

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.812 OF 2008**

The State of Maharashtra	)	
(Through Juna Rajwada Police Station	)	
Tal- Karvir, Dist- Kolhapur	)	..Appellant

V/s.

1 Balkrishna Ramchandra Gade	)	
Age-32 years	)	
2 Ramchandra Krishna Gade	)	
Age 69 years, Occ: Pensioner	)	
3 Sou. Usha Ramchandra Gade	)	
Age 65 years, Occ: Household	)	
All are R/a, Tulja Bhavani Colony,	)	
H. No.52/B, Near Sane Guruji Vasahat,	)	
Kolhapur	)	..Respondents

Ms. Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 18th SEPTEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal filed by the State of Maharashtra challenging the order of acquittal dated 03-04-2007 passed by the Addl. Sessions Judge Kolhapur in a Session Case no. 187 of 2005 for the offences punishable u/s 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*), 306 (*Abetment of suicide*), 323 (*Punishment for voluntarily causing hurt*), r/w 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code.

2 The respondents herein are the husband, father in law, and mother in law of the deceased, respectively. Deceased Tanuja, alias Anuradha got married to accused no 1 on 08-12-1997. After marriage, the said Anuradha started residing with accused no.1 who was a PSI posted at Bombay, whereas accused nos. 2 and 3 were residing in Kolhapur. It is the case of the prosecution that after about a year of marriage, deceased Anuradha started complaining to her father that all the accused have started ill-treating her on frivolous issues, during her stay with them. After sometime, the couple gave birth to a boy, called Shubhakar. It is further the case of the prosecution that Anuradha used to complain to her father that, even after the birth of the child, all the accused still continued to harass her. In the year 2004, when accused no 1 was transferred to Sangli, Anuradha alongwith her son started residing with accused no 2 and 3 at Kolhapur. It is further the case of the prosecution that during her stay with her in-laws, she was being harassed on the pretext of demand of Rs. 1 lakh. The parents of Anuradha were well informed about all these illtreatment from time to time. On 28-05-2005, when her father, the complainant, visited house of accused nos. 2 & 3 and met Anuradha, he noticed that Anuradha was stressed and when enquired with her, she disclosed that accused no 1 ill-treats her on account of demand of money and further, the accused no. 2 & 3 also threatened to perform 2nd marriage of accused no. 1 if she failed to bring the amount. Complainant after consoling her, returned to his house. At about 1.30 am on 29/05/2005, the complainant received a call from accused no.2, intimating

him that deceased has consumed something and is struggling for her life. Hearing this, complainant rushed to the house of accused and found that deceased was already shifted to CPR Hospital where she died in 5 minutes. Thereafter, the present complaint came to be lodged with Juna Rajwada Police station on 29-05-2005.

3 On completion of investigation, chargesheet came to be filed and charges came to be framed by the Ld. Additional Sessions Judge. In order to prove the guilt of the accused, the prosecution has examined 10 witnesses namely Mr. Mahadev Patole, Complainant as P.W.-1, Ms Sadhna Mane, sister of deceased as P.W.-2, Mr. Rajaram Kapse, witness as P.W.-3, Ms Sharmila Purandale, sister of deceased as P.W.-4, Mr. Jaywant Patil, cousin of deceased as P.W.-5, Mr. Krishna Patole, cousin of deceased as P.W.-6, Mr. Vijay Harlikar, tenant of accused no 2 as P.W.-7, Mr. Shashikant Pathak, tenant of accused no.2 as P.W.-8, Mr. Suresh Mane, IO as P.W.-9 and Mr. Madan Patil, IO as P.W.-10.

4 Apart from the oral testimonies of the witnesses, the prosecution also relied on letters at exh. 29 and 34, written by Pw2 and PW4, sisters of the deceased to the deceased.

5 It is an admitted position that the incident of suicide took place after about 7 years of marriage and thus presumption u/s 113(a) of the Evidence Act is not available to the prosecution. There is also no dispute that it is a suicidal death and that the deceased Anuradha committed suicide by consuming poison. PW1, father of the deceased, PW2, sister of deceased,

Pw4, sister of deceased, PW5, cousin brother of Anuradha are the close relatives of deceased Anuradha and hence their testimonies with respect to cruelty or harassment as defined u/s 498A would be the most reliable testimony and also at the same time be termed to be interested witnesses. It is also to be noted here that prior to the instant FIR, no other complaint was ever lodged by the deceased or any of the relatives of the deceased against the accused even though the case of the prosecution is that the deceased was being harassed for the last 6 and half years of her marriage. Even after taking the case of the prosecution as it is and the substantive piece of evidence being the testimonies of the witnesses, the same are in contrast to the letters at exhibit 29 and 34. None of the letters discloses any kind of discussion on any such allegations of cruelty or harassment to the complainant as it is very natural for the sisters to discuss amongst themselves. On the contrary, perusal of the letter discloses the other side of the story showing the happiness of the deceased. In spite of the testimonies of witnesses, I would consider the letters to be more reliable and the best piece of evidence, all the more when the witnesses admitted the letters to be written by them for the simple reason that those were written during the life time of the deceased when the alleged harassment was being suffered by the deceased, whereas the FIR can easily be said to be an afterthought being an emotional outburst of the complainant due to the sudden loss of deceased Anuradha.

6 Even after taking the case of the prosecution as it is, the allegation of

harassment as levelled by the prosecution against the accused cannot be said to be cruelty within the meaning of cruelty u/s 498A. It is difficult to straitjacket the term cruelty by means of a definition as cruelty is a relative term and what constitutes cruelty for one person may not be for another person. In the instant case, I do not find any reason to conclude that the allegations of cruelty as stated by the prosecution witnesses can be considered under purview of S.498A and hence I concur with the decision of the Ld. Trial Court that the prosecution failed to establish allegations of ill-treatment beyond a reasonable doubt.

7 As far as section 306 is concerned, though it is an independent offence, but the basic ingredient of section 306, to say, requires an active act or direct act leading the deceased to commit suicide needs to be proved by the prosecution. The assessment of the entire evidence on record does not demonstrate any specific role to any of the accused so as to return an unassailable finding of their criminality u/s 306.

8 As regards Section 306, it 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. ”

9 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.

10 A Learned Single Judge of the Kerala High Court in *Cyriac, S/o Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another*,¹ 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.

¹2005 Criminal Law Journal 4322

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."

11 In paragraph 19 of ***Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.***² 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."

12 The Apex Court in the judgment of ***Ude Singh & Ors. Vs. State of Haryana***³, has pithily explained what amounts to the abetment. Paragraphs 37 to 40 of the said judgment read as under:

37. Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when: (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

38. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case 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. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

39. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, 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 or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

40. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.

13 Paragraph 8 of the unreported judgment of the Apex Court in ***Rajesh Vs. State of Haryana***⁴ reads as under:

8. 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

⁴Delivered on 18-1-2019 in Criminal Appeal No.93 of 2019

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. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See Amalendu Pal alias Jhantu V. State of West Bengal⁵)

14 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.

15 There is no evidence, whatsoever to even suggest that Anuradha committed suicide because of ill-treatment or cruelty by the accused. There is also no evidence whatsoever that the accused by their acts intended Anuradha to commit suicide.

16 There is an acquittal and therefore, there is double presumption in favour of the 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 rightly observed that the prosecution had failed to prove its case.

5(2010) 1 SCC 707

17 In the circumstances, in my view, the opinion of the Sessions 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.

18 Appeal dismissed.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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by Meera M.
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