



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 234 OF 2006**

Vinod S/o. Khushalbhau Bhosale  
Age: 19 years, Occu.: Business  
R/o. Satral Shivar, Tq. Rahuri,  
District Ahmednagar

... Appellant  
(Orig. Accused No.1)

Versus

The State of Maharashtra

... Respondent

.....  
Mr. Niraj Chudiwal, Advocate h/f Mr. Satej S. Jadhav, Advocate for  
Appellant  
Mr. V.M. Jaware, APP for Respondent - State  
.....

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 06 JANUARY, 2025**

**PRONOUNCED ON : 09 JANUARY, 2025**

**JUDGMENT :-**

1. In this appeal, convict in Sessions Case No.1 of 2006 takes exception to the judgment and order passed by learned 3<sup>rd</sup> Ad-hoc Additional Sessions Judge, Ahmednagar, dated 06.03.2006 convicting him for offences punishable under sections 498-A and 306 of Indian Penal Code (IPC).

**PROSECUTION CASE IN BRIEF**

2. In brief case of the prosecution is that, deceased Surekha was married to present appellant in the year 2003 and after marriage, she went to cohabit with present appellant i.e. husband, and in-laws. For one year, everything was smooth. However, after demise of her father-in-law, the accused persons started addressing deceased Surekha as a "jinx," i.e., someone who brings misfortune and bad luck to their house. Appellant/accused no.1 also beat her and remaining accused abused her. Surekha reported about this on phone to her parents and brother and even during their visits to her house. All accused also demanded Rs.25,000/- for purchase of motorcycle for appellant. It is the case of prosecution that, as above demand was not met, Surekha was ill-treated and getting fed up, she hanged herself and committed suicide. On report of father PW-2, crime was registered for offences punishable under Sections 498-A and 306 of the IPC.

After investigation, accused were charged and the trial was conducted before the learned 3<sup>rd</sup> Additional Sessions Judge, Ahmednagar, vide Sessions Case No.01 of 2006 and after appreciating oral and documentary evidence, learned trial court, by judgment and order dated 06.03.2006, acquitted accused nos. 2 and

3, but convicted accused no.1, i.e. present appellant, for above offences.

Feeling aggrieved by above conviction, the present appeal has been preferred on various grounds raised in the appeal memo.

### **SUBMISSIONS**

#### **On behalf of appellant :**

3. Learned Counsel for appellant submitted that there is false implication. That, vague, general and sweeping allegations are levelled. He pointed out that, on the same set of evidence, accused nos.2 and 3 are acquitted, but appellant/husband is alone convicted. Learned counsel pointed out that evidence of father, mother and brother of deceased is not consistent and there are material omissions. That, there is no evidence to suggest the applicability of either offence under Section 498-A or about abetment to commit suicide. Therefore, learned counsel prays for setting aside of the impugned judgment and order by allowing the appeal.

#### **On behalf of State :**

4. Per contra, learned APP supported the judgment by submitting that, after one year of marriage, accused persons abused deceased Surekha and they considered her as a 'jinx'. That, immediately after

she stepped into their house after marriage, her father-in-law died, followed by her brother-in-law. That, appellant and in-laws of deceased were superstitious, and they ill-treated, abused Surekha on above count. That, they also put up demand of Rs.25,000/- for purchase of a motorcycle for the appellant. That, appellant beat deceased Surekha and therefore, according to learned APP, learned trial court has correctly appreciated the available evidence and committed no error whatsoever in holding appellant guilty. For above reasons, learned APP prays to dismiss the appeal.

#### **STATUS AND ROLE OF PROSECUTION WITNESSES**

5. In support of its case, prosecution has examined as many as five witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

**PW1** Santosh has acted as pancha to spot panchanama Exhibit 26.

**PW2** Dagadu Keshav Salve is father of the deceased. He deposed at Exh.27 as under :

*“1. .... I am having 3 daughters viz. Sangita Baban, Manda Bharat and Surekha Vinod. Surekha was my third daughter. Marriage of Surekha took place with accused no.1 in the year 2003 as per Christian Rites and Religion. After marriage, Surekha went for cohabitation with accused no.1 When*

*marriage took place, accused no.1, his parents and his brother were residing together. Surekha gave birth to a male child who is not 1 ½ years of age.*

*2) For one year good treatment was given to deceased Surekha. After one year, her father-in-law died. All accused were telling that due to her arrival in their family misfortune started and therefore her father-in-law died. Accused no.1 used to beat her while accused no.2 used to abuse her. My daughter told me about ill treatment on phone and also in our visits to her house. I and my wife used to go to her house and used to console her. I accused to behave properly with my daughter. However, there was no change in the behaviour of the accused. After 6 months of death of father-in-law, brother-in-law Rajendra was also expired. Thereafter, accused gave more ill-treatment to my daughter. All accused were telling my daughter that she was of "Pandharya Payachi" and were giving her ill-treatment. My daughter informed me. Therefore, I and my wife went to the house of accused and told them to behave properly.*

*3) All accused before 6 months of the death of Surekha demand Rs.25,000/- to Surekha for purchasing motorcycle. Surekha told me this on phone as well as on my personal visits to her. I and my wife told accused that we were not having that much amount. I assured that we would pay the said amount later on. Accused quarrelled with me for not giving money.*

*4) On 24.10.2005, my mother-in-law Shantabai Laxman expired. I informed accused, but they did not send Surekha. On 05.11.2005, my son Prakash went to bring Surekha for Bhaubij. My son halted there. I had been to Rampur to attend the funeral of my cousine brother Dadu Bhosale. My uncle Bhivsen Salve told my that my daughter committed suicide by hanging. I saw ligature marks on the neck of my daughter's dead body. Sarie*

*was found hanging in a room. P.M. was conducted on following day. After post-mortem, funeral took place in the village of accused. I made enquiry about my son Prakash, who was present there. Prakash met me. Prakash asked me why our daughter was given in the house of accused. She hanged herself as accused no.2 demanded Rs.25,000/-."*

**PW3** Sindhubai is mother of the deceased. At Exhibit 30, she deposed as under :

*"1. .... After one year of the marriage, father-in-law of Surekha died. Therefore, father-in-law of Surekha died. Therefore, accused started giving ill-treatment to my daughter. All accused were giving abuses to my daughter that she was not good. She was not having boon of goddess Laxmi. Accused no.1 used to beat her, while accused nos.2 and 3 were abusing her. Surekha told me about ill-treatment on telephone. I and my husband repeatedly visited the house of accused and told them to behave properly with Surekha. After 6 months, Raju- brother-in-law of Surekha was expired. Accused were telling her that due to her, their men expired and she would bring Rs.25,000/- for purchasing motorcycle. Before 6 months of death of Surekha accused started demanding Rs.25,000/-. Surekha told us this demand on telephone and also on our personal visits to her. I and my husband went to the house of accused and told them that we have no money and amount will be paid in future.*

*2. My son Prakash went to bring Surekha for Bhaubij Festival. My son halted there. Accused no.3 gave threat to my son and asked him to bring Rs.25,000/-. My son told me this on telephone. Thereafter I received phone message that my daughter was expired."*

**PW4** Prakash, i.e. brother of deceased, is examined at Exhibit 35

wherein he deposed as under :

*“1. .... Surekha was my youngest sister. Marriage of Surekha took place with accused no.1 on 11/05/2003. Surekha went for cohabitation with accused no.1 at village Rampur. At the time of marriage, accused nos.1,2 and father father-in-law and brother-in-law were residing together. Surekha has one son of 1 ½ years. For one year good treatment was given to Surekha.*

*2) After one year of marriage, Surekha’s father-in-law expired. Accused no.2 was telling that Surekha was of “Pandharya payachi and therefore she lost her husband”. Accused no.1 was also giving abuses and beating deceased Surekha. Accused no.3 was also giving abuses to deceased Surekha. Deceased told me this on telephone and whenever I visited her house. After 6 months of the death of father-in-law, her brother-in-law Raju died. Accused No.2 was telling Surekha that due to her her son was died, while accused nos.2 and 3 were also abusing deceased Surekha. Accused No.1 was also beating deceased Surekha. This was also told on telephone and in my personal visits to deceased Surekha. I asked to accused not to give ill-treatment to my sister. My parents also told accused to behave properly.*

*3) Before 6 months of the incident, accused demanded Rs.25,000/- to my parents for purchasing motorcycle. My sister told me this demand of accused. My father told accused husband, mother-in-law and father-in-law of deceased Surekha that he would pay money in future. However, ill-treatment continued.*

*4) On 24/10/2005, my grandmother Shantabai Laxman died. We requested accused to send deceased Surekha for funeral but*

*accused is not send Surekha.*

5) *On 05/11/2005, I went to bring Surekha for Bhaubij festival. Accused no.2 was out of station. Accused no.1 told me to ask his mother on her arrival in the village and then take away Surekha. I halted there. On following day till 1.30 p.m., accused no.2 did not come. So I asked accused no.3 and accused no.1 that I should take my sister for Bhaubij and also to give treatment to her as she was suffering from illness but both accused refused. Accused no.3 told me that if I would take my sister, she should not be brought back and if I visit their house again, he would cut my hands and legs as we could not provide their demand. There was also quarrel between me and accused no.3 who asked me to bring my father. I searched my father in Rampur, but I could not trace. Therefore, I made phone call to my mother and narrated her incident. My mother asked me to stay at Rampur and took my father to the house of accused. I then went to the house of accused no.3 and his children were sitting outside the house. I went in the middle room and found that my sister Surekha was hanged by sarie to the roof. I called Shashikant Bhosale and he released my sister from hanging with a hope that she might be alive, but in vain. Accused no.1 was also present who took Surekha to the hospital. Doctor declared her dead. On the following day funeral took place. Accused before the court are the same.”*

**PW5** Ramdas Raykar, API, is the Investigation Officer.

### **LEGAL PRECEDENTS**

6. Before advertng to the facts of the case in hand, it would be apt to discuss the settled legal position on the aspect of charge under Sections 498-A and 306 of IPC.

**Law on Section 498-A IPC :**

There are series of judgments wherein Hon'ble Apex Court has repeatedly observed and held that in case of general, vague and omnibus allegations without specifying role or giving specific instances of cruelty, charge of Section 498-A would not automatically get attracted. Such observations are reflected in *Kans Raj v. State of Punjab and others* [Appeal (crl.) 688-90 of 1993 decided by the Hon'ble Apex Court on 26.04.2000]; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Neelu Chopra and another v. Bharti* (2009) 10 SCC 184; *Geeta Mehrotra Vs. State of U.P.* (2012) 10 SCC 741; *Bhaskar Lal Sharma and Anr. v. Monica and Ors* AIR 2014 SC (Supp) 1310; *K. Subba Rao v. The State of Telangana* ; (2018) 14 SCC 452 wherein, as to what constitutes offence under Section 498-A and when it can be said to be made out has been dealt and discussed.

Even very recently, the Hon'ble Apex Court, in the case of *Naresh Kumar v. State of Haryana* (2024) 3 SCC 573 observed that, to constitute offence of cruelty, there has to be incessant or continuous form of cruelty.

Likewise, in the case of *Yashodeep Bisanrao Vadode v. State of*

***Maharashtra*** (2024) SCC Online SC 2989, the Hon'ble Apex Court observed that, by way of evidence, specific acts and role of accused has to be demonstrated for attracting Section 498-A IPC.

Again, in the most recent case of ***Dara Lakshmi Narayana and others v. State of Telangana and another*** 2024 SCC Online SC 3682, the Hon'ble Apex Court observed, "mere reference to the names of family members in a criminal case arising out of matrimonial dispute, without specific allegation, indicating their active involvement should be nipped in the bud".

**Law on Section 306 of IPC :**

7. 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.

8. 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.

9. 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.”*

10. 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.”*

11. 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.

12. 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.”*

13. 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.”*

14. 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.

15. 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)."

16. 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."*

#### **ANALYSIS**

17. Keeping in mind the above settled legal position, here, there is

no dispute about marriage between present appellant and deceased Surekha taking place in 2003. Informant (father), mother and brother are consistent that after one year, there was ill-treatment. It is alleged that accused/husband beat and abused Surekha and demanded Rs.25,000/-. However, none of the above witnesses have quoted as to when and on what count accused-husband/present appellant beat her. Apparently, sweeping allegations of abuse, ill-treatment, and demand are leveled against all accused. Prosecution has claimed that deceased was addressed as a 'jinx' for inviting bad luck. However, apart from delayed F.I.R., i.e. in spite of the occurrence taking place on 05.11.2005, report was lodged on 09.11.2005 i.e. after five days, and there is also no plausible explanation for delayed reporting.

18. Father and brother i.e. PW-2 and PW-4, apparently appear to have improvised their version as their statements are silent about accused/husband beating and raising demand. There is material omission on that regard. Version of son materially differs from version of his own parents on the count that deceased herself was suffering from illness. Even both parents are silent that accused No.3 stating PW-4 that if he takes his sister, then she should not be brought back. It also transpires that on the day of hanging, brother Prakash

was very much in house of accused. In paragraph 5, he stated that his sister hanged herself with a saree on the roof. However, in cross-examination, in paragraph 9, he admitted that accused no. 1/present appellant was present in the house, but he entered the room after this witness arrived. Resultantly, there is no evidence of any abetment, instigation or ill-treatment to suggest that deceased was compelled to take the drastic step of hanging herself as stated above. What actually happened in proximity to hanging is not stated by brother. There are vague, omnibus and sweeping allegations against all accused, however except the appellant/husband, all remaining accused are already acquitted from the said charge. Therefore, with such quality of evidence, charges under Sections 498-A and 306 of the IPC cannot be said to be proved beyond reasonable doubt. For all above reasons, appeal succeeds.

19. Perused the judgment under challenge. Learned trial Court has apparently failed to appreciate the material omissions, improvisation made by prosecution witnesses and that they are inconsistent on material count. Therefore, there being non-appreciation of the valuable evidence in proper perspective, interference is called for. Accordingly, I proceed to pass following order:

**ORDER**

- I) Criminal Appeal No.234 of 2006 is allowed.
- II) The conviction awarded to appellant Vinod Khushalbhau Bhosale in Sessions Case No.1 of 2006 by the learned 3rd Ad-hoc Additional Sessions Judge, Ahmednagar on 06.03.2006 for offences punishable under Sections 498-A and 306 of the Indian Penal Code, stands quashed and set aside.
- II) The appellant Vinod Khushalbhau Bhosale stands acquitted of the offences punishable under Section 498-A and 306 of the Indian Penal Code.
- IV) The bail bonds of appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

**( ABHAY S. WAGHWASE )**  
**JUDGE**