

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 155 OF 2019

Sumanbai W/o Dinkar Kamble,
Age : 56 years, Occup. : Household,
R/o: Yashodhranagar, CIDCO,
Nanded

... APPELLANT
(Original Complainant)

V E R S U S

1. Pradnya W/o Amol Kamble,
Age: 28 years, Occ. Household,
R/o: Malakoli, Ta.Loha,
District Nanded.

2. The State of Maharashtra,
(The Chief Secretary of
Home Department)

... RESPONDENT

...

Mr. R.B. Ade, Advocate for appellant
Mr. Satej S. Jadav, Advocate for respondent No. 1
Mr. K.D. Munde, APP for respondent No. 2 - State
...

CORAM : K.K. SONAWANE, J.

DATE : 8th APRIL, 2019.

JUDGMENT :-

. The instant appeal calls in question the impugned judgment and order of acquittal of the respondent/accused in Sessions Case No. 65 of 2017 for the offence punishable under Section 306 of the Indian Penal Code (for short "IPC") rendered by the learned Assistant Sessions Judge, Nanded, dated 30-11-2017. The appellant being victim of the crime, as defined under Section 2 (wa) of the Code of Criminal

Procedure (for short "Cr.P.C."), preferred the present appeal by invoking remedy under proviso to Section 372 of the Cr.P.C. for redressal of her grievances.

2. The factual matrix of the appeal culled out in brief is that the ill-fated deceased Amol Kamble was the son of first informant- Smt. Sumanbai Kamble. He was recruited in the year 2007 as an Police Constable on compassionate basis. The marriage of deceased Amol was solemnized with accused-respondent No.1 – Pradnya, in the year 2002. She begotten one son and daughter during wedlock from husband Amol. It has been alleged that the character of respondent-wife was suspicious and not good. She was not behaving properly with the husband. Therefore, the deceased Amol was always remained under mental stress. The respondent daughter-in-law Pradnya did not allow the mother-in-law – first informant to see her son Amol. The wife Pradnya always used to insult and humiliate the husband Amol. There were frequent quarrel in between the spouses. The husband Amol used to give understanding to the respondent-wife on the issue of her character. But, all his efforts did not evoke result. The deceased Amol remained under mental trauma. His physical health started deteriorating day-by-day. According to first informant, on 12-10-2013, when she was at Malakoli village, that time she received the phone call of son Amol. He was so much frustrated and weeping on the phone. He divulged that he had to attain duty at 11.00 a.m. But, the conduct and demeanour of his wife was not improvable and he could not disclose his family affairs to anybody else. Therefore, fed-up with daily harangue, he is intending to commit suicide. The first-informant mother

gave understanding and attempted to persuade the son - deceased Amol. But, thereafter, within a hour, she received the message about commission of suicide by the son Amol at his residence. The first informant rushed to the Government Hospital and saw the dead body of her son Amol.

3. Meanwhile, one Bhushan Gaikwad, relative of deceased Amol, filed report to the Police about suicidal death of deceased Amol on 12-10-2013. Pursuant to report, Police registered AD No. 56 of 2013 under section 174 of the Cr.P.C., and swung into action. The police visited the spot of incident and drawn panchnama of scene of occurrence. Inquest panchnama was drawn in presence of panchas. The mortal remains of the deceased was referred to Government Hospital for autopsy to ascertain the cause of death. Pending inquiry, on 19-10-2013, first informant Sumanbai Kamble ventilated the grievance and blamed the daughter-in-law respondent No. 1-Pradnya for suicidal death of her son Amol.

4. Pursuant to FIR, Police of Nanded Police Station registered the Crime No. 335 of 2013 under Section 306 of the IPC and the set penal law in motion. Investigating Officer recorded statements of witnesses acquainted with the facts of the case. Investigating Officer(IO) collected relevant documents of post mortem findings etc. and after completion of investigation IO preferred the charge-sheet against respondent-accused for offence punishable under Section 306 of the IPC before the learned Magistrate at Nanded. The offence punishable under Section 306 of the IPC was exclusively triable by the Court of Sessions, therefore, learned Magistrate, wisely, transmitted the entire

proceeding to the Court of Sessions for trial of the accused within ambit of law. The learned Sessions Judge framed the charge against accused, but she pleaded not guilty and claimed for trial.

5. In order to bring home guilt of the accused, prosecution examine in all four witness in this case. Learned Assistant Sessions Judge also recorded statement of respondent-accused under Section 313 of the Cr.P.C. After hearing both sides, learned Assistant Sessions Judge appreciated the evidence of prosecution witnesses adduced on record in the light of defence propounded on behalf of respondent – accused and arrived at the conclusion that prosecution failed to prove the charges of abetment of suicidal death of deceased Amol beyond reasonable doubt. Accordingly, learned Assistant Sessions Judge rendered the Judgment and order of acquittal of respondent-accused, which is the subject-matter of present appeal.

6. Learned counsel for the appellant submitted that the learned Assistant Sessions Judge did not appreciate the oral and circumstantial evidence on record in its proper perspective. The impugned finding of acquittal expressed by the learned Assistant Sessions Judge is erroneous, illegal and contrary to the law. The evidence of prosecution witnesses are consistent and sufficient to bring home guilt of the accused. The respondent- wife was the sole responsible for suicidal death of her husband deceased Amol. The behaviour of respondent -wife was not proper and her character was suspicious one. The deceased Amol always remained under mental stress, owing to frequent quarrels between spouses. At last the deceased Amol took

the drastic step of commission of suicide by hanging himself to the roof of the room. The respondent-wife abetted the commission of suicide by the husband Amol.

7. In refutation, learned counsel appearing for respondent-accused Pradnya scathingly assailed that the entire allegations nurtured on behalf of prosecution all are false, baseless and fabricated one. The impugned FIR came to be filed at belated stage after about 8/9 days of the incident. According to learned counsel, the spouses have two children i.e. son - Anup and one daughter - Divya. There was no any marital discord between spouses. They both were residing at Yashodhranagar, CIDCO, Nanded, along with children. Learned counsel further submitted that the deceased Amol was serving as Police Constable. There were some problems to him during the course of his employment. There were departmental notices issued to deceased for dereliction of duties. He was addicted to liquor and remained under mental stress. Both the notices issued to the deceased Amol from the Police Department are produced on record at (Exhibits-34 and 35). The accused - wife Pradnya has no concern at all with the suicidal death of husband Amol. Learned counsel harped on the circumstances that the father of deceased Amol was also employed in Police Department. After his death, the deceased Amol joined the service as Police Constable on compassionate basis. The brother - Vilas of the deceased Amol was unemployed at the time of incident. The mother of the deceased Sumanbai had an intention that her unemployed son Vikas would be recruited as Police Constable on compassionate basis after the death of deceased Amol. But, the Superior Police Officers were agreed to absorb

her i.e. accused-Pradnya widow of deceased Amol in service on compassionate basis, after the death of her husband Amol. In order to preclude the daughter in-law-accused Pradnya from employment in the Police Department on compassionate basis, the first informant mother-in-law with purported motive filed the present FIR.

8. I have given anxious consideration to the evidence adduced on record as well as factual aspect of the matter. It is not put in controversy that death of deceased Amol was suicidal one, occurred on 12-10-2013 at his residential premises located in Yashodhranagar, CIDCO, Nanded. It is not denied that respondent-accused and deceased Amol was husband and wife and their marriage was solemnized in the year 2002. The respondent-wife begotten one son and a daughter during wedlock from husband Amol. It is also an admitted fact that deceased Amol was employed as Police Constable in Police Department, Nanded on compassionate basis, after the death of his father.

9. PW-1 Sumanbai stated that the character of the respondent-accused was suspicious and she was not behaving in proper manner with her son – deceased Amol. Therefore, in view of strain relations between the spouses, the deceased Amol always remain under mental stress. PW-2 Vikas stated about frequent quarrels between the spouses. He further divulged that respondent-accused used to tell her husband why he always came late at house. PW-3 Lalita Kamble, Aunt of the deceased, also testified that respondent-accused did not allow her mother-in-law PW-1 Sumanbai to reside with son Amol in the

house.

10. It is to be noted that the alleged incident of suicide by deceased Amol was occurred on 12-10-2013. The first informant -mother of deceased Amol filed the present FIR on 19-10-2013 after efflux of 8/9 days of the incident. The circumstances on record reflects that the first informant- PW-1 Sumanbai since beginning was present with the corpse of the deceased Amol. She had an opportunity to see the Police during inquiry of AD No. 56 of 2013 to ascertain the cause of death. It is imperative to appreciate that the PW-1 Sumanbai did not ventilate grievances against the daughter-in-law accused Pradnya till 19-10-2013. But, after efflux of 8/9 days of the incident, she blamed the respondent-accused for the suicidal death of husband Amol. It is the settled rule of law that the FIR is extremely vital and valuable piece of evidence and on account of delay the report not only gets bereft of the advantage of spontaneity, but danger creeps in of introduction of coloured version or concocted story as a result of deliberation and consultation.

11. In the matter in hand, it has brought on record in the cross-examination of PW-1 Sumanbai that she wanted to get recruited her another unemployed son Vikas as Police Constable on compassionate basis after death of deceased Amol. But, the respondent-accused was interested to get herself employed in the Police Department in place of her husband. It has been suggested that the PW-1 Sumanbai with purported motivation to preclude the daughter-in-law from employment on compassionate basis as well as from getting pensionary benefits,

filed the present FIR. The attending circumstances available on record reflects some considerable merit in the theory put forth on behalf of respondent-accused; Otherwise, the PW-1 Sumanbai would have lodged FIR spontaneously at the earliest on the very same day of the incident of suicidal death of deceased Amol. The delay in lodging the FIR would cause serious flaw in the prosecution case.

12. Now, the pivotal issue of law, which arise in the appeal is, whether in the facts and circumstances of the matter, the appellant-accused is to be held guilty under Section 306 of IPC for the act of abetment of suicide. The provisions of Section 306 of IPC, is 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."

13. The process of Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. The law postulate that without a positive act on the part of accused to instigate or aid in committing suicide, the conviction can not be sustained. The "Abetment of a thing" has been defined under Section 107 of IPC, which is reproduced as under :-

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

14. In the matter in hand, it has been alleged that the behaviour of appellant-wife was not proper with the deceased-husband. Her character was suspicious and there were frequent quarrel between the spouses. In the aftermath, the deceased husband, who was in mental stress, committed suicide. At this juncture, it is profitable to make reference of exposition of law delineated in the case of – **Ramesh Kumar Versus State of Chhattisgarh**, reported in, **(2001) 9 SCC 618**. The Honourable Apex Court, while appreciating the circumstance of dispute between the spouses for abetment of suicide elucidated the expression 'instigation' referred in Section 107 of IPC in the paragraph No. 20, as follows :-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

15. Moreover, in the case of ***State of West Bengal Versus Orilal Jaiswal***, reported in, ***(1994) SCC (Cri.) 107***, the Honourable Apex Court in paragraph No. 17, observed that :-

17. "xx xx the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

16. In the light of aforesaid legal proposition, it is evident that in order to convict the person under Section 306 of IPC there has to be a clear *mens rea* to commit offence. In addition, it also requires active act or direct participation of the alleged accused which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

17. In the matter in hand, prosecution came forwarded with the specific allegation that the character of respondent-accused was suspicious one and her behaviour with husband was not proper. There were frequent quarrel between the spouses and fed-up with the daily

harangue, the deceased Amol committed suicide. According to prosecution, the respondent wife was responsible for his suicidal death. It would be reiterated that entire evidence of PW-1 Sumanbai, her brother PW2 - Vikas and her Aunt PW3 Lalita found slender and cryptic in nature. It would be hard to perceive that the respondent wife led the deceased husband to commit suicide seeing no option for him. It is cumbersome to appreciate that the accused wife pushed the deceased husband into such position that he was constrained to take such drastic step of committing suicide. The allegations nurtured on behalf of prosecution against respondent-accused are all found general and vague in nature. In contrast, the possibility cannot be ruled out that the documents of notices for departmental action issued to the deceased Amol produced on record may be the cause to commit suicide by him. The theory of squabble between the spouses on account of domestic reason propounded on behalf of prosecution could not be said to be an cause for instigating the deceased Amol to commit suicide. The allegations are not sufficient to make out the offence as contemplated under Section 107 of IPC.

18. It can not be ignored that occurrence of fight between spouses on one or other pretext during span of marital life is not very uncommon. Moreover, human sensitivity of each individual differs from person to person. Each individual has his own idea of a self-esteem and self-respect. Different people used to behave differently in the same situation. Be that as it may, in the matter in hand the unfortunate incident of suicidal death of husband - Amol had taken place in the house and in view of circumstances on record, it cannot be

said that the respondent wife has any nexus or proximity with the suicidal death of deceased - Amol. It is preposterous and incomprehensible to conceive that the respondent wife instigated the husband - Amol to commit suicide as envisaged under Section 107 of the IPC. I find that it is unsafe to fasten guilt on the respondent-wife for the offence punishable under Section 306 of IPC in this case. The findings expressed by the learned trial Court for acquittal of respondent-wife appears to be just, proper and reasonable one. There is no propriety to cause any interference in it at the behest of appellant-first informant. Therefore, present appeal being devoid of merit, deserves to be dismissed.

19. With the aforesaid discussion, present Criminal Appeal stands dismissed. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

MTK.