

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPEAL NO.114 OF 2009

State of Maharashtra, Through Police
Station Officer, Police Station, Shivaji
Nagar, Khamgaon, Tq. Khamgaon,
District Buldhana.

.... Appellant

// VERSUS //

Santosh s/o Purushottam Purohit,
Aged 38 years, R/o Shivaji Ves, Near
Municipal School No.3, At Tq. &
Police Station Khamgaon, District
Buldhana.

... Respondent

Shri V.A. Thakare, APP for the State / Appellant
Shri V.K. Paliwal, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.

DATED : 05/07/2022

ORAL JUDGMENT :

This appeal takes exception to the judgment and order passed
by the Additional Sessions Judge, Khamgaon, in Sessions Case No.37 of 2007
dated 21.11.2008, acquitting the respondent-Santosh w/o Purushottam

Purohit, for the offence punishable under Section 306 of the Indian Penal Code (for short “the IPC”).

2. The prayers made in this Appeal are as follows:

“i. Call for record from the Court of Additional Sessions Judge, Khamgaon in Sessions Trial No.37/2007.

ii) quash and set aside the impugned judgment and order in so far as acquittal of the respondent/accused under Section 306 of the I.P.C. is concerned.

iii. Convict the respondent/accused for the charge for the offence punishable under Section 306 of the I.P.C.

iv. Initiate an action under Section 390 of the Code of Criminal Procedure, on admission of the instant appeal.

3. From the prayers, it can be seen that a challenge raised to the acquittal of the respondent under Section 306 of the IPC. Accordingly, I hereby proceed to examine, whether the acquittal of the respondent- Santosh w/o Purushottam Purohit, under Section 306 of the IPC, is just, proper and sustainable in the eye of law.

4. The brief story of the prosecution is that, the deceased Anita, the wife of the respondent, was burnt by an accident in the night of 27.02.2007 at about 24 hours. The deceased was hospitalized and her dying declaration (Exh.29) was recorded on 28.02.2007 at 2.50 hours by the Executive Magistrate.

5. Thereafter, the Police Sub-Inspector, Akola on the next day morning independently recorded the statement (Exh.30) of the deceased Anita. According to her statement, when she was making tea in the midnight at 24 hours, she burnt by accident.

6. On 22.03.2007, the father of the deceased Anita namely, Lalchand Manaklaji Chhagani, (PW-1) lodged a written report (Exh.32), alleging that for last four to five years Anita's husband, the respondent meted out cruelty by means of beating and abusing her. It is further alleged that the respondent used to beat her with a view to coerce for fetching money from her father for purchasing rickshaw. He further alleged that, as his daughter Anita could not endure such torturous conduct for years together, she committed suicide by pouring kerosene on her person.

7. It is further alleged that she gave statement that she was burnt accidentally under pressure of the respondent and other accused persons and especially, because of their threat with respect of career of two minor children.

8. Thus, the gist of the prosecution case is that, the deceased Anita committed suicide owing to constant illtreatment and torture from the accused persons, including the respondent for their demand of money.

9. I have heard the learned APP and the learned counsel for the respondent.

10. The learned APP submits that, the learned trial Court has committed error in acquitting the respondent under Section 306 of the IPC, though, sufficient material was brought on record by the prosecution to establish that the respondent abetted the commission of suicide of Anita. He accordingly submits that the acquittal of the respondent under Section 306 of the IPC, is liable to be set aside.

11. He further submits that sufficient evidence was brought on record to show that there was continuous illtreatment for demand of money right from six years prior to the death of Anita and for this purpose, it is pointed out that the evidence of PW Nos.1, 2 and 3, is relevant and sufficient.

12. On the other hand, the learned counsel for the respondent submits that the learned trial Court has rightly acquitted the respondent for the offence punishable under Section 306 of the IPC, on a finding that the pre-requisites for attracting Section 306 of the IPC, are absent. Thus, he submits that no error is committed by the learned trial Court while acquitting the respondent. Accordingly, he prays for maintaining the order of acquittal of the respondent from the offence punishable under Section 306 of the IPC.

13. In this matter, to bring home the guilt beyond doubt, the prosecution has examined six witnesses. PW-1, the complainant Lalchand Manaklal Changani, the father of the deceased, PW-2, Dharmesh Nawalkishor Purohit, the brother-in-law, (the husband of younger sister of the deceased Anita), PW-3, Sangita Dharmesh Purohit, the younger sister of Anita, PW-4, Omprakash s/o Jasraj Rathi, neighbourer of the PW-1, PW-5, Shrikisanlal s/o Devidas Malani, neighbourer of PW-1 and PW-6, Narayan s/o Namdeorao Deshmukh, PSI, who has investigated the matter.

14. Whereas, the defence has examined one witness i.e. DW-1 Baliram Shriram Rayane, neighbourer of the accused persons.

15. To consider the rival contentions of the parties, I have perused the record and proceedings and also the judgment and order passed by the learned Additional Sessions Judge, Washim.

16. At this juncture, it is necessary to refer to Section 306 of the IPC, abetment of suicide, which reads thus:

“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.”

17. Similarly, it is necessary to consider Section 107 of the IPC, abetment of a thing which reads thus:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First. — Instigates any person to do that thing; or

Secondly.—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

Thirdly — Intentionally aids, by any act or illegal omission, the doing of that thing.”

18. The Hon’ble Supreme Court of India in the case of *Amalendu Pal Vs. State of West Bengal*¹ and *Ude Singh Vs. State of Haryana*² as held thus:

“10. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab as follows in paras 12 and 13: (SCC p. 134)

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. ... "

¹ (2010) 1 SCC 707,

² (2019) 17 SCC 301.

11. Further in Kishori Lal v. State of M.P. this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6: (SCC p.799)

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

19. In the case of *Chitresh Kumar Chopra Vs. State (NCT of Delhi)*³, the Hon'ble Supreme Court of India has observed thus:

"13. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, 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

3 (2009) 16 SCC 605,

pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

14. ...

15. *As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered by this Court in Ramesh Kumar Vs. State of Chhattisgarh.*

16. *Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.*

17. *Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or*

encourage doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edn.).

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

20. In the case of *Ude Singh (supra)*, the Hon'ble Supreme Court of India has held thus:

"16. 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.

16.1. 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 the 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.

16.2. 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.”

21. Thus, from the above observations of the Hon’ble Supreme Court of India, it is clear that 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.

22. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing.

23. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC. 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.

24. 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.

25. In the teeth of the above referred well settled principle of law, now I proceed to consider the evidence brought on record by the prosecution as regards the offence under Section 306 of the IPC.

26. It has come in the evidence of the prosecution that the marriage between the deceased and the respondent was solemnized and consummated about 12 years back. Thus, the provisions of Section 100 and Section 13-A of the Indian Evidence Act with respect the presumption as to abet to suicide by the married women, would not attract. PW Nos.1, 2 and

3 have alleged that the deceased Anita was being tortured and subjected to cruelty for demand of money.

27. It is stated that five to six years prior to her death, the accused persons subjected her to cruelty. Thus, for the first six years of marriage, there are no allegations about illtreatment. It has come in the evidence of the prosecution that after the respondent became addicted to liquor, the illtreatment to the deceased Anita, was started.

28. Considering the said fact, the trial Court has rightly held that, had the accused persons been really rapacious and because of that rapacity for money, they illtreated, they could not have given her warm and good treatment continuously for six years immediately after the marriage.

29. Moreover, it can be seen from the evidence of PW-1 that his financial condition was weak. Whereas, on the other hand, the financial condition of the accused persons not so weak. Even the father-in-law of the deceased, Purushottam has taken discharge of Anita from the Government hospital and admitted her to private hospital in critical care unit.

30. Moreover, the fact that the PW-1 was silent and did not lodge any complaint for about 10 to 12 days after the incident of burning, creates

doubt about the veracity of their evidence. In the normal course, had there been really illtreatment for demand of money, right from six years prior to the death of Anita, PW-1 would have immediately lodged report on the same day and would not have remained silent for such a long period before Anita succumbed to the injuries. Admittedly, the report came to be lodged after about ten days, after the demise of Anita.

31. Thus, as stated above, it creates doubt about the veracity of the evidence led by the PW-Nos.1, 2, and 3 as regards demand of money by the respondent.

32. Thus, in absence of any evidence to infer any abetment as defined in Sections 107 of the IPC, I have no hesitation to hold that offence under Section 306 of the IPC, is not made out against the respondent. Accordingly, as I do not find any merit in the present appeal, the Criminal Appeal is **dismissed**.

[ANIL S. KILOR, J.]