

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 500 OF 2009

1. Bhuraji Ratan Pimpalkar,
Aged about 23 years, Occ.: Labour
2. Meerabai Ratan Pimpalkar,
Aged about 48 years, Occu.: Household
work,

Both R/o. Bagwadi, Police Station,
Darwha, Tq. Darwha, Distt. Yavatmal.

.... **APPELLANTS.**

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station, Darwha,
Tq. Darwha, Darwha,
Distt. Yavatmal.

.... **RESPONDENT.**

Shri Sumit G. Joshi, Advocate (Appointed) for Appellant No.1.
Shri A.D.Tote, Advocate for Appellant No.2.
Shri A.R.Chutke, A.P.P. for Respondent/State.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 24, 2022.

ORAL JUDGMENT :

1. This appeal takes exception to the judgment and order dated 25/08/2009 passed by the Additional Sessions Judge, Darwha, in Sessions Trial No.67 of 2005 convicting the Appellants/Accused Nos. 1 and 2 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code (hereinafter referred to as “IPC”) and thereby appellant/accused No.1 is sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rupees Five Hundred in default to undergo simple imprisonment for two months, whereas, appellant/accused No.2 is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rupees Five Hundred in default to undergo simple imprisonment for two months.

2. The case of the prosecution in brief is that deceased Suman was the wife of Chandrabhan and had two children. It is further case of the prosecution that four months before the incidence she visited her sister Mandabai at Bagwadi where she fell in love with the accused No.1- Bhuraji and she started residing with him and the accused No.2-mother of Bhuraji. It is alleged that there was harassment at the hands of the accused to compel her to leave their house. There are allegations of assault also. It is stated that because of such harassment she committed

suicide on 13/09/2005. Thereupon, P.W. 2-Bonabai-mother of the deceased filed a report Exh.45 alleging that the accused Nos. 1 and 2 abetted suicidal death of her daughter Suman.

3. The charge against the accused is framed at Exh.34. The contents of the charge were read-over and explained to the accused in vernacular, to which the accused pleaded not guilty and preferred to face the trial. The defence of the accused is of denial simpliciter. To be more specific the accused in the prosecution evidence and statement under Section 313 of Cr.P.C. raised the defence of their false implication in the crime. The accused have not led evidence in their defence.

4. To bring home the guilt of the accused the prosecution has examined in all five witnesses. The prosecution has examined P.W.1 Manda Kisan Kumbhekar i.e. the sister of the deceased Suman at Exh.12, P.W. No.2 Bonabai Kashiram Aatram the mother of deceased at Exh.44, P.W. No.3 Prabhu Yashwanta Meshram, maternal uncle of deceased at Exh.46, P.W. No.4 Kalpana Wamanrao Bobade, the sister of deceased at Exh.47 and the I.O. P.W. No.5 Sk. Haider S/o Sk. Habib at Exh.50.

5. The learned trial Court after marshalling the oral as well as documentary evidence held the appellant guilty of the offence punishable under Section 306 read with Section 34 of the IPC vide judgment and order dated 25/08/2009, which is impugned in the present appeal.

6. I have heard learned counsel for the appellant and learned A.P.P. for the respondent/State.

7. Shri Sumit Joshi, learned counsel for appellant No.1 submits that though the prosecution has failed to bring home the guilt of the accused, the learned trial Court committed error in convicting the appellant.

8. It is submitted that even the oral testimony of P.W. 2 i.e. mother of the complainant is not sufficient to attract Section 306 of the IPC.

9. It is further pointed out that the maternal uncle and the sister of the deceased were declared hostile. He, therefore, submits that in the above referred backdrop, when the oral testimony of the

complainant/ P.W. 2 is not sufficient to establish the offence under Section 306 of the IPC. The learned trial Court ought to have acquitted the appellants.

10. It is submitted that no cogent evidence has been produced by the prosecution to show that the appellants have committed offence punishable under Section 306 of the Indian Penal Code. Accordingly, he prays for acquittal of the appellant No.1 by quashing and setting aside the order of conviction. The learned Counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Chitresh Kumar Chopra Vs. State (NCT of Delhi)*¹, *Amalendu Pal Vs. State of West Bengal*² and *Ude Singh Vs. State of Haryana and others*³.

11. Shri Tote, learned counsel for the appellant No.2 reiterated the submissions of Mr. Joshi and prays for acquittal of the appellant No.2 by quashing and setting aside the order of conviction.

1 (2009) 16 SCC 605,

2 (2010) 1 SCC 707,

3 (2019) 17 SCC 301.

12. On the other hand, learned A.P.P. Shri Chutke supports the impugned judgment and order passed by the trial Court and he submits that after a detailed scrutiny of the oral as well as documentary evidence, the learned trial Court, on recording reasons, convicted the appellants for the offence punishable under Section 306 of the Indian Penal Code and as such no interference is required. Accordingly, he prays for dismissal of the present appeal.

13. I have perused the record, proceedings and the impugned order.

14. In this case, P.W. 1 Manda Kumblukar, who is sister of the deceased, turned hostile. Similarly, maternal uncle of the deceased P.W. 3 Prabhu Meshram also turned hostile. In the said backdrop, the oral testimonies of the complainant P.W. 2-mother and P.W. 4 Kalpana Bobde, sister of the deceased, are relevant.

15. P.W. 2 in her examination-in-chief has deposed that before death the deceased was residing with accused-Bhuraji since six months. They were residing as husband and wife. She further states that the

deceased had come to her place before four months of her death and she told her that accused Bhuraji and his mother had assaulted her. She further deposed that the accused Bhuraji and his mother insisted the deceased to leave the house as the marriage was not performed between the deceased and Bhuraji.

16. Thus, from the evidence of P.W. 2 it is clear that except the incidence which took place four months before the death of the deceased nothing was stated by P.W.2. The oral testimony of P.W. 2 does not suggest that immediately before commission of the suicide by the deceased there was any ill-treatment meted out by the accused persons which left the deceased with no other option than to commit suicide.

17. Moving to the oral testimony of P.W. 4, sister of the deceased, she in her examination in chief states that before death the deceased was residing with accused-Bhuraji as his wife. They were residing together since six months and before the death, the deceased had come to her mother and from there she came to P.W. 4's house at Yavatmal. She further deposed that at that time the deceased told her that the accused persons expelled her from the house as her marriage had not taken place with Bhuraji.

18. Thus, there is no evidence available on record to show that the accused expelled the deceased from their home or asked her to leave their house, with the intention that the deceased shall commit suicide. Furthermore, no incident proximate to the commission of suicide, has brought on record by the prosecution to show that alleged harassment was the case of suicide.

19. The Hon'ble Supreme Court of India while reiterating the long settled legal position as regards Section 306 of the Indian Penal Code, in the case of *Amalendu Pal (supra)* has 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."

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."

20. Similarly, in the case of *Chitresh Kumar Chopra* (*supra*), 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 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.

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."

21. 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.”

22. 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. 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. 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. 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.

23. In the teeth of the above referred well settled principles of law I revert back to the evidence of this case. As I have observed that nothing has been brought on record by the prosecution through the oral evidence of P.W.2 and P.W.4 to show that proximate to the incidence there was any harassment or the accused had created such circumstances that the deceased was left with no other option than to commit suicide, it can safely be said that the prosecution has failed to bring the guilt home under Section Section 306 of the Indian Penal Code, against the accused. Accordingly, I pass the following order:

- i) The appeal is allowed.
- ii) The judgment and order dated 25/08/2009 passed by the Additional Sessions Judge, Darwha in Sessions Trial No. 67 of 2005 is hereby quashed and set aside.
- iii) Both the appellants are acquitted of the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.
- iv) Their Bail Bonds shall stand cancelled.
- v) The Muddemal Property be dealt with as per order of the learned Special Judge.

The criminal appeal stands **disposed of** accordingly. The pending applications, if any, shall stand disposed of accordingly.

Fees of Shri Sumit G. Joshi, Advocate appointed to represent appellant No.1 be quantified as per Rules.

JUDGE

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