



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 615 OF 2005

1. Prabhakar S/o Ramchandra Soparkar,
Age 57 years,
R/o. Varangaon, Tq. Bhusawal,
District Jalgaon.
2. Sau. Subhadra w/o Prabhakar Soparkar
**[Appeal stands abated against appellant
no.2 vide order dated 03.10.2024]** ... Appellants

Versus

The State of Maharashtra
Through : Police Station,
Varangaon, Dist. Jalgaon. ... Respondent

.....
Mr. Navin S. Shah, Advocate h/f Mr. Swapnil S. Patil, Advocate for
Appellants.
Mrs. Ashlesha S. Deshmukh, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.11.2024
Pronounced on : 28.11.2024

JUDGMENT :

1. Convicts for offence under Sections 498-A and 306 r/w 34 of the Indian Penal Code [IPC] are hereby assailing the judgment and order dated 26.08.2005 passed by learned IInd Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 40 of 2005 holding both parents-in-law of deceased Manisha guilty of above offence.

2. During pendency of the appeal, as appellant no.2 Subhadra died, appeal is abated against her and now only appeal of appellant no.1 Prabhakar is for consideration before this Court.

CASE OF PROSECUTION

3. In nutshell, both in-laws of deceased were chargesheeted by Varangaon Police Station on accusation that they subjected their daughter-in-law to physical and mental cruelty. Mother-in-law used to continuously abuse whereas, father-in-law beat her and therefore, getting fed up of such maltreatment, she immolated herself on 30.11.2004 and suffered 97% burns. While undergoing treatment, PW5 Investigating Officer recorded dying declaration under Section 32 of the Indian Evidence Act and on the strength of the same, registered crime bearing no.103 of 2004 and himself carried out investigation and finally chargesheeted the in-laws and they were made to face trial before Adhoc Additional Sessions Judge, Jalgaon vide Sessions Case No. 40 of 2005.

4. Learned trial Judge appreciated the evidence of prosecution comprising of five witnesses and also analyzed the documentary evidence. Defence did not lead any evidence. On complete

appreciation and after hearing both sides, judgment of conviction for offence under Sections 498-A and 306 r/w 34 of IPC has been rendered, which is now questioned by way of instant appeal.

EVIDENCE BEFORE THE TRIAL COURT

5. The status and role of the five witnesses examined by prosecution, and the sum and substance of their evidence can be summarized as under :

PW1 Yogesh acted as pancha to spot panchanama Exhibit 14.

PW2 Shravan, father, who is examined at Exhibit 15, deposed that his daughter was married to Ganesh Soparkar and she went to cohabit with husband and in-laws at Varangaon. During first visit paid by his daughter after 4-5 months of marriage, she reported that she was treated properly. He further deposed that during her second visit, which was paid after 4-6 months after her first visit, she disclosed that her father-in-law and mother-in-law ill-treated her. Father-in-law beat her and he also had an evil eye on her. Six months before, he received message about her burns and therefore, they all went to Civil Hospital, Jalgaon where, he claims that, she disclosed that under tension due to mother-in-law and father-in-law, she poured kerosene and set herself on fire.

PW3 Mother Tarabai also deposed that after marriage, their daughter used to visit their house on occasions of festivals and she disclosed that both accused used to ill-treat her. That, she was not provided proper food, she was beaten and scolded on trifle reasons. She came for delivery and later on returned to her matrimonial house. The incident took place 4-5 months prior and they received phone call and so they visited Civil Hospital. There, on being asked as to what happened, witness claims that, her daughter replied that accused prevented her from accepting telephone calls received from them and also disclosed that father-in-law had evil eye on her and hence, due to tension, she committed suicide.

PW4 Medical Officer, who attended deceased on admission on 30.11.2004 at 6.45 p.m., deposed about police approaching him for recording dying declaration and he issuing opinion at Exhibits 20 and 21.

PW5 PSI Damale is the Investigating Officer.

SUBMISSIONS

On behalf of the Appellant:

6. Pointing to the above evidence, learned counsel for the appellant submitted that prosecution had miserably failed to bring home the charges. According to him, essential ingredients for attracting neither of the charge were available in the prosecution

evidence. Taking this court through the evidence of parents, he submitted that they are not corroborating each other and are not consistent on material count. He pointed out that except parents, no independent witness or neighbour is examined. Even when Investigating Officer has admitted that statements of neighbours were recorded, still none of them spoke about any ill-treatment. Therefore, according to learned counsel, there is suppression of material evidence.

7. As regards to dying declaration is concerned, he criticized the same to be unworthy of credence as, according to him, deceased had suffered 97% burns. Doctor, who examined her, has admitted that deceased talked in incoherent manner. There is no thumb impression and for such reasons, the sole dying declaration comes under shadow of doubt.

8. Learned counsel further submitted that for attracting Section 306 IPC, it is incumbent upon prosecution to prove abetment, instigation or active role in commission of suicide. Here, there was no dowry demand or any harassment in that regard and therefore, it is his submission that, neither charge of Section 498-A nor Section 306 of IPC would be attracted. That, learned trial court failed to consider

and appreciate the settled legal position and erred in rendering guilt and hence he prays to set aside the same.

9. In support of above submissions, learned counsel seeks reliance on following rulings :

1. ***Sohan Raj Sharma v. State of Haryana*** 2008 AIR SCW 3202.
2. ***State of Andhra Pradesh v. M. Madhusudhan Rao*** [2008] 14 S.C. R. 1170.
3. ***Mariano Anto Bruno & Another v. The Inspector of Police*** 2022 LiveLaw (SC) 834.
4. ***Naresh Kumar v. State of Haryana*** (2024) 3 SCC 573.
5. ***Amrut Pundalik Marathe & ors. v. State of Maharashtra*** 2024(2) Bom. C. R. (Cri.) 67.

On behalf of respondent State :

10. Strongly opposing above submissions, learned APP submitted that there is convincing, cogent and trustworthy evidence of parents. They have both deposed about physical as well as mental cruelty. It is pointed out that there were regular quarrels, abuses and even beating by father-in-law. There are no allegations against husband. However, parents-in-law maltreated her. She reported it whenever she visited parents. Learned APP pointed out that only because of such ill-treatment, deceased immolated herself. She gave dying declaration to

the Investigating Officer and named them therein. Dying declaration was recorded in presence of Medical Officer who examined her and permitted recording dying declaration. Such doctor is made to step into the witness box and was examined as PW4. Therefore, coupled with the evidence of parents and proved dying declarations, it is her submission that, charges are substantiated and proved. Consequently, for want of merits, she urges to dismiss the appeal.

ANALYSIS

Charge under Section 498-A IPC :

11. On trial, charge under Sections 498-A and 306 of IPC are held to be proved by prosecution. As regards charge under Section 498-A is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *State of West Bengal v. Orilal Jaiswal* [(1994) 1 SCC 73], *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582/[2008] 14 S.C. R. 1170; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152 and *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

12. In support of charge of Section 498-A IPC, evidence of parents i.e. PW2 and PW3 is relevant. Learned counsel for the appellant, though submitted that there is no independent evidence, in matters of such nature, obviously there is evidence of family members of married woman. PW2 father, whose evidence is already discussed above, is regarding marriage of his daughter and she going to cohabit with husband and in-laws. It has come in his evidence that during first visit, which was paid by her after 4-5 months of marriage, on their query, deceased informed that she was being properly treated. His evidence further shows that second visit was paid by his daughter 4-6 months after her first visit. Therefore, second visit has to be somewhere after 10 months of marriage. This time, he alleges that, she disclosed that mother-in-law and father-in-law ill-treated her and father-in-law used to beat her. As pointed out, what was the form of ill-treatment by mother-in-law has not been stated by father. However, there are specific allegations that father-in-law used to beat her. Second allegation against preset appellant father-in-law is that, he had an evil eye on deceased. However, it is pertinent to note that evidence of PW3 mother is absolutely silent about deceased, during her second visit, reporting that father-in-law had evil eye on her.

13. PW3 mother also in her evidence speaks of visits of their daughter on festivals and disclosing about ill-treatment. Again, her evidence is distinct than that of her husband i.e. PW2 as, according to her, their daughter disclosed that accused persons did not provide proper food and used to beat her and scold her on trifle counts. To this extent, evidence of PW1 is silent. In para 2 of the evidence of PW3, she stated that after burns, deceased told that she was prevented from talking on phone and she also disclosed that father-in-law had evil eye on her and because of tension of both accused, she incinerated herself.

14. Learned APP has invited attention of the court to the dying declaration. In the said dying declaration, deceased has reported that on the day of incident itself, initially, mother-in-law abused and thereafter father-in-law beat her. Therefore, evidence of informant as well as dying declaration carries material against father-in-law for beating deceased. There are allegations that father-in-law had evil eye, but this is a vague allegation. Therefore, on complete re-appreciation of evidence of parents, allegations against father-in-law for beating deceased is forthcoming on record.

Charge under Sections 306 IPC :

15. Apart from Section 498-A IPC, appellant was made to face trial for above offence. The precise accusation and charge of prosecution is that, because of maltreatment at the hands of parents-in-law, deceased incinerated herself and they are responsible for her suicide. Having come with such specific case, it is incumbent upon prosecution to substantiate that there was abetment to commit suicide. Prosecution has to prove necessary ingredients incorporated in Section 107 of IPC which deals with abetment. In umpteen judgments, Hon'ble Apex Court has time and again expounded legal requirements for attracting the charge of 306 IPC i.e. in the known cases, which are time and again referred to till date.

16. In *State of West Bengal v. Orilal Jaiswal* (supra), the Hon'ble Supreme 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 her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord

and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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.

17. In ***Ramesh Kumar v. State of Chhatisgarh*** (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 spelt out.

18. In ***M. Arjunan v. State, represented by its Inspector of Police***, (2019) 3 SCC 315, while explaining the necessary ingredients of Section 306 IPC in detail, observed as under :-

“7. The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to

commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.”

19. In ***Ude Sing & others v. State of Haryana*** (2019) 17 SCC 301, the Hon’ble Supreme Court held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under :-

“ 16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person

would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended

nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

20. In ***Gurcharan Singh v. State of Punjab***, (2020) 10 SCC 200, the Hon’ble Apex Court observed 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. 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.

21. In ***Geo Varghese v. State of Rajasthan and another*** (2021) 19 SCC 144, the Hon’ble Supreme Court has considered the provision of Section 306 IPC along with the definition of abetment under Section 107 IPC and observed as under :

“14. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

. . .

15. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, has defined the word ‘instigate’ as under :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’.”

16. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by this Court. In the case or S.S. Cheena v. Vijay Kumar Mahajan and Anr (2010) 12 SCC 190, it was observed as under :-

“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 the Supreme 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.”

22. In ***Mariano Anto Bruno & another v. The Inspector of Police***, 2022 SCC OnLine SC 1387, after referring to the above referred decisions rendered in context of culpability under Section 306 IPC, the Hon'ble Supreme Court observed as under :

“44. . . . 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 IPC is not sustainable.”

23. In ***Kashibai & Others v. The State of Karnataka***, 2023 SCC OnLine SC 575, it is observed that to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

24. In very recent case of ***Naresh Kumar v. State of Haryana*** 2024 DGLS (SC) 224/(2024) 3 SCC 573 it is observed that, had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test)."

25. In another recent case of ***Kumar @ Shiva Kumar v. State of Karnataka*** [Criminal Appeal No. 1427 of 2011 decided by the Hon'ble Apex Court on 01.03.2024], following observations are made :

"39. Reverting back to the decision in M. Mohan (2011) 3 SCC 626 , this Court observed that abetment would involve 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. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in

order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.”

26. In the instant case, in the light charge under Section 306 IPC, again one has to fall back on the dying declaration. Learned counsel for the appellant has objected to the veracity of dying declaration on the ground that deceased having sustained over 97% burns, was not in a position to give statement. Secondly, doctor who examined her and gave certificate, admitted that there was incoherent talk by deceased. Thirdly, there is no certification of fitness.

27. In the light of such objections, the dying declaration as well as evidence of doctor PW4 is put to minute scrutiny. Though doctor has stated while under cross, that talks were incoherent, on court query as to whether he was in position to understand what was said by deceased, this medical expert has answered in affirmative. In his presence and on his examination and certification, the Investigating Officer has recorded dying declaration. The translated version of what deceased reported in dying declaration is reproduced as under:

“Today, on 30.11.2004, at 06:30 pm, when I was in the house, busy in the household chores, my mother-in-law Subhadrabai came near me and raised quarrel over some household reason and abused me. When I tried to reply her, my father-in-law beat me up and as this has become regular practice and as I am fed up with harassment at their hands, I poured the kerosene kept from a plastic can in the house on my person and set myself ablaze.”

28. Bearing above settled legal position in mind and reverting back to the facts and evidence in the case in hand, precisely what is emerging from dying declaration is that, on that day, there was initially abuse by mother-in-law and because deceased back-answered her mother-in-law, appellant father-in-law appears to have beaten her. At what time the incident of beating took place, even by approximation, is not coming in the dying declaration, however, regarding beating by father-in-law is also consistently coming from the testimony of parents of deceased. There is nothing to show that accused intended that she should incinerate herself. Beating by father-in-law appears to be a reaction for back answering. At that point of time, neither of the accused intended or knew that she would take extreme steps of setting herself ablaze. On the contrary, deceased herself has reported in the dying declaration that in anger and out of

tension, she incinerated herself. Consequently, in the considered opinion of this Court, the *sine qua non* regarding abetment, inducement or instigation to commit suicide are patently missing in the prosecution evidence and as such, charge under Section 306 IPC cannot be attracted.

29. To sum up, for above reasons, only charge of Section 498-A IPC stands proved but only against surviving appellant father-in-law. Learned trial court has sentenced him under Section 498-A IPC to suffer imprisonment for two years. However, as stated above, only allegation which stand substantiated is regarding beating. For his such act, sentence of two years appears to be on higher side. In view of the judgment of the Hon'ble Apex Court in Suo-Motu Writ Petition (C) No.3 of 2023 in the case of Right to Privacy of adolescents with Criminal Appeal No.1451 of 2024, the appellate court while confirming the conviction is also expected to get satisfied on the adequacy and sufficiency of sentence awarded by trial court.

30. Learned counsel submitted that appellant is over 70 years of age. On visiting the impugned judgment passed by the Sessions Court, it is evidence that at that time appellant was 57 years of age, and hence there is reason to hold that as on today, he is more than 70

years old. Therefore, in view of above discussion and also taking into account that the episode in question had taken place almost two decades back and appellant as on today is reported to be over 70 years of age, keeping in mind the sentencing policy that sentence should commensurate with the gravity of the act, the sentence from two years is required to be scaled down. Hence, following order is passed:

ORDER

- I. The appeal is **partly allowed**.
- II. Conviction awarded to the appellant Prabhakar S/o Ramchandra Soparkar, by the IInd Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 40 of 2005 for offence punishable under Section 498-A of IPC is hereby maintained, however his conviction under Section 306 of IPC stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Section 306 of IPC.
- IV. The sentence awarded to the appellant for offence under Section 498-A IPC is modified and reduced and instead of rigorous imprisonment for two years, **he is sentenced to suffer rigorous imprisonment for a period of six (06) months and to pay fine of Rs.2,000/-, in default of payment, to undergo further rigorous imprisonment for one (01) month.**

V. Rest of the impugned judgment and order is maintained.

[ABHAY S. WAGHWASE, J.]

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