



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 1197/2022.

Gopichand s/o Manoj Gawai,
Aged about 55 years, Occupation -
Agriculturist, resident of Hanwatkhedda,
Tahsil Malegaon, District Washim. ... **APPLICANT.**

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Ansing, Tahsil and District
Washim.

2.Sau. Sundarabai Ramchandra Wankhede,
Aged about 61 years, Occupation
Agriculturist, resident of Dhanora Mapari,
Tahsil and District Washim. ... **NON-APPLICANTS.**

Mr. M.P. Kariya with Ms A. Raut, Advocates for the Applicant.
Mr. I.J. Damle, A.P.P. for Non-Applicant No.1.
Mr. S. Singha, Advocate [Appointed] for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : APRIL 10, 2024.

Rgd./T

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Admit.

The matter is taken up for final disposal by consent of the learned Counsel appearing for the parties.

2. The applicant-husband is seeking to quash the charge sheet bearing Sessions Trial No.40/2022 pending on the file of Principal District and Sessions Judge, Washim arising out of first information report bearing Crime No.256/2021 registered with Ansingh Police Station, Washim for the offence punishable under Sections 306, 498-A, 323 and 504 of the Indian Penal Code.

3. Petitioner's wife committed suicide by hanging on 22.08.2021, while she was living at her paternal house. During the course of enquiry, mother of the deceased lodged report, on the basis of which the aforesaid crime came to be registered. It is the case of informant that there use to be matrimonial dispute in between the couple. The petitioner use to harass the deceased by suspecting her

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character. He was also insisting her to comply monetary demand. The deceased has also filed a complaint with the police for said purpose.

4. It is the case of the informant that on 14.06.2021, the deceased telephonically informed her parents about the harassment and called them to take her back. On such information, parents of the deceased brought her back and from then till the date of suicide, the deceased was living at her parental house. In the meantime, one meeting was arranged where the applicant refused for divorce. On the intervening night of 21.08.2021 to 22.08.2021 the deceased committed suicide by hanging.

5. On the basis of the report lodged by the mother of the deceased dated 27.08.2021, a crime has been registered for the aforesaid offences. After investigation charge sheet has been filed. The learned Counsel for the applicant would submit that the allegations made in the police report and the material collected during the course of investigation does not make out a case of abetment to commit suicide. It is primely argued that for the period

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of 2-3 months preceding the suicidal death, the deceased was at her paternal house. Moreover, there are no instances from which it can be gathered that the accused has abetted the deceased to commit suicide.

6. The State and the learned Counsel appearing for the informant have resisted this application by contending that the harassment at the hands of the applicant was the only reason for the deceased to commit suicide. It is a matter of trial, therefore, at this juncture the prosecution cannot be stifled.

7. The crime has been registered for the offence of abetment to commit suicide as well as matrimonial harassment. It is apparent that the first information report and other statements shows that for 2-3 months preceding to the occurrence the deceased was staying with her parents. The statements suggest that in the meantime only once the applicant-husband met her, where he refused for the settlement. True, the marriage was not running smooth as there was matrimonial dispute in between the couple. It is evident that the lady was unhappy, and therefore, she left the company of her

husband. Admittedly, she has not left any suicidal note while leaving the world.

8. It necessitates us to understand the position of law in this regard. In the case of **Madan Mohan Singh Vs. State of Gujarat and another - (2010) 8 SCC 628**, the accused was alleged to have instigated his driver to commit suicide. There was a detailed suicidal note left behind by the deceased and the accused had approached the High Court for quashing of the FIR and the criminal proceedings, but, his prayer was rejected, as consequence of which, the accused was before the Supreme Court seeking relief. The Supreme Court analyzed Section 306 read with 107 of the IPC and found that there has to be proximity between the alleged acts of the accused and the extreme step taken by the deceased of committing suicide. It was held that the allegations made and the material ought to be of a definite nature and not imaginary or inferential. The Supreme Court went into the suicidal note of about 15 pages and found that the contents thereof expressed the anguish of the deceased, who felt that his boss (the accused) had wronged him, but, it was noted that the contents fell short of depicting an intentional act on the part of the

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accused for driving the deceased to commit suicide. On this basis, the judgment of the High Court was set aside and the FIR and criminal proceedings were quashed.

9. Observations made by the Supreme Court in paragraph No.25 of the decision in case of **S.S. Chheena Vs. Vijay Kumar Mahajan and another - (2010) 12 SCC 190**, are relevant, which reads 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 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.”

10. Similarly, in the case of **M.Mohan Vs. State Represented by the Deputy Superintendent of Police - (2011) 3 SCC 626**, the Supreme Court held in the context of abetment as follows: -

“44. 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.

45. The intention of the legislature and the ratio of the cases decided by this court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

11. In the case of **Geo Varghese Vs. State of Rajasthan and another, 2021 SCC Online SC 873**, the Supreme Court held as follows: -

“23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of

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offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

12. In order to consider whether section 306 would apply to the facts in case, one would have to consider whether the essential ingredients of Section 107 of the Indian Penal Code are disclosed. Hence, it would be apposite to reproduce Sections 306 and 107 of the Indian Penal Code. The same read 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.

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.”

13. In the case of **Ramesh Kumar V/s. State of Chhattisgarh – [2001] 9 SCC 618**, the Apex Court has observed in para as under;

“20. Instigation is to goad, urge forward, provoke, incite or or encourage to do “an act”. To satisfy the requirement of instigation through 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.”

14. Recently the Supreme Court in case of **Ude Singh and others .vrs. State of Haryana - 2019 SCC Online SC 924**, extensively surveyed the law in the field and summarized the principles in cases of alleged abetment of suicide. The relevant observations contained in paragraph nos. 16.1 and 16.2 reads as below :

“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

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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

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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.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, selfconfidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."

15. The term "Abetment" involves mental process of

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instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it 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. There is nothing on record to show that the petitioner was instigating and harassing the deceased and further there is absolutely no material to allege that the petitioner abetted for suicide of the deceased within the meaning of Section 306, IPC. 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.

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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 behaviour 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.

17. By applying the aforesaid law, there must be a direct proof that the applicant that too in close proximity did any positive act which incited the woman to commit suicide. There is nothing on

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record by which it can be inferred that with adequate mensria the appellant has abetted his wife to commit suicide, particularly when the wife was living under the roof of her parents preceding 2-3 months of the suicidal death. Therefore, it is difficult to hold that there was abetment on the part of the applicant / husband, thus, the charge of abetment to commit suicide would not stand.

18. As regards to rest of the allegations are concerned, the statement of the parents of the deceased and relatives speaks about matrimonial harassment. It is a matter of trial, whether the allegations leveled in the statement are true or otherwise. However, to the extent of rest of the penal provisions, the prosecution cannot be throttled at initial stage.

19. In view of above, Criminal Application is partly allowed and disposed of. We hereby quash and set aside the charge sheet arising out of first information report bearing Crime No.256/2021 registered with Ansingh Police Station, Washim for the offence punishable under Section 306 of the Indian Penal Code only. The trial relating to other penal provisions shall proceed further in

accordance with the law.

20. Fees of the appointed Counsel for non-applicant no.2 be paid as per Rules.

JUDGE

JUDGE