

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.989 OF 2003**

The State of Maharashtra)
(Through Bandgarden Police Station)) ..Appellant

Versus

1. Nabab Mohammad Shaikh)
Age 47 yrs. Occ: Service)

2. Mumtaj Nabab Shaikh)
Age 40 yrs. Occ: Household)

3. Akram Nabab Shaikh)
Age 24 yrs. Occ: Service)

All R/o, Council Hall, Hyderabad Chawl)
Servant Quarters, Room No.5, Bandgarden)
Pune) ..Respondents
(Original Accused No.1 to 3)

Ms Pallavi Dabholkar APP for Appellant
Mr. Rohan Savant, Amicus Curiae

**CORAM : K.R.SHRIRAM, J.
DATE : 4th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 7-5-2003 passed by the learned 11th Additional Sessions Judge, Pune, acquitting three respondents (accused) of offence under Sections 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 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 prosecution's case in brief is :- (a) Aarifa, daughter of complainant Kadir Madar Shaikh (PW.-1), got married to accused no.3 Akram Nabab Shaikh on 15-10-2000. For about 6 months after marriage, the accused treated Aarifa well but thereafter, started ill-treating and subjected her to physical and mental cruelty. Unable to withstand the cruelty, Aarifa poured kerosene on her person and set herself on fire on 10-1-2002. Accused kept themselves away from the spot of incident and it is the neighbours of the accused, who came forward and informed the incident of Aarifa to the police and her relatives.

(b) Ill-treatment after 6 months began because one of the daughter of accused nos.1 and 2, whose name was Yasmin got married 6 months prior to the incident and the accused had spent lot of money. Accused were harassing Aarifa to get some money from her parents so that the accused could tide over the financial tightness caused due to marriage of Yasmin.

(c) The accused used to abuse and beat Aarifa accusing her not being a good cook and accused no.1 used to always talk to Aarifa angrily and in loud voice.

(d) Accused used to also beat Aarifa because she was unable to conceive.

According to prosecution, prior to date of incident, the accused in furtherance of their common intention subjected Aarifa to cruelty and abetted suicide.

4 Charge sheet for offences punishable under Sections 498A and 306 read with Section 34 of IPC was filed in the Court of Judicial Magistrate First Class, Pune and, thereafter, the case was committed to Sessions Court. Initially, Shahin, the sister of accused no.3 and daughter of accused nos.1 and 2 was also arraigned as accused, but the charge sheet against her was not considered by the Sessions Court, because Shahin was a minor. Prosecution was called upon to submit a separate charge sheet against Shahin before Juvenile Court. It is not clear what happened to that matter. Charges were framed against the three respondents (accused), who pleaded not guilty and claimed to be tried. Statements of the accused under Section 313 of Cr.PC were recorded and the stand of the accused was of total denial.

5 To drive home the guilt, prosecution led evidence of 7 witnesses; namely Kadir Madhar Shaikh, father of Aarifa and Complainant, as P.W.-1; Abeda Kadir Shaikh, the mother of Aarifa, as P.W.-2; Hasina Majhar Shaikh, aunt of Aarifa, as P.W.-3; Yasmin Harun Shaikh, another aunt of Aarifa, as P.W.-4; Sayyad Hasanali Mahboobali, a panch witness for spot panchnama and also a neighbour of accused, as P.W.-5; Barikrao Aaslu

Chaure, PSI Special Branch, Pune, as P.W.-6, who had recorded the statement and lodged the FIR; and Ramakant Vinayak Kale, Investigating Officer, as P.W.-7, who received all papers from P.W.-6. The defence did not lead any evidence. Postmortem report, Exhibit 18, has been admitted.

6 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 reappraise 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 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

1 (2008) 10 SCC 450

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.

7 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 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

2 (2014) 5 SCC 730

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.

8 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.

9 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.

10 Admittedly, for the first 6 months, Aarifa was treated well by the accused. It is the case of P.W.-1, P.W.-2, P.W.-3 and P.W.-4 that the accused were ill-treating Aarifa on the grounds that:- (a) Aarifa was not bringing

3 1996 SCC (cri) 972

money from her parents in view of the huge expenses that were incurred by the accused for conducting the marriage of Yasmin 6 months prior to the incident, (b) Aarifa used to not cook properly and, (c) Aarifa was not conceiving.

11 Law on what would amount to an offence under Section 498A, has been well discussed in catena of judgments. It is settled law that under Section 498A of IPC, every cruelty is not an offence. The cruelty must be of such a degree as contemplated by the Section, i.e., it must be willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb and health of the woman.

12 The Division Bench of this court in ***Kamlesh Ghanshyam Lohia and Ors. Vs. State of Maharashtra, through the commissioner of police & Ors.***⁴ in paragraphs 12 to 15, has observed as under:

“12. The allegations against the petitioners are, therefore, required to be appraised through the aforesaid backdrop. If we take the allegations in the FIR at par, qua the petitioners, at best, the following three allegations can be attributed to the petitioners :

(i) After the first informant and Krishna shifted to Juhu in June 2012, the petitioners occasionally visited them and during those visits, insulted the first informant by calling her fat and dark complexioned.

(ii) On every festive occasion, the family members of Krishna demanded clothes, ornaments and money from her parents and those demands were met.

(iii) All the family members humiliated the first informant by calling her, "infertile" and made her to demand money from her parents.

13. Whether the aforesaid allegations, even if taken at par, would warrant the prosecution of the petitioners is the moot question. It is indisputable that the cruelty under [section 498-A](#) of IPC has a specific legal connotation. Ordinary quarrels, differences of views and wear and tear of life, which every home witnesses, do not fall within the

4 2019 SCC online Bom 1762

mischief of cruelty which section 498-A of IPC punishes. Nor, every ill-treatment or harassment falls within its dragnet. To fall within the tentacles of section 498-A, the married woman must have been subjected to cruelty which would drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, or with a view to coerce her or any person related to her to meet an unlawful demand of property. Mere demand of money or property, unaccompanied by any harassment, would also not fall within the mischief of section 498-A. There has to be a nexus between the demand and the consequent harassment.

14. On the anvil of the aforesaid legal position, if the allegations enumerated above, are weighed, it becomes evident that the first allegation of insulting the first informant after she shifted to Juhu in the year 2010, is of general nature. The allegation is stale as well. By no stretch of imagination, it can be stated that the alleged conduct had the propensity to drive the first informant to commit suicide or cause harm to herself.

15. The second allegation of all the family members of Krishna demanding money, clothes and ornaments on each of the festive occasions is also of general nature and bereft of any specific instance and authorship. The said allegations, at the highest, would indicate that on festive occasions certain articles were demanded. In the absence of the allegation that the first informant was subjected to harassment either in order to meet the unlawful demands of property or on her failure to meet such demands, the second allegation loses the incriminating tendency. “

13 A Learned Single Judge of this Court in ***Neeraj Subhash Mehta Vs. The State of Maharashtra***,⁵ in paragraphs 9 and 10 has observed as under:

“9 Section 113A of the Evidence Act prescribes rule of presumption in case of suicidal death by a married woman. Whenever the question arose as to whether commission of suicide by a woman has been abetted by her husband or relatives of her husband and it is shown that she had committed suicide within the period of seven years of her marriage and that her husband or relatives of her husband had subjected her to cruelty, then the court may presume “having regard to all other circumstances of the case” that such a suicide has been abetted by her husband or relatives of her husband. It is, thus, clear that, this presumption cannot be raised automatically on proof of suicidal death within seven years of marriage and subjecting a married woman to cruelty. Something more is required to be seen for drawing this

5 2017 SCC Online Bom 62

presumption.

10 By catena of judgments of this court as well as Apex Court what amounts to cruelty as envisaged by Explanation to Section 498A of IPC is explained. Cruelty implies harsh and harmful conduct with certain intensity and persistence. It covers acts causing both physical and mental agony and torture or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miscarries. The conduct, in order to prove guilt, must be such as strongly stirring up the feeling in the mind of a married woman that life is now not worth living and she should die, being the only option left. In other words, provisions of Section 498A of the IPC envisages intention to drawing or force a woman to commit suicide by unabated persistence and grave cruelty. A willful conduct of such a nature as is likely to propel or compel a married woman to commit suicide or to cause grave injury or danger to her life, limb or health is required to be established. In other words, matrimonial cruelty is included from the definition of legal cruelty. To put it in other words, ordinary petulance and discord or differences in domestic life does not amount to cruelty. By keeping this aspect in mind, let us prima facie examine the instant case for a limited purpose as to whether the applicant / accused is entitled for liberty. If the impugned judgment and order of the trial court is perused, then it is seen that the reasoning part is in paragraph 65 of the judgment. Reliance is placed on evidence of PW1 to PW3 by the learned trial court. It is observed that the dispute was over the issue of the deceased having made "kaccha chapati." Further observations are to the effect that this was too trivial matter to invoke extreme and harsh response of calling her brother and parents. In other words, the learned trial Judge was very well aware of the fact that the incident of commission of suicide was preceded by a trivial incident in the matrimonial life of Neha. Still, without further discussion, offence punishable under Section 498A of the IPC is held to be proved. Then by taking aid of Section 106 of the Evidence Act, as well as Section 113A thereof, it is held that the offence punishable under Section 306 of the IPC is proved."

14 As regards the allegations of demand of money, the same appears to be of general nature and bereft of any specific incidence. First of all (a) it does not mention what was the amount demanded, (b) who demanded, and (c) who specifically meted out cruelty and in what form on Aarifa.

As regards inability to cook, again that is a general statement. Aarifa's inability to cook would have come out, if that was true, soon after the marriage. But why would the accused start ill-treating Aarifa 6 months after marriage alleging that she was unable to cook. On the contrary, Aarifa used to carry lunch to accused no.1 at his place of work as stated by PW.-3 and PW.-4.

As regards cruelty due to Aarifa not conceiving, PW.-2, mother of Aarifa, in her cross-examination admits that Aarifa told her that her mother-in-law even took her to Shanti Clinic for check up as to why Aarifa was not conceiving. If the accused were subjecting Aarifa to cruelty due to her inability to conceive, why would they take her to doctor to examine as to why Aarifa was unable to conceive. PW.-7 – Investigating Officer, in his examination in chief states that on 7-2-2002, the treatment was given to Aarifa in Shanti Clinic and the hospital had also issued a certificate, which is Article No.A.

15 PW.-2 admits that accused no.3 and Aarifa used to visit their house and PW.-1 and PW.-2 also used to go to the house of Aarifa and used to have meals together. At no point of time, any of the witnesses have informed the accused about alleged ill-treatment mentioned to them by Aarifa. It has also to be noted that the place, where the accused used to live with Aarifa, was called Hyderabad Chawl and it consisted of about 35-36 rooms. None of the neighbours have been examined and there is no

complaint of any of the neighbour Aarifa ever telling them or they hearing any commotion in the house of the accused. In fact, P.W.-5 – panch witness, who was also the neighbour of the accused, states that his house and the house of the accused are facing each other and there is a road having only width of 8 ft. and the entrance of the houses are opposite to each other. P.W.-5 says that the houses are at such distance that one can know what is happening in the house of others. P.W.-5 says that the accused used to leave their house every morning after preparing morning meal and taking their tiffins with them. P.W.-5 also says that Aarifa's cousin Mumtaz Pathan, who resides in the same locality, used to come to his house and the house of the accused and P.W.-5 never heard quarrel in the house of accused. As against this, P.W.-2 says that Aarifa and Mumtaz were not visiting each others houses. In his cross-examination, P.W.-5 also says that in the evening hours accused no.3 and Aarifa used to go in the scooter to the market and come back. P.W.-5 says that Aarifa and accused no.3 were happily cohabiting since their marriage, till her death and she never complained against her in-laws. P.W.-5 says that he frequently saw Aarifa with her husband while going for outing and P.W.-1 and P.W.-2, i.e., parents of Aarifa used to come to her house and they also never complained to him about Aarifa's grievances.

16 Though, P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have made an attempt to make out a case for cruelty and abetment, admittedly, there are too many omissions and contradictions, which only shows that the witnesses have

improved their cases in the evidence. PW.-1 admits that while lodging the complaint to the police, he stated that he had borne the expenses of marriage. But in cross-examination, he says the accused also shared the marriage expenses, but it was less than what they were supposed to. PW.-1 admits that the cousin of accused no.1 and his wife used to come and spend time with Aarifa every day. PW.-1 also admits every 7 to 15 days Aarifa along with the accused used to visit his house and have food with them and similarly PW.-1 would also go to the house of the accused, where they would provide food to him. PW.-1 also admits that every 1½ months, Aarifa used to come to his house for 4-5 days. In the cross-examination, PW.-1 admits that accused spent for the reception of Aarifa's marriage with accused no.3, where there were 100 guests from his side. In paragraph 10 of his cross-examination, PW.-1 admits all the omissions in the statement recorded by the police. PW.-1 admits that his statement to the police does not contain that the accused having spent large amount of money for marriage of Yasmin were demanding the money from Aarifa, or the accused no.1 was frequently talking angrily and loudly with Aarifa, or accused no.3 at the instance of accused nos.1 and 2 used to beat Aarifa, or Shahin, who has not been charged, used to instigate her parents, or the accused did not change their attitude but increased the cruelty or one day prior to the incident, accused no.1 asked Aarifa to bring tiffin on foot to Engineering College or after his duty on 10-1-2002 PW.-1 went to the house of his sister and

thereafter at 1 p.m. he came to the house of Aarifa to provide fruits and one of the accused told him Aarifa was burnt and she is in the Sasson Hospital. P.W.-1 says he went to the police station at about 1 to 1.30 p.m. on 10-1-2002 and nobody from his relation was with him while giving the complaint and he was there upto 3 to 3.30 p.m. and till the lodging of the complaint he was alone there. Per contra, P.W.-3 says that when she went to the police station and police recorded her statement, P.W.-1 was with her. Therefore, the statement of P.W.-1 that he was alone is not believable. This impinges on the credibility of evidence of P.W.-1.

17 P.W.-2 says that she saw the body of Aarifa and Aarifa's tongue had come out of the mouth, whereas the postmortem report says that the tongue was inside. P.W.-2 admits that the accused were present when the last rites of Aarifa was performed, whereas P.W.-1 says that he does not remember whether they were present. But the fact is nobody at the time of funeral accused the accused of harassing Aarifa. P.W.-2 also says that the cousin of accused no.1 and his wife used to be with Aarifa every day and she used to talk to them a lot and the cousin of accused no.1 used to tell that Aarifa was being looked after very well. If there were any problems as alleged, I am sure, Aarifa would have disclosed it to those persons, even though they may be related to the accused. Their statements were recorded, but they were not examined.

18 P.W.-2 admits that what she has stated in her statement

recorded on 29-1-2002, do not find mention in the statement that was given by her on 10-1-2002. P.W.-2 also admits that in the statement of 10-1-2002 she has not mentioned that accused used to harass Aarifa for not conceiving. P.W.-2 says that it is correct to say that even after marriage of Yasmin, P.W.-1 used to go to the house of Aarifa and Aarifa used to visit them. If there was a demand of money to Aarifa, I would assume, the accused would have indicated that to P.W.-1 also. P.W.-2 admits that in the police statement, it is recorded that accused no.1 was weeping loudly and it is stated “gale padun” he was weeping. P.W.-2 admits in her statement recorded by the police it is not mentioned that accused used to beat Aarifa and abuse Aarifa or 1 or 2 months prior to her death Aarifa told her about her grievances. Similarly, there are too many omissions in the statements of P.W.-3 and P.W.43. P.W.-6, who was the PSI and was investigating the matter has, in paragraphs 8, 9, 10 and 11 exposed all the omissions in the statements / evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-4, which for the sake of brevity, I am not reproducing.

19 None of the witness as noted earlier, have indicated what was the amount demanded. If there was repetitive demand of money, there could have been disclosure of figure. None of the witnesses have given any explanation as to why they were not in a position to disclose the amount demanded. None of the witnesses have also not stated anything regarding any coercion to Aarifa to meet their unlawful demand. What kind of coercion ? The witnesses are silent about that. The prosecution could not

produce any material on record to show that Aarifa was got examined by a doctor and the doctor opined that she was incapable to conceive. As against this, it has come on record that in-laws were prepared to provide treatment to Aarifa and there was no cogent evidence to form a presumption that Aarifa was not capable to conceive. Therefore, the allegations under Section 498A have not been proved at all.

20 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. ”*

21 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.

22 In *Manish Kumar Sharma Vs. State of Rajasthan*⁶, 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 believe that Kusum Devi would commit suicide.

6 1995 Criminal Law Journal 3066

23 In *Vedprakash Bhaiji Vs. State of Madhya Pradesh*⁷, 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*⁸ the Supreme Court of India extensively dealt with the concept of '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

7 1995 Criminal Law Journal 893

8 2002 Criminal Law Journal 2796

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).

25 A Learned Single Judge of the Kerala High Court in *Cyriac, S/o Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another*,⁹ dealt with extensively the concept of abetment to commit suicide after referring to a number of pronouncements including the decision of the

9 2005 Criminal Law Journal 4322

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."

26 In ***Madan Mohan Singh vs. State of Gujarat***¹⁰ 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

10 (2010) 8 Supreme Court Cases 628

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.”

27 In the judgment in the case of *Ramesh Kumar vs. State of Chhattisgarh*¹¹ 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

11 2001(9) SCC 618

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.”

28 In paragraph 19 of ***Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.***¹² 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.”

29 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.

30 It is nobody’s case that the accused intended Aarifa to commit suicide. A fatal impulse or an ill-fated thought of the deceased, however

¹² 2012(3) Bom.C.R. (CRI) 532

unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of IPC. In short, it is not what the deceased 'felt', but what the accused 'intended' by their act which is more important in this context.

31 Ms Dabholkar relies upon a judgment of the Apex Court in *State of West Bengal Vs. Orilal Jaiswal & Anr*¹³ to submit that there was no material to show that Aarifa was hypersensitive and/or for other reasons committed suicide and not on account of cruelty. Therefore, the Trial Court was not correct in acquitting the accused.

Each case has to be dealt with in its individual facts and circumstances. Though, Ms Dabholkar stated that the facts in *Orilal Jaiswal* (supra) were similar to the case in hand, I do not agree with Ms Dabholkar. All cases relating to offences under Sections 498A and 306, may look or sound similar, that does not mean they are even similar. In *Orilal Jaiswal* (supra), a newly married girl had committed suicide. The court observed that a newly married girl would reasonably expect love and affection from in-laws. She was abused by the mother-in-law that she was a woman of evil luck to the family because an elderly member in the family died soon after the marriage. In the case at hand, Aarifa was looked after very well. Admittedly, atleast for 6 months. On the contrary, Aarifa coming into the house of the accused also brought good fortune that the daughter of accused

13 (1994) 1 SCC 73

nos.1 and 2 even got married and that marriage was done with spending lot of money. In the case at hand, there is absolutely no evidence, except general statements and what has come in evidence, do not find a mention in the complaint. Therefore, this judgment is of no assistance to appellant.

32 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 Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

33 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.

34 Appeal dismissed.

(K.R. SHRIRAM, J.)