



Judgment

519 apl1308.23

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.1308 OF 2023

1. Santosh s/o Haribhau Bharne,
aged about 38 years, occupation:
business.

2. Dipak s/o Haribhau Bharne,
aged about 48 years, occupation:
labourer.

Both residents of Sadanand
Ward, Umarkhed District
Yavatmal.

..... **Applicants.**

:: VERSUS ::

1. State of Maharashtra,
through PSO Police Station,
Umarkhed.
Taluka and district Yavatmal.

2. Ravi Atmaram Jadhav,
r/o Borban, Near Gangasagar School,
Shrinagar, taluka Umarkhed,
district Yavatmal.

..... **Non-applicants.**

**Shri A.S.Mardikar, Senior Counsel assisted by Ms.Kaushiki
Gadge, Advocate for Applicants.**

Shri N.B.Jawade, Addl.PP for NA No.1/State.

Mrs.K.E.Meshram, Counsel Appointed for NA No.2.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 15/12/2025
PRONOUNCED ON : 19/12/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. Heard learned Senior Counsel Shri A.S.Mardikar for applicants, learned Additional Public Prosecutor Shri N.B.Jawade for non-applicant No.1/State, and learned counsel Mrs.K.E.Meshram appointed for non-applicant No.2/informant. **Admit.** Heard finally by consent of learned counsel for the parties.

2. The present application is preferred by applicants under Section 482 of the CrPC for quashing of FIR in connection with Crime No.155/2023 registered under Section 306 read with 34 of the IPC and consequent proceeding arising out of the same bearing chargesheet No.253/2023.

3

3. Brief facts necessary for disposal of the application are as under:

The crime is registered on the basis of a report lodged by non-applicant No.2 on an allegation that when he had been to village Waghad for some work, he received a phone call from his father. The father of the informant informed him that when he was in his bedroom, he heard a noise at main gate of his house and when he went to see, it revealed to him that applicant No.1 entered into bedroom of the deceased and did not come out and applicant No.2 was also standing outside the house and was abusing in filthy words about the deceased. The applicants were under influence of liquor. On the next day, i.e. 2.3.2023, again, applicants came there and abused the wife of the informant. The father of the informant informed the informant that applicants have humiliated her and, thereafter, she went inside the

4

bedroom, locked the bedroom from inside, and committed suicide by hanging herself. On the basis of the said report, the police have registered the crime against applicants.

4. Learned Senior Counsel for applicants submitted that to attract offence under Section 306 of the IPC, the prosecution has to *prima facie* establish that there was “abetment” to the deceased to commit suicide. Even accepting the prosecution case as it is, there is no “instigation” or “aid” and, therefore, the offence of “abetment” is not made out. He submitted that there may be a reason to the deceased to commit suicide as her activities came to knowledge of her father-in-law. He submitted that entire statements of witnesses nowhere disclose “instigation”, in the form of “humiliation”, and at the hands of applicants, the deceased has committed suicide. There is nothing on record to show that in what

5

manner, applicants could be said to have “instigated” the deceased that ultimately led her to commit suicide. The law governing Section 306 of the IPC is well settled. The basic ingredients to constitute offence under Section 306 of the IPC are, “suicidal death” and “abetment.” Section 306 of the IPC talks about “abetment of suicide” and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine. In order to attract the offence of “abetment”, there must be *mens rea*. Without knowledge or intention, there cannot be any “abetment”. The knowledge and intention must relate to the act said to be abetted, which in this case are absent and for all above these grounds, the application deserves to be allowed.

6

5. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the statement of the informant as well as other witnesses reveals that there was requisite *mens rea* and obviously, it is a matter of evidence. He submitted that statements of witnesses itself show that the deceased was humiliated in public, which is sufficient to infer that there was “abetment” at the hands of applicants and thereby she has committed suicide. She was referred by applicants as “prostitute.” Thus, there was “humiliation” of the deceased by raising doubt about her character and, therefore, she has committed suicide. At this stage, there is a sufficient material to connect applicants with the alleged offence.

6. After hearing both sides and perusing the material collected during the investigation, before entering into the merits of the case, it is necessary to see,

7

what are considerations as far as offence under Section 306 of the IPC is concerned.

7. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the IPC defines “abetment of suicide”, which reads thus:

“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. Classification of offence. - The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session”.

8. Section 107 of the IPC (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

“107. Abetment of a thing. A person abets the doing of a thing, who-

8

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.

Explanation 1.- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

9. Section 108 of the IPC reads thus:

“108. Abettor.-

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

10

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the

11

act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly,

12

and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.- The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.- It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

13

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C' has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder”.

10. Section 306 of the IPC talks about “abetment of suicide” and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

11. A question arises as to when a person is said to have instigated another. The word "instigate" means to

14

goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done.

12. It is well settled that in order to amount to an "abetment", there must be *mens rea*. Without knowledge or intention, there cannot be any "abetment". The knowledge and intention must relate to the act said to be abetted, which in this case are absent. Therefore, in order to constitute "abetment", there must be direct incitement to do culpable act.

13. In the case of **Prabhu vs. The State represented by the Inspector of Police and anr, SLP [Cri] Diary No. 39981/2022, decided on 30.01.2024**, by referring the various earlier decisions, the Hon'ble Apex Court held that the physical relationship over a considerable period of time was out of mutual love between the appellant and the deceased and not based on the promise of marriage.

15

In the said case, the Hon'ble Apex Court has considered its earlier decision in the case of **Kamlakar vs. State of Karnataka Criminal Appeal No.1485/of 2011, decided on 12.10.2023** and explained ingredients of Section 306 of the IPC and held, as under:

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In **Ramesh Kumar vs. Chattisgarh, reported in AIR 2001 SC 383**, this Court has analyzed different meanings of "Instigation". The relevant para of the said Judgment is reproduced herein:

16

“20. 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. 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."

8.4. The essentials of Section 306 IPC were elucidated by this Court in **M.Mohan vs. State, reported in AIR 2011 SC 1238**, as under:

"43. This Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** [(2009) 16 SCC 605: (2010) 3 SCC (Cri) 367)] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of selfesteem and selfrespect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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

18

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.

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 106 IPC were also discussed in **Amalendu Pal alias Jhantu vs. West Bengal AIR 2010 SC 512**, in the following paragraphs:

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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.

19

Merely on the allegation of harassment without there 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.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not

20

committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

14. In the light of the above said principles laid down by the Hon’ble Apex Court, it is well settled that to attract the provision, what is to be seen is that the accused have actually instigated or added to the victim in committing suicide. There must be direct or indirect inducement to the commission of suicide and the accused must be shown to have played an active role by an act of instigation or who are doing certain acts to facilitate the commission of suicide.

15. Applying the above principles to the facts of the present case, recital of the FIR reveals that on 1.3.2023, when the informant was not at home, applicant No.1 entered into the bedroom of the deceased and applicant No.2 was standing beside the room and was

21

referring the deceased as “prostitute” and also assaulted the father of the informant. On the next day also, applicants uttered similar words that, “the deceased is prostitute” in presence of other members of village and, therefore, the deceased felt humiliated. To substantiate the said contention, the investigating officer has recorded statements of various witnesses. The statements of villagers, namely Shashikala Jadhav, Ganesh Rathod, and Kisan Jadhav, also disclose that on 1.3.2023, at about 11:30 pm, they have heard altercations in front of the house of the informant and applicants were abusing the deceased by saying that, “she is prostitute”. The similar statements are by other witnesses also.

16. Thus, it is apparent from statements of witnesses and the statement of the father-in-law of the deceased that the deceased was humiliated by saying that, “she is prostitute” and applicant No.1 entered in her

bedroom. As per statements, applicants were under the influence of liquor at the relevant time.

17. As observed earlier, ingredients to constitute offence under Section 306 of the IPC would stand fulfilled if suicide is committed by deceased due to direct and alarming encouragement/incitement by accused leaving no option but to commit suicide. Further, extreme action of committing suicide is also on account of great disturbance to psychological imbalance of deceased.

This aspect is considered by the Hon'ble Apex Court in the case of **Nipun Aneja and Others Vs. State of Uttar Pradesh, reported in 2024 SCC OnLine SC 4091** wherein it has been observed, as under:

“The test that the Court should adopt in this type of cases is to make an endeavour to ascertain on the basis of the materials on record whether there is anything to

23

indicate even prima facie that the accused intended the consequences of the act, i.e., suicide. Over a period of time, the trend of the courts is that such intention can be read into or gathered only after a full-fledged trial. The problem is that the courts just look into the factum of suicide and nothing more. We believe that such understanding on the part of the courts is wrong. It all depends on the nature of the offence & accusation.”

18. In the case of **Ude Singh and ors vs. State of Haryana, reported in (2019)17 SCC 301**, wherein also this aspect is considered by the Hon’ble Apex court and it has been observed, as under:

“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

24

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, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances”.

19. In the case of **Praveen Pradhan vs. State of Uttaranchal**, reported in (2012)9 SCC 734, the Hon’ble Apex Court observed, as under:

“A plain and simple reading of this suicide note makes it crystal clear that the appellant had not just humiliated and insulted the deceased on one occasion. In fact, it is evident that the appellant perpetually humiliated, exploited and demoralised the deceased, which hurt his

25

self-respect tremendously. The words used are, to the effect that the appellant always hurt the self-respect of the deceased and he was always scolding him. The appellant always made attempts to force him to resign. The statements recorded by the police under Section 161 Cr.PC., particularly, one made by Smt. Kavita Singh, widow of the deceased and also those of various other family members, corroborate the version of events, as given in his suicide note”.

It has been further observed that, “in fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. Sometimes, there may not be direct evidence in regard to instigation

26

which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 Cr.PC”.

20. An indirect influence or an oblique impact which the acts or utterances of accused caused or created in the mind of deceased and which drove her to suicide would be sufficient to constitute the offence of “abetment of suicide”.

21. Coming to the facts of the present case, all that applicants did was, “uttered insulting statement to the

27

deceased in public and humiliated and also demoralized her by attacking her character”. The words, allegedly uttered by applicants in public and insulting the deceased in public alone, are sufficient, at this stage, to show that the proximate cause for the deceased to commit suicide was utterances of words by applicants. From statements of witnesses, requisite intention of applicants and *mens rea* are revealed. As per the case of the prosecution, the deceased was referred as “prostitute” and it demoralized her as well as affected her self-respect and immediately she has committed suicide by hanging herself.

22. Considering facts and circumstances of the case, we do not think that it is a case which requires any interference by this court at this stage and, therefore, the application deserves to be rejected and the same is **rejected** accordingly.

28

23. Fees of learned counsel Mrs.K.E.Meshram appointed for non-applicant No.2 are quantified and the same be paid to him as per rules.

Application stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!