

The State of Maharashtra) ..Appellant

1. Suresh Navnath Londhe)
Age 30 yrs.)

2. Navnath Dagdu Londhe)
Age 60 yrs.)

3. Smt. Avida Navnath Londhe)
Age 50 yrs.)

All R/a, Varunji Phata,)
Tal: Karad, Dist : Satara)

..Respondents
(Original Accused No.1 to 3)

CORAM : K.R.SHRIRAM, J.
DATE : 28th FEBRUARY 2020

1 This is an appeal impugning an order and judgment dated 28-1-
2003 passed by the learned 2nd Ad-hoc, Asst. Sessions Judge, Karad,
acquitting respondents (accused) of offence under Sections 498A (*Husband
or relative of husband of a woman subjecting her to cruelty*), 306
(*Abetment of suicide*), 504 (*intentional insult with intent to provoke breach
of the peace*) and 506 (*punishment for criminal intimidation*) read with

Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code.

2 Since nobody is appearing for respondents, the court appointed Mr. Rohan Savant, Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the distinguished assistance rendered by Mr. Savant. The endeavour put forth by Mr. Savant, has been of immense value in rendering the judgment.

3 The Apex Court in *Ghurey Lal Vs. State of U.P.*¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial

¹ (2008) 10 SCC 450

court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

4 The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to

² (2014) 5 SCC 730

result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

5 The Apex Court in *Ramesh Babulal Doshi Vs. State of Gujarat*³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

6 I have perused the impugned judgment, considered the evidence and also heard Ms. Dabholkar, learned APP and Mr. Savant, Amicus Curiae. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. I find there is

3 1996 SCC (cri) 972

no evidence whatever against accused no.2 and accused no.3. The Learned APP in fairness true to her role as an officer of this court, agrees.

7 As regards accused no.1, who is the husband of the deceased Jayshree, admittedly, accused no.1 and Jayshree got married sometime in 1989-1990 and both had cohabited for about 10 to 12 years until Jayshree died on 9-7-2001. There are three children from the marriage. If one considers the evidence, there is nothing convincing brought on record by prosecution of any previous cruelty or ill-treatment or harassment of Jayshree at the hands of accused no.1. Of course mother of Jayshree, Sarjan Voal (PW-1) has deposed that the accused used to tease Jayshree because Jayshree was of dark complexion and that she was not doing any house hold work and they did not require her in the matrimonial home. Jayshree has not stated any of these in her dying declaration. This, apart from the fact that both Jayshree and Accused no.1 lived together for almost 12 years and also had three children, in my view, shows the allegation of cruelty and harassment is vague and untrustworthy.

8 It is also stated by PW-1 that Jayshree had disclosed to her that accused no.1 had a concubine by the name Suvarna and on that ground also accused no.1 was harassing Jayshree. Jayshree has mentioned this in her statement at Exhibit 28 recorded by ASI, Mohan Krishna Bhosale (PW-4) on 5-7-2001, but this is not mentioned in the dying declaration recorded by Police Head Constable Jagannath Vitthal Bhakare (PW-3) on 4-7-2001 and

by Rajendra Majgaonkar, JMFC, holding charge of Special Executive Magistrate (PW-5) recorded on 4-7-2001. Therefore, this evidence is not believable.

9 Dying declaration Exhibit 26 recorded by PW-3 started at 7.00 p.m. and completed at 7.25 p.m. on 4-7-2001. Magistrate (PW-5) recorded dying declaration Exhibit 37 on the same day between 7.30 p.m. and 7.55 p.m. According to prosecution when Exhibit 26 and Exhibit 37 was being recorded, one Dr. Ankolkar, Medical Officer (PW-6) was present. The Medical Officer, in his examination-in-chief says when dying declaration was recorded by PW-5, he had checked B.P and pulse rate of Jayshree. PW-5 says that BP was not checked by PW-6. PW-6 also says that there is no entry in the record with him that dying declaration Exhibit 37 was recorded. PW-5 says he was not aware that any earlier dying declaration was recorded. I find that a bit difficult to accept because, PW-6 was present when Exhibit 26 was recorded and was also present when Exhibit 37 was recorded. It would be but natural for the doctor to inform the Magistrate that just five minutes prior to Magistrate's arrival Police Head Constable (PW-3) had recorded the statement. Moreover, the gap being only of five minutes, the Police Head Constable (PW-3) also would have been present when PW-5 arrived and started recording Exhibit 37. Still, there are inconsistencies between Exhibit 26 and Exhibit 37.

10 Admittedly, Jayshree had sustained burn injuries at about 4.00

p.m. on 4-7-2001 in her matrimonial home and she was brought to Krishna Hospital by accused no.1 in an auto rickshaw. Thereafter, in the evening, Exhibit 26 and Exhibit 37 came to be recorded one after the other with a gap of maximum five minutes between two. Still there are material inconsistencies between the two dying declarations. In Exhibit 26, Jayshree complained only against her husband- accused no.1, while in Exhibit 37 she involves her in-laws also alongwith accused no.1.

There is no dispute that at the time of incident, Jayshree was cooking food in her house and as per Exhibit 26, accused no.1 was standing at the door of the house and there was a discussion between Jayshree and accused no.1 regarding some work to be done by accused no.1. As per Exhibit 26, Jayshree asked her husband whether she should set herself on fire as he was otherwise quarreling with her and accused no.1 had said to her that she should set herself ablaze and it would make no difference to him. But in Exhibit 37, it is recorded that Jayshree told to her husband that he should not receive the money in advance as he would spend the same, to which accused no.1 replied saying Jayshree was being an obstacle always. As per Exhibit 37, accused no.1 then threw utensils in the house, at which time, Jayshree said he should not throw utensils but he may beat her if he so desired. Jayshree is further said to have told accused no.1 that she herself would die, on which, accused no.1 said that she should die by going anywhere. As per Exhibit 37, thereafter Jayshree poured kerosene on her

person and set herself ablaze with a burning wood. Further in Exhibit 26 Jayshree stated that her in-laws were residing separately with their other son. In Exhibit 37, Jayshree stated that she was residing in the matrimonial home with accused nos.1 to 3 and brother of her husband. In Exhibit 37 Jayshree stated that accused nos.2 and 3 were quarreling with her on petty reasons, that her husband was not providing sufficient amount from his salary, that he was spending money outside the house, etc., but none of this is mentioned in Exhibit 26.

In Exhibit 26, Jayshree had stated that she has set herself ablaze and accused no.1 tore her gown so that she would not be injured seriously. In Exhibit 26, Jayshree stated that her husband has also sustained burn injuries to his hands and accused no.1 brought her to the hospital in an auto rickshaw. Different story is stated in Exhibit 37, where Jayshree says that accused tore her gown and as nobody brought the auto rickshaw, she somehow wore a saree and tried to obtain an autorickshaw. There are similar such inconsistencies, which makes me doubt the truthfulness of contents either in Exhibit 26 or Exhibit 37.

11 The Apex Court in *Sham Shankar Kankaria Vs. State of Maharashtra*⁴, which was relied upon by Mr. Savant, has very elaborately dealt with the general principle on which dying declaration is admitted in evidence. Paragraphs 8 to 12 of the said judgment read as under:

4 (2006) 13 Supreme Court Cases 165

"8 At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in R. v. Wood Cock (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

"Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?" (See King John, Act 5, Sect.4)

9 The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri a man will not meet his maker with a lie in his mouth."

10 This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

11 Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Paniben v. State of Gujarat* (AIR 1992 SC 1817):

" (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja & Anr. v. The State of Madhya Pradesh* (1976) 2 SCR 764)]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See *State of Uttar Pradesh v. Ram Sagar Yadav and Ors.* (AIR 1985 SC 416) and *Ramavati Devi v. State of Bihar* (AIR 1983 SC 164)]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy and Anr. v. The Public Prosecutor* (AIR 1976 SC 1994)]

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg v. State of Madhya Pradesh* (1974 (4) SCC 264)]

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See *Kaka Singh v State of M.P* (AIR 1982 SC 1021)]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See *Ram Manorath Vs. State of U.P.* (1981 (2) SCC 654)]

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra v. Krishnamurthi Laxmipati Naidu* (AIR 1981 SC 617)]

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See *Surajdeo Oza and Ors. v. State of Bihar* (AIR 1979 SC 1505).]

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See State of U.P. v. Madan Mohan and Ors. (AIR 1989 SC 1519)].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v. State of Maharashtra (AIR 1982 SC 839)]."

12 In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration. [See Gangotri Singh v. State of U.P. [JT 1992 (2) SC 417], Goverdhan Raoji Ghyare v. State of Maharashtra (JT 1993 (5) SC 87), Meesala Ramakrishan v. State of Andhra Pradesh (JT 1994 (3) SC 232) and State of Rajasthan v. Kishore (JT 1996 (2) SC 595)].

12 Having scrutinized the dying declarations carefully, in my view, the contentions raise suspicion that it was tutored or prompted or was manipulated. The dying declarations, which suffers from such infirmity cannot form basis of conviction and that is what the Trial Court has held.

13 Moreover, when there are more than one statement in the nature of dying declarations, one in first in time must be preferred. Of course, it has to be trustworthy. In this case, even if we accept the dying declaration recorded by Police Head Constable (Exhibit 26), because that was first in point of time Jayshree simply says that she had an argument

with accused no.1, who was standing at the door and Jayshree asked him whether she should put herself ablaze as he was quarreling with her. Accused no.1 said to Jayshree that she should set herself ablaze and it would make no difference to him.

14 In my view, that statement in itself assuming accused no,1 had stated that, could not be considered to be interpreted to mean that accused no.1 wanted or intended Jayshree to commit suicide. There is no evidence of earlier cruelty or harassment as noted above. What is abetment ? Who is abettor, has been discussed in various judgments.

15 As regards Section 306:- 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. ”*

16 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.

17 In *Manish Kumar Sharma Vs. State of Rajasthan*⁵, 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

5 1995 Criminal Law Journal 3066

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 believe that Kusum Devi would commit suicide.

18 In *Vedprakash Bhaiji Vs. State of Madhya Pradesh* ⁶, 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.

24 In *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh* ⁷ the Supreme Court of India extensively dealt with the concept of

6 1995 Criminal Law Journal 893

7 2002 Criminal Law Journal 2796

'abetment' in the context of the offence punishable under Section 306 of the 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).

19 A Learned Single Judge of the Kerala High Court in *Cyriac, S/o*

Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another,⁸ 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 accused intended by his acts, consequence of a suicide. It is not

8 2005 Criminal Law Journal 4322

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."

20 In ***Madan Mohan Singh vs. State of Gujarat***⁹ 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

9 (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.”

21 In the judgment in the case of *Ramesh Kumar vs. State of Chhattisgarh*¹⁰ this Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC.

¹⁰ 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.”

22 In paragraph 19 of ***Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.***¹¹ 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.”

23 The courts have held that the evidence must suggest or indicate that the accused knew or had a reason to believe that deceased would

11 2012(3) Bom.C.R. (CRI) 532

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. In short, it is not what the deceased 'felt', but what the accused 'intended' by his act which is more important in this context. The fact that accused no.1 did not intend Jayshree to commit suicide could be seen from the very fact that admittedly accused no.1 immediately pounced to the rescue of Jayshree, tore her gown and after Jayshree wore another saree, rushed her to the hospital. The incident happened on 4-7-2001, but Jayshree died on 9-7-2001. PW-6, Medical Officer, in his cross-examination has admitted that Jayshree was discharged from his hospital on 7-7-2001 and in case of burn injuries, there can be formation of pus. PW-6 says that in case of infection, bacteria spreads in the body resulting in toxin formation and causes septicemic shock, which can result in death. PW-6 also admits that if proper treatment or antibiotics are not given to such patient or in case of negligence, the said patient can die by septicemic shock. Postmortem report Exhibit 18, says the cause of death to be septicemic shock due to 41% burn. Therefore, I cannot gather myself to conclude that accused no.1 wanted Jayshree to commit suicide. Therefore, the charges under Section 498A and 306, both have to fail.

24 As regards charges under Section 504 and 506, there is no evidence whatsoever and, therefore, those charges have to also fail.

25 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 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 Trial Court rightly observed that the prosecution had failed to prove its case.

26 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.

27 Appeal dismissed.

28 The High Court Legal Services Committee, to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.

(K.R. SHRIRAM, J.)