

MARIANO ANTO BRUNO & ANR.

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v.

THE INSPECTOR OF POLICE

(Criminal Appeal No. 1628 of 2022)

OCTOBER 12, 2022

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[M. R. SHAH AND KRISHNA MURARI, JJ.]

Penal Code, 1860 – ss. 498A, 306 and 107 – Marriage of Appellant No.1 (husband) & deceased was solemnized in 2005 – A male child was born out of wedlock in 2007 – Prosecution case that Appellant No.1 caused immense mental torture to deceased by compelling her to have another child despite her miscarriage with second pregnancy and that deceased was subjected to continuous cruelty which drove her to commit suicide – Trial court convicted appellant No.1 & mother-in-law of deceased u/s 498A & 306 IPC – High Court upheld the conviction of appellants – Held: To convict a person u/s.306 IPC, there has to be clear mens rea to commit offence – It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that she commits suicide – The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and appellant No.1 abetted the commission of suicide of the deceased – In the present case, both the elements were absent – So far as conviction u/s.498A IPC is concerned, except the statement of PW-1 to PW-3 recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage – PW-1 to PW-3 were interested witnesses & there were material contradictions in their testimonies – There was no marital discord between Appellant No.1 & deceased during nine years of their married life – The fact that deceased was suffering from bipolar disorder was concealed from the family of appellant family during their marriage – Also, the evidence of PW-9 i.e., the psychiatrist was not considered by the Courts below – Conviction of appellants u/ss.306 and 498A IPC, accordingly, not sustainable.

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A **Allowing the appeal, the Court**

- HELD:1.1.** Before convicting an accused under s.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 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. 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 s.306 IPC is not sustainable.[Para 38][906-H; 907-A-B]
- 1.2.** In the present case, not only the positive action in close proximity to the time of suicide is absent but also there is no evidence for any continuous physical or mental torture meted out to the deceased by the appellants. On the contrary, appellant no. 1 himself took the deceased to consult a psychiatrist just a day prior to this incident obviously with the intention to make her feel better. The said act can by no stretch of imagination be said to be any such act which may lead the deceased to commit suicide. Further, the allegations made by PW-1 to PW-3 in their statement with respect to continuous harassment and torture of the deceased by the appellants just after the marriage is not worthy of being relied upon and has to be taken with a pinch of salt on account of fact that throughout their 9 years of marriage, there has never been any complaint or a whisper in this regard either by the deceased or her family members who appeared as prosecution witnesses. Even the deceased herself who was a qualified doctor never made any complaint in this regard. It is really hard to believe that a well-educated and self-reliant lady would take such things lying down for a substantially long period of 9 years. [Para 35][906-A-D]

1.3. To convict a person under Section 306 IPC, there has to be clear *mens rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding

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no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent. [Para 36][906-E]

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2.1. So far as conviction under Section 498A IPC is concerned, except the statement of the prosecution witnesses PW-1 to PW-3 recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage. The fact that there were cordial relations between the families of Appellant No. 1 and the deceased is not disputed. The deceased committed suicide on 05.11.2014 and the complaint against the appellants were filed on 24.11.2014 i.e., 3 weeks after the death of the deceased. [Para 37][906-F-G]

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2.2. PW-1 to PW-3 are interested witnesses, still, PW-3 categorically stated that “the marriage between my sister Dr. Amali Victoria and Dr. Bruno was a happy marriage”. Thus there exists material contradictions not only in his own statements and also the statement of other two witnesses. [Para 40][907-H; 908-A]

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3.1. The facts and evidence in the present case which have not been squarely analysed by both the Trial Court as well as the High Court can be summarised as follows:- a.) The complaint against the appellants was filed after 3 weeks of the death of the deceased; b.) There is not a shred of evidence with respect to offence alleged under Section 498A of the IPC meted out to the deceased by the Appellants; c.) There has been no marital discord between Appellant No. 1 and the deceased during their 9 years of married life; d.) There have been several emails exchanged between Appellant No. 1 and sisters of the deceased whereby the Appellant No. 1 was showered with praises for taking care of the deceased in the best possible manner and credit was also given to his parents for supporting the deceased in her career. Further, it was the sister of the deceased, who herself sent a mail to Appellant No. 1 saying “amali is fighting a disorder”; e.) The

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- A deceased was suffering from bipolar disorder and also had suicidal ideas from few days before suicide. Further, the deceased was also undergoing treatment for depression as she was showing major symptoms of depression like tiredness, poor sleep pattern, demoralised feeling to name a few. The fact that deceased was suffering from bipolar disorder was concealed from the Appellant family during their marriage; f.) The Trial Court as well as the High Court did not take the evidence of PW-9, Psychiatrist into consideration while convicting the Appellants under Sections 306 and 498A of IPC; g.) The conviction of the appellants is solely based on the oral evidence of mother and sister of the deceased,
- B who are interested witnesses; h.) The post mortem report does not give the cause of the death but on 15.12.14, the cause of the death is shown as Asphyxia due to external compression. [Para 43][909-E-H; 910-A-E]

3.2. Having considered the aforesaid facts of the case in

- D juxtaposition with the judgments and upon appreciation of evidence of the eyewitnesses and other material adduced by the prosecution, it is clear that the trial court wrongly convicted the Appellants and the High Court was also not justified in upholding the conviction of Appellants under Sections 306 and 498A IPC. [Para 44][910-F]

E *Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618 : [2001] 4 Suppl. SCR 247 – relied on.*

F *Geo Varghese v. State of Rajasthan and Another 2021 SCC OnLine SC 873; M. Arjunan v. State, represented by its Inspector of Police (2019) 3 SCC 315; and Ude Singh & Ors. v. State of Haryana (2019) 17 SCC 301 : [2019] 9 SCR 703 – referred to.*

Case Law Reference

G	[2019] 3 SCC 315	referred to	Para 25
	[2019] 9 SCR 703	referred to	Para 26
	[2001] 4 Suppl. SCR 247	relied on	Para 42

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1628 of 2022

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From the Judgment and Orders dated 31.01.2022 of the High Court of Judicature at Madras in Crl. A. No. 166 of 2021. A

Kapil Sibal, Sr. Adv., Arjun Garg, Aparajita Jamwal, Agilesh Kumar S., Aakash Nandolia, Ms. Sagun Srivastava, Ms. Aparajita, Advs. for the Appellants.

P. V. Yogeswaran, Ashish Kumar Upadhyay, Y. Lokesh, V. Sibi Kargil, V. Kandha Prabhu, Arjun Singh, Anubhav Chaturvedi, Pankaj Kumar Agarwal, Surya Narayan Patro, L. R. Venkatesan, K. Kumaravadivel, Ms. Shiwani Tushir, Ms. Maitri Goal, Advs. for the Respondent. B

The Judgment of the Court was delivered by C

KRISHNA MURARI, J.

1. The present appeal is directed against the judgment and order dated 31.01.2022 passed by the High Court of Judicature at Madras (hereinafter referred to as "**High Court**") in Criminal Appeal No. 166 of 2021 filed by the Appellants herein seeking to set aside the order of conviction passed by the Sessions Judge, Mahila Court, Chennai (hereinafter referred to as "**Trial Court**") in S.C No. 209 of 2016 under Sections 498A and 306 of the Indian Penal Code (hereinafter referred to as "**IPC**"). The Appellants were sentenced to undergo imprisonment for a period of 3 years with a fine of Rs. 5,000/- each, in default of which to undergo simple imprisonment for a period of one month under Section 498A IPC and to undergo imprisonment for a period of 7 years with a fine of Rs. 25,000/- each in default of which to undergo simple imprisonment for a period of 3 months under Section 306 IPC. By impugned judgment, the High Court upheld the conviction of the Appellants for the offence under Sections 498A and 306 IPC. D E F

2. Briefly, the facts relevant for the purpose of this appeal are as follows:

2.1 The marriage between Appellant No. 1 and Dr. M. Amali Victoria (hereinafter referred to as "**deceased**") was solemnised on 08.09.2005 and a male child was born out of wedlock in the year 2007. On the professional front, both parties are doctors. Appellant No. 1 was informed on 05.11.2014 that the deceased had collapsed in the bathroom of their home and was non-responsive. Immediately, an ambulance was called by the father of Appellant No. 1. On reaching the site of the H

- A incident, Appellant No. 1 found the deceased having no pulse. Despite intervention from the neighbors of Appellant No. 1 who were doctors, the deceased could not be resuscitated and passed away on 05.11.2014. Post mortem of the body was conducted on 06.11.2014 and the cause of death was asphyxia due to external compression of the neck.
- B 2.2 On 06.11.2014, The Respondent Police registered FIR No. 1865 of 2015 at Police Station K2, Ayanavaram, District Kilpauk, Chennai based on the statement of Appellant No. 1 owing to the unnatural death of the deceased under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C”).
- C 2.3 After 3 weeks of the death of the deceased, PW-1(the mother of the deceased) lodged a complaint against the Appellant No.1, Appellant No. 2(mother-in-law), and the father-in-law of the deceased for the offences punishable under Sections 498A and 306 IPC. Thereafter, the FIR was converted from Section 174 Cr.P.C to Sections 498A and 306 IPC.
- D 2.4 It was the case of the prosecution that the marriage of the deceased with Appellant No. 1 was solemnised in the year 2005 and since the deceased was not having a child for 1.5 years, the appellants abused her and compelled her to participate in the Pooja and on the refusal of the same, she was threatened by the appellants that she would die. Subsequently, the deceased gave birth to a male child named Rosando by caesarean in the year 2007. Further, the Appellant No. 1 caused immense mental torture to the deceased by compelling her to have another child in spite of the fact that the deceased had a miscarriage with her second pregnancy. The deceased was made to do all the domestic
- E household work and was subjected to continuous cruelty at the hands of the appellants. Due to the same reason, the deceased was driven to commit suicide on 05.11.2014.
- F 3. Thereafter, on completion of the investigation, charge sheet was filed and cognizance was taken. Since the offences are triable by the Court of Session, the said case being SC No. 209 of 2016 was committed to Mahila Court, Chennai for trial.
- G 4. The Trial Court framed charges against the appellants for the offences under Sections 498A and 306 IPC. The appellants pleaded not guilty and therefore they came to be tried for the aforesaid offence.

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5. In order to substantiate the case, the prosecution examined 15 witnesses. From side of the defence, no witnesses were examined. The statement of the appellants was also recorded under Section 313 of Cr.P.C.

6. The Trial Court, after analysing the statement made by the prosecution witness and evidence of the defence, vide judgment and order dated 26.03.2021 convicted the Appellants i.e., the husband and mother-in-law of the deceased for the offences under Sections 498A and 306 IPC and were sentenced as stated herein above. The Trial Court acquitted the father-in-law of the deceased of all the charges.

7. Challenging the judgment and order passed by the Trial Court, the Appellants filed Criminal Appeal No. 166 of 2021 before the High Court. The same was dismissed with the observation that the Appellants have committed the offence under Sections 498A and 306 IPC and the Trial Court rightly appreciated the evidence and convicted the appellants herein. The Respondent police were directed to send the appellants to undergo the remaining period of sentence. Being aggrieved by the High Court order, the appellants have preferred the present appeal.

8. We have heard Mr. Kapil Sibal, Learned Senior Advocate appearing on behalf of the appellants and Mr. P.V. Yugeswaran, Learned Counsel appearing on behalf of the Respondents.

Contentions on behalf of the Appellants:

9. Mr. Kapil Sibal, Learned Senior Advocate submitted that the allegations of cruelty have been made for the first time in the complaint made by the mother of the deceased and there is not even a whisper of these allegations in over 9 years of marriage by the deceased or her family. On the contrary, the relations between the Appellants and his family, and the deceased and her family were extremely cordial.

10. It was vehemently submitted that the deceased was suffering from bipolar disorder and this fact was not disclosed to the petitioner at the time of marriage. In spite of the non-disclosure of the same, Appellant No. 1 took good care of the deceased and it cannot be alleged that the deceased committed suicide due to abetment by the Appellants.

11. It was further submitted that the complaint has been made belatedly with an ulterior motive which is also reflected in/from the initial statements of family members of the deceased made soon after her death.

- A 12. It was next submitted that there were no signs of animosity between the families when their statements were being recorded immediately after the death of the deceased. However, one of the sisters of the deceased asked for the custody of Appellant No.1's son (rights over the property) and on refusal, the complaints started.
- B 13. It was further submitted that the courts below completely disregarded the testimony of PW-9 who was the medical professional, who treated the deceased on 04.11.2014 ie., one day before her death. The summary recorded by PW-9 clearly records the history of depressive illness in the past, suicidal attempts, and suicidal ideas.
- C 14. It was also submitted that the courts below have proceeded with convicting the appellants solely on the basis of the testimony of PW-1 to PW-3 alleging continuous harassment and mental cruelty by the appellants.
- D 15. Reliance was placed on the decision of this Court in *Amalendu Pal Vs. State of West Bengal¹, Rajesh Vs. State of Haryana², Gurcharan Singh Vs. State of Punjab³, Ude Singh & Ors. Vs. State of Haryana⁴*.

Contentions on behalf of the Respondents:

- E 16. Mr. P.V. Yugeswaran, Learned Counsel appearing for the Respondents submitted that the evidence of PW-1 to PW-3 has clearly established that after marriage, all the accused persons demanded more dowry and also stated how the deceased was abused and humiliated for not conceiving and compelled her consume cow urine in the name of 'Pooja'.
- F 17. It was further submitted that the Trial Court as well the High Court has weighed all relevant factors, including the nature of the charge, the gravity of the offence and penalty, and the nature of evidence while convicting the Appellants under Sections 306 and 498A IPC.
- G 18. It was also submitted that PW-1 to PW-3 have consistently stated about the nature of harassment and incident which instigated the victim to commit suicide leaving her only child.

¹(2010) 1 SCC 707

²(2020) 15 SCC 359

³(2020) 10 SCC 200

H ⁴(2019) 17 SCC 301

19. It was next vehemently submitted that there is clear evidence A to show that after the abortion of second pregnancy in 2014, the abuse, harassment, and instigation by the accused persons increased many folds.

20. We have carefully considered the rival contentions of the learned counsel appearing for the parties and perused the entire records. B

21. The genesis of the present appeal originates from the impugned order pronounced by the High Court whereby the High Court upheld the conviction of the Appellants under Sections 306 and 498A of IPC. Taking that into account, it is necessary to advert to the essential ingredients of Section 306 IPC. C

22. Section 306 of IPC reads as under:-

“306. Abetment of suicide: - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” D

23. Abetment is defined under Section 107 of IPC which reads as under:-

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

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 F

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1- A person who by wilful misrepresentation, or by wilful 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. G

Explanation 2- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the H

A *commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”*

24. While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in ***Geo Varghese Vs. State of Rajasthan and Another***⁵ has observed as under:-

C “*13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under :-*

D “*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.”*

E *14. Though, the IPC does not define the word ‘Suicide’ but the ordinary dictionary meaning of suicide is ‘self-killing’. The word is derived from a modern latin word ‘suicidium’, ‘sui’ means ‘oneself’ and ‘cidium’ means ‘killing’. Thus, the word suicide implies an act of ‘self-killing’. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.*

F *15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.*

G *16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh¹ has defined the word ‘instigate’ as under :-*

“*Instigation is to goad, urge forward, provoke, incite or encourage to do an act.”*

H *17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this*

Court. In the case of **S.S.Cheena Vs. Vijay Kumar Mahajan** A and Anr⁶, it was observed as under:-

“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.” B C

25. The ingredients of Section 306 IPC have been extensively laid out in **M. Arjunan Vs. State, represented by its Inspector of Police**⁷ D which are as under: -

“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 I.P.C.” E F

26. 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. With regard to the same, a two-judge bench of this Court in **Ude Singh & Ors. Vs. State of Haryana**⁸ observed as under:- G

⁶(2010) 12 SCC 190

⁷(2019) 3 SCC 315

⁸(2019) 17 SCC 301

- A “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.
- D 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.”

27. In the backdrop of the above discussion, we may now advert to the facts of the present case to test whether the conviction of the Appellants for the offence under Sections 306 and 498A IPC is sustainable or not.

28. The marriage of Appellant No. 1 and the deceased was solemnised in the year 2005 and a male child named “Rosando” was born out of the wedlock in the year 2007. It is pertinent to mention that both, Appellant No. 1 and the deceased are reputed doctors by profession working in the State of Tamil Nadu. There has been no animosity between the families of Appellant No. 1 and the deceased throughout their marriage. Infact, after the marriage, Appellant No. 1 came to know that the deceased was suffering from bipolar disorder. Subsequently he also came to know that she had suicidal tendencies right from her student days and had undergone treatment under a psychiatrist at Thirunelveli, Tamil Nadu.

29. At this stage, it may be relevant to refer to the statement made by Appellant No. 1 under Section 313 Cr.P.C which is as under:

“My wife had mental illness right from her young age. She had undergone treatment several times as an in-patient even while she was studying. She had even attempted suicide several times. They had got her married suppressing the above facts. I became aware of these facts only after the marriage when I confronted my mother-in-law and my wife’s sister regarding the above, my mother-in-law had left for America. It was I who had treated my wife for 9 years thereafter. I had managed to ensure that the effects of the disease are contained to the minimum possible. She continuously had Bipolar Disorder, Depression, Phobias, Hallucination and Suicidal tendency.

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A *She had been taking several medicines continuously for these.*

The fact stands corroborated by the summary of treatment report dated 04.11.14 by Dr. Shalini, Consultant Psychiatrist, PW-9 which is reproduced below:-

B "Dr. Amali Victoria/32/F MBBS, MD(psy), Asst Prof IMH

W/o Mr. Mariano Bruno / 36/ M Mch (Neuro) Surgeon

Mx 7 years A/NC/N/ 1 Son 7/M

- Couple present together

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- Wife C/o sadness for past 1 month, after being posted in female ward @ IMH

o Feels tired, not interested in working

o Feels demoralized, incapacitated

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o Poor sleep

- She had felt well until 6 weeks, suddenly turned more and more desparate.

- No H/o hypothyroidism

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- H/o similar depressive illness in the past (+)

o H/o episode during MBBS, had attempted suicide, had taken treatment with a psychiatrist at Thirunelvelli, admitted in ICU, TMC.

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o 2nd episode post partum

o 3rd episode present

- C/o suicidal ideas past two days – hence husband has brought her for consultation today

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- Client's husband wants to go in for 2nd child, where as amali fears that she may not be able to cope up. Feels helpless, hopeless and worthless

- She wants to quit her job, but fears parents in law will leave her and go back to native place. She feels she will not be able to take care of her son or other future kids on her own.

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- Husband says he had requested for a second opinion because he feels she is getting very quiet and inactive at home. She had previously consulted her psychiatrist colleague at IMH also. But husband wants a second opinion as she has been talking of committing suicide for the past 2 days. A
- Amali Counselling B

Advised free T3, TSH
Rx
Cap. Prodep (20) 1-0-0
Tab Eliwel (25) 0-0-1 C
× 10 days

- To come with TFT report for review after 10 days
- To continue the therapy for sense of worthlessness”

30. Within few weeks of marriage, the Appellant No. 1 wrote an email to the deceased's mother and sister seeking their help in order to take care of the deceased but the deceased's mother refused to help and she left for United States. Subsequently, with the help of Appellant No. 1, the health condition of the deceased improved and she finished her post-graduation in 2013 with a gold medal and subsequently, started working in the year 2014. The relationship between the families were cordial and the deceased was very affectionate towards the Appellant's family and there are no evidence of cruelty or harassment meted out to her by the Appellants. D E

31. In the year 2014, the deceased suffered a miscarriage, due to which she started showing signs of depression and further took treatment on 04.11.2014 from Dr. Shalini ie, PW-9, who prescribed certain medications. However, the deceased passed away on 05.11.2014 after she was found unconscious in the bathroom. F

32. With respect to bipolar disorder with which the deceased was suffering, it refers to a disorder associated with episodes of mood swings ranging from depressive lows to manic highs. Some of the symptoms of bipolar disorder are as follows: G

- Feeling sad, hopeless or irritable most of the time
- Lack of energy

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- A ➤ Difficulty in concentrating and remembering things
 ➤ Loss of interest in everyday activities
 ➤ Feelings of emptiness or worthlessness
- Indeed, each suicide is a personal tragedy that prematurely takes
- B the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record.
- C 33. Coming to the case at hand, FIR was lodged by Appellant No.1 due to the unnatural death of the deceased, soon thereafter, one of the sisters of the deceased asked for the custody of the son of Appellant No.1 and on refusal of the same, the mother of the deceased gave an oral statement after 3 weeks of the death of the deceased alleging that the Appellants caused the death of the deceased and that she was subject
- D to constant harassment at the hands of the Appellants due to insufficient dowry and the Appellants constantly abused the deceased for not conceiving. It is thereafter, the FIR was converted from Section 174 Cr.P.C to Section 306 IPC. Charges were framed and after completion of trial, the Trial Court convicted the Appellants under Sections 306 and
- E 498A IPC. On Appeal, the High Court upheld the same. The operative portion of the judgment reads as under: -
- F *"16. Two things have to be proved by the prosecution in order to sustain the appellants' conviction for the offences under Section 498(A) and 306 IPC, as to whether, the death of the deceased is unnatural and as to whether the deceased committed suicide due to harassment, inducement and abetment of the appellants. In this case, as already stated, as per the Medical evidence, it is clear that the victim died unnaturally and the evidence of P.W.1 to P.W.3 proved that the appellants made harassment on the victim and caused mental and physical cruelty. Due to cruelty, the deceased has taken the extreme step to end her life."*
- G *18. In cases of this nature, no independent witness can be expected, because in India, the women are even well qualified persons, considering their family reputation, they may not express certain things to any third person or stranger and*
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they can only say either to their mother or sister or very close friend or well-wishers. In this case, P.W.1 is the mother of the deceased and P.W.2 is the elder sister of the deceased. There are no medical records produced on the side of the appellants to show that the deceased was mentally disordered person or she is having tendency of committing suicide. However, the evidence of P.W.1 to P.W.3 and P.W.10, would clearly show that the deceased committed suicide due to the continuous harassment and the mental cruelty made by the appellants. Hence, the evidence of P.W.1 to P.W.3 are reliable and trustworthy, which inspires the confidence of this Court to convict the appellants. Testimony of interested witness cannot be per se discarded and the Court has to adopt careful approach and analyse evidence to find out the cogency and credibility. This Court does not find out any reason to disbelieve the evidence of P.W.1 to P.W.3 and evidence of P.W.2 was corroborated by the evidence of P.W.10.

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20. A careful reading of the evidence of P.W.1 to P.W.3 and also the evidence of the Doctor who conducted post-mortem proved that the victim was subjected to harassment and cruelty made by the appellants. She is well educated and working as a Psychiatrist in the Government Mental Hospital, Kilpauk, she ended her life by way of hanging. Therefore, this Court finds that the appellants have committed the offence under Sections 498(A) and 306 IPC and the learned trial Judge rightly appreciated the evidence and convicted the appellants and therefore, there is no merit in this case and the appeal is liable to be dismissed."

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34. A bare perusal of the impugned judgment indicates that the High Court erred in recording the finding that there is sufficient evidence for convicting the appellants under Section 306 IPC losing sight of the fact that there exists no evidence on record indicating that the deceased was meted out with harassment by the appellants just before her death. It is well-settled that not only there has to be evidence of continuous harassment, but there should be cogent evidence to establish a positive action by the accused which should more or less be proximate to the time of occurrence, which action can said to have led or compelled the person to commit suicide.

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- A 35. In case at hand, not only the said positive action in close proximity to the time of suicide is absent but also there is no evidence for any continuous physical or mental torture meted out to the deceased by the appellants. On the contrary, appellant no. 1 himself took the deceased to consult a psychiatrist just a day prior to this incident obviously with the intention to make her feel better. The said act can by no stretch of imagination be said to be any such act which may lead the deceased to commit suicide. Further, the allegations made by PW-1 to PW-3 in their statement with respect to continuous harassment and torture of the deceased by the appellants just after the marriage is not worthy of being relied upon and has to be taken with a pinch of salt on account of fact
- B that throughout their 9 years of marriage, there has never been any complaint or a whisper in this regard either by the deceased or her family members who appeared as prosecution witnesses. Even the deceased herself who was a qualified doctor never made any complaint in this regard. It is really hard to believe that a well-educated and self-reliant lady would take such things lying down for a substantially long period of 9 years.
- C 36. To convict a person under Section 306 IPC, there has to be clear *mens rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.
- D 37. Now, so far as conviction under Section 498A IPC is concerned, except the statement of the prosecution witnesses PW-1 to PW-3 recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage. The fact that there were cordial relations between the families of Appellant No. 1 and the deceased is not disputed.
- E G The deceased committed suicide on 05.11.2014 and the complaint against the appellants were filed on 24.11.2014 i.e., 3 weeks after the death of the deceased.
- F 38. This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine H the facts and circumstances of the case and also assess the evidence

adduced before it in order to find out whether 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. 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.

39. Prosecution in order to prove the guilt of accused/appellants produced the following witnesses:

- Mother of the deceased – PW-1 A
- Sister of the deceased – PW-2 B
- Brother of the deceased - PW-3 C
- Carpenter who broke open the bathroom door - PW-4 D
- servant maid working in the house - PW-5
- AC mechanic who accompanied the carpenter - PW-6
- Colleague of the deceased - PW-7
- Colleague of the deceased - PW-8 E
- Doctor who gave the treatment to the deceased on 04.11.2014 - PW-9
- Doctor who conducted autopsy on the dead body - PW-10
- Doctor who declared the deceased as brought dead on 05.11.2014 - PW-11 F
- Doctor who treated the deceased on abortion of the second child - PW-12
- Auto driver - PW-13
- Sub-Inspector of Police - PW-14 G
- Inspector of Police who investigated the case – PW-15

40. PW-1 to PW-3 are interested witnesses, still, PW-3 categorically stated that "*the marriage between my sister Dr. Amali Victoria and Dr. Bruno was a happy marriage*". Thus there exists H

- A material contradictions not only in his own statements and also the statement of other two witnesses.
41. PW-9, Dr. Shalini is the Psychiatrist who had given treatment to the deceased on 04.11.2014. she had deposed that the deceased expressed her disinterest in duty, complained of lack of sleep and not feeling hungry and also had no interest over anything. Further, PW-9 stated that these were the symptoms of depression. PW-9 in her summary of treatment report dated 04.11.2014 stated that the deceased stated cause of sadness for the past 1 month was due to her posting at the female ward @ IMH and she feels tired, is not interested in working, poor sleep pattern to name a few. Furthermore, it is pertinent to mention that it was also noted in treatment summary by PW-9 that the deceased had similar depressive illness in the past i.e., 1st episode during MBBS college days, had attempted suicide, 2nd episode post-partum and present is the third episode. The deceased had suicidal ideas before going for the consultation with the psychiatrist on 04.11.2014 and the same is evident from the summary of treatment. However, the evidence of PW-9 i.e., the psychiatrist has not been considered by the Courts below and conviction of the appellants were solely based on the oral evidence of PW-1 to PW-3.

42. It is well settled that the Courts ought to 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 the life by committing suicide. Reference may be made to the judgment of a three-Judge Bench of this Court in *Ramesh Kumar Vs. State of Chhattisgarh*⁹, wherein this Court set-aside the conviction of the accused for the offence under Section 306 IPC as ingredients of Section 306 IPC were not satisfactorily proved. It was observed as under :-

- G “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*

H ⁹(2001) 9 SCC 618

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. A

21. *In State of West Bengal v. Orilal Jaiswal and Anr.¹⁰, this 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 the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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.”* B

(emphasis supplied) C

43. Accordingly, the facts and evidence in the present case which have not been squarely analysed by both the Trial Court as well as the High Court can be summarised as follows:- D

1. The complaint against the appellants was filed after 3 weeks of the death of the deceased. E
2. There is not a shred of evidence with respect to offence alleged under Section 498A of the IPC meted out to the deceased by the Appellants. F
3. There has been no marital discord between Appellant No. 1 and the deceased during their 9 years of married life. G
4. There have been several emails exchanged between Appellant No. 1 and sisters of the deceased whereby the Appellant No. 1 was showered with praises for taking care of the deceased in the best possible manner and credit was

¹⁰(1994) 1 SCC 73 H

- A also given to his parents for supporting the deceased in her career. Further, it was the sister of the deceased, who herself sent a mail to Appellant No. 1 saying "*amali is fighting a disorder*"
- B 5. The deceased was suffering from bipolar disorder and also had suicidal ideas from few days before suicide. Further, the deceased was also undergoing treatment for depression as she was showing major symptoms of depression like tiredness, poor sleep pattern, demoralised feeling to name a few. The fact that deceased was suffering from bipolar disorder was concealed from the Appellant family during their marriage.
- C 6. The Trial Court as well as the High Court did not take the evidence of PW-9, Psychiatrist into consideration while convicting the Appellants under Sections 306 and 498A of IPC.
- D 7. The conviction of the appellants is solely based on the oral evidence of mother and sister of the deceased, who are interested witnesses.
- E 8. The post mortem report does not give the cause of the death but on 15.12.14, the cause of the death is shown as **Ashphyxia due to external compression.**
- F 44. Having considered the aforesaid facts of the case in juxtaposition with the judgments referred to above and upon appreciation of evidence of the eyewitnesses and other material adduced by the prosecution, we are of the view that Trial Court wrongly convicted the Appellants and the High Court was also not justified in upholding the conviction of the Appellants under Sections 306 and 498A IPC.
- G 45. As a result, the impugned judgment dated 31.01.2022 passed by the High Court as well as judgment and order of the Trial Court dated 26.03.2021 are unsustainable and deserve to be set aside and are hereby set aside. The appellants are acquitted of the charges levelled against them.
- H 46. The appeal, accordingly, stands allowed.