Punjab took us through the evidence on record, particularly the letters dated 7th June, 1983 and submitted that this was a clear case of the husband and his sister creating conditions which compelled the deceased to take the extreme step of burning herself and her children. The evidence of Dr. Harjinder Singh who performed autopsy has not been disputed before us. His evidence shows that the deaths of all had resulted on account of shock sustained due to excessive burns. PW 2 Jasbir Kaur, the mother of the deceased, says that her daughter complained to her from time to time about the ill-treatment meted out to her by her husband on his own and at the instigation of his mother and sister. She has also stated that this ill-treatment was due to failure of the deceased to meet his demand for extra dowry. She received a message about the incident while she was at her brother's residence in Amritsar. She and her son went to the hospital and learnt that her daughter and grand children had passed

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away. She then deposed to have received a letter of 7th June, 1983 on 9th June, 1983. In her cross-examination it was brought out that she had not pointed an accusing finger at the mother and sister of accused Iqbal Singh. She tried to explain the absence of allegation against the said two persons on the ground that she was confused on account of the tragedy. She further deposed that she had omitted the names of two ladies because of pressure exerted on her by Iqbal Singh. Obviously her explanation cannot carry conviction because it is difficult to believe that she would submit to the pressure of Iqbal Singh whom she considered primarily responsible for the death of her daughter and grand children. It may also be mentioned at this stage accused Kulwant Kaur is a married women who lives with her husband in another village. There is no evidence on record to show that she was at the residence of her brother on the date of the incident or immediately prior thereto to instigate her brother. PW Santosh Singh, brother of the deceased, has maintained that accused Iqbal Singh was ill-treating his sister soon after marriage as the latter was not able to meet his demand for extra dowry. He further deposed that after the death of his father his mother had received a sum of Rs.60,000 or thereabouts by way of provident fund and gratuity and when the accuse Iqbal Singh learnt about the same he pressurised the deceased to secure a sum of Rs.40,000 or thereabouts from that amount to meet his demand for extra dowry. He had gone with his mother PW 2 Jasbir Kaur to the hospital after learning about the incident. In cross-examination he was questioned about the purchase of a plot in the name of the deceased by Iqbal Singh. He, however, stated that his father had given a sum Rs.20,000 or 21,000 for purchase of this plot although he could not state the exact price at which it was purchased. The two letters,

one addressed to the Deputy Commissioner of Police and the other to the mother dated 7th June 1983, have been duly proved by the prosecution. These letters were written immediately before she put an end to her life and the lives of her three children. These letters reveal her plight immediately before the incident. There is a mention about an attempt on the part of her husband to kill her on the preceding day. She apprehended that her children would suffer intolerable miseries if they survived her and, therefore, she took the extreme decision to put an end to their lives also along with her. This letter clearly brings out her turmoil whereunder she took the extreme step of putting an end to her life. The earlier letter of 12th October, 1977 also shows that she was being ill-treated soon after her marriage. The divorce deed produced at Exh. D-2 is dated 30th November, 1977. This would show that by that time the relatives had intervened and, therefore, when the police came to inquire on 11th December, 1977 she told them that

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there was no immediate danger but her application should be kept pending. Considerable emphasis was laid by the learned counsel for the respondents on the statement in Exh. D-2 attributed to the deceased that she had been forced to marry Iqbal Singh. Emphasis was also laid on the post-script at the foot of the said document made by Iqbal Singh to the effect that he has agreed to a divorce since his wife desires it. From these two statements counsel for the respondents argued that the accused Iqbal Singh had no grudge against his wife and had expressed his willingness to put an end to the marital relationship as his wife so desired. He also submitted that the statement of the deceased that she was forced to marry Iqbal Singh went to show that it was she who was keen to put an end to the relationship as she did not desire to live with Iqbal Singh. But counsel overlooks the fact that there is intrinsic evidence in the divorce deed that their marital life was unhappy and she apprehended blood shed as well as harm to the children even after they parted company. Counsel then referred to letter Exh. D-1 April, 1983 written by the deceased to one Gopal Singh complaining about the behaviour of the Headmaster towards her. By that letter she expressed her desire to secure a transfer from the school to get rid of the harassment meted out to her by the Headmaster. In this letter there is a mention that her husband Iqbal Singh was spending considerable time in correspondable time in correspondence with the Headmaster. From this letter counsel for the respondents submitted that the deceased could have committed suicide on account of the harassment caused to her by the Headmaster of the school. But that does not explain the killing of the children. This letter was written on 17th April, 1983 whereas the incident in question occurred on 7th June, 1983 i.e. more than 1-1/2 months thereafter. The immediate cause for the extreme step taken by the deceased is clearly reflected in the two letters of 7th June, 1983. Therefore, the inference drawn by the learned counsel for the respondents from the letter of 17th April, 1983 cannot advance the defence set up by the accused persons. Iqbal Singh filed a written statement jointly with Kulwant Kaur wherein he stated that he had not helped his wife to secure a transfer as the family was having a good residence in the village and this was the real cause of quarrel between the two. The statement shows that the factum of quarrel between the husband and wife is not seriously disputed. The nature of correspondence he was

carrying on with the Headmaster is not difficult to judge. He then states that he had purchased the plot in the name of his wife for Rs. 12,500 but he does not disclose the source from which the consideration for the plot came. He further states that his wife was earning Rs.900 per month and, therefore, he could never have entertained an intention to push her to committing suicide. It

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would, therefore, appear from the evidence placed on record that the relations between the deceased and Iqbal Singh were strained because of the latter's demand for extra dowry and they worsened to such an extent that the deceased decided to put an end to her life.

The charge against the accused was under section 306, I.P.C. That section must be read in the backdrop of the above facts. Under that section if any person commits suicide the person who abets the commission of suicide shall be liable to be punished with imprisonment of either description for a term which may extend to ten years and fine. The question is whether on the facts proved it can be said that either Iqbal Singh or his sister were guilty of abetment. Chapter V of the Penal Code is entitled 'Of Abetment' and comprises sections 107 to 120 of which we may notice sections 107 and 108 only. 'Abetment' as defined by section 107 comprises (i) instigation to do that thing which is an offence (ii) engaging in any conspiracy for the doing of that thing and (iii) intentionally aiding by any act or illegal omission the doing of that thing. Section 108 defines an abettor as a person who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word 'instigate' in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. Since there is no question of parties being engaged in any sort of conspiracy we have to consider whether there was any intentional aiding for committing suicide. The dictionary meaning of the word aid is to give assistance, help, etc.

Before we come to grips with the question at issue it is necessary to notice a few legislative changes introduced in the Penal Code to combat the menace of dowry deaths. The increasing number of such deaths was a matter of serious concern to our law-makers. Cases of cruelty by the husband and his relatives culminated in the wife being driven to commit suicide or being done to death by burning or in any other manner. In order to combat this menace the legislature decided to amend the Penal Code, Criminal Procedure Code and the Evidence Act by the Criminal Law (Section Amendment) Act, 1983 (No. 46 of 1983). So far as the Penal Code is concerned, Section 498A came to be introduced whereunder 'cruelty' by the husband or his relative to the former's wife is made a penal offence punishable with imprisonment for a term which may extend to three years and fine. The explanation to the section defines 'cruelty' to mean (i) 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 her life, limb or health or (ii) causing harassment of the woman with a view to coercing her or any person

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related to her to meet any unlawful demand for any property or valuable security. Thus, under this newly added provision if a woman is subjected to cruelty by her husband or his relative it is a penal offence and by the insertion of section 198A in the Code of Criminal Procedure a Court can take cognizance of the offence upon a police report or

upon a complaint by the aggrieved party or by the woman's parents, brother, sister, etc. The offence is made non-bailable. In so far as the Evidence Act is concerned, a new section 113A came to be introduced which reads as under:

"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.

Explanation-For the purposes of this section, 'cruelty' shall have the same meaning as in Section 498A of the Indian Penal Code (45 of 1860)."

On a plain reading of this provision it is obvious that if a wife is shown to have committed suicide within a period of seven years from the date of marriage and there is evidence that she was subjected to cruelty by her husband or his relative, it would be permissible for the court to presume that such suicide was abetted by her husband or by such relative of her husband. The Amendment Act 46 of 1983 received the assent of the President on 25th December, 1983 and was published in the Gazette of India, dated 26th December, 1983. The trial court rendered its Judgment on 23rd February, 1984 and it does not appear if the prosecution concentrated on section 113A, Evidence Act, for otherwise it would have tried to place on record the exact date of marriage to take advantage of the presumption arising thereunder. The High Court referred to this provision but did not say anything in regard to its application. Being a rule of evidence it could perhaps have been invoked if proof regarding the exact date of marriage was laid. Since there is no cogent evidence that the marriage was solemnised within seven years from the date of incident we need not dilate on that point.

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The law underwent a further change with the introduction of section 304B in the Penal Code and section 113B in the Evidence Act by the Dowry Prohibition (Amendment) Act, 1986. Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relative for or in connection with any demand for dowry, such death is described as dowry death under section 304B for which the punishment extends to imprisonment for life but not less than imprisonment for seven years. By section 113B, Evidence Act, the court has to raise a presumption of dowry death if the same has taken place within seven years of marriage and there is evidence of the woman having been subjected to cruelty and/or harassment.

The legislative intent is clear: to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting

a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members section 498A, I.P.C. would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304B, I.P.C. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract section 302, I.P.C. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would

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squarely fall within the ambit of section 306, I.P.C. In such a case the conduct of the person would tantamount to inciting provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide. In the present case the facts clearly reveal from the divorce deed Exh. D-2 that the relations between the husband and the wife were strained even in 1977. There is intrinsic evidence in that document that the wife apprehended blood shed and harm to her children. Before the execution of this document she had sought police protection by her application/letter dated 12th October, 1977. Then in April, 1983 her efforts to secure a transfer from the school where she was harassed by the Head Master were frustrated by her husband. Her husband had kept up the pressure for extra-dowry since her marriage and had stepped it up after the demise of her father on learning that her mother had received the G.P. Fund, Gratuity, etc., due to her father. Since she and her mother and brother were not able to meet this demand she was subjected to considerable torture. Added to that was the anxiety caused by her husband's conduct at trying to frustrate her efforts to seek a transfer from the school where she was serving. The last straw on the camel's back fell when she was severely beaten on the previous day, i.e. 6th June, 1983 as is evident from her letter of 7th June, 1983. An atmosphere of terror was created to push her into taking the extreme step. It would seem it was a carefully chalked out strategy to provoke her into taking the extreme step to kill herself and her children as she apprehended that they will be much more miserable after she is dead and gone. In this fact/situation can it be said that the husband had not been responsible in creating circumstances which would provoke or force her into taking the only alternative left open to her, namely suicide? Can it be said that the husband did not realise where he was leading her by his wilful conduct? We think in the peculiar facts and circumstances of the case, the trial court had rightly convicted the husband under

section 306 I.P.C. We think that the High Court committed an error in reversing the conviction. We, therefore, allow this appeal, set aside the High Court's order and restore the order of conviction and sentence passed by the trial court. We cannot countenance the plea for reduction of his sentence. No order on his C.M.P.

So far as his sister's involvement is concerned, we think the evidence falls short of proof beyond reasonable doubt and, therefore, we see no reason to interfere with the High Court's order. We, therefore, dismiss the State's appeal directed against her. Her bail bonds will stand cancelled.

V.P.R.

Appeal allowed.

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JUDIS