



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 766 OF 2005

1. Navnath s/o Raosaheb Saudagar,
Age : 23 years, Occu : Mechanic,
2. Raosaheb Madhav Saudagar,
Age : 55 years, Occu : Agriculturist,
3. Chandrabhaga Raosaheb Saudagar,
Age : 50 years, Occu : Household,
All R/o. Village Guha Shivar,
Taluka Rahuri, Dist. Ahmednagar Appellants

Versus

The State of Maharashtra Respondent

.....
Advocate for Appellants : Mr. Yuvraj Kakade h/f N. V. Gaware
APP for Respondent-State : Ms. Chaitali Chaudhari-Kutti
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27 NOVEMBER 2024

PRONOUNCED ON : 10 JANUARY 2025

JUDGMENT :

1. Instant appeal arises out of judgment and order dated 28.10.2005, passed by learned Ist Ad-hoc Additional District and Sessions Judge, Ahmednagar in Sessions Case No. 39 of 2005, holding appellants guilty for the offences punishable under Sections 306 and 498-A of Indian Penal Code, 1860 (henceforth "IPC" for short).

CASE OF PROSECUTION

2. In short, the prosecution case in trial Court is that, after two months of marriage, deceased Surekha was subjected to physical and mental cruelty. They had put up demand of Rs.50,000/- for setting up garage. On failure to meet the demand, she was harassed. Consequently, she hanged herself. Hence the report resulting into crime and trial, which ended up in conviction.

SUBMISSIONS

On behalf of appellants :-

3. Pleading innocence and alleging false implication, learned counsel for appellants would submit that prosecution failed to establish the charges beyond reasonable doubt. That, accusations are out of annoyance. That, witnesses who are close relatives are levelling vague, omnibus and sweeping allegations without specifying nature of harassment, without quoting instances of harassment and without specifying the role of accused persons. He pointed out that, witnesses are improvising the story than that was reported to police. That, there are material omissions rendering their testimonies unworthy of credence. That, there is no evidence to show that there was consistent demand as alleged. That, false and afterthought story has been reported. Learned counsel pointed out that in fact deceased herself was not interested in cohabiting and she regularly left the

matrimonial house and was required to be fetched back. Appellants were financially well off, of which there is clear admission, and as such there is no question of putting any monetary demand. Evidence on the point of section 498-A is apparently weak.

4. As regards to the offence under Section 306 of IPC is concerned, it is submitted that last visit of prosecution witnesses to the deceased Surekha was on 24.11.2004. She apparently committed suicide for the best reasons known to her on 12.12.2004. Thus, there being huge gap and there is no iota of evidence suggesting harassment, inducement, abetment on any count, the accusations of prosecution and findings of learned trial court, are against the evidence as well as law. He pointed out that, no circumstances are coming on record suggesting involvement of any of the appellant in the alleged suicide of Surekha. For all above reasons, she questions the findings and conclusion reached at by learned trial court and seeks indulgence of this appellate court.

On behalf of respondent-State :-

5. In answer to above, learned APP would submit that barely after two months of marriage, there was ill-treatment i.e. both physical as well as mental. Appellant No.1-husband put up the

demand of Rs.50,000/- for setting up a garage. For all above reasons, deceased was subjected to cruelty. Whenever deceased Surekha came, she reported above conduct of accused towards her. That, finally getting fed up of the ill-treatment and cruelty at the hands of accused, deceased was forced to end up her life. She committed suicide in the house of accused. According to learned APP, there is no plausible explanation from appellants' side about such unnatural death met by Surekha while she cohabited. Therefore, learned APP supported the appreciation of evidence, findings recorded and conclusion drawn by learned Trial Court.

EVIDENCE BEFORE THE TRIAL COURT

6. In support of its case, prosecution has examined in all 6 witnesses. Crucial evidence is of deceased Surekha's uncle PW2 Annasaheb, one acquaintance PW3 Jagannath, father PW4 Sahebrao and brother PW5 Babasaheb. The role and status and the sum and substance of the evidence of witnesses examined can be summarized as under :

PW1 Sarjerao Gorakshanath Ghadge acted as pancha to inquest panchanama vide panchanama Exhibit 18. He has admitted his signature and its contents of inquest panchanama.

PW2 Annasaheb Ganpat Shinde is the uncle of deceased Surekha. Relevant portion of his evidence at Exhibit 22 is as under :

"1. We are two brothers. Name of the elder brother is Sahebrao Shinde. Sahebrao has two sons and two daughters. Deceased Surekha is elder daughter of Sahebrao. The marriage of Surekha was solemnised along with accused Navnath at village Chinchmire. Accused No. Raosaheb and No. 3 Chandrabhaga are the parents of Navnath. In the said marriage, gold ornaments of two Tolas were given to Surekha whereas clothes Basta worth rupees three thousands was gifted. We have performed said marriage by giving utensils and other household articles.

2. After marriage, Surekha went to the house of in-law at village Guha. Surekha has passed eight standard, however failed in 9th standard. The accused persons have treated Surekha properly for two months. Thereafter, her in-laws and husband have started her giving physical and mental torture on the ground that she cannot cook properly and not in a position to do agricultural work properly. The accused No. 1 Navnath is the motor cycle mechanic. He was asking Sunita to bring an amount of Rs. 50,000/- from her paternal home in order to start the garage. We did not pay the amount. However, assured to pay the same. The accused persons were asking Surekha not to live there and were insisting to leave the house.

3. Surekha used to disclose all these things to us whenever she used to come to paternal home. Janannath Maruti Musmade and Namdeo Sobyabapu Narwade are the brother-in-law (Sadu) and father-in-law of my brother respectively. Thereafter I myself and cousin brother Balasaheb Genu Shinde pacified the in-laws of Surekha by visiting Guha. Prior to death Surekha lastly came to us on Diwali.

4. Incident is dated 12th December 2004. That day I was at

Rahuri. The son of my maternal uncle namely Sudhakar Ananda Narwade has informed me about the incident. He told me that Surekha died because of hanging. Thereafter I myself and Narwade immediately went to Guha at the house of Surekha. The dead body of Surekha was lying in the house and that time there were-ligature marks on her neck. That time the police have prepared the panchnama of the dead body and sent it for post mortem. After postmortem, the funeral ceremony of Surekha was performed at native of the accused i.e. village Guha, in between 11 to 12 midnight. After funeral other relatives went to their houses and I came to Rahur to lodge the complaints.”

PW3 Jagunnath Maruti Musmode is the grand-father of deceased Surekha, is examined at Exhibit 24. His evidence is as under :

“1. Accused persons are know to me. Surekha was daughter of my son-in-law (Mewani). I am residing at village Guha near S.T. stand. The marriage of Surekha along with accused No. 1 Navnath was solemnised in the month of May 2004. After marriage Surekha went to the house of her in-laws for cohabitation. For one month after the marriage, she was treated properly. Thereafter her in-laws and husband have started her ill-treatment. The accused persons were ill-treating. The accused persons were ill-treating her on the ground that she does not know household work, and she cannot cook properly. Similarly, they were ill-treating her on account of amount of Rs. 50,000/- for the purpose of opening of garage. The said fact was disclosed by Surekha to us whenever she used to come at my home while going to paternal home.

2. Thereafter, I myself, my father-in-law Jagannath²⁵ Maruti Musmade, and maternal uncle of Surekha namely Jalinder

Musmande went to the house of accused persons and tried to pacify them not to ill-treat Surekha.”

PW4 Sahebrao Ganpat Shinde, father of deceased Surekha, at Exhibit 25, deposed as under :

“1. Surekha was my daughter. She married with accused No.1 Navnath on 9-5-2004. The said marriage was performed by gifting two Tolas gold and cloth Basta. After marriage Surekha went to the house of her in laws so that village Guha. Approximately for two months, she was treated Properly. Thereafter, her husband and in-laws started her ill-treatment. They were beating her on the ground that she does not know cooking, and the agricultural work. Similarly, the accused persons were insisting her to bring an amount of Rs. 50,000/-firom her paternal home to start the garage. The said fact was disclosed by Surekha to us when she came to the paternal home on two occasions.

2. Thereafter I myself, Jagannath Musmade, Namdeo Musmade and brother Annasaheb went to the house of accused and pacified that we are not in a position to pay the amount, and hence would pay later on.

3. Lastly Surekha wame to us on Diwali festival. She was taken by her husband Navhath, at our home. On the next day, father-in-law of Surekha came to us to take her back. However, I did not send Surekha along with him. That time, when we enquired about her ornaments with Surekha, she told ms that her husband and in-laws have taken away ornaments from her on the ground that she should bring rupees fifty thousand. Thereafter on third day, my son Babasaheb reached her to her in-laws house. That time, accused

persons asked my son to bring Rs.50,000/- otherwise by giving an amount of rupees one lakh they would give divorce to Surekha. My son Babasaheb has disclosed me said fact.

4. *Incident of Surekha has taken place after 15 days of the Diwali festival whereas it has taken place after seven months of the marriage. On the day of incident when we were present at home, we received the telephone message. Thereafter I myself, my wife, son, brother Annasaheb cousin brother and others went to Surekha's house at Guha. We reached there at 4 p.m. When we went to Surekha's house, the dead body of Surekha was lying there, and there were ligature marks on her neck. Thereafter on completion of formalities, funeral was completed at about 12 mid-night."*

PW5 Babasaheb Sahebrao Shinde, brother of deceased Surekha, at Exhibit 26, deposed as under :

"1. Surekha is my sister. After marriage, sister Surekha went to the house of her in-laws for cohabitation. Initially for 1 to 1.5 months, she was treated properly. Thereafter, her husband and in-laws have started her ill-treatment. They have started her ill-treatment on the grounds that her parents have given her less dowry and not giving an amount of Rs. 50,000/- to open the garage. After two months of the marriage, when I went to meet Surekha she has narrated me the said incident.

2. Lastly before incident Surekha came to us on Bhaubeej festival. That time her husband Navnath has taken her to us. That time, the members of the family of in-laws of Surekha have taken away ornaments on her person, and asked her to bring Rs. 50,000/- from her paternal home. Surekha has narrated the said incident to

us. Thereafter on third day I went to the house of in-laws of Surekha to reach her. That time, the in-laws of Surekha asked her why she did not bring Rs. 50,000/- from her paternal home, and in case she did not bring the same, then she should go to her paternal home, and in case she did not bring the same, then she should go to her paternal home. That time, the members of in-laws house of Surekha have abused her in my presence. That time, the in-laws of Surekha told her than, in case she does not bring Rs. 50,000/- from her paternal home, thereby giving rupees one lakh to her divorce her. That time, by assuring the members of in-laws house of Surekha, that we would pay you Rs. 50,000/- to open garage by doing some transaction and that time I came back to home. Thereafter, I narrated the said incident to my family members.

3. The incident has taken place after fifteen days of the Diwali festival.”

PW6 Prosecution has examined PW6 Vijendra Shankarlal Jaiswal who was the Investigating Officer of the present crime and who has filed charge-sheet against the accused.

ANALYSIS

Charge under Section 498-A IPC :

7. 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.

8. The testimonies of PW2 Annasaheb (informant / uncle of deceased), PW3 Jagannath (acquaintance with deceased), PW4 Sahebrao (father of deceased) and PW5 Babasaheb (brother of deceased) which are relevant, are already reproduced in aforesaid paras.

9. In the present case, FIR was lodged at the instance of PW2 Annasaheb, who is uncle of deceased. On careful re-appreciation, it emerges that, according to him, his niece Surekha was properly treated for two months. Further according to him, thereafter there was taunting for not cooking food properly and not doing agricultural work. However, he has not named, who amongst three accused taunted to the above extent. He attributes demand of Rs.50,000/- for garage to husband. He apparently names merely husband and not other in-laws.

He was extensively cross-examined by the accused initially about the relatives; their details; and distance of their stay amongst each other. In para 6 of his evidence, he admitted that marriage was completely peaceful and happy and at that time, it was performed immediately after 10-15 days after settlement. He also answered that accused No. 1 – husband, since prior to marriage, was serving in Kamal Auto Centre at Rahuri. He also admitted that parents of accused are having irrigated land and their financial condition is good. He further admitted that accused-husband used to leave for his work at 8 a.m. and return back at 8 p.m. whereas parents-in-law left for agricultural work in the morning and returned by evening and deceased Surekha used to stay alone at home. He admitted that there was no complaint anywhere regarding alleged ill-treatment to any one. He attributes demand of Rs.50,000/-, but in November 2004. Rest of the suggestions were denied by this witness.

10. On visiting evidence of PW4 Sahebrao father, even his version is that after two months of marriage, her husband and in-laws ill-treated Surekha. He claims that as Surekha did not know cooking and agricultural work, there was beating to her. It is pertinent to note that as regards to beating is concerned, his own brother PW2 Annasaheb is silent. PW5 Babasaheb is naming all accused persons

for insisting to bring Rs.50,000/- from parents to set up a garage, however, his brother i.e. informant PW2 Annasaheb had attributed demand of Rs.50,000/- only to husband. According to father, daughter disclosed about when she came on two occasions. He too admits about visit of deceased during Diwali. According to him, he made inquiries about ornaments on the person of his daughter and she told that accused persons had taken it away in the backdrop of demand of Rs.50,000/-. He claims that his son PW5 Babasaheb had been to the house of accused to drop Surekha. At that time, accused had asked Rs.50,000/- to him. Accused persons had asked his son to bring Rs.50,000/- or to give Rs.1,00,000/- and give divorce. To the above extent, testimony of informant PW-2 Annasaheb is absolutely silent. Thus, both real brothers are not consistent and are at variance on material count.

In para 9 of the cross-examination of PW4 father, omissions are brought on record about informing accused that he was not in a position to pay the demand. In para 5 of the cross-examination, he admitted that he is unable to state that when Surekha told him about ill-treatment and demand of Rs.50,000/- have been made.

11. Brother of deceased i.e. PW5 Babasaheb is also examined

at Exh. 26. In his above reproduced testimony, he has stated that after 1 to 1½ months, there was ill-treatment on the ground that parents had given less dowry and not given amount of Rs.50,000/- to set up a garage. He claims that he learned about it when he went to meet Surekha after two months.

Thus, this witness gives a very distinct version than his own father and uncle PW2 Annasaheb. He deposed on the count of less dowry has neither his father nor his uncle whisper about any dowry. He also does not depose about taunting for not preparing food properly or not doing agricultural work. Another feature which emerges is that PW2 Annasaheb and PW4 Sahebrao both speak about learning from Surekha when she came to there place. However, this witness brother speaks of learning from her only when he went to meet her at her marital house. Para 6 of his cross shows that there is omission about asking her to bring Rs.50,000/- and on failure to meet demand to take Rs.1,00,000/- and give divorce. Thus, his version is materially different then his own father and uncle.

Consequently, informant, father and brother are not lending support to each other in consistent manner on the point of demand and cruelty. None of them have assigned distinct role to any

of the accused and have also not quoted the instances, except stating that there was mental and physical cruelty. Law requires specific material and not vague and sweeping allegations. To attract section 498-A there has to be continuous and incessant harassment. Material to this extent is missing in the evidence of prosecution.

Charge under Section 306 of IPC :-

12. Another charge is under Section 306 of IPC. Before advertent to appreciate the available evidence on this count, it would be apt to first deal with settled legal position and legal requirements for attracting said charge. In umpteen judgments, the Hon'ble Apex Court has dealt and discussed as to how and when said charge can be said to be brought home. The following are the few report known cases on above charge :

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.

13. 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.

14. 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.”

15. 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.”

16. 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.

17. 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.”

18. 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.”

19. 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.

20. 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)."

21. 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."

22. Apparently, marriage is of the year May 2004. Informant PW2 Annasaheb, father PW4 Sahebrao and brother PW5 Babasaheb speak about last visit of deceased Surekha to their house in Diwali, which falls in November. Admittedly, episode of hanging is of 12.12.2004 i.e. almost after a month or so after Diwali. Witnesses admit to that extent. In order to attract section 306, it is incumbent upon prosecution to demonstrate and substantiate that in proximity to 12.12.2004, there was cruelty or harassment in the backdrop of demand and it was of such nature and extent that deceased was left with no other alternative, but to end up her life. It is expected of prosecution to show that accused persons created such circumstances and had made her life so miserable due to which she took the extreme steps of hanging herself. In short, it is expected of prosecution to bring material suggesting abetment, inducement with sole intention to see that deceased commit suicide. Such legal requirements are time and again reflected in above reproduced rulings. Keeping such legal requirements in mind, available evidence is analyzed.

23. None of the witnesses attribute any sort of cruelty and harassment in proximity to 12.12.2004. There is nothing to show that on the day of alleged hanging husband and in-laws were in the company of deceased. No witness has been examined to demonstrate

the same. Inquest pancha has admitted that there are houses around the spot, but none is examined. As stated above, deceased does not seem to be in contact with witnesses after her visit to the house in Diwali. Therefore unless there is material indicating any sort of maltreatment in proximity to suicide, it is unsafe to attribute abetment or inducement. Witnesses admit that deceased husband was already serving. There are no details as to where he intended to set up garage. There is no investigation on these lines. PW2 informant himself admitted in cross about accused demanding Rs.50,000/- in the month of November, but he does not speak of any specific cruelty that too by specific accused. General allegations seem to be levelled. Such evidence, in the considered opinion of this court, is not sufficient to attribute abetment.

For all above reasons, even charge of 306 of IPC is fails.

Hence, the following order is passed:

ORDER

- I. Criminal Appeal is **allowed**.
- II. The conviction awarded by the Ist Adhoc Additional Sessions Judge, Ahmednagar to the appellants Navnath Raosaheb Saudagar, Raosaheb Madhav Saudagar and Chandrabhaga Raosaheb Saudagar, in Sessions Case No. 39 of 2005 for offences punishable under Section 498-A and 306 of IPC, stands quashed and set aside.

- III. The appellants stands acquitted from the charge levelled against them for the offences punishable under Sections 498-A and 306 of IPC.
- IV. The bail-bonds of the appellants stands cancelled.
- V. The fine amount deposited, if any, be refunded to the appellants 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, J.]

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