

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 266 of 1990

**Smt. Ramdhari Debi & Anr.
-Vs-
The State of West Bengal**

For the Appellant : Mr. Arnab Chatterjee
(Amicus Curiae)

For the State : Mr. Narayan Prasad Agarwalla,
Mr. Pratick Bose

Heard on : 08.09.2023, 04.01.2024, 05.01.2024

Judgment on : 13.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 28th May, 1990 passed by the Learned 7th Additional Sessions Judge, Alipore, 24 – Parganas, in Sessions Trial No. 1(9) of 1988, convicting and sentencing the appellants to suffer rigorous imprisonment for 4 years and to pay a fine of Rs.500/- each in default to suffer simple imprisonment for a further period of two months for the offence under Section 306 of the Indian Penal Code and to suffer rigorous imprisonment for one (1) year and to pay a fine of Rs.100/- each in default to suffer simple imprisonment for a further period of 15 days for the offence under Section 498A of the Indian Penal Code.

2. The police case was started against the appellants on the alleged grounds that the appellants committed torture and cruelty on the victim lady named Munni Debi wife of Suraj Prosad for that she was compelled to commit suicide by setting fire on her person after pouring kerosene oil on her person. She was removed to N.R.S. Medical College and Hospital where she died.
3. Based on the written complaint, G.R. Case No. 467 of 1987 in connection with the F.I.R. of a cognizable offence reported under Section 154 of the Code of Criminal Procedure at Entally Police Station.
4. The Investigating Officer after completion investigation submitted charge-sheet under Sections 498A/306 of the Indian Penal Code against the appellants.
5. Charges were framed under Section 498A read with Section 34 and Section 306 read with Section 34 of the Indian Penal Code against the appellants who pleaded not guilty and claimed to be tried.
6. The prosecution in order to prove its case produced 18 witnesses and exhibited certain documents and the defence cited two witnesses.
7. The Learned Amicus Curiae for the appellant submitted that:-
 - i. The Learned Sessions Judge was wrong in law in taking into consideration the evidences of PW-5 and PW-7 (who are the landlord and landlady of the appellants/accused) and PW-13 (relation of PW-5) and PWs-14,15,16 (tenants under the PW-7) as it has been established from the materials on record that they are the interested witnesses.

- ii. The Learned Sessions Judge should have taken into consideration the delay (11 hours) of lodging F.I.R. by PW-1 and no explanation has been given for the same by the prosecution.
- iii. The Learned Sessions Judge erred in law in relying on the F.I.R. being Exhibit-I as the same was lodged after the launching of investigation as the same will be evident from the materials on record.
- iv. The Learned Sessions Judge should have believed the evidences of PW-1 (father of the victim girl), PW-2 (husband of the victim lady) and PW-9 and should have acquitted the appellants/accused from the charges under Sections 306 and 498A of the Indian Penal Code.
- v. The Learned Sessions Judge ought to have disbelieved the evidence of PW-4 as the said witness failed to produce any document in order to support of his oral statement.
- vi. The Learned Sessions Judge should not have taken into consideration the Exhibit-7 as the same has not been proved in accordance with law.

8. Learned Amicus Curiae further submitted that:-

- i. In the instant criminal prosecution the husband of the victim housewife was not made as an accused by the de-facto complainant. On the other hand the husband of the victim housewife was examined as PW-2 and during the trial he was declared hostile by the prosecution. PW-5 in her examination-in-chief (second last line) deposed that Suraj Prasad @ Prosad (husband) assaulted his wife.

PW-14 (seventh line from bottom) deposed that wife of Suraj Prasad was treated with cruelty by her husband and other in-laws. The accused persons and also Suraj Prasad used to assault the victim. PW-15 also deposed in the same fashion that Munni Debi was subjected to torture and assault by the accused persons and her husband.

- ii. When the prosecution intended to place the husband of the deceased on the witness side; the prosecution could not claim that the present appellants were the only persons who assaulted and tortured the victim housewife. Thus, the present appellant should also be given the same benefit as of the husband of the victim housewife.
- iii. PW-5 and PW-15 were the vital witnesses of the prosecution. Both deposed in the same tune that on the day of occurrence in the morning there was an altercation/free fight between Suraj Prasad, Rajkumar Prasad and Ramdhari Debi due to which Suraj Prasad sustained injury on his neck and with intervention of PW-5 and PW-15 the matter was dropped and Ramdhari Debi took Suraj Prasad to dispensary for treatment. After some time the deceased housewife bolted the door from inside and committed suicide by setting herself on fire.

PW-13, 14 and 16 were the other vital witnesses for the prosecution. All of them stressed on family disturbance and the act of suicide, without harping the act of cruelty on demand of dowry.

- iv. Though the present appellants were convicted under Section 498A, not a single witness deposed about any physical or mental cruelty/torture for demand of dowry. Pertinently mere disturbance between a couple/family, is not sufficient to convict a person under Section 498A of the Indian Penal Code, if there is no allegation of demand of dowry.
- v. The appellants were also convicted under Section 306 of the Indian Penal Code. From the statement of PW-5 it is clear that the victim housewife committed suicide. However, none of the witnesses mentioned a single sentence against the present appellants, which shall be considered as an act of abetment or instigation to commit suicide.

In absence of any specific allegation of abetment or instigation to drive a woman to commit suicide, conviction under Section 306 of the Indian Penal Code is totally bad in law.

- vi. PW-1 (father of the deceased) deposed that his daughter was arrogant and when she was aged about 10-11 years, she attempted to commit suicide. Thus, it can be said that the deceased housewife had suicidal tendency.
- vii. During examination of the appellants under Section 313 Cr.P.C. questions were not put to the appellant regarding allegation of demand of dowry and/or any act of abetment.

- viii. The deposition of PW-13, 14 and 16 before the Court are totally contradictory to their first statement made before the Investigating Officer (PW-18).
- ix. The Investigating Officer in his deposition stated that he seized the kerosene oil container, one Janata stove from the room of Suraj Prasad. Thus, the present appellants cannot also be blamed for storing kerosene oil with an intention to instigate the victim housewife to commit suicide.
- x. It is an important issue to add that the couple were married in 1981 and during the subsistence of their marriage three female children were born. However, none of them were examined during the trial.
- xi. Father of the victim housewife was examined as PW-1. Nowhere he stated anything regarding any demand of dowry and/or any act of torture by the present appellant. The other family members of the victim housewife were not examined by the prosecution.
- xii. In order to establish a case of abetment of committing suicide, prosecution had to establish two things, firstly, that the death was suicidal in nature and that intention of the accused/appellants to aid and instigate or abet the deceased to commit suicide. In this case, the death is suicidal in nature. Though post-mortem report was not exhibited during trial. However, from the evidence of the post-mortem doctor and other witnesses it was established that it was a case of suicide. The next ingredient was, of course, whether the appellants had any intention to aid or instigate or abet the

deceased to commit suicide. That nowhere within the four corners of the evidence it had been spelt out that the appellants had actually instigated the deceased to commit suicide or abetted her to commit suicide or they had any intention that she would commit suicide. Simply because the mother-in-law has uttered something; cannot be said to have been uttered with mens rea. Alleged suicide was not the direct result of the alleged bitter relationship between the deceased and the appellants. In such case, it can hardly be accepted that the appellants had actually abetted or instigated the deceased to commit suicide. Thus, the presumption under Section 113 of the Evidence Act cannot possibly be drawn against the appellants.

- xiii. Section 306 of the Indian Penal Code provides punishment for abetment to commit suicide. Expression 'abetment' has been defined in Section 107 of the Indian Penal Code, the intention of the accused to aid or instigate or abet the deceased to commit suicide must be established. Considering the definition of 'abetment' under Section 107 of the Indian Penal Code, it is quite clear that charge of an offence under Section 306 of Indian Penal Code cannot be sustained merely on the allegation of harassment to the deceased.
- xiv. From the overall assessment of the prosecution case it can easily be concluded that this is not at all a case of abetment of suicide and prosecution failed to bring home the charges of abetment of suicide. Not a single witness deposed anything which proved the allegation of abetment against the appellant.

- xv. The appellants submit that it is trite law that in order to attract the provisions of Section 498A of Indian Penal Code the prosecution has to make allegations of harassment to the extent as to coerce the victim to make any unlawful demand of dowry, or any unlawful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury to life, limb or health. In the instant case, it would be evident that no such allegation has been made out by any of the witnesses. Mere ill-treatment on the wife and/or daily wear and tear in the matrimonial life cannot constitute an offence under Section 498A of the Indian Penal Code.
- xvi. The overall assessment of the evidence by the Learned Judge is unworthy of any credit and acceptance by a man of reasonable prudence. Each part of the prosecution case suffers from meagerness of evidence or absence of satisfactory evidence, but the Learned Judge in a very slipshod and casual manner discussed the evidence wherein he left the material facts favouring the accused the evidence wherein he left the material facts favouring the accused from his consideration and thus acted with serious illegality.
- xvii. The order of conviction as recorded against the appellant is based on evidence illegally admitted and/or non-consideration of material pieces of evidence brought out during cross-examination. The Learned Judge acted in defiance of the sense of justice and the

provisions of law by filing of the gap in the prosecution case by introducing imaginary facts and conjectural circumstances.

- xviii. The order of conviction and sentence as recorded against the appellant is un-sustainable in law in as much as it has not been proved beyond reasonable doubt that the incident had occurred on the date alleged, at the time alleged, and at the place alleged, under the circumstances as stated by the prosecution.
- xix. Upon a proper appreciation of evidence on record and correct assessment of the provisions of law, the Learned Judge ought to have held that the prosecution has failed to bring home the charge/allegations levelled against the appellant and the prosecution case is mixture of lies and improbability.

9. A circumspection of the prosecution witnesses revealed as follows:

- i. PW-1 the father of the victim stated to have reached the NRS Hospital and found his daughter to have expired. He further stated that his daughter never complained anything about assault or torture on her by any member of the in-laws's family. He further deposed that his daughter did not tell him anything about the mother-in-law or the brother-in-law.
- ii. During cross-examination, PW-1 stated that he did not know Bengali. He could not read and write Bengali. He did not know the contents of Exhibit-1. During further cross-examination on recall by defence, PW-1 stated that Munni Devi was illiterate. She was given marriage in the year 1981. She had three

daughters. She was arrogant. While she was aged about 10/11 years she attempted to commit suicide by falling in a well as Pw-1 forced her to go to school. The pecuniary condition of Suraj Prasad was not at all good. After marriage, Munni used to visit the house of PW-1 occasionally. She never complained of anything to PW-1 that there was trouble between the landlord and others.

- iii. During examination on recall by the prosecution, PW-1 stated that after the incident, he went to Entally P.S. Five others also accompanied him to P.S. He narrated the incident to Daroga Babu and he asked the police to go to the spot. Then said that he had asked the police to go to N.R.S. Hospital where his daughter was admitted. He put his signature on the statement recorded by the police. He did not state in the F.I.R. (Exhibit -1) that his daughter lodged a diary at Entally P.S. but he stated before the police that his daughter treated at N.R.S. Hospital due to injury by hot tea on 14.01.1985. He did not remember if he had stated before the police that his daughter used to complain before him regarding the torture and assault by her father-in-law and her brother-in-law. The three daughters were staying with their father. It was not a fact that he had suppressed the truth to save the accused persons and also those children. It was not a fact that he was deposing falsely at the request of the accused persons.

- iv. PW-2 namely Suraj Kumar Prasad stated in his examination-in-chief that he resided at Ichapur. 2nd Row, Cal-15. Munni was his wife. She committed suicide by setting fire. PW-2 stated that his wife committed suicide by setting herself on fire in his absence at the house at the relevant time he had been to the chamber of Dr. Mallick for treatment accompanied by his mother. On return to his house, he found his wife to have been removed to the NRS Hospital. He further stated that there was no incident occurring at his house involving his wife and he was declared hostile by the prosecution.
- v. During cross-examination PW-2 stated that he did not know English. He had no trouble with his wife and she was happy in his house.
- vi. During further cross-examination on recall, PW-2 stated that Sudhir Das @ Hazra Babu was his landlord and the relation between other tenants was not good. The brother of PW-2 Rajkumar lodged a diary against landlord and others. He stated that he married Munni Devi in the year 1981. He had 3 daughters. Sometimes after the marriage Munni Devi attempted to commit suicide for which he lodged a petition in court that was in the year 1985.
- vii. PW-3 Dr. Tapas Kumar Sarkar stated in his evidence that he was medical officer at N.R.S. Hospital. On 06.03.1987 at 09:25 am, he was on duty in the Munni Devi, W/o- Suresh Prasad,

7/1 Kulis 2nd Lane, Cal-15. PW-3 the Medical Officer stated that the victim lady was admitted with hundred per cent recent burn with smell of kerosene oil coming from her mouth. The history regarding burn injury was not received from the patient party.

- viii. PW-4 Dr. Kashi Nath Mallick stated in his evidence that he was a Medical Practitioner, having his chamber at 46/1, Debendra Chandra Dey Road, Calcutta. He knew Suraj Prosad and his family. In the first week of March, 1987 Suraj Prosad came to his chamber along with his mother complaining that he sustained an injury over his neck as a result of altercation with his brother. Suraj Prosad had got one brother so far his knowledge went. He had come to his chamber at about 08:20/08:30 a.m. While he was in his chamber some para boys came and reported him that his wife caught fire. On hearing this, they left his clinic. He did not know anything else. He was not called to their house on that day.
- ix. During cross-examination, PW-4 stated that he did not maintain any prescription book or any register. Police came to him. He did not adduce any paper before the police. It was not a fact that Suraj Prosad and his mother did not come to his chamber on that day and the relevant time it was not a fact that para people did not come to his clinic. It was not a fact that Suraj Prosad did not complain before him that he had

altercation with his brother or that he sustained injury on his neck by his brother.

- x. PW-5 namely Lakshmibala Das in her examination-in-chief stated that she resided at 15, Kuliadanga, 2nd Lane, Calcutta – 15 within P.S.- Tangra. She knew Suraj Prosad. He was their tenant. She knew the mother and brother of Suraj Prosad who were present in court today (identified the accused on dock). Munni Debi was the wife of Suraj Prosad, he had died. Then the witness said, that Munni Debi had committed suicide about 3 years ago in the morning at about 08:00 a.m by setting fire on herself. Suraj Prosad lived along with his mother and brother in joint mess. There was trouble between Munni Debi and the accused persons. Suraj Prosad used to remain outside throughout the day. He used to return home in the evening. She tried to settle the dispute between them but in vain. On the day of occurrence in the morning, Munni Debi assaulted her daughter. At that time, accused Rajkumar was easing himself in the lavatory. There was altercation/fighting between two brothers. Suraj Prosad assaulted his wife. Thereafter, the accused persons also assaulted Munni Debi. Accused Rajkumar pressed the neck of Suraj Prasad. At that time, he was going to tea stall for bringing tea and she saw the incident. On seeing this, she intervened and separated them. Thereafter, Suraj Prosad went to dispensary along with his mother. Sometimes

thereafter Munni entered inside her room leaving her minor children on the verandah and she bolted the door of the room from inside. She found smoke coming from that room. Herself and her three daughters Ratan Ghosh and some others tried to break open the door of the room but they could not open the door. Then, victim Munni Debi opened the door in burning condition and she had come out of the room. Suraj Prosad had five other brothers. Two of them lived separately. She along with Ratan GHosh, Dilip Prosad removed the victim to N.R.S. Hospital by Auto Rickshaw where she was admitted.

- xi. PW-5 stated that the accused persons had got one room and they lived in the said room. At that time, she was returning from tea stall belonging to Bablu. She was carrying a glass of tea in her hand. She tried to open the door by one hand. The altercation or quarrel continued for about 1/1½ hour in the morning between two brothers. No outsider came there at that time. Herself and her three daughters were present in their house at that time. Para people came and tried to break open the door of the room on seeing the smoke and fire. She did not know their names. They tried to break door for about 10/15 minutes. She was standing there all along. They poured water on the victim. They also tried to extinguish the fire inside the room by pouring water. Some of the articles inside the room got damaged by fire. There was water in the house of the respective

tenants. They tried to extinguish the fire with water stored in their house. There was water tap on the road. They took about 15/20 minutes to reach N.R.S. Hospital by auto riskshaw. Doctor asked her name and address. She did not narrate the incident to the doctor. They remained in the hospital for about 10/15 minutes. She did not go to Entally P.S. to lodge any report over the incident. Police came to their house subsequently and she narrated the incident to police. Police came to their house on the very day. Police came to their house at about 10/10.30 a.m. She was examined on that day. Police examined other persons on the same day. There was salish in the locality over the dispute between Munni Debi and the accused persons. Salish was held $\frac{3}{4}$ times in their locality. Munni Debi also lodged diary at the P.S. regarding the torture and assault on her. She did not file any case against Suraj Prosad and others for eviction. She asked the accused persons to vacate the room but they did not vacate the same. There was no trouble between herself and the accused persons over the rent. It was a fact that there was ill-feeling between her and the accused persons over the tenancy and the rate of rent. It was not a fact that she threatened the accused persons on some occasions. It was not a fact that there was no altercation between two brothers on the day of occurrence. It was not a fact that there was no salish in the matter. It was not a fact that she

did not interfere or that she did not separate or restrain them from quarrelling. It was not a fact that she was not present at the time of incident or that she did not see the occurrence. She stated to police that she was returning home from tea stall with a glass of tea in her hand or that she tried to open the door of the room. She stated to police that Ratan Ghosh accompanied her to N.R.S. Hospital.

- xii. PW-6/Dr. Jitendra Nath Roy in his deposition stated that on 07.03.1987, he held P.M. Examination on the dead body of Munni Debi aged about 24 years brought and identified by Constable No. 96, S. Some of Section -Q (Entally P.S.) in connection with Case No. 79 dated 6.03.1987. On examination he found the following:-

A. 1st, 2nd and 3rd degree burn involving (a) whole areas of face, (number-b) whole areas of neck, (number-c) whole areas of both sides of chest, (number-d) whole areas of both sides of breasts, back of chest, (number-e) whole areas of left side of thigh and left leg, (number-f) whole areas of right thigh and right leg and whole areas of right sided buttock and left sided buttock.

On careful dissection of the neck was done by step by step and every step was examined with the help of magnifying lens but no mark of injury nor E.V.C. Blood found on soft tissues or bony tissues of neck except burn injuries.

B. Multiple lenoiudinan incision was given all over the body but no mark of injury nor E.V.D. Blood found on soft tissues and bonny tissues of the body except burn injury.

The death in his opinion was due to the effects of burn injuries stated above, ante-mortem in nature. Further opinion on receipt of chemical examiner report. Vicera was preserved in S.S. Solut on of Sodiem Chloride, blood in vial, blood sloped in a blotin paper with control, scalp hairs, nail cutting and skin sent to Chemical Examiner through P.S. with properly sealed and levelled. During cross-examination, he stated that the body was not decomposed and it was fresh. He thought that the deceased died within 24 hours from time of examination. He held post mortem examination at 02:00 P.M. on 07.03.87.

xiii. PW-7 deposed to have seen the victim lying in front of the bathroom sustaining burn injuries and thereafter removed to the hospital by his wife. He had been the seizure list witness who identified his signature marked as Exhibit 3/1. During his cross-examination he stated his ignorance of the contents of the seizure list.

xiv. PW-8 the S.I. of Police identified his statement recorded by him marked Exhibit 1 along with his signature marked Exhibit 1 /2.

xv. PW-9 deposed to have taken the injured to NRS Hospital by auto rickshaw along with PW-5 and one of the brother of Suraj

Prasad the husband of the victim further stated to be ignorant about the incident.

- xvi. PW-10 was the photographer to have taken the photographs with the dead body of the deceased victim marked Exhibit 3 and the negatives of the same to have been marked as Exhibit 4.
- xvii. PW-11 was the Constable of Calcutta Police who had registered the police case on 06.03.87. He had been to the place of occurrence and prepared the rough sketch map. The deponent further described the place of occurrence in his evidence.
- xviii. PW-12 identified the bed head tickets marked MAT Exhibit 5 collectively and further submitted that he did not have any personal knowledge about the incident.
- xix. PW-13 deposed that the victim had narrated her discontentment at her husband's house over the relationship with her mother-in-law being tortured by the mother-in-law and the brother-in-law. During her cross-examination, she stated that she resided at a distance which took 10 minutes to travel from the house of her sister where the victim and her family resided. She further stated that the victim had earlier attempted to commit suicide on prior occasion for which a diary was lodged.
- xx. The evidence of PW-14 was based on hearsay.
- xxi. PW-15 in his deposition stated that on the day of occurrence at about 08:00/08:15 a.m. in the morning the accused persons

(mother-in-law and brother-in-law) assaulted Munni Debi. He intervened and separated them. Prior to that Munni Debi was subjected to torture and assault by the accused persons and her husband. Accused Raj Kumar Prosad caught hold the neck of Suraj Prosad and he intervened and separated them. Raj Kumar Prosad assaulted Munni Debi. At that Suraj Prosad objected when he was caught hold by Raj Kumar Prosad. He intervened and separated them. Suraj Prosad sustained some injury on his neck. Then Ramdhari Debi took Suraj Prosad to the dispensary. Thereafter, he went to market. While, he was returning home from market he found a crowd near their house. Then, he came to learn that Munni Debi committed suicide and she has already been removed to hospital.

- xxii. PW-16 in his deposition stated that on 06.03.87 at about 08:30 a.m. in the morning on the day of occurrence there was trouble and altercation between Munni Debi and her mother-in-law, brother-in-law and husband. Accused Raj Kumar Prosad assaulted Munni Debi first. At that, Suraj Prosad raised protest. Then, there was Marpit between two brothers. Suraj Prosad sustained injury on his person. Ramdhari Devi took Suraj Prosad to the dispensary. The relation between Munni Debi and her mother-in-law, brother-in-law and other inmates of their family was very bad. On several occasions he tried to persuade them and to maintain peace in the family. They were in habit of

picking up quarrels among themselves. After the incident of assault he went to market. While, he was returning from market, he heard from para boys that Munni Debi committed suicide by fire. Some portion of his room also got damage by fire. Munni Devi was removed to hospital by a Toto Rickshaw. Ramdhari Devi and Raj Kumar Prosad are present in court for identification.

- xxiii. In cross-examination PW-16 stated that when the two brothers were quarrelling among themselves he intervened and separated them. Madhusadan Sen was his father, who also intervened and separated Suraj Prosad and Raj Kumar Prosad on the day of occurrence. It was not a fact that he was standing there when the two brother were quarrelling among themselves. It was a fact that the two brothers used to quarrel among themselves regularly. It was not a fact that he was deposing falsely. It was not a fact that Raj Kumar Prosad also accompanied his mother to the dispensary. It was not a fact that the two brothers used to quarrel among themselves over Munni Devi. It was not a fact that left the place in the year 1985. It was not a fact that he did not reside in the house at the time of incident.
- xxiv. PW-17 recorded the G.D.E. entry marked as Exhibit-7 and his signature thereon as Mat Exhibit- 7/1.
- xxv. PW-18 was the Investigating Officer who on completion of the investigation had filed the charge-sheet on 11.11.87.

10. Section 498A of the Indian Penal Code states as follows:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

11. The Apex Court in the case of **S.S. Chheena v. Vijay Kumar Mahajan**¹ laid down the following principles:-

“15. *In order to properly comprehend the scope and ambit of Section 306 IPC, it is important to carefully examine the basic ingredients of Section 306 IPC. 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.”

16. *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,*

¹ (2010) 12 SCC190

irrespective of the means employed by him in achieving his object of killing himself.

17. Suicide by itself is not an offence under either English or Indian criminal law, though at one time it was a felony in England. In England, the former law was of the nature of being a deterrent to people as it provided penalties of two types:

- Degradation of corpse of the deceased by burying it on the highway with a stake through its chest.
- Forfeiture of property of the deceased by the State.

This penalty was later distilled down to merely not providing a full Christian burial, unless the deceased could be proved to be of unsound mind. However, currently there is no punishment for suicide after the enactment of the Suicide Act, 1961 which proclaims that the rule of law whereby it was a crime for a person to commit suicide has been abrogated.

.....

21. 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 : 1995 SCC (Cri) 1157] In *Mahendra Singh* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] 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.”

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 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

22. The learned counsel also placed reliance on another judgment of this Court in *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618 : 2002

SCC (Cri) 1088] . 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.”

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.

23. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that: (SCC p. 90, para 17)

“17. ... 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.”

24. *This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The 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. 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.*

25. *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 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.*

26. *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.*

27. *When we carefully scrutinise 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.”

12. In the case of **Gurcharan Singh v. State of Punjab**², the Hon’ble Apex Court held the following:-

“13. Section 107 IPC defines “abetment” and in this case, the following part of the section will bear consideration:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.”

14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether the appellant had the mens rea for the crime he is held to have committed. The conviction of the appellant by the trial court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife

² (2020) 10 SCC 200

was unhappy because of the appellant and she was forced to take such a step on his account.

16. *The necessary ingredients for the offence under Section 306 IPC were considered in S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] where explaining the concept of abetment, Dalveer Bhandari, J. wrote as under : (SCC p. 197, para 25)*

“25. 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 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.”

17. *While dealing with a case of abetment of suicide in Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13)*

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, 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 there 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 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC 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 IPC.”

18. *In Mangat Ram v. State of Haryana [Mangat Ram v. State of Haryana, (2014) 12 SCC 595 : (2014) 5 SCC (Cri) 127] , which again was a case of wife's unnatural death, speaking for the Division Bench, K.S.P. Radhakrishnan, J. rightly observed as under : (SCC p. 606, para 24)*

“24. We find it difficult to comprehend the reasoning of the High Court [Mangat Ram v. State of Haryana, Criminal Appeal No. 592-SB of 1997, decided on 27-5-2008 (P&H)] that “no prudent man is to commit suicide unless abetted to do so”. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.””

13. The father of the victim, i.e. PW-1, is the primary witness to ascribe the role of the appellant with regard to the offence committed under Section 498A of the Indian Penal Code. The husband of the victim has been absolved from the commission of the crime under Section 498A and 306 of the I.P.C. whereas the present appellant has been convicted without an iota of evidence with regard to implicate him for demand of dowry. The combative relationship between the victim and the brother-in-law and mother-in-law

relieving the husband of the victim has been stressed upon emphatically by the prosecution witnesses as above who were intimately related to the landlord with an intention to evict the tenants from their rented accommodation. Normal altercation amongst family members cannot be attributed to the commission of an offence under Section 498A of the I.P.C. Several family members residing in a congested area can give rise to dispute on several grounds concerning domestic affairs which necessarily do not constitute an offence under Section 498A of the I.P.C.

14. In the instant case, the daughter of the victim was assaulted by her to the detestment of the brother-in-law and the husband apparently entering into a brawl without any mens rea or guilty motive to instigate or abet the victim to commit suicide. On the contrary, the fight between both the brothers resulted in an injury caused to the husband of the victim who had been to the doctor's chamber for treatment along with his mother. The children of the victim were not examined. The impulsive nature of the victim has been earlier stated by the father of the victim who had the proclivity to commit suicide and such vulnerability to her emotional upheaval does not render the same to be a conclusive act through incitement or instigation. The psychology of the victim prone to self-destruction on various occasions unreasonably failing to control her emotional outbursts is a general problem involving her mental health and cannot under any circumstances be cited to have been abetted or instigated.

15. The prosecution failed to connect the act of such commission of suicide to any particular or specific act on the part of the appellant to have instigated the victim to commit suicide.
16. In view of the above discussions, the instant criminal appeal is allowed.
17. There is no order as to costs.
18. I record my appreciation for the able assistance rendered by Mr. Arnab Chatterjee, Learned Advocate as Amicus Curiae in disposing of the appeal.
19. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
20. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)