

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.469 OF 2004**

The State of Maharashtra)
(Jagnath Ambu Bhandare,)
Age – 55 years, R/o. Kasabe-Sukene,)
Tal. Niphad, Dist. Nashik)Appellant/Complainant

V/s.

1. Vasant Pundalik Shankpal)
Age 32 years, R/o. Narayantembhishivar,)
Tal. Niphad, Dist. Nashik)
2. Bhausahab Pundalik Shankpal)
Age 46 years, R/o. Narayantembhishivar,)
Tal. Niphad, Dist. Nashik)
3. Rambhau Pundalik Shankpal)
Age 35 years, R/o. Narayantembhishivar,)
Tal. Niphad, Dist. Nashik)
4. Hanumanta Radhaji Gavali)
Age 42 years, R/o. Narayantembhishivar,)
Tal. Niphad, Dist. Nashik)Respondents/Accused

Ms. Pallavi Dabholkar, APP for State – Appellant.
Mr. Anuj Desai, Advocate appointed as Amicus Curiae.

**CORAM : K.R.SHRIRAM, J.
DATE : 26th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 20th December 2003 passed by the 3rd Ad-hoc Assistant Sessions Judge, Nashik, acquitting accused no.1 of offence punishable under Section 306 (*Abetment of suicide*) of Indian Penal Code (IPC) and accused nos.2,3 and 4 of offence punishable under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*), Section 306 read with Section 34 (*Acts done by several persons in furtherance of common intention*) of IPC. Accused no.1 has been convicted for offence punishable under Section 498-A

of IPC. Learned APP is unable to answer whether there is any separate appeal filed by accused no.1 against conviction under Section 498-A of IPC. The appeal is only challenging the acquittal of accused nos.2,3 and 4 under Section 306 of IPC and Section 498-A of IPC and accused no.1 under Section 306 of IPC.

2 On 21st February 2020 since nobody was present in Court representing respondents, the Court appointed Mr. Anuj Desai, an Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr. Anuj Desai, learned Amicus Curiae, for it has been of immense value in rendering the judgment.

3 The facts in brief are one Jagnath Ambu Bhandare (PW-1), the father of victim Anita, lodged FIR on 7th January 2000 in Pimpalgaon Police Station. As per his complaint, Anita had got married to accused no.1 on 31st May 1998. Thereafter, Anita started residing in the house of accused no.1 (husband of Anita) alongwith other three accused. Accused no.2 and accused no.4 are brothers of accused no.1 and accused no.3 is the father of accused no.1. Admittedly, accused no.4 had been given in adoption to some other family. It is alleged that all accused were telling Anita that she should bring Rs.1 lakh from her parents so that accused no.1 could buy a shop as he was unemployed. This was told by Anita to her parents, i.e., PW-1 (father) and PW-3 (mother) when she went to the parental home during diwali in the year 1999. After 4 or 5 days of diwali, accused no.1 went to the house of

complainant to take back Anita at which time accused no.1 is alleged to have told PW-1 that he wanted Rs.1 lakh to purchase a shop premises and PW-1 replied saying that even the loan taken for marriage of Anita has not been repaid and once the grape season is over and they received income from the grapes sold, he will give Rs.1 lakh to accused no.1. It is alleged that Anita later once again told PW-1 that the accused are beating her, not giving her food and harassing her because PW-1 was yet to pay Rs.1 lakh to purchase a shop to accused no.1. PW-1 convinced Anita and sent her back to the matrimonial home.

4 On 6th January 2000, at about 8.00 p.m., PW-1 received a message from somebody in the village of accused that Anita was dead. PW-1 does not say who that somebody was. PW-1 rushed to Government Hospital at Pimpalgaon and he found the hospital was closed. So PW-1 went to the house of the Medical Officer who informed him that Anita had died and her body is in the hospital. Postmortem was done and PW-1 came to know that Anita had died as she had consumed poison. The body was received by PW-1 who also signed the receipt for receiving ornaments that was on the body and thereafter, Anita was cremated at the village of accused. It is the case of prosecution that Anita consumed poison and committed suicide as she was unable to withstand the cruelty by accused.

5 After investigation and recording of statements, chargesheet was filed and charges were framed. In the chargesheet, prosecution has listed 18 witnesses apart from complainant but led evidence of only 5 witnesses

including the Investigating Officer. The accused pleaded not guilty and claimed to be tried. Defence of the accused is of total denial and that it was intentionally filed with a view to harass. Accused no.2 says that complaint is filed to defame and harass him. Accused no.3 and accused no.4 also say the same.

6 As the charge under Section 306 of IPC can be exclusively tried only by the Court of Sessions, the matter was committed to the Court of Sessions. In the defence, the accused has produced documents, which are at Exhibit 31 and Exhibit 32, for showing that their financial position was sound and they were not in need of any money as alleged by Anita's parents.

7 The Trial Court convicted accused no.1 of offence punishable under Section 498-A of IPC but acquitted accused no.1 of offence under Section 306 of IPC and all the other accused of all charges. Learned APP submitted that atleast against accused no.1, the Trial Court having convicted him under Section 498-A of IPC, as a corollary should have convicted accused no.1 even for charges under Section 306 of IPC because the same facts would have applied. In view of this submission, the only basis on which there is a conviction under Section 498-A of IPC of accused no.1 is because Anita would not have told her parents about the ill-treatment or demand of money if she had not been so harassed by accused no.1. According to the Trial Court, it is most natural that Anita would have stated about the cruelty to her parents and general tendency of any married women is that as far as possible not to disclose the faults or harassment of her husband or in-laws to

the parents unless suffering of which becomes severe and unbearable.

8 When one considers the entire evidence against accused nos.2,3 and 4, I find no specific allegation whatsoever in the evidence. Ms. Dabholkar, learned APP in fairness and true to her role as an officer of this Court, concurs with this view of the Court but insisted that the acquittal of accused no.1 under Section 306 of IPC has to be interfered with because accused no.1 has been convicted under Section 498-A of IPC.

9 In my view, apart from general statements that Anita was harassed by demanding Rs.1 lakh, nothing specific has come in evidence. I find there are quite a few omissions and contradictions in the evidence of PW-1 and PW-3. So far as PW-4 is concerned, it is quite clear that he cannot be believed. PW-4, who was the brother of PW-3, deposed that he had gone to the house of accused on 4-5 occasions and on one occasion PW-1 had accompanied him and on all these occasions, accused did not allow Anita to meet them. PW-4 has also deposed that all accused started harassing Anita after 4 to 6 months of her marriage and they were abusing, beating and not providing food to Anita. PW-1, who is the father of Anita, has not stated anywhere in his evidence that he ever went to the house of accused with PW-4 accompanying him. Moreover, in his cross examination, PW-4 admits that in his police statement, it is not mentioned that he had gone to the house of accused, he has not stated that on one occasion he and PW-1 had gone to the house of accused and not stated that accused had not allowed Anita to meet them, not stated that 3 days prior to her death Anita had

contacted him over telephone and stated about the harassment by accused and his statement does not mention about demand of Rs.1 lakh that Anita informed him about to open fertilizer shop for accused no.1. Therefore, the testimony of PW-4 need not be even considered.

10 PW-2, the Medical Officer, has in his cross examination, admitted that the condition of Anita's body was well nourished. There is no observation in the postmortem report also of any external physical injury on the body of Anita. Therefore, it is not possible to accept that Anita was not being given food or that Anita was being beaten.

11 Coming to the evidence of PW-5, the Investigating Officer, PW-5 admits in his cross examination that he never made any inquiry regarding the shop or gala that accused wanted to purchase. Therefore, there is no evidence that accused even wanted to buy any shop or gala. It is nobody's case that the accused were demanding Rs.1 lakh just to blow it up. The case of prosecution is that the amount of Rs.1 lakh was being demanded only to purchase a gala and the intention of accused to purchase a gala has not been proved.

12 Coming to the evidence of PW-1 and PW-3, PW-1 says that he learnt from Anita that 7 to 8 months after her marriage, accused no.1 informed her that she should bring Rs.1 lakh for business from PW-1 and this Anita informed him when she visited the parental home. PW-1 says that Anita would tell him that accused no.1 was demanding the amount and she would weep while saying that to him and all the accused used to beat her or

even threaten to kill her if she did not bring the said amount. According to PW-1, when Anita came to their house before the first diwali after marriage with accused no.1, on three occasions and during diwali Anita mentioned to him about the demand and harassment. PW-1 says he informed Anita that after he receives income from the grape garden he would pay the amount to her. PW-1 says Anita had come alone to the house at the time of diwali and after 8 days from diwali “we had sent her” to the house of accused. As against this, PW-3 says accused no.1 had been to their house at the time of diwali and they told Anita and accused no.1 that they have not repaid the loan which they had taken for the marriage of Anita and will pay the amount to accused no.1 after receiving income from grape garden. What I am driving at is PW-1 does not say that accused no.1 had come during the diwali and he told that to accused no.1 and Anita. Moreover, PW-1 says that after 8 days from diwali “we had sent” Anita to the house of accused, whereas PW-3 in her cross examination states that accused no.1 had come to their house to take back Anita after diwali. PW-3 says accused no.1 even informed them that he has come after taking lunch and he had come on motor cycle to take Anita back.

13 Moreover, according to PW-3, on every occasion Anita went to their house, accused no.3 either came along in a jeep and dropped Anita and went again in a jeep to pick up Anita. PW-3 also says that as per custom, about 4 to 6 months before the second diwali, accused no.3 had gone to their house to invite them over to the house of accused and PW-3 accompanied by 2 or 3 other ladies from

their relatives had gone to the house of accused. PW-3 also adds that they were well looked after and also they took lunch and accused had picked them up in a jeep and dropped them back. If the accused were upset with Anita that she was not bringing Rs.1 lakh from her parents, I wonder whether her parents would have been honoured like this. One may say as stated by the Trial Court that the accused may show a pretense of honour to the parents of Anita. But why would the accused go to pick her mother and drop her back alongwith two other ladies? I would have expected the mother (PW-3) would have told two or three ladies, who were her relatives, who she felt were important enough to be taken with her to the house of accused, about the harassment being meted out to Anita. They have not been told and it is also not disclosed who those relatives are. PW-3 says that when she went to the house of Anita, Anita told “us” that accused are demanding the said amount of Rs.1 lakh and they are harassing her and not giving food to her. Who this “us” is not mentioned and if Anita was not being given food, I wonder why will they feed her mother and her relatives.

14 The other strange thing that I have noticed and which is very difficult to believe is PW-1 and PW-3 both say they did not know the financial condition of accused no.1 and his family. No parent would give their daughter's hand in marriage to anyone without even checking the ability of the prospective son-in-law to provide, if not better, atleast the same lifestyle that their daughter was used to. PW-4 says two tractors were near the house of accused. PW-3 says accused no.3 would come in a jeep to drop and pick up Anita

from the parental house. PW-3 says after diwali, accused no.1 came in a motor cycle to pick up Anita. There are documents produced as Exhibit 31 and 32 giving the list of the assets that the accused possessed to show that Rs.1 lakh was too small an amount to even demand.

15 Therefore, by simply saying that accused used to harass Anita by demanding money of Rs.1 lakh, nothing specific has come through. PW-1 and PW-3 do not even mention that they have seen any beating mark on the body of Anita.

16 Mr. Desai, the learned Amicus relied upon various judgments on Section 306 of IPC and Section 113A of evidence Act as under :

1. Wasim v. State (NCT of Delhi), (2019) 7 SCC 435 : (2019) 3 SCC (Cri) 69 : 2019 SCC OnLine SC 874 at Paras 12 & 13:

Section 306 IPC provides for punishment with imprisonment that may extend to ten years. There should be clear mens rea to commit the offence for conviction under Section 306 IPC. It also requires an active act or direct act 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/she committed suicide—See M. Mohan v. State [M. Mohan v. State, (2011) 3 SCC 626 : (2011) 2 SCC (Cri) 1] . To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary—See Pallem Deniel Victor v. State of A.P [Pallem Deniel Victor v. State of A.P, (1997) 1 Crimes 499 (AP)] Whereas, Under Section 498-A harassment of woman for demand of dowry takes character of cruelty. Any wilful conduct which is likely to drive the woman to commit suicide is sufficient for conviction under Section 498-A IPC.

2. Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088 at Para 12:

It cannot be lost sight of that the presumption under Section 113A is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must

exist.

A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty.

On existence and availability of the abovesaid circumstances, the court **may presume** that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression “may presume” suggests.

Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression — “the other circumstances of the case” used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption.

The phrase “may presume” used in Section 113-A is defined in Section 4 of the Evidence Act, which says — “Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.”

3. Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281 : 2005 SCC (Cri) 1473 at Para 11:

The basic difference between the two sections i.e. Section 306 and Section 498-A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.

4. Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896 at para 12:

before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life.

5. Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367 at Paras 13 & 15; and Randhir Singh v. State of Punjab [Randhir Singh v. State of Punjab, (2004) 13 SCC 129 : 2005 SCC (Cri) 56 at Para 12:

Direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 IPC.

The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

The word "urge forward" means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with the intention to provoke, incite or encourage the doing of an act by the latter.

In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

6. Ude Singh & Ors. Vs. State of Haryana, 2019 SCC Online SC 924 at Paras 37 to 40; and Rajesh Vs. State of Haryana, 2019 SCC OnLine SC 44 at Para 9:

Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

There must be a proof of direct or indirect act/s of incitement to the commission of suicide. There should be cogent and convincing proof of the act/s of incitement to the commission of suicide. Mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence.

It is settled law that, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide.

The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment, a particular case may fall short of the offence of abetment of suicide.

Hence, each case is required to be dealt with on its own facts and circumstances.

7. Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr., 2012(3) Bom.C.R. (CRI) 532 at Para 19:

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. 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.

8. Saktharam v. State of Maharashtra, (2003) 12 SCC 368 at page 368 at Para 4:

For the fault of the husband, the in-laws or other relatives cannot, in all cases, be held to be involved in the demand of dowry. Who demanded dowry and subjected her to cruelty is required to be established. In cases, where such accusations are made, the overt acts attributed to such persons are required to be proved beyond reasonable doubt. The Hon'ble Supreme Court relies upon Kans Raj v. State of Punjab [(2000) 5 SCC 207] where it is specifically observed that a tendency has however developed for roping in all relations of the in-laws of the deceased wife in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

9. Pawan Kumar vs. State of H.P.: (2017) 7 SCC 780 at Para 34:

The word "abetment" has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element.

17 Since we are only concerned with the acquittal of accused no.1 under Section 306 of IPC, in view of what is stated in paragraph 8 above, is it sufficient to hold accused no.1 guilty under Section 306 of IPC just because he has been convicted under Section 498-A of IPC. I must hasten to add, nobody knows the status of any appeal filed by accused no.1 against his conviction under Section 498-A as accused has not been appearing at all. Let us now examine the provisions of Section 306 of IPC.

18 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. ”*

19 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.

20 In *Manish Kumar Sharma V/s. 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

1. 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.

21 In *Vedprakash Bhajji V/s. 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.

22 In *Sanju alias Sanjay Singh Sengar V/s. 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).

23 A Learned Single Judge of the Kerala High Court in ***Cyriac, S/o Devassia and another Vs. Sub-Inspector of Police, Kaduthuruthy and another***,⁴ dealt with extensively the concept of abetment to commit suicide

4. 2005 Criminal Law Journal 4322

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 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."

24 In ***Madan Mohan Singh V/s. 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 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.

5. (2010) 8 Supreme Court Cases 628

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.”

25 In the judgment in the case of *Ramesh Kumar V/s. 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. 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

6. 2001(9) SCC 618

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.”

26 In paragraph 19 of ***Shivaji Shitole and Ors. V/s. 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.”

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

28 It is nobody's case that accused no.1 intended that Anita should commit suicide. Should we convict accused no.1 only on the basis of general statements made by PW-1 and PW-3. The answer is no because there is no evidence to speak of that the accused intended Anita should commit suicide.

7. 2012(3) Bom.C.R. (CRI) 532

29 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, reappreciate 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.”

30 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

8. (2007) 4 SCC 415

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.

31 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.

32 Appeal dismissed.

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

34 Within two weeks from today, the records and proceedings be sent to the Trial Court and the Trial Court will forward it to the concerned Court if there is any appeal filed by accused no.1 against conviction under Section 498-A of IPC.

(K.R. SHRIRAM, J.)