

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO.1015 OF 2002**

Mr. Narendra Gokuldas Soni	..Appellant
Vs.	
Mr. Suresh Fulchand Soni & Ors	..Respondents

None for Appellant
Ms Anamika Malhotra APP for State

**CORAM : K.R.SHRIRAM, J.
DATE : 18th OCTOBER 2019**

P.C.:

1 This is an appeal against acquittal of the accused who were charged with offences under Sections 498(A), 306 read with Section 34 of IPC. The prosecution had also filed an independent appeal which came to be rejected for non removal of office objections way back in 2005.

2 None had appeared for appellant on 14-10-2019 and therefore, the matter was stood over to 15-10-2019. On 15-10-2019, 16-10-2019 and 17-10-2019 the matter was not taken up due to paucity of time. Today when the appeal is taken up for hearing, appellant is again not represented. This court with the assistance of the Learned APP Ms Malhotra had considered the appeal memo, evidence and the impugned judgment.

3 The accused are Suresh Fulchand Soni and Sita Fulchand Soni. Accused no.1 is the son of accused no.2. Accused no.1 had got married to one Manisha on 8-7-1999. The complainant who is also the appellant is the

cousin of the deceased Manisha. It appears that deceased Manisha went to cohabit with accused no.1 after the marriage at the house, which belonged to accused no.2. About three months after the marriage, it seems the deceased Manisha went to appellant and informed him that accused no.2 has suffered substantial loss in his business and has demanded Rs.25,000/- to restart the business. Appellant gave a sum of Rs.10,000/- to accused no.1 because that is what he had with him and requested accused no.1 not to harass the deceased. It is the prosecution's case that whenever the deceased visited appellant and her family members, she always informed that accused used to demand money from her.

4 It is also the case of the prosecution that on or about 6-3-2000 when Manisha informed P.W.-2 that she had pain in her abdomen, P.W.-2 took her to the hospital where the doctor opined that the deceased was pregnant. The deceased thereafter went to the house of appellant where accused no.1 went later. Accused no.1 had talk with the deceased and later requested appellant to drop the deceased in the matrimonial home. Appellant dropped the deceased in the matrimonial home and on the same day he received a message from accused that Manisha was not feeling well and thereafter accused no.1 took the deceased to the hospital of one Dr. Lalwani. Appellant thereafter went to the hospital of Dr. Lalwani and met the doctor where, he came to know that Manisha had died and therefore, he had advised the accused to take Manisha to the Sassoon Hospital, Pune. It

seems that the complainant/appellant did not find Manisha at the Sassoon Hospital, but he came to know that the accused inspite of taking Manisha to Sassoon Hospital, had taken her home in an auto rickshaw. Therefore, complainant went to the house of accused where he found dead body of Manisha. On the next day, the complainant / appellant lodged a complaint with the police and the police started investigation. The Investigating Officer collected medical reports, recorded the statements of relevant witnesses and after completion of investigation, filed the charge sheet in the Court of Joint Magistrate First Class, on 10-2-2000. On 11-8-2000, the Learned JMFC committed the case to the Sessions Court. On 26-4-2000, the Sessions Court framed the charges against the accused for the offenses punishable under Sections 498(A) and 306 read with Section 34 of IPC. The accused pleaded not guilty. The prosecution led evidence of three witnesses, i.e., complainant (PW-1) Narendra Soni cousin brother of the deceased, Hemalata Kisan Soni cousin aunt of the deceased (PW-2) and Investigating Officer Ravikant Digambar Malekar (PW-3).

5 For the charges to stick the onus, was on the prosecution to prove that; (a) the deceased Manisha was subjected to cruelty, (b) cruelty was meted out to her by demanding money, (c) unable to bear this cruelty Manisha committed suicide by consuming poison, i.e., the suicide committed by Manisha was the result of action on part of accused and Manisha had no other option due to action of the accused.

6 Except for the P.W.-1 and P.W-2 stating that deceased Manisha telling them that accused no.1 wanted Rs.25,000/- for starting a business because he suffered some loss, nothing else has come on record. In fact P.W.-2 does not say anything to that effect and only states that at the time of marriage accused asked for Rs.30,000/- instead of utensils being given. She says that in October 1999 in fact accused no.1 went to her house and requested for monetary help in the sum of Rs.20,000/- but she could not give her the money because her husband was not at home and the accused went away. She, of course, states that Manisha informed her that accused would quarrel with her on flimsy ground and were not eating food prepared by her. P.W.-2, however, does not say that Manisha informed her that accused were demanding money from her and because she was unable to fulfill the demand, they were treating her with cruelty and harassment. The evidence also does not indicate that either P.W.-1 or P.W.-2 witnessed the accused treating Manisha with cruelty. P.W.-2 states that Manisha is to live with her before the marriage and was maintained by P.W.-2 since her childhood. P. W.-2 in cross-examination states that Manisha never disclosed anything or made any complaint against accused persons of cruelty.

7 Therefore, I cannot find fault with the conclusion of the Trial Court that the prosecution is failed to prove that Manisha was treated with cruelty and harassment. On this ground alone, the entire case of the prosecution should fail.

8 Assuming for the sake of argument that there was element of cruelty, still the onus of the prosecution was to prove that unable to bear this cruelty Manisha committed suicide by consuming poison, the suicide committed by Manisha was the result of action on part of accused and Manisha had no option. None of these have been proved by the prosecution. There is no evidence to prove that the suicide committed by Manisha was the result of any action on the part of the accused or that suicide by Manisha was the only course open to her due to action of Accused. There is no evidence also that there was goading or solicitation or insinuation by any of the accused to Manisha to commit suicide. In the case of **Swamy Prahaladdas Vs. State of M.P. & Anr.**¹ the Apex Court, while considering utterances like “to go and die” during the quarrel between husband and wife uttered by husband, held that utterances of such words are not direct cause for committing suicide.

9 In the judgment in the case of **Ramesh Kumar vs. State of Chhattisgarh**² this Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC. 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

1 1995 Supp (3) SCC 438

2 (2001) 9 SCC 618

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.”

10 Similarly in the judgment in the case of **Sanju Alias Sanjay Singh Sengar vs. State of M.P.**³ when any quarrel which has taken place between husband and wife in which husband has stated to have told the deceased ”to go and die”, the Apex Court has held that the suicide committed two days thereafter was not proximate to the quarrel though the deceased was named in the suicide note and that the suicide was not the direct result of quarrel when the appellant used abusive language and told the deceased to go and die.

11 At the same time, complying the judgment referred above, this court is of the view that getting into an argument or refusing to eat the food cooked by the deceased, again has not been proved, cannot be considered as material sufficient to be called as goading or solicitation or insinuation by the accused to Manisha to commit suicide.

3 (2002) 5 SCC 371

12 To draw the inference of instigation it all depends on facts and circumstances of the case, whether the acts committing by the accused will constitute direct or indirect act of incitement to the commission of suicide is a matter which is required to be considered in facts and circumstances of each case.

13 Moreover, the prosecution has not been able to prove; (a) from where Manisha procured cyanide, (b) the Chemical analysis has not been examined, (c) the doctor who has done autopsy has not been examined. One has to keep in mind that cyanide, is something which cannot be obtained over the counter.

14 Therefore, the fact of Manisha having committed suicide itself has not been proved.

15 In the circumstances, Appeal dismissed.

(K.R. SHRIRAM, J.)