

## CASE ANALYSIS: PAWAN KUMAR v. STATE OF H.P

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### I. INTRODUCTION

This judgement passed by the Supreme Court of India<sup>1</sup>, paves way in making the rights of women in the country stronger and more protective. Patriarchy and other factors leads to the illusion of women being unequal to men and the practices used to enforce these ideas are still widely existent all over India. This leads to the concept of male chauvinism or the apparent dominance of men over women. The main facet spoken about is that of harassment by way of eve teasing and threatening. These ultimately contribute as factors leading to cruelty against women which can in various instances amount to abetment of suicide. Other concerns touched upon include, whether a dying declaration is admissible in a Court of Law and the nature of jurisdiction the High Court exercises when it reverses a judgment of an acquittal. The act of eve teasing as a form of gender-based violence and crimes against women batters a woman's right to freedom and a peaceful life and this also restricts her enjoyment of the fundamental rights the Constitution of India vests upon her.

### II. BACKGROUND

The deceased, in the middle of her teens, eloped with the appellant- accused, who was initially charged under Sections 363, 366 and 376 of the Indian Penal Code (herein referred to as IPC) and was acquitted for the same. The accused started threatening and harassing by way of teasing the victim on a routine basis, blaming the victim for his prosecution. The accused created a situation that was unbearable and insufferable for the victim. This situation ultimately

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<sup>1</sup> Criminal Appeal No. 775 of 2017, decided by Dipak Misra, A. M. Khanwilkar and Mohan M. Shantanagoudar.

compelled the victim to commit suicide by pouring kerosene on her body and setting herself ablaze. The victim succumbed to her injuries after her dying declaration was recorded during the course of investigation. The appellant-accused was subsequently charged under Section 306 of the IPC for Abetment of Suicide of the deceased. The Trial Court acquitted the accused and did not consider the statements given by the witnesses and the parents of the deceased and the dying declaration given by the deceased was ruled out as invalid. The reason given by the trial Judge was that the deceased was not in a position to speak and there was no medical certificate appended as regards her fitness<sup>2</sup>. In contradiction, the High Court considered the testimony given by the witnesses and also gave due credence to the dying declaration by not giving too much importance to the medical condition prior to the victim's death. The Appellate Court was of the opinion that the High Court was correct in reversing the findings of the Trial Court and admitted the dying declaration of the deceased. The Appellate Court stated that there was indeed an aspect of abetment of suicide in this present case. The reason for the same being the cruelty imposed on the deceased by the accused. The Court ruled that threatening and harassing by way of eve-teasing amounts to abetment of suicide. Article 14, 15 and 21 of the Constitution of India was also discussed in this case by the Appellate Court. The Court stated that a woman has her own space as a man does and that a civilized society has no room for male chauvinism<sup>3</sup>. The High Court in this case has rightly exercised its jurisdiction and the Appellate Court abided by the same. Consequently, the appeal was dismissed and the appellate-accused was convicted for abetment of suicide under Section 306 of the IPC.

### III. ANALYSIS

This decision can be observed as an impeccable one, especially in line with rights of woman of this country. Years of patriarchy, gender indifferences and other factors, have contributed to woman always being considered beneath to that of men and thus to the feeling that men can indisputably dominate over women, leading to what is known as violence against women. In this case a young woman was endlessly tormented by her ex-lover, who felt that she had no right to reject him or his love, as he was the one who was to be the dominant partner in their

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<sup>2</sup> Pawan Kumar v. State of H.P., CDJ (2017) SC 510.

<sup>3</sup> *Id.*

relationship and this ended up in a severe case of eve teasing and subsequently the girl setting herself on fire. Violence against women in simple terms means any act of gender-based violence. This leads to physical, mental and psychological agony or harm to women and is inclusive of a whole range of acts that deprives a woman of her liberty, dignity and the right to a peaceful life. Essentially gender based violence is a manifestation of gender inequity and inequality and a supposed subordinate social status assigned to women in society. Consequences of these acts are devastating and horrid and can have short term and long-term effects on a woman's physical health and mental well-being. Here we see the act of eve-teasing being the gender-based violence the victim is subjected to. It is an act of terror that violates a woman's body, space and self-esteem and can include offensive remarks, intrusive touching and any act that essentially is an intrusion of a woman's person, her bodily integrity. Eve teasing also denies a woman of her fundamental right to move freely and carry herself with dignity solely based on her gender. Eve teasers can be any person in a woman's life including a member of her family, a neighbour, a friend or a colleague. In one sense no place in a woman's life can be portrayed as safe for a woman as any place of routine or otherwise can have a predator lurking.<sup>4</sup> What the court through this judgement tries to reinforce, is that patriarchy and dominance of men no longer has any prevalence or presence in this country and should be done away with. In one sense this is difficult in India due to the extensive presence of patriarchy but this decision is a big step forward in trying to protect women and bring them to the same pedestal as men in all aspects and levels. As mentioned in the judgement, the case of Deputy Inspector General of Police and another v. S. Samuthiram<sup>5</sup>, explains that eve teasing can be divided as verbal eve-teasing, physical eve-teasing, psychological harassment, sexual harassment; and harassment through some objects. In the present case, psychological harassment presents itself as the main form the young girl went through, leading to her death. In India, eve teasing is not an offense under any law but the closest to a law covering the aspects of eve teasing are section 294 and section 349 of the IPC. Sadly, eve teasing only comprises of a small percentage of crimes and violence against women. It can also act as an assisting crime or can eventually lead to more violent incidents like acid attacks and sexual assault. There is a

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<sup>4</sup> DR BABITA CHUGH, WOMEN AND CRIME 20-21 (Rajat Publications, 2015).

<sup>5</sup> Deputy Inspector General of Police and another v. S. Samuthiram (2013) 1 SCC 598.

need for clear guidelines or provisions to be brought out to protect woman and her rights from eve teasing and it should be made punishable.

The most crucial consequences of violence against women and girls is the denial of fundamental human rights to women and girls.<sup>6</sup> India is a signatory to various international treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is present to protect women and their human rights. Eve teasing and forcing love on a woman, as part of violence against women violates or deprives a woman of Articles 14, 15 and 21 of the Constitution of India. One aspect the decision focuses on is woman's right to her personal space and that she enjoys the same as that a man would as under Article 14, which provides for right to equality and Article 15, which prohibits discrimination on grounds of sex. This also relates to the fundamental concept of gender sensitivity and equal rights and that justice is to be equally possessed by both men and women. Act of eve teasing does deprive a woman of having equal rights as that of her male counterpart as he has no freedom, dignity and peace taken away as what a woman gets taken away from her life. Article 21 of the Constitution of India provides us with a right to life with human dignity. This right also includes the right to proper and comfortable livelihood. When a woman is eve teased or forced to be in love or a relationship she doesn't want to be in it can in various ways deprive her of both physical as well as mental health. It stripes her from the opportunity to a trouble free and peaceful life. It also heavily concentrates on her right to choose which should be legally and socially considered and respected. Her choice to reject love or advances from a man is her undeniable right as it affects her right to life and no one, including her relatives or friends, can compel or force her to do anything she does not want to do and this is what the court also tries to put pressure on.

The admissibility of a dying declaration and pronouncing it as valid or invalid depends on the interpretation of the court. In the case of *P. Srinivasulu v. State of AP*<sup>7</sup>, wherein similar facts are present, the Court considered the dying declaration as valid. The Magistrate stated that the deceased was in a conscious state when the dying declaration was recorded. He also stated that

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<sup>6</sup> DR. SURUCHI SHUKLA & DR. ANJNA FELLOWS & DR. NEELMA KUNWAR, VIOLENCE ON WOMEN 16 (Discovery Publishing House Pvt. Ltd., 1<sup>st</sup> ed. 2012).

<sup>7</sup> *P. Srinivasulu v. State of AP*, CDJ (2004) APHC 783.

the degree of burn injuries does not affect the validity of the dying declaration. Similarly, in the present case, the dying declaration was recorded by the Head Constable and was testified by the attested doctor PW-10, Dr Sanjay. The court stated that the certificate of fitness is not the requirement of law and also that there is no rule disqualifying a person, suffering from 80% burn injuries from giving a dying declaration. For this, the court relied on *Vijay Pal v. State (GNCT) of Delhi*<sup>8</sup>. When a victim, who is the sole person present in the scene, gives a statement as to what happened, there is no reason for not accepting the same, regardless of it being a dying declaration or not. The admissibility of the dying declaration narrows down to the competency of the victim or witness who is giving the statement. It is thus subject to the interpretation of the court. It is right to say that the Appellate Court was consistent in its judgement regarding the pursuance of the dying declaration. The burn injuries cannot establish the validity of a dying declaration. The law regarding the admissibility of dying declaration is ambiguous and the rule requires amendments. The law should clarify the procedures to be followed in cases where the person is unable to attest and where the hands and toes are burnt. Thus, necessary amendment should be made to Criminal Rules of Practice and Circular Order, 1990 and other laws regarding the same.

The other aspect the court deals with in this case is the nature of jurisdiction the High Court exercises when it reverses a judgment of acquittal to that of conviction in exercise of appellate jurisdiction. Using case laws and precedents, it is flawlessly proved that the reversal in judgement is appropriate and binding, especially with this case where it is the appeal in respect to the acquittal of the accused.

Section 107 of the IPC, 1860 provides for abetment of a thing, in this case it is the abetment of suicide. Here, the accused – appellant is said to have instigated the deceased in her act of committing suicide by way of harassment and eve teasing. The Court based its findings on the observations made in *Ramesh Kumar v. State of Chhattisgarh*<sup>9</sup> and in the present case it was similarly held, since the accused kept irritating and harassing the deceased by his words that lead to her committing suicide. Also, the accused in his actions attacked the self- esteem and self- respect of the deceased and the court considered this as eve teasing amounting to cruelty inflicted on the deceased. The judgement was rendered by relying on all the evidence given by

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<sup>8</sup> *Vijay Pal v. State (GNCT) of Delhi*, CDJ (2015) SC 188.

<sup>9</sup> *Ramesh Kumar v. State of Chhattisgarh*, CDJ (2001) SC 629.

the witnesses. This is a case that involves eve teasing and threatening. The Court was of the opinion that these two acts amounts to cruelty and so concluded that the accused-appellant indeed abetted the deceased in her act of committing suicide and thus dismissed the appeal. The accused in this instant case was rightly convicted under Section 306 of the IPC for abetment of suicide. Violation of fundamental rights of an individual, amounts to cruelty. Though the accused did no particular act per se, to force the victim to commit suicide, his threats and harassment by way of eve teasing ultimately lead to it. Also, the point to be noted in this case is that, the accused has not acted in such manner in just one instance, but instead it was a routine practice. From Section 107 of the IPC it can be perceived that continuous conduct of the accused is nothing but an act of abetment. The court did not find any other material evidence to conclude that the deceased was hypersensitive and that, that is why she reacted in the manner she did. Thus, cruelty and harassment present themselves as possible reasons for her committing suicide. Cruelty may itself not be enough to convict a person under abetment of suicide, but in a case like this, cruelty is not the only element that instigated the victim. When cruelty is combined with other kinds of factors that provoke a person to take such a drastic decision, it may be concluded as abetment of suicide and a conviction under Section 306 of the IPC may be upheld. The evidences given by all the witnesses clarifies that the accused, after his acquittal by the Trial Court has indulged in threatening and harassing the deceased. For a normal person such acts on a daily base become intolerable and unbearable, which automatically affects that person's mental wellbeing. Teasing can be inferred in different ways. This case is not a situation where an adult is insulted or taunted for the re-payment of a debt or similar happenings. It is a scenario wherein a young adolescent girl has to go through mental agony on a daily basis due to threats and harassment that includes verbal teasing and violent threats. It wouldn't be right to say that all these acts do not amount to abetment. It in a way provokes a person to end his or her life, as it seems like the easiest way out of the grappling situation that manifests itself.

The victim also belonged to the poor strata of society and the humiliation she faced was so severe, especially when she had to face it in front of her parents and this also instigated her to take severe action. The conduct of the accused was absolutely proactive. The interpretation made by the court in this case was accurate. Furthermore, a woman has her own space and she can live the way she wants. Interfering with that space, by way of psychologically harassment

and threats is quite sadistic. Such cruelty needs to be handled and mended in the right way. It wouldn't have been appropriate if the court hadn't considered such a situation, like the one depicted in this instant case, as amounting to abetment of suicide.

#### IV. CONCLUSION

To conclude, it can be said that the court in its decision has expressed the need to enforce the laws for the protection of women from violence inflicted upon them, such as threatening, harassment and eve teasing, which develop out of concepts of male chauvinism and egoism. The court lays down that a woman is entitled to enjoy all her indispensable rights and has the privilege of choice in all circumstances of her life. It also points out that when these rights are taken away, justice is to be dispensed to her and assailants are to be punished accordingly. Eve teasing could be seen as insignificant on its own, but in reality, can lead to higher degrees of violence and crimes against women and as seen in this case can lead to abetment of suicide. So, the need is to make appropriate guidelines or laws and provisions regarding protection of women from eve teasing, making it a severely punishable act. The court lays down that threatening and harassment by way of eve teasing amounts to cruelty and based on the varying degrees of its occurrence, it can be an element of abetment of suicide. Amendments in Criminal Rules of Practice and Circular Orders, 1990 and other laws, relating to admissibility of dying declaration in a Court of Law is also to be considered for the better understanding of its validity. Citizens of India enjoy fundamental rights and the mere distinction between a man and a woman, should not deprive anyone of their rights.