

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 242 OF 2003

Shivraj s/o. Nagnath Girwalkar .. Appellant
Age. 27 years, Occ. Service,
R/o. Vasant Nagar, Nanded,
Tq. & Dist. Nanded.

Versus

The State of Maharashtra .. Respondent

Mr. Anil M. Gaikwad, Advocate for the appellant.
Mr. Y.G. Gujarati, APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	02.12.2022
PRONOUNCED ON	:	08.02.2023

J U D G M E N T :-

01. This is an appeal by the original accused No.1 in Sessions Case No.1 of 2002 decided on 15.03.2003 by the learned III Additional Sessions Judge, Nanded. The appellant is held guilty of the offence punishable under sections 498-A and 306 of the Indian Penal Code and sentenced to suffer imprisonment for two years and to pay fine of Rs.5000/- in default to suffer rigorous imprisonment for six months for the offence punishable under section 498-A of the IPC. For the offence punishable under section 306 of the IPC he is sentenced to suffer imprisonment for seven years and to pay fine of

Rs.10,000/- in default to suffer rigorous imprisonment for one year. Other four accused are acquitted as no case against them is proved.

02. The story of the prosecution in short is that the appellant married with deceased Aparna, daughter of the appellant, on 06.05.2001. After marriage, the deceased resided in the family of the accused. Unfortunately, she committed suicide on 08.07.2001. It is alleged that she committed suicide because of the cruelty and harassment as well as illtreatment for unlawful demand. FIR was lodged by father of the deceased viz. Mahadeo Shete. On the basis of an FIR, offence came to be registered with Shivajinagar Police Station, Nanded. The police investigated the offence and filed charge-sheet. In the trial charges under sections 498-A and 306 of the IPC came to be framed.

03. The defence of the accused is that there is no illtreatment or cruelty as alleged by the prosecution. The deceased has not committed suicide because of the illtreatment or harassment.

04. The prosecution examined the informant-father of deceased

Aparna as PW-1-Mahadeo. He stated in his evidence that after the marriage, deceased stayed with her husband in joint family. Immediately on the next day of the marriage, the accused persons along with his daughter visited temple at Ambajogai. From there they visited the shop of his son and demanded an amount of Rs.3100/- towards balance of the amount that was to be paid for cloths for marriage. Accused persons threatened that they will not take back the deceased unless amount is paid. Son of the informant, therefore, paid the amount of Rs.3100/-. On 10.05.2001, his brother Bhimashankar had brought the deceased from the house of the accused from Ambajogai, where deceased told that everything is going on well. Later on, the deceased and all the accused started residing at Nanded. On 21.05.2001 again the deceased was brought to Ambajogai, where she told that the in-laws are illtreating her on account that she was not knowing cooking. It is further alleged that she was not even given a meal. The deceased wanted to take education by taking admission to LL.B. course. However, the accused persons told her to bring money and college fees from her parents. He stated that on 07.07.2001 the deceased called her mother and told that she was kept without food for last four days and asked her mother to come immediately to fetch her. He decided to go to Nanded next day in the morning. However, on

the next day in the morning at 7.15 am informant received phone call from his cousin Vasantappa that he received message from accused No.2 that deceased committed suicide. On reaching to Nanded he called accused No.2 i.e. father-in-law of the deceased on phone, on which he told that deceased committed suicide at 5.00 a.m. On going to Nanded, they found swelling and mark around neck of her dead body. The dead body was taken to the Government Hospital for postmortem. In the hospital she was declared dead and therefore postmortem was conducted.

05. In the cross, omission is brought on record in respect of the incident that happened on the next day of the marriage i.e. of taking amount of Rs.3100/-. In the cross further it is brought on record that in the investigation the police had recovered some letters showing communication between the deceased and her friend Gangasagar and one Jyoti Badera, who were college day friends of the deceased. It is brought on record that the deceased was studious and wanted to study. He was shown receipts of payment of fee for LL.B. course at Nanded, wherein writing of accused No.4 is seen. Suggestion was given that from the letters recovered by PSI, it appears that marriage of deceased was against her wish. There are voluminous letters

to which questions were asked. Certain omissions are also brought on record about above evidence.

06. PW-2-Sau.Shivnanda is paternal aunt of the deceased, who deposed about the incident of taking Rs.3100/- as was told to her by brother of the deceased. She stated that on 10.05.2001, the deceased had told her at Ambajogai that the accused persons are not giving meal to her. On 21.05.2001 the deceased again met her at Ambajogai. That time she also stated about the illtreatment. She has thus stated that on two occasions, she had talk with the deceased about the illtreatment.

07. In the cross-examination of PW-2 it is brought on record that statements of two friends of the deceased namely Jyoti and Gangasagar were also recorded. The police had shown seized photographs, diary and some letters to the witness.

08. PW-3 – Umakant Shete is uncle of the deceased, who has deposed about the marriage ceremony. In his evidence, he has stated that the deceased used to tell that accused No.1 used to ill-treat her and therefore she was not

ready to go back to the matrimonial house. It was on persuasion of her relatives, she went back to matrimonial home.

09. In the cross, it is brought on record that the deceased did not request this witness to spend for her education. He was asked about the letters those were recovered by the police showing correspondence between her friend and the deceased.

10. PW-4 – Mandakini is maternal aunt of the deceased. Her evidence is hearsay. From the cross it is seen that omissions are brought on record from her evidence that she had stayed at Parali Vajjnath with deceased where she had told her about illtreatment. Further omission is brought on record in respect of not providing faral to the deceased for the fast.

11. PW-5–Kundanbai is mother of the deceased. She stated about giving dowry in the marriage of Rs.51,000/-. She stated that after marriage, she had been to Ambajogai. In the shop of son, she found that the deceased was weeping. On asking, she told that she was kept starving in the matrimonial house. She stated about paying Rs.3100/- to the accused. She

stated about further visits of the deceased to her parents' house, where she used to state about illtreatment and harassment meted out to her by her in-laws. She further stated about recording of other statements etc.

12. In the cross, PW-5 accepted that even after the marriage the deceased persuaded her education. After marriage they did not spend the amount on her education. The accused are from well to do family. Accused No.1 was not educated like deceased and he was also not having permanent service. Her marriage was performed in hurry as her uncle was not keeping good health. Further it is brought on record in the cross about correspondence of the deceased with her friend. She accepts that as per the practice in the society people keep fast on Monday. She accepted that in the marriage an amount of Rs.51,000/- was given with their free will. In her deposition though she has stated that amount of dowry was paid but it was by way of improvement and that was taken in the cross-examination. Further omissions are also brought on record about her statement before the police that accused were not ready and did not allow her to take education.

13. Next evidence is of PW-6 – Dr. Vaijnath Khanapurkar, Medical

Officer, who conducted autopsy to prove that the death was suicidal.

14. Next witness is PW-7 – Kum. Gangasagar who happened to be fast friend of the deceased and who had much correspondence with the deceased. In her deposition she stated that the deceased did not tell her anything about her married life in her visit to the college, when she met deceased at Ambajogai after 3-4 days of marriage. She proved letters written by her to the deceased and some letters written by deceased to her. In her cross-examination she accepted that they both were sensitive and they had ambition to build good career. On the marriage of the deceased, because of separation, both friends were in deep sorrow. They used to console each other and accordingly she used to write letters to the deceased.

15. In cross it is brought on record that one more friend Jyoti also used to call deceased frequently and they were also writing letters to each other. She had suggested the deceased to adjust at matrimonial home. This deponent also advised the deceased to continue to take education.

16. PW-8 Surekha, PW-9 – Shashikant, PW-10 – Vasant and PW-11

Sadanand are relatives of the deceased. Nothing is brought on record by the prosecution from evidence of these witnesses.

17. PW-12 – Bharat is a person residing in the same lane of the parents of the deceased at Ambajogai, who acted as panch of the spot.

18. PW – 13 Devanand is a photographer, who took photographs of the spot of incident.

19. PW-14 – Arvind Shinde was working as API at Shivaji Nagar Police Station, Nanded, who did investigation and carried out seizure panchanama. He had sent dead-body for post-mortem. In the cross-examination, it is stated that from the letters seized of the deceased, there is no mention about illtreatment at the hands of the accused persons. There is also no mention that the deceased was asked to bring money for her education. He did not record the statement of Jyoti. He also did not interrogate her as he did not feel it necessary. He could not state as to who wrote letter Article 19. He also did not enquire whether the said letter was written by any boy or any girl. He denied suggestion that from the letters it

transpires that friendship or love of the deceased was broken and therefore she was frustrated.

20. In the investigation various letters were found. Those were exchanged between the deceased, Gangasagar and Jyoti. These letters are relied upon by the defence to show that the deceased was in frustration because of the marriage. She did not expect even normal married life as transpires from these letters. For her the marriage was like an adjustment. Because of the marriage, she lost joy in the life. Thus, it is defence that because of frustration, the deceased committed suicide. As her parents did not want real reason of suicide to come forward, they have falsely implicated the accused persons.

21. After going through the submissions, it would be necessary to see the letters which are seized during investigation from the house of the parents of the deceased by the Investigating Officer. In this case it is not disputed that the deceased died due to suicide.

22. Learned Advocate for the appellant, therefore, submitted that

reading of these letters itself will clearly show that it was the deceased, who was frustrated in the life because of the marriage and she was not expecting normal married life. For her marriage life itself was a hell. He mainly relies upon contents of the letter by giving chart. From letter Exh.44 it is seen that this letter was wrote by Gangasagar to the deceased, addressing her as Rani, advising her that the marriage is an adjustment. This shows intimate relations between Gangasagar, Jyoti and deceased. In this letter, she wrote to deceased that in our society marriage is inevitable and it is to be faced as social responsibility, clearly indicating that even normal married life was also not expected by the deceased and for her it was like a misery. From letter Exh.46 it was written again by Gangasagar to the deceased which again shows that the deceased was very much involved in the friendship with Gangasagar. Further letters are by Jyoti to the deceased i.e. Article 4, in which it is expressed that she could not bear non-meeting with her even for 1 or 2 days. This letter also clearly shows that there was intimate relations between Jyoti and the deceased. She expressed that she loves 100% more than Gangasagar in which she expressed that they will continue friendship till last breath of life.

23. Article-6 is a letter in which Jyoti has written that she is mad for

the deceased. It is expressed that she had fear that the deceased would leave her. In next letter Article 7 Jyoti has expressed that she was not interested at all in getting married. Even after marriage, Jyoti felt that she cannot forget the deceased. In letter Article 7 Jyoti writes that she cannot imagine life without friendship with the deceased. In letter Article 9, she expressed that she cannot live even for a minute without the deceased. She has lost interest in the life. She earnestly requested the deceased to write some letters to her otherwise she would go mad. She ended this letter by saying that 'I miss Aparna' followed by emoji and at last 'I love you'. Letter Article 13 is again letter by Jyoti to the deceased in which she has again expressed that she has become restless as she could not see deceased for some reason. She even expressed that the deceased has betrayed her by getting married. There are even other letters written by Jyoti to deceased on the similar lines. There are letters written by deceased to Gangasagar and Jyoti. In none of the letters, she expressed anything suggesting that she was harassed or illtreated at the hands of the inlaws or the husband. She has even expressed that she cannot afford to miss her friends even for a day. She has written that she loves so much to Gangasagar and requested her to keep on sending letters. Letter Article 16 is by deceased Jyoti in which she expressed that she always keep

weeping by looking at the photograph of Jyoti in which she had expressed that she even planned to commit suicide as she could not bear sorrow of not being together with her friend. However, to see her friends once again she even cancelled to plan to commit suicide. This letter is dated 04.07.2001, just 4 days prior to date of suicide. There are also papers showing that the deceased was taking education even after marriage. For that she had even applied for EBC certificate in the college at Ambajogai. Her receipt shows that she had even taken admission in law college, Nanded by paying fees of Rs.1250/- for DTL (Taxation Law). Article 5 is last letter written by the deceased, in which she expressed that life is full of sorrow. Life is only for sufferance. She expressed that she has committed so many sins in the life even after marriage saying that doing anything against conscious is a sin. At last she has stated that she is finishing her life and she is tired of life. She prayed to almighty if there is next birth, she should not be given birth as a human.

24. Thus, referring to all these letters and evidence, the learned Advocate for the appellant submits that there is nothing to show that the deceased committed suicide for the reason of harassment at the hands of the accused persons. He relied upon judgment in the case of **M. Arjunan Vs. State**

reported in AIR 2019 SC 43, wherein essential ingredients of offence under section 306 of the IPC are given. Said para 8 of the judgment is as under :-

“8. The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment or suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

25. Second judgment he relied upon is in the case of State of Bengal Vs. Indrajit Kundu & Ors., 2019 AIR (SC) 5164, wherein it was held that the suicide committed by the victim cannot be said to be result of any action on the part of the respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. In para 12 of the judgment the Apex Court considered as to what is ‘instigation’, as below :-

“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 case 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 or anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

26. Next judgment cited is in the case of **Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors., reported in AIR 2021 SC 1**, in which the Hon'ble Apex Court has considered various judgments on the point of abetment to commit suicide.

27. The last judgment cited by learned Advocate for the appellant is in the case of **Mariano Anto Bruno & Anr. Vs. The Inspector of Police, Criminal Appeal No.1828 of 2022**, wherein the Hon'ble Apex Court has discussed section 306 of the IPC. It was held that there appears to be sufficient evidence for convicting the appellant under section 306 of the IPC for showing that there is abetment to commit suicide, there has to be evidence of continuous harassment and cogent evidence to establish positive action by the accused.

28. In the present case it is seen that the incidents of harassment are of demanding Rs.3100/- on second day of marriage towards short of the amount towards purchasing of clothing and secondly not giving food for four days. However, defendant has rightly brought on record omissions in respect of this. On the contrary there is overwhelming material to show even normal marriage life had become painful for the deceased. The deceased was not

expecting such a life. She was so much involved in her college friends even after marriage, which she herself expressed that she could not live without them even for a day. Letters to her friends clearly show that she was in sorrow because she was detached from her friends. In the last letter/suicide note it is seen that she has not stated anything about the married life or she has decided to finish life because of harassment at the hands of the accused. She herself was living with the feeling that she made so many sins in her life and because of that she wanted to finish her life. She confessed about sins as per her notions, acting against conscious, which made her to take decision to finish her life. While considering the case of abetment to commit suicide, the prosecution has to prove that it is only because of the action of the accused, the deceased was made to commit suicide either by aid, assistance or instigation or by making life so much miserable that person would take decision to end life. It is held by various judgments that abetment requires intention in the mind of accused, where mental process needs to be proved. In this case, no harassment of such nature is proved by the prosecution. Clearly a case is made out that for reason to commit suicide by the deceased, there was no any act on the part of the accused but it was conscious of the deceased herself, which made her to take decision to finish her life.

29. In view of the same, this Court finds that there was no sufficient evidence to come to the conclusion that the deceased committed suicide by any of the acts on the part of the accused persons. Therefore, this Court holds that the conviction recorded by the Sessions Court deserves to be quashed and set aside. Hence, following order :-

ORDER

- i) The Criminal Appeal is allowed.
- ii) The conviction and sentence of the appellant recorded by the III Additional Sessions Judge, Nanded on 15.03.2003 in Sessions Case No.1 of 2022 is quashed and set aside.
- iii) The appellant is acquitted of the offences punishable under sections 498-A and 306 of the Indian Penal Code.
- iv) The bail bond of the appellant stands cancelled.
- v) Fine amount, if any, paid by the appellant be refunded to him.
- vi) The appellant to furnish fresh bail bond with surety as per Section 437-A of the Code of Criminal Procedure, 1973.

[KISHORE C. SANT, J.]