



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

CRIMINAL APPEAL NO. 449 OF 2005

Dnyaneshwar Rangnath Salve
Age: 25 years, Occu.: Agriculture,
R/o. Ranjona, Tq. Basmath,
District Hingoli

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

Versus

The State of Maharashtra

... Respondent

.....
Ms. Rani Bharuka Bora, Advocate h/f Mr. S.S. Bora, Advocate for
Appellant
Mr. N.D. Batule, APP for Respondent - State
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 20 FEBRUARY 2025
PRONOUNCED ON : 27 FEBRUARY 2025

JUDGMENT :-

1. Appellant assails judgment and order dated 14.06.2005 passed by learned Additional Sessions Judge, Basmathnagar in Sessions Trial No.36 of 2004 [179 of 2003 (old)], whereby appellant is held guilty for offences punishable under sections 498-A and 306 of Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. Deceased Anusaya was married with appellant in May 2003. After one month of marriage, she was ill-treated by her husband and in-laws on account of demand of articles like H.M.T. Watch, T.V. etc. That, she reported physical and mental cruelty when she visited her parents' house. Deceased had lastly visited her parents' house on 17.09.2003 and after two days, message was received that she consumed poison and succumbed to the same. Therefore, father PW-1 lodged report resulting into crime being registered and investigated by PW-8 Investigating Officer, who after gathering sufficient evidence, chargesheeted in all four accused including present appellant.

3 Learned Additional Sessions Judge appreciated oral and documentary evidence, and by judgment and order dated 14.06.2005, acquitted accused Nos.2 to 4, but convicted the husband (present appellant) for offences punishable under sections 498-A and 306 of IPC. Hence, the instant appeal.

SUBMISSIONS

On behalf of appellant :

4. Learned counsel for appellant pleaded innocence and false implication. That, allegations are general and omnibus in nature. That, sweeping allegations are levelled without specifically the nature of ill-treatment and by which of the accused and in which form. That, parents, who are witnesses, are not consistent and their statements are not supporting each other. That, answers given in the cross render their substantive evidence doubtful. That, there are no independent witnesses. Learned counsel pointed out that on same set of evidence, co-accused are already given clean acquittal on merit, but present appellant-husband alone is chosen amongst them and held guilty. Thus, according to her, there is apparently improper appreciation of evidence and required ingredients for attracting Section 498-A of IPC are patently missing. She pointed out that, it is not proved whether consumption was accidental or due to any other reason. That, though parents deposed about speaking and interacting with deceased in the Hospital, there was no immediate reporting at that time itself. That, only after death was announced, after funeral there is false implication. According her, such aspects are not considered by learned trial Judge and therefore, findings in the

conclusion are against evidence as well as law. Hence, she seeks indulgence at the hands of this Court by allowing the appeal by setting aside the impugned judgment.

On behalf of State :

5. Learned APP supported the judgment by pointing out that barely after one month of marriage, there was demand and on failure to meet it, there was physical and mental cruelty. That, the same was reported by deceased to her parents when she visited them. That, both, father and mother of deceased, had stepped into the witness box and their evidence on crucial aspects of demand and cruelty had remained intact. According to learned APP, learned trial Judge has correctly appreciated the available evidence and committed no error whatsoever in recording guilty of the appellant and therefore, he prays to dismiss the appeal for want of merits.

STATUS AND ROLE OF PROSECUTION WITNESSES

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

PW1 Dashrath Dnyanoba Chavan is father of the deceased. He

deposed at Exh.21 as under :

“ 1. Deceased Anusayabai was my daughter. She was married on 27.05.2003 with accused Dnyaneshwar. The other accused are, mother-in-law and father-in-law of my daughter. After marriage she was cohabiting with him. She was given normal treatment for about one month. After marriage I went back to my home. At that time they told me, I have a good salary and demanded C.D. Player and HMT. Watch. I expressed inability that I have already given much more and now is not able to give anything more. I brought my daughter to my home, as per custom and send her by offering Clothes and customary gifts. I had personally reached her. She was to sleep in field. I expressed that better to sleep at home. Dnyaneshwar told me until the demands are not fulfilled, she was not allowed to go to home. The ill-treatment continued. she was not given proper food. she tortured. For Mahalaxmi I again brought at my house. for cohabitation with my son. Thereafter she was sent. The demand and ill-treatment continued. Ramcharidra Salve and Pandurang were mediators. I informed them, as I was not residing here and they should peruse accused for good treatment to my daughter. At the time of Shardha Paksha I had gone to bring my daughter. Again they demanded one new dress to her husband and previous demands. I had tried to convince them and told I am not able to fulfill your demands. However, I have provided a good dress as per the desire of Dnyaneshwar. It was stitched at Satyam Tailor. I have also handed over copies of the receipts to police. The originals are with me. They are at Article "A" and "B". My daughter and husband stayed-for two days at my place (residence) and they left for their home on 17.09.2003. On 19th I received one phone, that my daughter is vomiting. My wife Conveyed message to me at Osmanabad. My wife and daughter had reached to Basmath Hospital at late hours of night. I reached with night. She was admitted at Pardikar Hospital, Basmath. Late hours in the night my

daughter was referred to Civil Hospital, Parbhani and she died on the way of Zero Phata. She was pronounced dead at Civil Hospital, Parbhani. after postmortem the dead body was handed over for funeral to accused. The health of my daughter was good. There was no reason for her to have omitting. I therefore had lodged the report, at Police Station, Hatta after her funeral. The report now shown to me is the same, contents are correct. It is the same. It is at Exh. 22. Accused before the Court are same.”

PW2 Dr. Balaji Munde, autopsy surgeon has deposed at Exhibit 25/1 as under:

“1. On 20.09.2004 I had performed autopsy on the dead body of Anusayabai Dnyaneshwar Salve in between 11.05 to 12.50 p.m. I have recorded my findings in the respective Columns of Autopsy report. The opinion was reserved as Viscera was sent to C.A. The autopsy notes are in my hand writing, bears my signature. Autopsy Report is at Exh.26. I am now shown C.A. report of viscera. It is regarding the same viscera which was reserved by me and sent to C.A. The death of Anusayabai was due to poisoning Monorotophos (Nuvapron). C.A. report is at Exh. 27. The uterus was examined it was normal and there was no pregnancy.”

PW3 Dr. Dhondiram Pardikar, is the treating doctor in whose Hospital deceased was admitted. At Exhibit 29/1, he deposed as under:

“1. I have a hospital at Sraswati Coloney near State Bank of Hyderabad. On 19.09.2003 Sarwswati @Anusaya was brought to my hospital, she was admitted in my hospital. She was vomiting and was having loose motions. I have treated for vomiting and

loose motions. I was given history of vomiting and loose motions I have clinically examined her. After examination I started treatment. Patient responded to my treatment but in a short while again she vomited. Patient became restless. I advised her relative to remove patient at Government Hospital, Parbhani. Patient was removed to hospital at the mid-night around 2.00 to 2.30 a.m. of 20.09.2003.”

PW4 Babasaheb, Police Constable, who carried letter to the Government Hospital Parbhani.

PW5 Pushapabai Chavan is mother of the deceased. At Exhibit 37/1 she deposed as under :

“1. Deceased Anusayabai was my daughter with accused - Dnyaneshwar before two years. She Was given normal treatment for a month. The other accused are the in-laws of my daughter Anussyabei. and grand mother-in-law. They are mother-in-law, father-in-law The accused started demand of colour Telivision, V c. D. and HMT. watch. We had all given the articles as settled in the marriage. Anusaysbei was given illtreatment. She was not given food to est. was make to work as labour. My daughter had come on the occasion of Panchmi festival. At that time she had told me about illtreatment. After Panchmi come for Urus At that time they had not brought my daughter. I have done all the things possible to me, and they will not trouble my daughter. My daughter was then again brought at the time of Pitru Amavasaya (Pitru-Paksha). My son in law stayed for two/three days and were departed as per customs. We have given clothes to our son-in-law, Seri to my daughter, we have perceived son-in-law that our financial

condition is not sound so as to fulfill your big demand. Two days later one phone came to us that Anusaya pad Max vomiting and, she was admitted in hospital of Dr.Perdikar. After phone I and my daughter came to hospital and reached to Baameth around 9.00 p.m.. agony My daughter was foaming in her mouth. questioned how she has as become serious. I Doctor said that they are giving treatment. My daughter spoke to me. She said me, I have tolerated much. I have done what I desire. There was a smell of medicine. At the mid-night I have awaited Doctor. Doctor came now. Doctor then tied clothes over her arm, pump air and thereafter (witness is indicating of Blood-pressure examination) said I am not treatment and she should be removed from hospital. There was no vehicle with us. Therefore, Doctor gave his vehicle for carrying her to Parohani. Then the brother-in-law, mother-in-law were there. They were there as spectator. We went to hospital at Parbhani there Medical Officer declared my daughter as dead. By then my husband reached to the hospital. After, postmortem dead body was given to accused, we have attended the funeral. The accused before the Court are the same, because of whom torture my daughter has died. ”

PW6 Bhanudas acted as pancha witness, who turned hostile.

PW7 Shankar acted as panch to seizure panchanama.

PW8 Sopan More, API, was the Investigation Officer.

7. On trial, charge under Sections 498-A and 306 of IPC are held to be proved by prosecution.

LEGAL PRECEDENTS

Charge under Section 498-A IPC :

8. 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.

Law on Section 306 of IPC :

9. 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.

10. 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.

11. 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.”

12. 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.”

13. 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.

14. 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.”

15. 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.”

16. 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.

17. 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)."

18. 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

19. Here, crucial evidence is of parents of deceased i.e. PW-1 father and PW-5 mother. On placing evidence of informant PW-1, and PW-5 in juxtaposition, it is noticed that they are inconsistent on material count. According to the informant-father, after one month of

marriage, he brought his daughter back and that time, he alleges that, “accused told him that, he had good salary, and thereby demanded C.D. player and H.M.T. Watch”. Then, he alleges that, he brought his daughter to his home and as per customs, send her back by offering her clothes and customary gifts and when he had personally reached her back, he learnt that she had to sleep in the field, and therefore, he claims to have suggested that she would better sleep at home. Then, he alleges that, husband told him that until demands are not met, she will not be allowed to go home. Then, he alleges ill-treatment to be continued. According to him, his daughter was not given proper food and she was tortured. However, as submitted above, when four accused are named, who amongst them ill-treated his daughter and in what manner and what form, has not been stated by him. Thus, apparently, there are general allegations like not allowing her to sleep at home and rather making her sleep in the field. Then, he claims that his daughter came along with appellant-husband to his house and they went back on 17.09.2003, and on 19.09.2003 news about admission of his daughter in the Hospital on account of vomiting was received. During such stay, there does not appear to be allegations of any sort against anyone. Further, there is no report while he allegedly met his

daughter in both the Hospitals at Basmath as well as Parbhani. Rather he has lodged report after the funeral.

After visiting mother's evidence, which is at Exhibit 37, she seems to have testified that, accused started demanding colour Television, V.C.D. and H.M.T. Watch. Even she has attributed the demand to all four accused. Even, she has stated that, her daughter was given ill-treatment, but by whom and what was the nature of alleged ill-treatment has not been stated by her. Both these witnesses are not quoting single incidence or form of ill-treatment. They merely speak that she was not given food to eat. Mother has stated that, her deceased daughter was made to work as labour, but such version is not coming from the father. Even she claims to have interacted with her daughter in the Hospital whereupon, her daughter told her that she had tolerated much and she had done what she desired. All such alleged conversation by deceased is not stated by the father. Therefore, apparently, though parents are alleging demand and ill-treatment, no specific instances are stated for attracting Section 498-A of IPC. There has to be continuous and incessant demand followed by harassment. This crucial aspect is not available in the parents' evidence. They have not stated about nature of cruelty nor quoted form of ill-treatment by each of the accused particularly.

Furthermore, as stated above, informant himself claims that her deceased daughter and appellant-husband were staying in his own house on 17.09.2003, but nothing was reported by deceased during such stay or about giving understanding to accused or about daughter informing that ill-treatment was continued. Alleged consumption is after two days, but in spite of victim being taken to private Hospital and thereafter at Civil Hospital, its papers are not on record. There is no material to show that only because of harassment and ill-treatment, Anusaya consumed poison. Doctor, who treated her, in his cross, has admitted that, he had recorded that it was a case of food poisoning. He has stated that deceased vomited in the Hospital, but the same is not collected. After postmortem, viscera was dispatched to analyzer on 25.09.2003, however, report is received after six months. Therefore, here, as submitted, four accused were chargesheeted for commission of offence under Sections 498-A and 306 of IPC, but only appellant-husband is held guilty and rest are acquitted.

20. Perused the judgment impugned herein. No reason has been assigned by the learned trial Judge for singling out appellant-husband from rest of the accused and applying evidence available to hold him guilty. Apparently, essential ingredients for attracting

Sections 498 and 306 of IPC, which are reiterated in above legal precedents, are not available in the prosecution evidence. Therefore, conclusion drawn by the learned trial Judge, cannot be allowed to be sustained. Accordingly, I proceed to pass following order:

ORDER

- [I] Criminal Appeal No.449 of 2005 is allowed.
- [II] The conviction awarded to appellant Dnyaneshwar Rangnath Salve in Sessions Trial No. 36 of 2004 [179 of 2003 (old)] by the learned Additional Sessions Judge, Basmathnagar on 14.06.2005 for offences punishable under Sections 498-A and 306 of the Indian Penal Code, stands quashed and set aside.
- [III] The appellant Dnyaneshwar Rangnath Salve 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