

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 675 OF 2002

Vithal S/o Taterao Maghade,
Age : 31 years, Occu. : Agril.,
R/o Islampur, Tq. Purna,
District Parbhani.

... **Appellant.**
(Orig. Accused No.1.)

Versus

The State of Maharashtra

... **Respondent.**

...
Mr. M. P. Kale, Advocate for Appellant.
Mr. R. D. Sanap, APP for Respondent – State.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 7th FEBRUARY 2023
PRONOUNCED ON : 20th FEBRUARY 2023

JUDGMENT :

Here, original accused – convict Vithal has taken exception to judgment and order of conviction passed by learned IInd Additional Sessions Judge, Parbhani, dated 14.12.2002, by which he is held guilty for commission of offence under sections 306 and 498-A of Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month and further to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month.

PROSECUTION CASE IN TRIAL COURT

2. Daughter of informant, namely, Ranjana was eldest amongst other daughters and was married to accused Vithal who was resident of Islampur. After marriage, she went to reside with her husband and father-in-law Taterao. According to informant, everything was smooth for a period of five years. Informant lost her husband who was in service in railway department and she took appointment on compassionate ground and also received pension of deceased husband. Accused – Vithal started pressurizing Ranjana to bring money from her mother, i.e. out of pension received by informant – mother and he also pressurized her to seek share in agricultural land of his father by saying that she had no brother. On both counts, informant claims that, Ranjana was harassed. Thereafter, informant once paid Rs.3,000/- to accused-Vithal and subsequently Rs.1500/- for construction of well as demanded by accused. Informant herself as well as by indulging her acquaintance, namely, Taterao Bokhare, Trimbakrao Bokhare, Bhimrao Bokhare, Prabhakar Bokhare and Subhash Bokhare tried to give understanding to accused and requested to cohabit peacefully and not to harass Ranjana, but still harassment continued. Just before Diwali festival, deceased Ranjana had come to the informant and informed about the harassment meted out to her by husband. According to informant, accused no.2 i.e. father-in-law of deceased used to instigate his son accused no.1, who used to beat her. One day, accused no.1 husband came to

the house of informant and asked whether Ranjana has come there and on inquiry he told that she is not in his house since one day. Subsequently, accused – Vithal again informed her that dead body of Ranjana is floating in their well and therefore, informant lodged complaint against accused Nos.1 and 2 i.e. husband and father-in-law of deceased Ranjana, on the strength of which, crime was registered with Purna Police Station for the above offence.

3. Investigation commenced and after gathering sufficient evidence against accused, they were charge-sheeted. At trial prosecution examined in all six witnesses and sought reliance on various documentary evidence like FIR, inquest panchanama, postmortem report, spot panchanama etc. Defence refused to lead any evidence and faced trial. Learned trial Judge appreciated oral and documentary evidence and reached to the finding that prosecution has succeeded in bringing home charges as against husband accused- Vithal only. Finding no evidence against father-in-law, he stood acquitted. Thus, impugned judgment and order of conviction of accused No.1 is now challenged before us by way of instant appeal.

SUBMISSIONS

4. Learned counsel for appellant would submit that prosecution case was weak on all counts and there was no trustworthy, reliable evidence on behalf of prosecution. However, still learned trial Judge accepted the case of

prosecution and recorded the guilt of accused.

Secondly, required ingredients for attracting offence of abetment to commit suicide were not at all available evidence of prosecution, however, learned trial Judge has held accused – appellant guilty and convicted him. That, there is total non appreciation of evidence on record and settled legal position has been lost sight of.

Thirdly, there is no material whatsoever in support of allegation of ill treatment and commission of offence under section 498-A of IPC. Mere omnibus allegations are raised about harassment in the backdrop of demand of money.

Fourthly, there is no evidence that demand was put up continuously and she was harassed for not bringing the amount.

Fifthly, learned counsel for appellant emphasized that there is nothing on record to show as to what preceded immediately prior to the alleged suicide. No evidence whatsoever is coming on record on behalf of investigating machinery in that direction and therefore, learned trial judge ought not to have held that there was abetment to commit suicide.

Sixthly, that there is only testimony of interested witness like mother and on Trimbakrao who has acted as pancha to inquest. There is no other independent witness had never been examined by prosecution on the point of ill treatment, demand or abetment. Learned counsel points out there were various ladies from her parental house who were residing in the vicinity

of matrimonial house of deceased, however none of them has come forward as a witness to speak about maltreatment being meted out to deceased.

Lastly, while concluding learned counsel submitted that there is every possibility that deceased had been to fetch water and she might have fallen in the well and got drowned. Thus, he submits that appeal deserves to be allowed.

5. As against this, learned APP submitted that there is cogent and reliable evidence of mother regarding accused putting up demand of money and ascertaining share in the land. Such demand cropped up after informant lost her own husband i.e. father of deceased. Accused-Vithal used to harass deceased Ranjana continuously for meeting such demand. That, informant-mother once tried to meet such demand, but demand was continued. In spite of giving understanding there was no change in his behaviour. Only because of the ill treatment and harassment deceased took the extreme step of committing suicide. There is no other reason. Infact, according to learned APP, deceased was pregnant. Therefore there was no reason to end up her life, but only for the continuous harassment at the hands of the husband she was compelled to end up her life. Accused husband and father-in-law were harassing her and it is they who have abetted suicide and therefore learned trial Judge committed no error whatsoever in passing impugned order of conviction and hence, he prays that appeal be dismissed.

6. After hearing both sides, we have examined record before the trial court. We have also undertaken exercise of re-assessment and re-appreciation of the evidence. Record shows that as many as six witnesses were examined by prosecution to prove its case. The following are the witnesses whose testimonies are taken.

EVIDENCE ON BEHALF OF PROSECUTION

7. **PW-1** Kantabai – informant i.e. mother of deceased, in her testimony speaks about marriage of deceased with accused. According to her, everything to be smooth for a period of five years and subsequent to death of husband of this witness, accused asked deceased Ranjana to bring money from pension received by informant on account of death of her husband and he also asked her to put up claim for share in the agricultural land. This witness also claims that she tried to meet his demand by paying Rs.3000/-, however ill treatment was continued. According to her, only because of such harassment and ill treatment by husband and father-in-law, deceased committed the suicide.

8. **PW-2** Bhimrao is paternal uncle of deceased. In his evidence also he stated that everything was smooth for five years after marriage. After death

of his brother, accused started harassing deceased Ranjana for bringing money from the pension received by informant. Accused No.1 was telling her that she had no brother and she should get the land of her share left by her father. He also speaks about the mother of Ranjana paying Rs.3000/- and Rs.1500/- on demand, but still harassment continued. He claims that incident took place on 15.12.1999. He also attributed allegations against father-in-law of deceased Ranjana for instigating his son and resultantly accused – husband beating her.

9. **PW-3** Dr. Dwarkadas Zanwar, is the autopsy Doctor who conducted postmortem and opined that death was due to drowning. He identified postmortem report (Exhibit-21).

10. **PW-4** Gayabai is the sister of deceased. She also reiterated that after marriage of her elder sister everything was smooth for five years and thereafter husband used to beat her for bringing amount. Accused No.2 used to instigate accused no.1 and on his instigation accused No.1 used to beat her sister. This witness also told about accused-husband asking her sister to bring pension amount from her mother which she received on account of demise of their father. According to her, when Ranjana came for Diwali festival, she had told about ill treatment meted out to her. She also holds accused Nos.1 and 2 responsible for suicide.

11. **PW-5** Trimbak is the Pancha to inquest panchanama and also party to the team which, on request of PW-1, gave understanding to accused persons not to harass Ranjana.

ANALYSIS

12. Accused husband faced trial on the charge of commission of offence under section 498-A and 306 of IPC. Here, before this court accused – husband is questioning the impugned judgment and order passed by the trial court as he alone has been held guilty for the above charges.

13. Before re-appreciating the evidence of prosecution, we deem it fit to give a brief account of the settled legal position as regards to when charge under section 306 of IPC can be said to be brought home by prosecution.

In order to properly comprehend the scope and ambit of section 306 of the I.P.C., it is of vital importance to carefully examine the basic ingredients of said provision. The above provision of penal code provides that, if any person commits suicide, whoever abets commission of suicide shall be punished as provided under said provision. Thus, the basic ingredients of this provision are **suicidal death** and the **abetment** thereof.

Penal Code does not provide for definition of suicide. However, in common parlance, “suicide can be said to be an act of self-destruction”.

It would be profitable to reproduce as to what is meant by **abetment**. **Section 107** of the IPC deals with abetment, which reads as under :-

“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 to that conspiracy, and in order to the doing of that thing; or

Thirdly, - Intentionally aids, by way of act or illegal omission, the doing of that thing.

Explanation-1- A person who, by wilful misrepresentation, or by wilful concealment of material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation-2- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

14. In case of offence u/s.306 of the IPC, legal position has been settled and enunciated in various rulings of Hon'ble Apex Court and few landmark judgments, which are referable in the case in hand, are dealt as follows :-

[1] **Ramesh Kumar Vs. State of Chhatisgarh,
(2001) 9 SCC 618**

In this case, Hon'ble three Judges' Bench of Hon'ble Apex Court had occasion to deal a case arising out of dispute between husband and wife. There also husband had committed suicide and in para.20 the Hon'ble Apex Court while examining different shades of the meaning “**Instigation**” ruled as under :-

Instigation is to goad, urge forward, provoke, incite or encourage to do an “act”. To satisfy 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 consequences. Yet, a reasonable certainty to incite the consequence must be capable of being spelt out. A word uttered in fit of anger or omission without intending the consequence to actually follow cannot be said to be instigation.

**[2] Sanju @ Sanjay Singh Sengar Vs. State of M.P,
2002 Cri.L.J. 2796**

Hon'ble Apex Court in this ruling held that, 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. It is common knowledge that the words uttered in a quarrel or in spur of moment cannot be taken to be uttered.

**[3] S.S.Chheena Vs. Vijay Kumar Mahajan,
(2010) 12 SCC 190**

It is held by the Hon'ble Apex Court that,
“That the intention of legislature is that, in order to convict a person u/s.306 of the I.P.C., there has to be clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option.”

**[4] Randhir Singh Vs. State of Punjab,
(2004) 13 SCC 129**

Hon'ble Apex Court in this ruling held and ruled that, abetment involves mental process of instigating a person, or intentionally aiding that person in doing of a thing. In case of conspiracy, also it would involve that mental process of entering into conspiracy for the doing of the act. 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 commission of offence u/s.306 of the I.P.C.

**[5] M.Mohan Vs. State represented by the Superintendent of Police,
AIR 2011 SC 1238**

Hon'ble Apex Court held that,
“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of accused to instigate or aid in committing suicide, conviction cannot be sustained.”

[6] **Gurcharan Singh Vs. State of Punjab,**
AIR 2017 SC 74

Hon'ble Apex Court held that,
“21. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:
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.
22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 I.P.C. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 I.P.C., thus criminalises the sustained incitement for suicide.”

[7] **Netai Dutta Vs. State of West Bengal,**
AIR 2005 SC 1775

In context while dealing with the concept of abetment u/s.107 of the I.P.C. and specially in the context of **suicide note**, Hon'ble Apex Court held that,
“In the suicide note except referring names of appellants at two places, there is no reference of any act or incidents whereby the appellant herein is alleged to have committed any wilful act or

omission or intentionally aided or instigated the deceased in committing the suicide. There is no case that appellant had played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased.”

[8] **Mahendra Singh Vs. State of M.P., 1995 Suppl. (3) SCC 731,** The Hon'ble Apex Court after considering definition of abetment u/s.107 of the I.P.C., found that the charge and conviction of the appellant for offence u/s.306 of the I.P.C. as not sustainable merely on the basis of harassment to the deceased. The Hon'ble Apex Court further held that, neither of ingredients of abetment are attracted on the statement of deceased.

15. Thus, what can be culled out from the above discussed rulings is that, to constitute abetment the intention and involvement of accused to aid or to instigate the commission of suicide is imperative. That, abetment necessarily must involve a mental process of instigating a person or intentionally aiding that person in doing of a thing. Active role has to be played by accused persons in instigating or aiding the doing of a thing before a person can be said to be abetting the offence u/s.306 of the IPC. There has to be a clear mens rea and unless it is established in clear terms that accused had mens rea to commit the offence, guilt cannot be fastened. Thus, the pith and purport of section 306 of the IPC is that, there has to be indictable acts or omissions on the part of accused persons and which are continuous in nature and which ultimately created such circumstances that the person, who commits suicide, is left with no other alternative, but to end up her life. Death by suicide must have been the desired object of the abettor and it should be

demonstrated that, only with such intention accused instigated or goaded the victim to commit suicide.

16. In the light of above legal requirements, we proceed to sift the evidence on record.

17. Here though six witnesses had examined by prosecution in the trial court, in our considered opinion, testimonies of **PW-1** Kantabai - mother/informant, **PW-4** Gayabai - sister and **PW-5** Trimbak are only of relevance.

We have taken brief account of testimonies of above three witnesses in aforesaid paras. On Minute scrutiny, it is revealed that at the time of marriage of deceased with accused – Vithal, his father-in-law i.e. father of deceased and husband of PW-1 Kantabai was alive. Therefore, it is also stated by PW-1 Kantabai that everything was smooth for initial period of five years. After demise of father-in-law, it is the case of prosecution that accused started raising demand of money and was thereby asking deceased to bring the amount of pension received by PW-1 Kantabai. PW-1 Kantabai does not quantify the amount of pension received by her. However, she speaks of lending him cash two times, i.e. Rs.3,000/- at one time and Rs.1,500/- at the another occasion. She is assertive that said subsequent payment was made for construction of well. For what purpose first payment of Rs.3,000/- was made

and when it was complied has admittedly not being stated by PW-1 Kantabai and in cross-examination she has admitted to that extent. Nowhere it is stated that for what purpose accused raised amount from pension. It is not a case of prosecution that for running his house and family, accused was asking deceased to bring money from her mother. Precise allegation is that for meeting such demand, there was ill treatment and harassment. On carefully examining the testimony of PW-1 mother, it is seen that she has only uttered that her daughter was harassed. What was the nature of harassment or nature of ill treatment has not come on record. Even when such treatment was mated out is also precisely not coming on record because marriage is already more than a decade old. Even sister of deceased has not clarified as to the nature of ill treatment or harassment and exactly when it was mated out. These two witnesses are only related witness.

18. Second allegation is that accused wanted his deceased wife to put up demand of her share in her father's land. Investigation machinery has not gathered any evidence as to how much land father-in-law owned and where. On such demand, it is also alleged that accused used to beat her and according to PW-1 Kantabai, her daughter used to tell her whenever she visited her. Mother also speaks that she herself also went to see her daughter almost after every fortnight. She has also stated in examination-in-chief that she did not pay the amount of pension to him and therefore, she attribute beating to her

daughter by accused. She has named persons whose indulgence she sought for giving understanding to accused. Out of 5 to 6 persons only Bhimrao (PW-2) has been examined to lend support to the version of PW-1 Kantabai. Though PW-5 Trimbak is examined, he is examining in the capacity of inquest pancha.

19. In examination-in-chief PW-1 Kantabai has also stated that, some 8 days prior to the incident also she had gone to meet her deceased daughter at the matrimonial house of deceased and at that time also she had questioned accused Nos.1 and 2 as to why they were harassing her and according to her they did not give any response. She has alleged that accused No.2 Taterao used to instigate accused No.1 and upon which accused No.1 used to beat her daughter. For what accused No.2 instigated and on what count has not been clarified by this witness. Surprisingly, she is also found to state that once in her presence accused No.1 beat her daughter, but apparently she does not seem to have taken any steps of lodging report or giving understanding to accused.

20. In cross-examination PW-1 has admitted that marriage of second daughter Satyabhama was at the intervention and at the instance of accused. At the time of marriage of such daughter, accused and her deceased daughter had come to stay for 15 days. She has admitted that some ladies by name,

Sarjabai and Rangubai of her village were given in marriage in Islampur and they were cousin sisters of her husband and they resided in the very Wada of accused – Vithal. She admitted that she did not disclose of the alleged ill treatment to her daughter at the hands of accused to any of her cousin sisters-in-law and she has also not reported about ill treatment even to Sarpanch or Police Patil. She has admitted that well was constructed by accused six months prior to the death of daughter and that her daughter had committed suicide in the newly constructed well. It also seems from her version that FIR is silent about her alleged visit to her daughter 8 days prior to the statement and as such it is an improvement.

21. Now, let us turn to the evidence of **PW-2** Bhimrao. This is the witness to whom PW-1 Kantabai allegedly sent along with other male persons to give understanding to accused persons. Infact, PW-2 Bhimrao seems to be the real brother of deceased Mukindrao. He too stated that after marriage, accused was harmoniously residing with his niece. He stated that his brother died three years prior to the death of Ranjana. He stated that thereafter accused No.1 started harassing Ranjana after death of Mukindrao and that he was telling to bring amount from her mother i.e. from the amount of pension. He was also allegedly telling her that she had no brother and she should get the land of her share from the land left by her father. On failure to meet the demand, he stated that Ranjana was beaten. He also speaks of taking persons

to the Islampur to the house of accused to convince them. He stated that they agreed to not to harass her. Then he speaks of receiving the information about the death of deceased on 15.12.1999.

His cross-examination shows that he is unaware of the amount of pension received by his sister-in-law or amount of salary received by her. He is unable to state on which day amount of Rs.3000/- and Rs.1500/- respectively was paid to accused – Vithal. Though he stated that he has seen the well in which Ranjana had fallen, he is unable to state in whose land it was. Rest all is denied.

22. Another witness **PW-4** Gayabai is a real sister of deceased. She is a resident of Pimpri (Deshmukh). She also reiterated like her mother that everything was smooth for five years after marriage of her sister, but thereafter her sister was harassed by accused for bringing amount from pension received by her mother and also to seek share in the land. She states that when accused came to look for her sister at informant's place at that time he allegedly informed that there was quarrel between him and deceased. Such version is not coming from the mouth of her mother i.e. PW-1 informant.

In cross examination, she too has admitted that their relatives stayed at Islampur. Like her mother, she is also unable to give particulars of dates of demand made and complied. She has stated that her mother paid amounts in her presence but mother does not speak about this. She is also

unable to state when there was harassment and beating or nature of harassment. Rest all is denied.

SUMMATION

23. Therefore, what can be culled out from above discussion is that mother, uncle and sister, though are consistent, they are only consistent about deceased being harassed by accused No.1 husband. As stated above, what was the nature of harassment has not been specified by any of the witnesses. When harassment was approximately dated out is also not stated. What was the instigation at the end of accused No.2 is not stated by any of the witnesses. What exactly preceded immediately prior to the alleged suicide has not come on record. In view of above discussed settled legal position, it was imperative for the prosecution to demonstrate that there was positive act or active role played by accused in abetting the suicide. Here, there is no evidence that on account of alleged demands there was continuous harassment rendering life of deceased miserable or that the harassment was to such an extent that deceased was left with no other alternative but to end up her life. As required under law, prosecution has also not shown that accused persons had desire that she should end up her life by jumping in the well. Resultantly, required legal aspects are patently missing from the case. Neither manner of harassment is stated nor particulars as to when such instances took place is stated by any of the witness. Therefore, here prosecution could not prove

beyond reasonable doubt that accused persons abetted suicide by deceased and therefore we feel it unsafe to fasten guilt for commission of offence either under section 498-A or 306 of IPC.

24. We have carefully gone through the impugned judgment under challenge. In our opinion, learned trial Judge has merely considered oral accounts of informant - mother, PW-2 Bhimrao and PW4 daughter. Answers given by these witnesses in cross-examination are not properly appreciated. Learned trial Judge also seems to have overlooked the crucial aspect of non availability of material to hold abetment resulting into suicide. Learned trial judge seems to have lost sight of the fact that there was no evidence that accused persons ill treated or harassed deceased with sole desire to see that she ends up her life. Resultantly, the findings and conclusion reached at by trial Judge being in absence of legally acceptable evidence, the judgment authored by the learned trial Judge cannot be allowed to be sustained and consequently, interference is necessary at the hands of this court by allowing the appeal and setting aside the impugned judgment and order. Accordingly we proceed to pass following order :-

OPERATIVE ORDER

- (i) Criminal Appeal stands allowed.

- (ii) The conviction awarded by the learned IInd Additional Sessions Judge, Parbhani on 14.11.2002 in Sessions Case No. 33 of 2001 to the appellant - Vithal S/o Taterao Maghade, stands set aside.
- (iii) The appellant stands acquitted of the offences punishable under sections 306 and 498-A of Indian Penal Code.
- (iv) The appellant be set at liberty, if not required in any other case.
- (v) The fine amount paid, if any, be refunded to the accused-appellant after the statutory period.
- (vi) It is clarified that there is no change in the order in respect of disposal of Muddemal articles.

(ABHAY S. WAGHWASE, J.)