

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 620 OF 2003**

The State of Maharashtra	)	..Appellant/Complainant
Versus		
1 Smt Kunda alias Sharadini	)	
Devidas Naik,	)	
Age about 57 yrs.	)	
R/a. B 220/6, Sarkari Vasahat,	)	
Bandra Mumbai	)	
2 Smt. Shaila @ Prerna Ramesh Swar)		
Age about 45 years,	)	
R/a. Vivek Society, Panchpakhadi	)	
Thane, District Thane	)	..Respondents (Ori-Accused)

Ms Anamika Malhotra APP for State
Mr. S. A. Ingawale for Respondent Nos.1 and 2

**CORAM : K.R.SHRIRAM, J.
DATE : 11th DECEMBER 2019**

ORAL JUDGMENT:

1 This is an appeal under Section 378(1) of the Criminal Procedure Code 1973, impugning an order and judgment dated 29-11-2002 passed by the Ad-hoc Additional District and Sessions Judge, Thane, acquitting the accused of charges under Section 498A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306 (*Abetment of suicide*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code.

2 At the outset itself, I need to state, having perused the records

and proceedings, evidence and the impugned judgment with the assistance of the Learned APP Ms Malhotra and Mr. Ingawale for Respondents, I am in concurrence with the conclusion arrived at in the impugned judgment.

3 Accused stood charged for having committed cruelty against Dipal Dilip Bandodkar (deceased), who was their brother's wife, leading her to commit suicide and also for the offence of having abetted the commission of suicide. The deceased committed suicide on 6-12-1999 leaving behind a suicide note dated 6-11-1999 (Exhibit 10), in which she has accused the accused of harassing her, that she was tired of the harassment, that she was unable to bear the harassment anymore and therefore, she was going to commit suicide. In the said note, deceased has given a clean chit to her husband and infact certified her husband as a good man, who should not be harassed at all. The existence of this document and the fact that it was in the hand writing of deceased, has been proved and is not disputed by the accused. The effect of the document is of course what we are going to consider.

4 The deceased was found dead in the matrimonial home at Thane. It is the case of prosecution that the father of deceased-complainant (PW.-1), when he tried to contact deceased over telephone on 8-12-1999, there was no response. PW.-1, along with his son Ramesh Punjaji Darde (PW.-3) went to the matrimonial house of deceased, knocked at the door

and found no response. They are supposed to have inquired with the neighbours about the whereabouts of the deceased and as they did not get any news, they went back home at Colaba. PW.-1 and PW.-3 thereafter, went to Colaba Police Station and then went to Naupada Police Station at Thane. PW.-1 and PW.-3 accompanied by Naupada Police went to the matrimonial home of deceased and the police broke open the lock and found deceased hanging from a ceiling fan. The body was later sent for postmortem and subsequently cremated. Postmortem report also says the cause of death is by hanging. The viscera was preserved but the chemical analysis report has not come on record.

5 Based on what was stated in the suicide note (Exhibit 10), prosecution has charged the accused under Sections 498A and 306 read with Section 34 of IPC.

6 At the outset itself, the Learned APP true to her role as an officer of the court stated that there is no case under Section 498A at all made out. Learned APP restricted her submissions on Section 306,i.e., abetment of suicide by the accused. Learned APP submitted that from Exhibit 10, it is quite clear that the accused harassed deceased, tired with the harassment deceased decided to end her life and ended her life by committing suicide. Learned APP also submitted that there were many people in the world who could have been accused, but the fact that

deceased specifically mentioned her sisters in law by name (the two accused), the court has to hold that the accused were responsible for deceased committing suicide. The Learned APP also submitted that even though Exhibit 10 mentions that her husband is also not supporting her but listening to the accused, also shows that the accused are solely responsible for the suicide of deceased. Is that sufficient to hold the accused guilty of offence under Section 306 ? Let us now examine.

7 Section 306 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.”*

What is abetment and who is an abettor can be found in Sections 107 and 108 of IPC which read as under:

*“107: **Abetment of a thing.**— A person abets the doing of a thing, who:- (1) Instigates any person to do that thing; or (2) 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 (3) Intentionally aids, by any act or illegal omission, the doing of that thing.”*

*“108. **Abettor.**—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. ”*

8 Here is the case of abetment by instigation. When is a person said to instigate another ? The word 'instigate' literally means to goad, or urge, or to provoke, or incite, or encourage, to do an act, which the person,

otherwise would not have done. It is well settled, that in order to amount to abetment, there must be mens rea or community of intention. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct incitement to do the culpable act. This issue has been discussed by various High Courts and Supreme Court of India and some of those pronouncements are discussed here.

9 In *Manish Kumar Sharma Vs. State of Rajasthan*¹, the prosecution story was that the accused Manish Kumar had advanced some money to the victim Kusum Devi and that there were frequent quarrels between the said accused and the said Kusum Devi. Kusum Devi started living a life full of tension, which was accentuated on account of persistent demands made by the accused in respect of money. On the fateful day, the accused had, allegedly, demanded his money back and uttered the words "Randi tu marti ku nahi hai mere saath chal nahi to tujhe janase maar dunga" whereupon Kusum Devi consumed some tablets of some poisonous substance and died. After carefully considering the legal position and the concept of 'abetment', Rajasthan High Court held that, it could not be said that accused wanted, or intended, Kusum Devi to commit suicide. There was no evidence to suggest or indicate that the accused knew or had reason to

1 1995 Criminal Law Journal 3066

believe that Kusum Devi would commit suicide.

10 In *Vedprakash Bhaiji Vs. State of Madhya Pradesh*², the facts of the prosecution case were that the accused Vedprakash and others had advanced a loan to the deceased Ramesh Kumar and that on the day prior to the incident, the accused had filthily abused Ramesh Kumar and had demanded an amount of Rs. 30,000/ from him, threatening that otherwise he would be killed. Again, in the night of the same day, demand was made from Ramesh Kumar for the repayment of the loan advanced. Ramesh Kumar was abused and threatened repeatedly. On the next day, Ramesh Kumar wanted to lodge a report in Police Station against the accused person; but instead committed suicide by consuming some poisonous substance. In the suicide note left by him, he blamed the accused persons, who were charged of an offence punishable under Section 306 of the IPC and were prosecuted. The Madhya Pradesh High Court, after considering the concept of 'abetment' in the light of certain previously decided cases, quashed the prosecution, holding that no case of abetting the commission of suicide had been made out.

11 In *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh*³ the Supreme Court of India extensively dealt with the concept of 'abetment' in the context of the offence punishable under Section 306 of the

2 1995 Criminal Law Journal 893

3 2002 Criminal Law Journal 2796

Indian Penal Code. In that case, the allegation against the accused/appellant before the Supreme Court was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts show that there were matrimonial disputes between Neelam, sister of the appellant/accused and her husband and that, in connection with these disputes, the appellant had allegedly threatened and abused the said Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant, who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. The petitioner had, therefore, appealed to the Supreme Court. While allowing the appeal, the Apex Court, inter alia, observed as follows :

"Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation." (Para 13 of the reported judgment).

Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another,⁴ dealt with extensively the concept of abetment to commit suicide after referring to a number of pronouncements including the decision of the Supreme Court of India. The facts of that case were that the deceased Joseph owed Rs. 200/- to one of the accused and was not able to pay back the money. The accused had called Joseph to the bakery of accused, wrongfully restrained him and abused him in public. One of the accused also beat Joseph. Joseph felt insulted. On reaching home, he divulged his embarrassment to his wife and on the same night, committed suicide by consuming poison. According to the prosecution, it was because of the words uttered by the accused persons and the manner in which the deceased was dealt with by them in public, that the deceased had committed suicide. The accused were being prosecuted for an offence punishable under Section 306 of the Indian Penal Code and had approached the Kerala High Court for quashing the proceedings initiated against them.

The Learned Single Judge ultimately summarized the legal position as follows :

" 17. From the discussion already made by me, I hold as follows : The act or conduct of the accused, however, insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Even if the words uttered by the accused or his conduct in public are sufficient to demean or humiliate the deceased and even to drive him to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the

4 2005 Criminal Law Journal 4322

accused intended by his acts, consequence of a suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide.

18. An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 IPC. In short, it is not what the deceased 'felt', but what the accused 'intended' by his act which is more important in this context."

13 In ***Madan Mohan Singh vs. State of Gujarat***⁵ appellant before the Supreme Court was facing prosecution in respect of the offences punishable including under Section 306 of the IPC. The prosecution against him had been initiated on the basis of the FIR lodged by one Harshidaben, widow of Deepakbhai Joshi. The substance of allegation against the accused was that her husband Deepakbhai was serving as a driver in Ahmedabad Bharat Sanchar Nigam Ltd., in the Microwave Project Department. He had undergone bypass surgery and was advised by the doctor to avoid lifting heavy weights. The accused – Madan Mohan Singh, who was the superior of Deepakbhai, used to use Deepakbhai to run his private errands and had been harassing him. Though Madan Mohan Singh was transferred, he kept on continuously using the services of Deepakbhai. Madan Mohan Singh was then again transferred in the Microwave Project department. On the very first day, he told Deepakbhai to keep the keys of the vehicle on the table. Deepakbhai however, did not listen to him on account of which Madan Mohan Singh was angry and had threatened him of suspension. He had also

5 (2010) 8 Supreme Court Cases 628

threatened Deepakbhai that if he did not listen to him, he would create difficulties for him. Madan Mohan Singh had told Deepakbhai, as to how he was still alive, inspite of the insults. On 21.2.2008, Deepakbhai left his house as usual, but did not return in the evening. A missing report was lodged with the police. Ultimately, Deepakbhai's dead body was found lying in a vehicle. His wife Harshidaben then lodged a report with the police, alleging that Deepakbhai had been harassed by Madan Mohan Singh and that he had been insulted in front of the staff several times and because of that Deepakbhai was depressed and had committed suicide. A suicide note was allegedly left by the said Deepakbhai, blaming Madan Mohan Singh for his acts and stating that he was committing suicide due to his functioning style. Madan Mohan Singh approached the High Court at Gujarat and later Supreme Court of India for getting the prosecution against him quashed. Supreme Court of India while quashing the proceedings in question observed in paragraph 12 as under :

“In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC.”

14 In the judgment in the case of *Ramesh Kumar vs. State of Chhattisgarh*⁶ this Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC.

6 2001(9) SCC 618

While interpreting the word “instigation”, it is held in paragraph 20 as under:

“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 In paragraph 19 of ***Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.***⁷ this court has summed up the legal position on Section 306. Paragraph 19 reads as under:

“19. The legal position that emerges from the above discussion is as follows : Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain or at least quite likely to commit suicide. Unless that the victim should commit suicide, is either intended, or can be reasonably foreseen and expected a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as “go and die”, in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.”

16 The courts have held that the evidence must suggest or indicate

⁷ 2012(3) Bom.C.R. (CRI) 532

that the accused knew or had a reason to believe that deceased would commit suicide.

17 It is nobody's case that the accused intended that deceased should commit suicide. The entire basis of prosecution's case is Exhibit -10, i.e., suicide note found near the dead body. PW-1, i.e., father of deceased says that he had heard that the accused, who are the sisters of the husband of his daughter, were harassing his daughter but he had no idea of the nature of harassment. From whom he heard, is not mentioned, though later he adds, the deceased told before the incident the accused were harassing her. This is far too a general statement even to be considered to be relevant.

 In the cross-examination, PW-1 says that his daughter (deceased) was 39 years old, had no children and was taking treatment for begetting a child. PW-1 also says deceased was sad because of that.

18 PW-2 Nishigandha Pravin Khanvilkar was a colleague of deceased. PW-2 says deceased conveyed to her that the accused used to harass deceased by torturing her, not allowing deceased to carry on her relationship with the husband's family and deceased was all alone whenever the husband used to take the accused persons every month for outstation. PW-2 also says that when she went to visit deceased one month prior to her suicide, she felt that neither the husband nor the accused were prepared to take deceased for picnic. What was the basis for such feeling, is not

mentioned. Moreover, PW.-3, who is the brother of deceased says that one month prior to her death deceased was staying with her parents at the parental home. It makes me wonder, then how did PW.-2 meet deceased at her matrimonial home in Thane. PW.-2 in her cross-examination also says that the husband of deceased was not doing any job and she felt deceased was isolated from her husband's family. These are again "her feelings" and not that she saw it happening. If the husband was not doing any job, how could he take his entire family every month for outstation leaving deceased alone. PW.-2 also states that she never thought deceased will ever commit suicide. The evidence of PW.-2 is not reliable.

19 PW.-3, the brother of deceased, says deceased informed them that she was being tortured when she visited her parental home. The deceased allegedly informed them that both the accused have tortured her and the entire family was torturing her including the accused by isolating her. Father of deceased, i.e., PW.-1 does not mention any such torture being alleged by deceased. Further, this is far too a general statement, to hold the accused guilty. The father and brother of deceased don't even state whether they even made an attempt to speak to the accused or the husband of deceased or the mother-in-law of the deceased as to why they were torturing the deceased. It would have been natural for any parent or sibling, to meet the husband's family to find what was the problem because of which their daughter or sister was complaining.

PW.-4 is the sister of deceased, who though states that deceased informed her of being harassed by the accused, she did not express what kind of torture was meted out to deceased.

20 PW.-4 also states that “ in our presence, the accused did not harass her”. Therefore, none of the witnesses have seen the accused harass or torture the deceased. What kind of torture, is also not specified. It will be hazardous to convict any accused on the basis of such general statements. Further the accused and deceased were not living under one roof. Accused no.2 was living 2 kms away and accused no.1 was living in Bandra about 35 kms away. Having considered the entire evidence, I am unable to make out what was the harassment or how did the accused harass deceased. Therefore, should the court only hold someone guilty purely on the basis of what is stated in Exhibit 10. I would say no. All the ingredients required for Section 306 are missing. For the offence under Section 306, the act or conduct of the accused, however, insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended that the consequence of such acts will be suicide. Prosecution has to establish that the accused intended by their acts, consequence of a suicide. It is settled law that it is not enough, if the acts of the accused cause persuasion in the mind of the deceased to commit suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may

be, cannot fray the fabric of the provision contained in Section 306 IPC. What is required under Section 306 is not what deceased felt, but what the accused intended by their acts, which is more important in this context. There is no evidence whatsoever, what was the torture or harassment. There is also no evidence whatsoever that the accused by their acts intended deceased to commit suicide.

21 I have to also note that the suicide note (Exhibit 10) is dated 6-11-1999 and deceased committed suicide on 6-12-1999, a full one month later. Learned APP made an attempt to persuade the court to assume that deceased would have by mistake written the date as 6-11-2019 instead of 6-12-2019. At this stage, I cannot proceed on assumption. Secondly, not once, but in three places deceased has written the date as 6-11-2019. From the way deceased has signed the suicide note, the way the suicide note has been written and the fact that deceased has also added in her suicide note how the benefits that would be given to her by her employers should be distributed between her mother and sisters after her death, shows deceased was in proper frame of mind to know correctly the date on which note is written.

22 Moreover, even if, I accept what the Learned APP submitted, still that would not change the situation because there is no evidence to speak of that the accused intended deceased to commit suicide,

23 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***⁸ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

24 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that

8. (2007) 4 SCC 415

every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

25 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

26 Appeal dismissed.

(K.R. SHRIRAM, J.)