

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.358 OF 2022

Jitendrakumar Mukeshprasad Saha,
Age 39 years, Occ.Service,
R/o.Flat No.504, A Wing,
Donum Dei CHS, Kanakiya Road,
Mira Road, Thane-401107.

Applicant

versus

1. The State of Maharashtra.
2. Chandrabhanu Narayan Das,
Age 63 years, Occ.Business,
R/o.Flat No.62, Buddhnagar, Cuttack Road,
Kalpana Square, Bhubhaneshwar,
Odhis-751006.

Respondents

Mr.Tapan Thatte, Advocate for Applicant.
Mrs.Anamika Malhotra, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th July 2023

PC :

1. The Applicant is chargesheeted for the offences under Sections 306, 304-B, 323, 504, 506, 498-A of Indian Penal Code on the basis of first information report registered with Koregaon Park Police Station vide Crime No.80 of 2018. The FIR was registered by Respondent no.2.

2. The first informant has alleged that marriage of his daughter Lipsa (deceased) was solemnized with accused (Applicant) on 28th February 2016. After the marriage the deceased was residing with accused at Koregaon Park, at Pune. About three months ago, the first informant received call from accused/applicant informing that he has

sent Lipsa to his house at Bhuvaneshwar by flight and he should pick her up from airport. The accused also told him that Lipsa is frequently talking on phone to someone. The complainant met her at airport and enquired with her about it. She told him that applicant is suspecting that she is in relationship with some person and he does not want her. She is frustrated due to that. After few days the accused again gave a call and informed that he has forgotten what has happened and Lipsa should return back. She was sent back to Pune by flight. On 3rd August 2018, the applicant told the complainant that he would divorce Lipsa and he should take her with him. Complainant enquired with Lipsa about the matter and she told him that applicant is again suspecting her character. She was assaulted by him. Applicant informed the complainant on the same day that he is going to Delhi, the complainant should come to Pune and take Lipsa with him. Thereafter the complainant kept on calling Lipsa on her cell phone till 10.00 am on 4th August 2018. She was not responding. Wife of complainant gave call to Applicant. He told that he is at Delhi. After some time applicant gave call and told her that Lipsa is not responding to his phone call. The complainant made call to her office. Her boss informed her that Lipsa is not responding to his call. She had joined office on previous day but on that day she did not come to office. Since Lipsa was not responding to call, complainant's wife gave call to Pravin Kukreja and told him to visit house of Lipsa and find out about her. At about 4.00 p.m Pravin gave call and informed that Lipsa has committed suicide by hanging. The complainant immediately went to Pune. Police informed him that before committing suicide, Lipsa had written note on paper of Rubi Hall Hospital that no one is responsible for my death. Post mortem was conducted at Sassoon Hospital and doctor has given

opinion that death is due to hanging. She was ill-treated by accused.

3. Supplementary statement of first informant was recorded on 29th August 2018 wherein it is alleged that at the time of marriage, the father and sister of accused had demanded Rs.10 lakh as dowry. On the day of marriage the first informant had parted amount of Rs.1 lakh by cash. Prior to that father of accused was repeatedly demanding money. As per demand he parted amount of Rs.2 lakh by NEFT to Mukesh Saha (father of accused) on 23rd October 2015, Rs.1 lakh on 6th February 2016 and Rs.1 lakh on 11th February 2016. In January-2018 accused had purchased Maruti Ciaz car on loan. The accused was demanding money for making payment of balance amount of Rs.5 lakh. Statement of Pravin Kukreja was recorded on 5th August 2018.

4. Applicant preferred application for discharge before Trial Court. The said application was rejected vide order dated 8th August 2022.

5. Learned advocate for Applicant submitted that there is no evidence to prosecute Applicant for the offence u/s.306, 304-B or 498-A of IPC. There is no evidence to substantiate the charge that there was instigation by the accused to the victim to commit suicide. The suicide note recovered during investigation exonerates Applicant. The victim has not held any one responsible for suicide. Whats App chats of the fateful date inter se between Applicant and deceased were checked which show that deceased did not blame Applicant for her suicide. The subsequent statement of complainant is improvised. There is no evidence to frame charge against Applicant

for the alleged offences. Merely on the ground that victim committed suicide within short span of time, no adverse inference can be drawn on the basis of presumption u/s.113-A or 113-B of Indian Evidence Act.

6. Learned Advocate for Applicant has relied upon following decision :

(i) Rajababu and another Vs. State of Madhya Pradesh - (2008)17-SCC-526

7. Learned APP submitted that chargesheet contains sufficient material to prosecute Applicant. The marriage between Applicant and deceased was solemnized in 2016. The deceased committed suicide on 4th August 2018. Presumption u/s.113-A of Indian Evidence Act can be invoked in the present case. There was demand of dowry. Hence offence u/s.304-B and 498A of IPC are made out. Presumption u/s.113-B of Evidence Act is also applicable. Due to harassment at the hands of accused the victim committed suicide. There is prima facie evidence against accused to proceed against him. In the FIR it is specifically mentioned that accused has ill-treated the deceased and suspected her character, due to which she committed suicide. In the supplementary statement the complainant has referred to dowry demand made by accused. The exact time of suicide is not clear. The medical officer will have to be examined during trial. At the stage of framing charge, the Court has to accept prima facie case. Statement of witness Madhvi Gogate and Sachin Shinde creates suspicion about conduct of Applicant.

8. The Applicant is the husband of deceased. The deceased

committed suicide on 4th August 2018. The FIR was lodged by father of deceased on 5th August 2018. Marriage between Applicant and deceased was solemnized on 28th February 2016. The FIR is completely silent about demand of dowry or money by accused or his relatives. The entire FIR revolves around the fact that accused was complaining that the victim was talking to some one on phone. Victim had informed that accused is suspecting that she is in relationship with some one and not interested in her. The accused had also informed about said fact to complainant. The FIR also discloses that the police found note written by victim in English stating that “No one is responsible for my death. Lipsa Das” Supplementary statement of complainant was recorded on 29th August 2018. In the said statement for the first time it was stated that father and sister of accused had demanded dowry. The first informant had transferred Rs.1 lakh. The father of accused then repeatedly demanded money. Hence on 6th October 2016 complainant transferred Rs.2 lakh, Rs.1 lakh on 11th February 2016 into the account of father of accused. It is also alleged that Applicant had purchased Maruti car on loan and there was demand of Rs.5 lakh for making balance payment. The Applicant was ill-treating the deceased. This amount was transferred in 2016. While lodging the FIR the complainant did not make any grievance about demand and apparently the amount was transferred voluntarily. The receipts and bank statement produced by first informant indicate that amount was transferred in to the account of Applicant’s father. The allegations in supplementary statement are after thought. The FIR was registered for offences u/s.306, 323, 504 and 506 of IPC. Sections 498-A, 304-B of IPC were added subsequently. During the course of investigation statements of various witnesses were

recorded. Statement of Rajnish Jarolia states that on 4th August 2018 he found Applicant under tension. He is the co-employee in the office of Applicant. According to to him, Applicant left office at 11.30 to 12.00 noon. He told him that he is going to Delhi. Statement of Sachin Shinde disclosed that he is a milkman and he is delivering milk to residence of accused. On 4th August 2018 Applicant gave call to him and told him to deliver milk in the hand of his wife. He went to his house but door was not opened. According to prosecution these statements create doubt about conduct of accused. It is pertinent to note that door of the house of accused was closed from inside. Victim was found hanging. This is evident from statement of Pravin Kukreja. Post mortem report gives cause of death as Asphyxia due to hanging. Statements of employees from office of victim were also recorded. Vijaykumar Lohia in his statement has stated that Lipsa had come to office on 3rd August 2018. She received call at 11.30 a.m. She left office by informing that she has some guests at home and she would return. Statement of Madhvi Gogate discloses that she is working in the office of Lipsa. About three months ago Lipsa was found in disturbed state of mind. On enquiry with her, she had informed that her husband is suspicious about her and quarreling with her. He tells her that he is not interested in cohabiting with her. CDR location and Toll Naka receipts which are part of charge sheet would indicate that Applicant was not in house or near the scene of offence at the probable time of incident. Suicide note relied upon by prosecution fortifies that victim has committed suicide. She has not blamed anyone. The investigation agency has sought handwriting opinion to show that note was in handwriting of victim.

9. The prosecution case proceeds with theory that accused was suspicious about victim as she was talking to someone on phone. Charge sheet contains screen shots of Whats App chat dated 3rd August 2018. These are in proximity with incident of suicide. The conversation is between Applicant and victim with reference to chats of victim with another person. Victim tells Applicant that person is her friend. Nothing else. Applicant replied that he got call from number of Ameya and the caller told him that his wife is after him. Learned advocate for Applicant submitted that screen shot which is subject matter of application would indicate that victim is responding to some one that she cannot stop thinking about him. The conversation further indicate that the victim stating that she is returning from office. The accused telling her that he is not in Pune and she should pack her bag and leave. The conversation also refers to the response of victim that she is done with her life and accused replying that she has gone mad and she should not do anything stupid. The victim responded that it is her fault. The entire conversation reveals disturbance amongst Applicant and victim. During investigation statement of Amey Kanekar was recorded, who has referred to his friendship with victim through Facebook. He stated that victim had told him that she likes him. He had told her that he is married person and stay happily with husband. He had informed accused that there is pure friendship between him and victim and nothing beyond that. It cannot be said that there was instigation by Applicant or abetment to victim to commit suicide.

10. There is no material to frame charge for the alleged offence against the Applicant. There is no debate that roving inquiry and weighing evidence as is done in trial is not permissible at the stage of

framing charge or exercising powers of discharge. In the case of PVijayan Vs. State of Kerala – AIR-2010-SC-663, and Dilawar Babu Kurane Vs. State of Maharashtra – AIR-2002-SC-564, it is held that Judge was not a mere post office to frame the charge at the behest of prosecution. But had to exercise his judicial mind to the facts of case in order to determine whether a case for trial has been made out by prosecution. In the case of State of M.P Vs. Sheetla Sahai – 2009-Crl.L.J.-4436 (SC), it is held that material brought on record whether disclose commission of offence or not must be determined having regard to entirety of materials brought on record by prosecution and not on part of it. Plea that court at the time of framing of charge could only look to those materials whereupon prosecution intended to rely upon and ignore others which were in favour of accused was not tenable.

11. Any person who abets the commission of suicide is liable to be punished u/s.306 of IPC. Section 107 of IPC lays down the ingredients of abetment which include instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing.

12. Section 113-A and 113-B of Indian Evidence Act reads as follows :-

“113-A. Presumption as to abetment of suicide by a married woman.-

When the question is whether the commission of suicide by a woman had been abetted by her husband

or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

“113-B. Presumption as to dowry death.-

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

13. It is settled law as laid down in various precedents by Supreme Court that legislative mandate of Section 113-A is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty as per the terms defined in Section 498-A IPC, the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof showing that such an offence has been committed by the accused u/s.498-A IPC is on the prosecution (Pinakin Mahipatray Rawal Vs. State of Gujarat – [2013]10-SCC-48).

14. Section 113-B of Indian Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the Court shall presume that such person has committed the dowry death (Shanti Vs. State of Rajasthan – AIR-1991-SC-1226).

15. In this case the proximate cause of suicide is different than that of demand or harassment for dowry,. The FIR is silent about demand or ill-treatment due to non fulfillment of dowry. The supplementary statement refers to transfer of amount in to the account of father of accused before marriage, which is apparently as per their understanding as the incidents are of 2016. The suicide note does not blame Applicant for extreme step taken by victim.

16. In the case of Rajababu and another Vs State of Madhya Pradesh (supra), the Hon'ble Supreme Court has observed that for presumption u/s.113-A of Evidence Act the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband or any relative of her husband had subjected her to cruelty. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A of IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

17. In case of Ramesh Kumar Vs State of Chhattisgarh (2001)9-SC-618, it was observed as follows :

“12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws an incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (I) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the court *may presume* that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression ‘may presume’ suggests. Secondly, the existence and availability of the above said three circumstances shall not like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to ‘all the other circumstances of the case’. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression - ‘the other circumstances of the case’ used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last

but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defense or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'may presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says- 'Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.'

18. In the case of State of West Bengal Vs. Orilal Jaiswal – (1994)1-SCC-73, it was observed as follows :

“15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceeding. In a criminal trial however intriguing the facts and circumstances of the case may be, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of the Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the case and the materials placed on record. Lord Denning in *Bater Vs. Bater* (All ER at P.459) has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.”

19. The prosecution proceeds on the basis that suicide note was written by deceased. The investigating agency has obtained handwriting expert's opinion which supports the prosecution case that writing on the suicide note is that of the deceased. The victim has not held responsible anybody for suicide. Prior to the incident of suicide there was exchange of messages between deceased and Applicant which refers to tension between them which has probably led to the incident of suicide.

20. It is important to examine the basic ingredients of Section 306 IPC. It is reproduced as under :

“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.”

21. Section 107 of the IPC relates to the ‘Abetment of a thing’ which reads as follows :

“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 willful misrepresentation, or by willful 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.

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.”

22. To constitute the offence under Section 306 of IPC there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. The accused must have *mens rea* to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must in close proximity to the act of committing suicide. (Mohit Singhal & Anr. Vs. The State of Uttarakhand & Ors. decided by the Hon’ble Supreme Court in Criminal Appeal No.3578 of 2023.)

23. It is necessary for the prosecution to prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide and in the absence of availability of such material, accused cannot be compelled to face trial for the offence under Section 306 of IPC.

24. In the case of Sanju @ Sanjay Sengar Vs. State of Madhya Pradesh 2002-Cri.L.J.2796, the Appellant before the Apex Court was the brother of wife of deceased. It was the prosecution case that after the marriage of deceased with appellant’s sister, there was continuous ill treatment by the deceased and his family members to his appellant’s sister. She had gone to her parents house and started living with the Appellant. About two months prior to the

incident, the Appellant advised the deceased to take his sister back to her matrimonial house and treat her properly. On 25th July 1998, the Appellant visited the place of the parents of deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or harassed. The appellant threatened the parents of the deceased that if they do not mend their behaviour towards his sister, he would be compelled to resort to filing a complaint under Section 498-A of IPC. The Parents of the deceased expressed helplessness. They informed the deceased about the same. He went to the house of the parents of the Appellant, where quarrel took place between them. The deceased returned alone and told his brothers and others that Appellant had threatened and abused him by using filthy words. On 27th July 1998, he committed suicide. Suicide note was left by him. On the basis of suicide note, charge-sheet was filed against the accused/Appellant. The Apex Court considered the decisions and in the light of definition of abetment under Section 107 of IPC held that, even if the Court accepts the prosecution story that the appellant told the deceased 'to go and die' that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea* is necessary concomitant of instigation.

25. In the case of Ramesh Kumar Vs. State of Chhattisgarh (supra) (2001)9-SCC-618, it is observed 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 spell out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Making the deceased free-to go wherever she like and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free “to commit suicide”.

26. In the case of Madan Mohan Singh Vs. State of Gujrat and Another (2010)8-SCC-628, the appellant therein was working as DET in Bharat Sanchar Nigam Ltd. The deceased was working as driver in BSNL. The complaint was filed by the wife of the deceased. The deceased has written suicide note stating that the accused was responsible for his death. The Apex Court observed that there is absolutely nothing in suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 of IPC. There must be an allegation that the accused had instigated the deceased to commit suicide or had engaged with some other other person in a conspiracy and lastly that the accused accused had in any way aided any act or illegal omission to bring about the suicide. In order to bring to an offence under Section 306 of IPC, specific abetment as contemplated by Section 107 of IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of the abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 of IPC. Unless there is specific allegation and material of definite nature, (not imaginary or inferential one), it would be hazardous to ask the accused to face the trial. A criminal trial is not exactly a pleasant

experience.

27. In the case of S.S. Cheena Vs. Vijay Kumar Mahajan 2010-All MR (Cri).-3298 (SC), the factual matrix indicate that there was dispute between two students. This came to the notice of the the head of the department, who asked both the students to submit their versions of the incident in writing. Both gave their versions. Enquiry was conducted by the Security Officer/Appellant. During the inquiry, one of the student/deceased committed suicide. Suicide note was found. FIR was registered under Section 306 of IPC. The Apex Court observed that abetment involves the 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. The intention of the legislature and the ratio of the cases decided by the Court it is clear that in order to convict a person under Section 306 of IPC, there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. The deceased in that case was hypersensitive to ordinary petulance, discord and differences which happen day to day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. It would not travesty of justice to compel the Appellant to face a criminal trial without any credible material whatsoever.

28. In the case of Chitresh Kumar Chopra Vs. State Govt. of NCT of Delhi (2009)16-SCC-605, the Apex Court dealt with the dictionary meaning of the words “instigation” and “goading”. The

Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. It is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of his own facts and circumstances.

29. In the State of Kerala and others Vs. S Unnikrishnan Nair and others (AIR-2015-SC-3351), it was observed that the plain reading of the suicide note which forms the fulcrum of the allegations on plain reading of the same, it is difficult to hold that there has been any abetment by the accused. The note, except saying that the accused compelled to do everything and cheated him and to put him in deep trouble contents nothing else. The accused were inferior in rank and it is surprising that such a thing could happen.

30. Considering the aforesaid circumstances the impugned order rejecting application for discharge is required to be quashed and set aside and Applicant deserves to be discharged from the case.

ORDER

- (i) Criminal Revision Application No.358 of 2022 is allowed;
- (ii) Impugned order dated 8th August 2022 below Exhibit-3 in Session Case No.415 of 2020 passed by Additional Sessions Judge, Pune is set aside. The Applicant is discharged from Session Case No.415 of 2020 pending before the Court of Sessions at Pune;
- (iii) Application stands disposed off.

(PRAKASH D. NAIK, J.)