

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.511 OF 2011**

Smt. Vinodi Gudakesh Saxena)
Age 64, House Wife, Residing at)
A-6, Lok Bihar, Mehtani Park,)
Ajit Baugh, Chembur, Mumbai-74) ...Appellant

Vs.

1.Shri Sandip Sundar Shetty)
Age 36, Occupation Service,)
residing at C-24, Lavanya Co-op Soc.,)
Gurukrupa Nagar, Nahur, Mulund (W)
Mumbai 400 082) ...Original Accused

2. The State of Maharashtra)
At the instance of Mulund Police Stn.) ...Respondents

**WITH
CRIMINAL APPEAL NO.1189 OF 2012**

The State of Maharashtra) ...Appellant

Vs.

Shri Sandip Sundar Shetty)
residing at C-24, Lavanya Co-op Soc.,)
Gurukrupa Nagar, Nahur, Mulund (W)
Mumbai 400 082) ...Respondent
(Original Accused)

Mr. Prosper D'Souza, appointed Advocate through Legal Aid Committee for Appellant in Criminal Appeal No.511 of 2011
Mr. Girish Kulkarni i/b Mr. M. G. Shukla for respondent in both the matters
Mrs. M.M. Deshmukh, Addl. PP for State – Appellant in Criminal Appeal No.1189 of 2012 and for Respondent no.2 in Criminal Appeal No.511 of 2011

**CORAM : K.R.SHRIRAM, J.
DATE : 25th JUNE 2021**

ORAL JUDGMENT :

1 Both these appeals are challenging the impugned order and judgment

dated 21st March 2011, passed by Asst. Sessions Judge, Greater Mumbai, acquitting respondent (accused) of offences punishable under Section 498A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306 (*Abetment of suicide*) of the Indian Penal Code.

2 A lady by name Vigya, who committed suicide by hanging on 22nd May 2005 at her matrimonial home, was married to accused. The marriage, which was a love marriage, took place on 14th December 1997. Both were well qualified and were working in a company in Delhi. Vigya and accused started residing in Delhi from January/February 1998. They had a son by name Siddhant.

3 Sometime in October 2004, Vigya got a job offer from a company in Mumbai. Vigya resigned her job in Delhi and moved to Mumbai and started residing at her parent's house. Thereafter, accused also moved to Mumbai in February 2005, as he also got a job in Mumbai. Accused and Vigya were residing with the parents of Vigya, i.e., P.W.2 and P.W.3. A month or so later, Vigya and accused moved to the house of parents of accused in Mulund, Mumbai. Vigya and accused also engaged a full-time maid one Amita Kadam, who is P.W.-5, as both accused and Vigya were employed.

4 It is alleged that accused decided to purchase a house at Andheri for Rs 33,06,000/-. As accused was falling short of Rs 10,00,000/-, accused started demanding from Vigya to bring that money from her parents and due to non-fulfillment of this demand, accused started harassing and torturing Vigya. I have to note it is prosecution's specific case that at this

point the torture and harassment started, which is much after February 2005. As noted earlier, accused and Vigya lived together in Delhi from January/February 1998 till October 2004. There is also a general allegation that when accused and Vigya were in Delhi, there also accused harassed Vigya, without adducing any evidence to back this allegation. Why was he troubling ? nobody states anything. According to prosecution, Vigya tired of harassment and ill treatment, hung herself to death on 22nd May 2005. An information was given to the police and the police registered an accidental death case no. 61 of 2005 and prepared inquest panchnama and spot panchnama. Admittedly, in the initial inquiry, P.W.-2 and P.W.-3 (parents of Vigya) did not make any complaint or grievance against accused about the cause of death of Vigya . During the inquiry, the police were informed that Vigya was moody and after recording the statements of P.W.-2 and P.W.-3, postmortem was done and body was handed to P.W.-2, the father of Vigya.

5 Three months after the death of Vigya, the mother of Vigya P.W.-3, made a complaint in writing that accused murdered Vigya by throttling her on account of non-fulfilment of unlawful demand of Rs.10,00,000/-. The police re-investigated the matter and arrived at a conclusion that the Vigya had committed suicide and it was not a case of murder. The police filed charge sheet before the Metropolitan Magistrate 27th Court, for offence punishable under section 498A and 306 of IPC. As the charge under section 306 was exclusively triable by the court of Sessions, the case was committed to the court of Sessions for trial. Charges were framed and accused pleaded

not guilty and claimed to be tried. According to accused, Vigya was a career-oriented girl and short tempered, which resulted in commission of suicide.

6 To bring home the guilt, prosecution led evidence of 6 witnesses namely: Mr. Vyanku Balu Naik, PSI as P.W.-1, and it was this person, who had conducted the inquiry soon after the death of Vigya, Mr. Gudakesh Narendrakumar Saxena, father of Vigya as P.W.-2, Smt. Vinodi Saxena, mother of Vigya (complainant) as P.W.-3, one Master Aditya Shah who is, Vigya's sister's son as P.W.-4, Ms. Amita Kadam, maid working at house of accused as P.W.-5 and Nivrutti Kokre, Investigating Officer as P.W.-6. After considering the evidence and documents Sessions Court acquitted accused.

7 I have also perused the evidence and the impugned judgment and the documents with the assistance of Additional P.P., Mr. D'souza and Mr. Girish Kulkarni for respondent. In my view the prosecution has failed in driving home the charge and Session Court's conclusion cannot be faulted.

8 Sessions Court has rightly concluded that, in the case of hanging and prosecution not leading any evidence to prove that it was murder, and there being absolutely no material to indicate even remotely that the accused murdered Vigya, we have to proceed on the basis that Vigya committed suicide. It is prosecution's case that Vigya committed suicide inside the room by locking the door from inside and when accused broke open the door he found Vigya hanging from the ceiling fan. Vigya was hanging on her dupatta tied around her neck. Mr. D'souza stated that how could accused alone have broken open the lock and brought the body down and, therefore, it is

not clear whether it is murder or suicide. Answer to Mr. D'Souza's question is available in the evidence of the independent witness PW-5 who has stated that the door of the room, in which Vigya committed suicide was locked from inside.

9 As noted earlier, during the initial inquiry and investigation, nothing incriminating against accused was found or stated by PW-2 and PW-3, the parents of Vigya. The documents of inquiry were actually forwarded for granting final summary. The prosecution's star witnesses in this case are PW-2 and PW-3, who are parents of Vigya. If one considers the evidence of PW-2, the father of Vigya, he says that within few days of marriage accused started assaulting Vigya and also started demands of money. PW-2 says that within 5 to 6 months of marriage Vigya informed him about accused quarreling and assaulting her on flimsy grounds and non-fulfillment of expectation of accused in the form of money. These are very general allegations. The only specific case that has come in the evidence is the demand of Rs.10,00,000/- for buying the flat, which, as noted earlier the need for that money only come up after February 2005.

10 PW-3, who belatedly set the complaint into motion, also states about ill-treatment by accused. PW-3 says Vigya informed her that accused would beat her and once even tried to strangulate her to death. The specific allegation of harassment made by PW-3 is also on account of demand of money for making payment for purchase of a house. Again, as noted earlier, this demand could only have happened after February 2005 and not earlier.

No evidence of any kind of demand for how much amount etc., has come in the evidence for the earlier period. According to P.W.-3, she paid Rs 1,50,000/- to Vigya . How she has paid, whether by cash or cheque or if it was cash, whether she withdrew from the bank, there is no evidence whatsoever.

11 P.W.-4 and P.W.-5 were called to give evidence for prosecution to prove that accused harassed Vigya for money and to prove cruelty. Both these witnesses also were of no assistance to prosecution.

12 The defence submitted that the case of prosecution is based on hearsay evidence and primarily by witnesses, who are interested witnesses. It is settled law, just because they are interested witness does not mean that evidence of those witnesses has to be discarded but it has to be very carefully considered.

13 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 wilful 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.

14 The Division Bench of this court in *Kamlesh Ghanshyam Lohia and Ors. Vs. State of Maharashtra, through the commissioner of police & Ors.*,¹ in paragraphs 12 to 15, has observed as under:

¹2019 SCC online Bom 1762

“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 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. “

15 A Learned Single Judge of this Court in ***Neeraj Subhash Mehta Vs.***

The State of Maharashtra,² in paragraphs 10 has observed as under:

²2017 SCC Online Bom 62

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 unabatted 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."*

16 As regards the allegations of demand of money and harassment, before the unproved demand for Rs. 10 Lakhs allegedly was made, all are 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) how accused meted out cruelty and in what form.

17 P.W.-1 in his cross examination admits that when he reached the spot, P.W.-2 and P.W.-3 were present and they did not make any complaint against accused or about the cause of death of Vigya. P.W.-1 also states that he has

recorded statements of P.W.-2 and P.W.-3. When the statement of P.W.-2 was referred to him, P.W.-1 admits that P.W.-2 infact told him that there was no quarrel between Vigya and accused and that Vigya was hot tempered. It seems P.W.-2 informed P.W.-1 that accused and Vigya were living happily and P.W.-2 have no complaint against accused. Similar is the statement that has been recorded by P.W.-1 of P.W.-3. According to P.W.-2 and P.W.-3, the police have incorrectly recorded their statements on 22nd May 2005 and their signatures were taken. P.W.-2 however, admitted his signature but P.W.-3 denied her signature. I have to note that P.W.-3 in her examination in chief has deposed that Police took her and her husband's signature on two statements in Marathi and when P.W.-2 and P.W.-3 were confronted with their earlier statement recorded by the police, they admitted that statements do not contain any allegations of assault or demand of money by accused. This a clear case of improvisation in as much as, a complaint itself came to be lodged on 20th August 2005, i.e., three months after the death.

18 If one considers the evidence of P.W.-2 and P.W.-3, it does appear though they have made general allegations of accused illtreating Vigya while they were at Delhi, the alleged demand of money of Rs.10,00,000/- etc., has come up only after February 2005.

19 P.W.-3 has admitted in her cross examination that though it was a love marriage she was happy with the match. Both Vigya and accused were well qualified and well-placed and she was happy with the behaviour of accused with Vigya and there was no quarrel of whatsoever nature at least in the

presence of parents of Vigya. As P.W.-2 and P.W.-3 have not witnessed any incidence of quarrel between accused and Vigya, the evidence of P.W.-2 and P.W.-3 that deceased used to tell them about cruelty meted out to her by accused, would be hearsay and it would be unsafe to unsettle the order of acquittal relying on their evidence. I find support to this in ***Deepak and Ors. Vs. State of Maharashtra***³.

20 The prosecution has relied on the evidence of P.W.-4, who was 15 years of age when the evidence was recorded, i.e., on 3rd February 2011. This means when the incident happened, this witness was nine years of age. This witness says that on 15th May 2005, that is about one week before the incident, he saw accused abusing and beating Vigya on account of money. He is the witness who has seen only one incident. Even if we accept what he is stating, in his cross examination he states accused used to behave very well with him and he enjoyed visiting their house. He admits that in his statement recorded by the police there is no mention about the quarrel on account of money that he has mentioned. Therefore, one cannot rule out that he was tutored to make that statement before the court.

Next witness P.W.5 Anita Kadam, was working as maid in the house of accused. P.W.-5 has stated about the quarrel having taken place between accused and Vigya on the date of incident and accused and Vigya were not talking to each other. P.W.-5 admits that she was not an eye witness to the

³ 2004(4) Crime 500

quarrel because she was not at home at the time of quarrel and when she came home and found that both were not talking to each other, on inquiry she came to know that accused and Vigya had quarreled. She does not say with whom she inquired or given the details of quarrel. In her cross-examination, P.W.-5 states that Vigya was hot tempered and used to quarrel with accused. P.W.-5 further admits there has not been much quarrel between accused and Vigya in her presence. Therefore, her evidence does not assist the case of prosecution. In any case, quarrel is the daily wear and tear of marital life and that does not satisfy the requirement for offence under Section 498A .

21 P.W.-6, investigation officer, in his cross examination admits that he even went to Delhi to investigate and inquired about the relationship between accused and Vigya from the neighbors. According to him, nobody has informed him about any quarrel between Vigya and accused. Nobody has disclosed about any cruelty also by accused on Vigya. P.W.-6 says that he recorded the statements of those neighbours but that has not been produced in court. This is a material lacuna and it appears that only such evidence which was favouring the prosecution has been produced before the court.

22 Therefore, when one analyses the evidence before the court, except oral evidence of P.W.-2 and P.W.-3, parents of Vigya that there was ill treatment on account of demand of money, there is no direct or substantial evidence brought on record to prove the charge of cruelty as defined under section 498A of IPC. One more point which needs to be noted is that no

evidence has come on record to show that accused was in the process of buying a flat for which he was short of Rs. 10,00,000/-. P.W.-3 states Vigya paid Rs.13.6 lakhs by way of earnest money for the flat but no evidence is brought on record. P.W.3 says that she gave Rs.1,50,000/- to Vigya but again no evidence, as noted earlier, to show that this amount is paid.

23 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. ”*

24 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.

25 In *Manish Kumar Sharma Vs. State of Rajasthan*⁴, 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.

26 In *Vedprakash Bhajji Vs. State of Madhya Pradesh*⁵, 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

⁴1995 Criminal Law Journal 3066

⁵1995 Criminal Law Journal 893

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.

27 In *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh*⁶ 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 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

⁶2002 Criminal Law Journal 2796

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).

28 A Learned Single Judge of the Kerala High Court in *Cyriac, S/o Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another*,⁷ dealt with extensively the concept of abetment to commit suicide after referring to a number of pronouncements including the decision of the Supreme Court of India. The facts of that case were that the deceased Joseph owed Rs. 200/- to one of the accused and was not able to pay back the money. The accused had called Joseph to the bakery of accused, wrongfully restrained him and abused him in public. One of the accused also beat Joseph. Joseph felt insulted. On reaching home, he divulged his embarrassment to his wife and on the same night, committed suicide by

⁷2005 Criminal Law Journal 4322

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."

29 In ***Madan Mohan Singh vs. State of Gujarat***⁸ 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

⁸(2010) 8 Supreme Court Cases 628

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. 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.”

30 In the judgment in the case of *Ramesh Kumar vs. State of Chhattisgarh*⁹ 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 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.”

31 In paragraph 19 of *Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.*¹⁰ 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

⁹2001(9) SCC 618

¹⁰2012(3) Bom.C.R. (CRI) 532

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."

32 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.

33 It is nobody's case that the accused intended Vigya to commit suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 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.

34 The incident took place on 22nd May 2005. On the same day inquiry was carried out by police officers attached to the Mulund police station. P.W.-2 and P.W.-3 were present at the spot and no allegations were made against accused by P.W.-2 and P.W.-3. P.W.-3 makes a complaint on 20th August 2005, i.e., delay of 3 months, based on which, re-investigation started. The other point which has weighed in the mind of the trial Court for acquitting accused is the delay of 3 months in PW-3 lodging a complaint. Further, statement of P.W.-5 was recorded by the police only on 8th October 2005 and based on the statement of P.W.-5, investigation officer lodged a

report with the police station on 31st December 2005. So, therefore, there has been delay of 7 months between the date of incident and lodging the report. There has been a delay of 3 months in lodging the report relying on the statement of P.W.-5. The prosecution has not made any attempt to explain the delay.

35 It is settled law that delay in lodging the complaint cannot be used as a ritualistic formula for doubting the prosecution's case and discarding the same solely on the ground of delay in lodging the complaint. At the same time, delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory. If prosecution fails to satisfactorily explain the delay, the delay could be fatal to prosecution. The Apex Court in State of **Himachal Pradesh V/s. Gian Chand**¹¹, held as under :

12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In the present case, PW1__ the mother of the prosecutrix is a widow. The accused is a close relation of brother of late husband of PW1. PW1 obviously needed her family members consisting of her in-laws to accompany her or at least help her in lodging the first information report at the police station. The incident having occurred in a village, the approach of the in-laws of PW1 displayed rusticity in first calling upon the father of the accused and complaining to him of what his son had done. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of family. That failed. It is thereafter only that the complainant, the widow woman, left all by herself and having no male family member willing to accompany her, proceeded alone to police station. She was lent moral support by Ruldu Ram, the

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village Panch, whereupon the report of the incident was lodged. The sequence of events soon following the crime and as described by the prosecution witnesses sounds quite natural and provides a satisfactory explanation for the delay. It was found to be so by the learned Sessions Judge. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained unexplained and hence fatal to the prosecution case. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is a reluctance on the part of the family of the victim to report the matter to the police and carry the same to the court. A cool thought may precede lodging of the FIR. Such are the observations found to have been made by this Court in State of Punjab Vs. Gurmit Singh & Ors., (1996) 2 SCC 384 and also in the case of Harpal Singh (1981) SCC CrI. 208. We are satisfied that the delay in making the FIR has been satisfactorily explained and therefore does not cause any dent in the prosecution case.

36 Nothing prevented P.W.-3 in lodging the complaint on the day Vigya committed suicide. P.W.-3 has also not explained the delay why she took three months to lodge the complaint dated 20th August 2005. P.W.-3 only says that on the day after the death, P.W.-2 went to the police and inquired about the case and he was told by the police that the case was closed. P.W.-3 says that P.W.-2 was told to meet Mr. Naik and P.W.-2 went to police station again next day but Mr. Naik did not meet him. Somebody told him to give written complaint in Hindi and English, which has not been accepted. Then P.W.-3 wrote a complaint in Marathi on 20th August 2005, which is at exhibit 35. P.W.-2 does not state any of these things in his evidence. Moreover, what P.W.-3 states is also hearsay. According to P.W.-3, her husband P.W.-2 went on the second day and the day after which would be 23rd May 2005 and 24th May 2005. P.W.-3 does not explain then why she wrote complaint on 20th August 2005. I have to also note that, the complaint that P.W.-3 claims to have written in Hindi and English, which were not taken by the police, is

also not brought on record.

37 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused 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, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Sessions Court. For acquitting accused, the Sessions Court observed that the prosecution had failed to prove its case.

38 In the circumstances, in my view, the opinion of the Sessions Court cannot be held to be illegal or improper or contrary to law. I cannot find any fault with the judgment of the Sessions Court. The order of acquittal, in my view, should not be interfered with.

39 Both Appeals dismissed.

(K.R. SHRIRAM, J.)