

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 177 OF 2022

Bhagyashri Sanjay Bhavsar .. Applicant
Versus
The State of Maharashtra and Anr .. Respondents

WITH
CRIMINAL WRIT PETITION NO. 4334 OF 2021

Balasaheb Babanrao Mahale .. Petitioner
Versus
The State of Maharashtra and Anr .. Respondents

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Dr. Uday Warunjikar with Mr.Vaibhav Kadam, Aditya Thorat, Sameer Patkar, Yash Fadtare, Aprajita Mahto i/b Mr.Chetan Damre for the applicant in Revision Application No. 177/2022.
Mr.Nitin Sejpai with Mrs.Pooja N. Sejpai, Ms.Akshata Desai for petitioner in WP No.4334/2021 and respondent in Revn No.177/2022.
Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 13th SEPTEMBER, 2023

P.C:-

1 Criminal Revision Application No.177/2022 is heard along with Criminal Writ Petition No. 4334/2021, since both proceedings revolve around FIR no.157/2019 which was registered with Wani Police Station, Nashik on 12/11/2019.

The Revision Application is filed by one Bhagyashri Sanjay Bhavsar, who is charge-sheeted as Accused no.2 in the above C.R, calling in question the order passed by the Sessions Court, refusing her the discharge, whereas Writ Petition is filed by Balasaheb Mahale, the complainant in the C.R seeking directions for further investigation.

2 Heard Dr.Uday Warunjikar along with Advocate Vaibhav Kadam representing the Revision Applicant, Advocate Nitin Sejpal appearing for the petitioner as well as respondent no.2 in the Revision Application. Dr. Uday Warunjikar also represent Smt.Bhagyashri who is impleaded as respondent no.2 in the Writ Petition.

Pooja, the daughter of Balasaheb, was married to Shekhar Sanjay Shinde (Accused no.1) on 17/5/2019, as per Hindu Vedic Rites, and when she visited her parental house on occasion of Diwali, she informed her family members that her husband was maintaining an extra-marital relationship and hence, the relation between them as husband and wife, was strained, and she even narrated that the accused was harassing her mentally and physically.

On 6/11/2019, a message was received by her family that she was vomiting and taken ill and was admitted in a private hospital for treatment. It was thereupon revealed that she had

consumed some substance and was shifted to a bigger hospital for further treatment. However, on 9/11/2019, she passed away.

Balasaheb suspected foul play and was of the opinion, that his daughter she committed suicide, unable to bear the harassment caused to her by her husband and his paramour i.e. Bhagyashri and after four days of the incident, an FIR was registered on 12/11/2019 against her husband and the present applicant, which invoked Sections 498A, 306, 406, 201 r/w Section 34 of the IPC. The applicant along with the accused were arrested, but she was released on bail.

On completion of investigation, the charge-sheet was filed on 31/7/2020.

3 On filing of the charge-sheet, the applicant preferred an application u/s.227 of the Cr.P.C in Sessions Case No.12/2021, seeking discharge by pleading that there is no sufficient ground for proceeding against her. However, the same came to be rejected by the Addl. Sessions Judge -4, Nashik, on 1/12/2021 by recording that the applicant had caused mental stress to the deceased and hence, the prosecution should be given an opportunity to prove the allegations.

It is this order which is assailed in the Criminal Revision Application.

4 The charge-sheet filed on completion of investigation would reveal that the cause of death of the deceased Puja was

opined to be '*bilateral pneumonitis*'; case of poisoning. The post mortem report did not record any injury on the body, but the stomach was found to contain pale white mucinous fluid with walls congested, eroded, haemorrhagic at places, along with presence of yellowish fluid in small intestine as well as large intestine. The Investigating Officer recorded the statements of the family members of the deceased and during search of the house, mobile of the deceased was recovered in which two Whatsapp messages were found to be scribed; one being addressed to her husband and the second being addressed to her sister-in-law.

The Whatsapp messages form part of the charge-sheet and from reading of the text message, one can infer that there was a discord between the husband and the wife and in the message addressed to the husband, she has ventilated her emotions and revealed her feelings towards him, by indicating to him that though she kept loving him, he never reciprocated. The deceased questioned her husband as to what was found to be lacking in her, which compelled him to maintain relationship with Bhagyashri, the applicant, before marriage and even after marriage, he continued it. She bid him adieu, by cursing him and also wishing him luck in future.

Another Whatsapp message addressed to her sister-in-law is, in her grievance, being narrated to her, and she disclosed her about the extra-marital relationship, which her brother was

carrying and she make an attempt to justify her behaviour, of taking her life as she was left with no option.

The statements of the relatives recorded in the course of investigation, also speak of the extra-marital relationship maintained between the applicant and the husband of the deceased.

5 In the wake of the material compiled in the charge-sheet, the question is, whether the deserve to be prosecuted u/s.306 of the IPC, which punished an act of abetment of suicide. Section 107 of the IPC define 'abetment' of a thing in the following manner :-

Section 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.

Explanation 1 – A person who, by wilful misrepresentation, or by wilful concealment of a 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.

6 Reading of Section 107 along with Section 306 necessarily contemplate two ingredients being; (a) there must be abetment of the act of commission of suicide; either by instigation, conspiracy or intentionally aiding the same and (b),

the act which amounts to abetment must have reasonable proximity and nexus with the actual commission of suicide.

7 In case of *Poonam Agrawal vs. State of Maharashtra*¹ the Division Bench, to which I was a party, by drawing parlance from the decision of the Apex Court, in *Ramesh Kumar vs. State of Chhatisgarh*,² I had assigned distinct shades to the term 'instigation' in the following words

"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"

Since abetment involves mental process of instigating a person or intentionally aiding a person or doing of a thing, or a positive act on part of the accused, to instigate or aid, conviction cannot be sustained. It is necessary that the intention to provoke, incite or aid the doing of the act, must be established before an offence u/s.306 of the IPC is said to be proved.

Each person's expectations from life would differ and every person has his own idea of self esteem and self respect and it

1 2019 Cr.L.J, 4823,

2 AIR 2001 SC 3837

is impossible to lay down a straight jacket formula and in para-12, it was observed as under :-

“It is by this time settled by a catena of decisions that there should be intention to provoke, incite or aid the doing of the act by the latter. It has been succinctly held that each persons suicidibility pattern is different from the others and every person has his own idea of self esteem and self-respect and it is impossible to lay down any straight jacket formula in dealing with such cases and each case has to be decided on the basis of its own facts and circumstances. 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 the accused to instigate or aid, in committing suicide, conviction cannot be sustained. Undisputedly, the intention of the legislature and the position of law laid down by the catena of judgments is to the effect that in order to convict a person under Section 306 of the IPC, there must exist a clear mens rea to commit the offence and an active act or direct act which led the deceased to commit suicide, and the act must be of such a nature which was intended to push the deceased into commission of suicide. A hyper sensitive individual would not be the testing factor since human sensitivity of each individual differs from the other and different people would face a situation differently.”

8 Before the conclusion is drawn, that a person has abetted suicide of another, it is necessary to ascertain whether the circumstances are so created, that there is no option open to the person, but to commit suicide and therefore, it must be of that degree and level. Abetment necessarily involves a mental process of instigation or intentionally aiding a person in doing of a thing. *Mens rea*, to commit an offence u/s.306 IPC must be clearly established. For sustaining a conviction u/s.306 IPC, it must be conclusively established that the act of the deceased has a connect

with the act of the accused and seeming no option to come out of it, the suicide is committed.

In *Dr.Seema Ajay Bhoosreddy. Vs. State of Maharashtra*,³, the Division Bench of this Court specifically observed as under :-

“29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to- day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under [section 306 IPC](#) against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under [section 306 IPC](#) against the appellant is quashed and all proceedings pending against him are also set aside.”

9 In case of *K.V. Prakash Babu vs. State of Karnataka*⁴ , the Apex Court examined the aspect about what would amount to cruelty u/s.498A and whether extra marital relationship would amount to cruelty.

While answering the broad question, Their Lordships observed as under :-

“The aforesaid analysis of the provision clearly spells how coercive harassment can have the attributes of cruelty that would meet the criterion as conceived of under [Section 498-A](#) of the IPC. Thus, the

3 2011 All.M.R (crimes) 3326

4 (2011) 17 SCC 176

emphasis is on any wilful conduct which is of such a nature that is likely to drive the woman to commit suicide. The mental cruelty which is engraved in the first limb of [Section 498-A](#) of the IPC has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and dependent upon the conduct of the person concerned.”

10 The proposition was taken ahead to determine whether the relationship which is an extra-marital relationship would amount to abetment, leading to the act of suicide within the meaning of Section 306 IPC. By referring to the decision in case of *Pinakin Mahipatray Rawal Vs. State of Gujarat*⁵, Their Lordships specifically concluded as under :-

“In the said case, the Court was dealing with as to whether relationship between the appellant and the second accused therein was extra-marital leading to cruelty within the meaning of [Section 498-A](#) IPC and whether that would amount to abetment leading to the act of suicide within the meaning of [Section 306](#) IPC. Dealing with the extra-marital relationship, the Court has opined that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on, but extra-marital relationship as such is not defined in the [IPC](#). The Court analyzing further in the context of [Section 498A](#) observed that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to [Section 498A](#) IPC. The Court further elucidated that harassment need not be in the form of physical assault and even mental harassment also would come within the purview of [Section 498A](#) IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it

5 2013(10) SCC 48

may be unbearable and a weak person may think of ending one's life. The Court ruled that in the facts of the said case the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide. The two-Judge Bench further opined that:-

“Section 306 refers to abetment of suicide which says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.” [emphasis added]

11 Hence, merely, because there is some evidence of illicit or extra-marital relationship, and even if it is proved, it cannot be conclusively held to amount to instigation or incitement to commit suicide unless for the wife, she is left with no other option, but to take the extreme step. Merely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of the wife, that by itself cannot be regarded as mental cruelty which would attract the cruelty for satisfying the ingredients of Section 306 IPC. Though the act may be construed as illegal or immoral and may affect one of the spouse, who is sensible in that regard, that act per-se, cannot be construed to abet the suicide. In the present case, the material in the charge-sheet would limpidly show that there was some relationship between the applicant and the husband of the

deceased, but in absence of the necessary ingredients of Section 306 having been satisfied, she cannot be prosecuted for offence u/s.306 having abetted the act of suicide.

The Sessions Judge, referred to the decision of K.V. Prakash Babu (supra), but has drawn a conclusion that the observations are not applicable to the present case as there are allegations against the applicant for causing mental stress to the deceased. In my considered opinion, it is an incorrect reading of the ratio flowing from *K.V. Prakash Babu*, which has explicitly held that solely because the husband is involved in an extra-marital relationship and there is some suspicion about the same, that cannot be regarded as mental cruelty, which would attract the cruelty for the purpose of satisfying ingredients of Section 498A of the IPC or Section 306 IPC.

12 As the Sessions Judge has failed to note that there is no instigation i.e. any act of goading, provoking or inciting or encouraging the commission of suicide by the present applicant, when the deceased merely suspected a special relationship between them, as her husband used to often use to converse with her on the mobile and probably, she never confronted him with the same, and therefore, before taking the extreme step, she expressed herself through the Whatsapp message. Probably, if she would have raked up the issue with him, some solution would have come out.

In cases of alleged abetment of suicide, there must be direct proof or indirect proof of incitement to the commission of suicide. Moreover, the proximity between the alleged act of abetment and the actual commission of suicide must also be conspicuously pointed out before a person is held to be guilty of abetting the offence of suicide.

For the aforesaid reasons, I do not find that the material collected by the prosecution is sufficient to establish the charge u/s.306 IPC against the applicant. No doubt, it is well settled position of law, that while discharging the accused, the Court must without making a roving inquiry into the pros and cons, consider the broad probabilities, the total effect of the material before it and the infirmities appearing in the case and this is what is precisely considered by me.

Assuming that the material brought on record by the prosecution, as its case is, that the husband of the deceased, shared a proximate relationship with the applicant, there must exist some concrete material to entertain the strong suspicion and assuming for a moment, that they share such a relationship the factor to be considered is, whether the material is sufficient to prove the charge.

Looking at the material in the charge-sheet, it definitely fall short of the offence under Section 306 read with Section 107 of the IPC and undoubtedly, the benefit of this must

be ensured to her as an accused and she deserve discharge from the charges levelled in the charge-sheet.

The impugned order dated 1/12/2021 is therefore, quashed and set aside and the applicant stand discharged in Case No.12/2021.

WRIT PETITION NO. 4334/2021

13 In the Writ Petition filed by the complainant, the following relief is sought :-

“(b) Pooja (since deceased), the elder daughter of the Petitioner had studied upto B.E. The marriage of Pooja was solemnized with Shekhar Sanjay Shinde residing at Yewala on 17th May 2019 as per Hindu Vedic Rites at Sai Shrushti Lawns”.

Mr.Sejpal, the counsel for the petitioner has argued that the daughter of the petitioner was subjected to physical and mental torture and in fact, since she has died within a short duration of marriage and Section 304B of IPC is attracted, the death having been occurred within 7 years of marriage, but the case has not been investigated from this angle. Apart from this, it is also his submission that the accused persons have not been questioned by the Investigating Officer in this direction and instead of seeking police remand of the accused persons for investigation, the Investigating Officer had sought magisterial custody on the first day of remand itself.

It is pertinent to note that for attracting Section 304B of the IPC, it is necessary that the death of woman should have

been caused other than in normal circumstances and she must have been subjected to cruelty or harassment by her husband or his relative, or in connection with demand of dowry. However, these necessary ingredients are conspicuously missing in the facts of the present case. From the Whatsapp messages, recovered from the mobile phone of the deceased, her act and reason for consuming poison is evident and it is not the case of the prosecution that she was subjected to harassment for dowry.

When in the Whatsapp messages, the deceased is bidding good-bye to her husband and is expressing her anguish and distress over his behavior and she has consumed poison, and was found vomiting, in my opinion, that there is no scope for further investigation of the offence on the lines which the petitioner indicate and that is the precise reason why the trial Court rejected the application, particularly when the relief of further investigation, it was sought at the instance of a *de facto* complainant.

Finding no fault in the impugned order dated 30/8/2023, Writ Petition is dismissed.

(SMT. BHARATI DANGRE, J.)