

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-1808-2011 and
CRM-A-216-MA-2013
Reserved on:-11.04.2023
Date of Decision:- 20.04.2023**

JAGBIR

.....APPELLANT

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Namit Gautam, Advocate
for the appellant.

Ms. Anamika Prakash, Advocate
for respondents No.2 to 4.

Mr. Surinder Singh, AAG, Haryana.

VIKRAM AGGARWAL, J.

1. This judgment shall dispose of the aforementioned criminal revision petition and application for leave to file appeal. The criminal revision petition is directed against the order dated 31.05.2011 passed by the Additional Sessions Judge, Hisar vide which the application filed by the petitioner-complainant for summoning respondents No.2 to 4(therein)as additional accused under Section 319 code of Criminal Procedure (for short Cr.P.C.) was dismissed. Since no stay was granted, the main trial itself was decided and the accused was acquitted giving rise to the application seeking leave to file appeal.

2. Since the main case itself was decided, the CRR-1808-2011 has been rendered infructuous and is disposed of as such.

CRM-A-216-MA-2013

3. The applicant-appellant seeks leave to file appeal against the judgment dated 16.01.2013 passed by the Sessions Judge, Hisar vide which the respondent-accused Vinod Kumar was acquitted of the charge framed under Section 306 I.P.C.

4. On 03.02.2010, one Sombir committed suicide by consuming some insecticide. He left behind a suicide note as per which Ran Singh, Bhima, Vinod, Virender and Rajesh who were partners of the deceased Sombir in a business of sale and purchase of property were not paying Rs.10/12 lacs which they were due to pay to Sombir. Fed up with this, Sombir committed suicide. On a statement given by his brother Jagbir Singh, Fir No.124 dated 03.02.2010 under Section 306/34 IPC at Police Station Sadar, Hisar was registered. Investigation commenced. Only accused Vinod was arrested and final report under Section 173 Cr.P.C. was submitted against him. The prosecutions examined 13 witnesses. No evidence was led in defence. After examining the matter, the trial Court acquitted the respondent-accused, leading to the filing of the present application for the grant of leave to file appeal.

5. Notice of this application was issued.

6. I have heard learned counsel for the parties and, with their assistance, have also gone through the record of the case.

7. Learned counsel for the applicant-appellant has submitted that the trial Court gravely erred in acquitting the respondent-accused. It has been contended that the prosecution had proved its case against the accused by leading cogent evidence and had proved the guilt of the accused beyond reasonable doubt. It has been submitted that the trial Court decided the matter as if it was deciding a civil suit and did not even make a reference to the suicide note. Learned counsel has

contended that in the suicide note, the deceased Sombir had clearly stated that it were his partners who had driven him to commit suicide. Learned counsel has submitted that under the circumstances, the judgment deserves to be set aside.

8. On the other hand learned counsel for the respondent-accused and learned counsel representing the State of Haryana have submitted that there is no illegality in the judgment passed by the trial court. It has been contended that the prosecution had failed to prove its case against the accused and no case of abetment of suicide was made out. It has been submitted that under the circumstances, the trial court rightly acquitted the accused.

9. I have considered the submissions made by learned counsel for the parties.

10. Before advertng to the merits of the case, it would be essential to examine what would constitute abetment. Section 107 IPC defines abetment and lays down 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 of that conspiracy, and in order to the doing of that thing; or Thirdly. - Intentionally aids, by an act or illegal omission, the going 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.”

11. Now it has to be determined as to whether in a particular case, an offence of abetment can be said to have been made out. What are the parameters and what are the principles is to be seen. In the case of **Kishangiri Mangalgi**

Goswami Vs. State of Gujarat, 2009(1) RCR (Criminal) 947, the Hon'ble

Supreme Court was dealing with an appeal against a judgment of conviction under Sections 306 and 498A IPC. In that case, a lady committed suicide by burning herself. Her husband was alleged to have inflicted mental and physical torture on account of having brought inadequate dowry. Fed up with the harassment, she committed suicide. The accused was convicted by the trial Court and the conviction was maintained by the Hon'ble High Court of Gujarat. The Hon'ble Supreme Court, however, reversed the judgment and acquitted the accused. It was held by the Hon'ble Supreme Court as under:-

“9. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under Section 306 of Indian Penal Code.

10. In *State of West Bengal v. Orilal Jaiswal, 1994(3) RCR(Criminal) 186* this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

11. Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be

punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence

12. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough. [See *Mahinder Singh v. State of M.P., (1995 AIR SCW 4570)*].”

12. In the case of *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), 2009(16) SCC 605*, the Hon'ble Supreme of Court of India upheld the framing of charge under Section 306 IPC. In that case, the accused and the deceased were doing business in partnership. The accused was alleged to have mentally tortured the deceased and made him to sign a settlement, wherein share of profit of the deceased was reduced. The accused also asked the deceased that if he wanted to live in the society, he should sign the agreement or should die by taking poison. Soon thereafter, the deceased committed suicide. The Hon'ble Supreme Court held as under:-

“12. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the Indian Penal Code.

13. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 Indian Penal Code ?

14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the Indian Penal Code. The meaning of the said word was

considered by this Court in *Ramesh Kumar v. State of Chhattisgarh, 2001(4) RCR(Criminal) 537 : (2001)9 SCC 618.*

Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

16. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide.

Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for selfprotection or an escapism from intolerable self.

17. In the present case, the charge against the appellant is that he along with other two accused "in furtherance of common intention", mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and, therefore, clause firstly of Section 107 of the Indian Penal Code was attracted. Briefly dealing with the material available on record, in the order directing framing of charge against the appellant, the learned trial court has observed as under:

"In the present case the evidence shows threatening given to the deceased. One witness called Kartar Singh says that CK Chopra was heard saying to the deceased that the deceased had become dishonest because he was refusing to sign a paper in which the share in some joint property was shown to be 10%. On another occasion Chopra was heard by this witness to say that Chopra would ruin the deceased if he did not give up his claim for 25% and did not agree to accept 10%. Witness Padam Bahadur has stated inter alia that he overheard Jahoor and Mahavir telling the deceased that Chopra had asked them to say that this was the last opportunity to sign the document and that if he wanted to live in the society he should sign the agreement or should die by taking poison. Soon thereafter the deceased committed suicide. Thus the evidence is not of a mere quarrel in which one person told the other go and die without actually suggesting that the opponent should commit suicide. In the present case the evidence collected by the investigation suggest that the deceased had been actually pushed to the wall and the escape by committing suicide was suggested by the accused persons."

13. In S.S.Chheena Versus Vijay Kumar Mahajan, 2010(4) RCR

(Criminal) 66, Hon'ble Supreme Court observed as under:-

“16. In order to properly comprehend the scope and ambit of Section 306 Indian Penal Code, it is important to carefully examine the basic ingredients of Section 306 Indian Penal Code. The said section 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."

17. The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

20. In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under Section 306 Indian Penal Code.

21. "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, 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 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 2 which has been inserted along with Section 107 reads as under :

"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 facilitates the commission thereof, is said to aid the doing of that act."

22. The learned counsel for the appellant has placed reliance on a judgment of this Court *in Mahendra Singh v. State of M.P., 1995 Supp. (3) SCC 731*. In Mahendra Singh, the allegations levelled were as under : (SCC p. 731, para 1)

"1.... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

23. The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 Indian Penal Code merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

24. The learned counsel also placed reliance on another judgment of this Court in Ramesh Kumar v. State of Chhattisgarh, 2001(4) R.C.R.(Criminal) 537 : (2001) 9 SCC 618. In this case, a three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant

husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"20. 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."

25. In this case, the court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant- accused having abetted commission of suicide by Seema may necessarily be drawn. 26. In *State of West Bengal v. Orilal Jaiswal*, 1994(3) R.C.R. (Criminal) 186 : (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. 27. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009(4) R.C.R.(Criminal) 196 : 2009(5) R.A.J. 278 : (2009) 16 SCC 605, had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goad". 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. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances. 28. 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. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 Indian Penal Code 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.”

14. In the case of Amalendu Pal alias Jhantu Versus State of West Bengal, 2010(1) RCR (Criminal) 643, it has been observed by the Hon'ble Supreme Court as under:-

“13. The legal position as regards Sections 306 Indian Penal Code which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab, 2004(4) RCR (Criminal) 740 : 2004(3) Apex Criminal 683 : (2004)13 SCC 129 as follows in paras 12 and 13 :

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 Indian Penal Code. 13. In *State of W.B. v. Orilal Jaiswal* this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 Indian Penal Code is not sustainable.

16. In order to bring a case within the purview of Section 306 of Indian Penal Code there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted

the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 Indian Penal Code.”

15. In the case of Gangula Mohan Reddy Versus State of Andhra Pradesh, 2010(1) RCR (Criminal) 603, Hon'ble Supreme Court dealing with Section 306 - Indian Penal Code, Section 107 i.e. Abetment of suicide held as under :-

“1. In order to convict a person under Section 306 Indian Penal Code 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 this act must have been intended to push the deceased into such a position that he committed suicide.

2. 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.

3. 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 others - Each person has his own idea of self esteem and self respect - Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases - Each case has to be decided on the basis of its own facts and circumstances. 2009(4) RCR(Crl.) 196 (SC) relied.”

16. In the case of *Mariano Anto Bruno & Anr. vs. The Inspector of Police 2022 AIR (Supreme Court) 4994*, the marriage of Mariano Anto Bruno and one Dr. Amali Victoria was solemnized on 08.09.2005. In 2007, a male child was born. On 05.11.2014, the wife is said to have collapsed in the bathroom of the home in which the couple was living. The husband reached the spot and found that his wife had no pulse. Efforts to resuscitate her went in vain and Dr. Amali Victoria passed away. The postmortem examination revealed that death was on account of asphyxia due to external compression of the neck. After three weeks of her death, her mother submitted a complaint against the husband of the deceased and his mother alleging harassment for dowry and abetment of suicide. It was alleged that after the marriage, since her daughter did not have a child for 1½ years, her

husband and his mother used to abuse her. Even after the birth of a male child in 2007, she was subjected to mental torture and was pressurized to have a second child. Extreme harassment led her to commit suicide.

17. The trial Court convicted the appellants and sentenced them to undergo rigorous imprisonment for a period of 03 years each alongwith fine under Section 498-A IPC and 07 years each alongwith fine under Section 306 IPC. The question again before the Hon'ble Supreme Court was as to whether it was a case of abetment of suicide. After examining the entire law on the subject which includes the judgments referred in the preceding paragraphs, the Hon'ble Supreme Court held that both the trial Court and the High Court erred in convicting the appellants for abetment of suicide. While declaring so, the Hon'ble Supreme Court of India has held as under:-

42. It is well settled that the Courts ought to be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. Reference may be made to the judgment of a three-Judge Bench of this Court in *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, wherein this Court set-aside the conviction of the accused for the offence under Section 306 IPC as ingredients of Section 306 IPC were not satisfactorily proved. It was observed as under :-

"20. 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.

21. In *State of West Bengal v. Orilal Jaiswal and Anr.* (1994) 1 SCC 73, this Court has cautioned that the Court should be extremely careful in assessing the facts and

circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

(emphasis supplied)

43. Accordingly, the facts and evidence in the present case which have not been squarely analysed by both the Trial Court as well as the High Court can be summarised as follows:-

1. The complaint against the appellants was filed after 3 weeks of the death of the deceased.
2. There is not a shred of evidence with respect to offence alleged under Section 498A of the IPC meted out to the deceased by the Appellants.
3. There has been no marital discord between Appellant No. 1 and the deceased during their 9 years of married life.
4. There have been several e-mails exchanged between Appellant No. 1 and sisters of the deceased whereby the Appellant No. 1 was showered with praises for taking care of the deceased in the best possible manner and credit was also given to his parents for supporting the deceased in her career. Further, it was the sister of the deceased, who herself sent a mail to Appellant No. 1 saying "amali is fighting a disorder"
5. The deceased was suffering from bipolar disorder and also had suicidal ideas from few days before suicide. Further, the deceased was also undergoing treatment for depression as she was showing major symptoms of depression like tiredness, poor sleep pattern, demoralised feeling to name a few. The fact that deceased was suffering from bipolar disorder was concealed from the Appellant family during their marriage.
6. The Trial Court as well as the High Court did not take the evidence of PW-9, Psychiatrist into consideration while convicting the Appellants under Sections 306 and 498A of IPC.
7. The conviction of the appellants is solely based on the oral evidence of mother and sister of the deceased, who are interested witnesses.
8. The post mortem report does not give the cause of the death but on 15.12.14, the cause of the death is shown as Ashpyxia due to external compression.

18. The case shall have to be decided on the touch stone of the principles laid down in the aforementioned judgments. No doubt, a young man lost his life. He had to end it himself which is even more tragic. He also executed a suicide note which, strangely, the trial Court does not even mention about. The judgment of the trial Court of course lays more stress on the capacity of the deceased to pay money to the accused rather than whether it was a case of abetment of suicide or not. The trial Court, in the considered opinion of this Court, did not record proper reasons for acquitting the accused because it was required to sift and weigh the evidence as also keeping in mind the principles of law while deciding the case. From the arguments of the parties and from a perusal of the record as also the judgment of the trial Court, it emerges that the reasoning given by the trial Court is not very sound and many important aspects were not discussed. However, there is no flaw in the decision arrived at. Merely because the respondent-accused owed some money to the deceased and was not returning it and on account of the same, the deceased committed suicide would not attract the offence of abetment of suicide. No details were given as to when the money was borrowed, how much money was borrowed, what document was executed and when the same had been demanded back from the accused. Furnishing of no proof of lending money is also one of the grounds which goes against the case of the prosecution. However, the main issue which the prosecution was not able to prove was that it was the respondent-accused who had abetted the suicide of Sombir. Nothing came on record which could have even suggested that the respondent-accused aided, Goaded or incited sombir to commit suicide. In fact, it was a purely civil dispute and if sombir was of such a sensitive nature that on account of this, he committed suicide, it can, by no stretch of imagination be said that the respondent-accused had abetted the same. In the

considered opinion of this Court, the case in hand is not at all a case of abetment of suicide, as was rightly held by the trial court.

19. Even otherwise it is settled law that Courts should be slow in interfering with judgments of acquittal. It is now well settled that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of "caution" was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the facts of each case. As stated above, in the present case, there is no perversity on facts or law. Still further, in the case of **State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Criminal) 01**, the Hon'ble Apex Court laid few parameters to be kept in mind while entertaining appeals against judgments of acquittal. It was held that the Appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the Appellate Court may be the more probable one. It was held that while dealing with a judgment of acquittal, the Appellate Court has to consider the entire evidence on record so as to arrive at a finding as to whether the view of the trial

Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters presumption of his innocence. The part of the judgment dealing with this issue is reproduced here-in-below:-

“This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate Court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate Court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate Court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate Court can interfere with the order of acquittal. The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.”

This view was also taken by the Hon'ble Apex Court in a case **State of Rajasthan Vs. Madan alias Madaniya, 2019 Crl.L.R. (S.C.) 09**. It was held by the Hon'ble Apex Court that in an appeal against acquittal, the Appellate Court would only interfere where there exists perversity of facts and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the judgment in the case of **Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2)SCC 490.**”

20. Keeping in view the aforementioned facts and circumstances and the position of law as noticed in the preceding paragraphs, this Court is of the

considered opinion that there is no ground to interfere in the judgement of acquittal passed by the trial Court. Under the circumstances, I do not find any merit in the present application and the same is hereby dismissed.

20.04.2023.
himanshu

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No