

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 785 of 1997****FOR APPROVAL AND SIGNATURE:****HONOURABLE SMT. JUSTICE ABHILASHA KUMARI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

STATE OF GUJARAT....Appellant(s)

Versus

BAVANJI SHAMJI BHANGI & 2....Opponent(s)/Respondent(s)

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Appearance:

MR HIMANSHU K PATEL, ADDL. PUBLIC PROSECUTOR for Appellant No. 1
MR HARESH N JOSHI, ADVOCATE for the Opponent/Respondent No. 1 - 3

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CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/06/2013

ORAL JUDGMENT

1. The present appeal is directed against the judgment and order dated 02.07.1997, passed by the learned Assistant Sessions Judge, Gondal, in Sessions Case No.154/1992, whereby all three respondents

(original accused) have been acquitted of the charges under Sections-306, 498A, 354 and 114 of the Indian Penal Code.

2. The case of the prosecution is based upon the complaint dated 16.04.1992, registered as C.R.No.I-38/1992, at Upleta Police Station. The complainant is Champaben (the deceased), who subsequently died of burn injuries, on 06.05.1992. As per the case of the prosecution, the deceased was working as a Sweeper in Upleta Nagarpalika, on daily-wage basis. She used to earn about Rs.775/- per month. Her marriage had taken place about nine years ago. The deceased had three sons from the said wedlock. Her husband had committed suicide by hanging himself, about five months before the filing of the complaint. The deceased has stated in the complaint that respondent No.3 Jayanti Ratna, who is the son of her uncle-in-law and lives next door to her, was also working as a Sweeper in the Nagarpalika. On 14.04.1992, at about 2.30 p.m., he asked her to accompany him to watch a film when she was at work. The deceased refused to do so. After her work was over at about 5.30 p.m., the deceased went home. At about 11.30 p.m., respondent No.3 came to her house. He caught hold

of her arm and told her to give him one chance. The allegation is that respondent No.3 made an illicit demand to the deceased, which was rejected by her. Thereafter, on 15.04.1992, at about 11.30 p.m., respondent No.3 again came to the house of the deceased and woke her up. He reiterated his illicit demand and caught hold of the arm of the deceased. Two friends of the late husband of the deceased, Vinodbhai and Dineshbhai, were passing by. Upon seeing respondent No.3, they stopped. The deceased told them that respondent No.3 is harassing her. It is further the case of the prosecution that respondents Nos.1 and 2, father-in-law and mother-in-law of the deceased used to taunt the deceased by calling her "characterless", and in that manner inflicted mental torture upon her. On 16.04.1992, the deceased went for her work in the morning. At about 11.30 a.m., she returned home. At about 11.45 a.m., respondent No.3 came to her house and caught hold of her arm. He again made an illicit demand. The deceased, being fed up of the taunts given by respondents Nos.1 and 2, and the harassment caused by respondent No.3 by making illicit demands from her, poured kerosene on her body and set herself ablaze with

a matchstick. On the same day, that is, 16.04.1992, the Dying Declaration of the deceased was recorded by an Executive Magistrate. The Dying Declaration is in question-and-answer form. The deceased has stated that the respondents are harassing her for the last eight days. The deceased has further stated that respondent No.3 was after her to live with him, and respondents Nos.1 and 2 were encouraging his demands. For this reason, she has committed suicide.

3. After the registration of the complaint, the investigative machinery swung into motion. Statements of witnesses were recorded. An Inquest was performed on the dead body of the deceased, which was sent for autopsy. A Panchnama of the scene of offence was prepared. At the end of the investigation, as sufficient incriminating evidence was found against the accused, they came to be charge-sheeted before the Court of learned Judicial Magistrate, First Class, Upleta. As the offence under Section-306 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the learned Assistant Sessions Judge, Gondal (hereinafter referred to as "the Trial Court"). The

Trial Court framed the charge against the accused, at Exhibit-1, on 29.05.1997. It was read over and explained to the accused, who denied their guilt and claimed to be tried. Accordingly, the case was put to trial. In order to bring home the guilt of the accused, the prosecution has examined as many as 18 witnesses and produced documentary evidence. After the recording of the evidence of the prosecution witnesses was over, the learned Trial Judge explained to the accused the statements appearing against them in the evidence of the prosecution witnesses and recorded their statements under Section-313 of the Code of Criminal Procedure, 1973. The defence of the accused was that of total denial.

4. After appreciating and evaluating the evidence on record, the Trial Court recorded a finding of acquittal in favour of all three accused, arriving at the conclusion that there was no evidence on record to substantiate the charges against them. Aggrieved thereby, the State is in appeal.

5. Mr.Himanshu K. Patel, learned Additional Public

Prosecutor has submitted that the Trial Court has not considered that the complaint was lodged by the deceased herself, while she was admitted in the Hospital. Though it has not been taken as a Dying Declaration, being first in point of time, it ought to have been treated as such. It is submitted that when a person is on the death-bed, he, or she, would not normally implicate anyone falsely. In the complaint, the deceased has stated that accused No.3 was harassing her by making illegal demands and had come to her house thrice, at night, to pressurize her. It is further submitted that the husband of the deceased had committed suicide about five months before the registration of the complaint. The deceased was a young woman of about 30 years having three children. She was under trauma and accused No.3 was trying to take advantage of her situation, which left her with no option but to take her life. Learned Additional Public Prosecutor has further submitted that though other prosecution witnesses have turned hostile, there is no reason why the recitals in the complaint and the Dying Declaration ought not to be believed. It is submitted that the Dying Declaration has been recorded

on the day of the incident, and on the same day as the complaint. There is evidence to show that the deceased was conscious, while it was recorded, as endorsed by a Doctor. The Executive Magistrate who has recorded the Dying Declaration has been examined and has also stated that the deceased was conscious when it was recorded. It is urged that merely because the Dying Declaration was recorded within a period of five minutes, it cannot be discarded on this ground, as has been done by the Trial Court. It is submitted that the questions asked to the deceased were short ones and the Dying Declaration could easily have been recorded in five minutes, as the patient was conscious. That the Trial Court has not considered the Dying Declaration on irrelevant considerations, resulting in the wrongful acquittal of the accused. Learned Additional Public Prosecutor has further submitted that the reasons recorded by the Trial Court for acquittal are neither cogent nor convincing. The Trial Court has concentrated only on the hostile witnesses, but has wrongly ignored the Dying Declaration given by the deceased. On the above grounds, it is prayed that the appeal be allowed and the impugned judgment and

order be quashed and set aside.

6. Mr.Haresh N. Joshi, learned advocate, appears for the respondents. He has opposed the submissions advanced by the learned Additional Public Prosecutor by submitting that a perusal of the Dying Declaration reveals that the ingredients of 'abetment', as required by Sections-107 and 306, of the Indian Penal Code, are not made out against the respondents. It is further submitted that the deceased has stated that the respondents used to harass her. However, the nature of the alleged cruelty has not been described. Though the deceased has stated that respondent No.3 has made illicit demands to her that, in itself, is not sufficient to prove abetment. The Dying Declaration does not disclose any ingredients of instigation or *mens-rea* on the part of the respondents, acting upon which the deceased was forced to commit suicide. It is next submitted that the allegations are general in nature and would not fall under the definition of 'cruelty' in terms of Section-498A and 'abetment' as per the provisions of Sections-107 and 306 of the Indian Penal Code. It is submitted that the complaint at Exhibit-28 has been given by the

deceased herself, but the version in the complaint is different to that contained in the Dying Declaration. The deceased has not stated in the Dying Declaration that respondent No.3 came to her house on 14.04.1992 and 15.04.1992. As the two versions given by the deceased are inconsistent with each other, no reliance can be placed on either of the documents. Lastly, it is submitted that where two views are possible on the basis of the evidence on record, the Appellate Court should adopt the view favourable to the accused and not disturb the findings of acquittal recorded by the Trial Court.

7. Learned advocate for the respondents has relied upon the following judgments :

- (i) **Sanju alias Sanjay Singh Sengar Vs. State of M.P., reported in (2002) 5 SCC 371.**
- (ii) **Gangula Mohan Reddy Vs. State of Andhra Pradesh, reported in (2010) 1 SCC 750.**
- (iii) **Sampath Kumar Vs. Inspector of Police, Krishnagiri, reported in (2012) 4 SCC 124.**
- (iv) **Murugesan S/o. Muthu and others Vs. State through Inspector of Police, reported in (2012) 10 SCC 383.**

On the basis of the above submissions, it is

prayed that the appeal be rejected.

8. In the background of the above submissions, it would be appropriate to briefly discuss the salient features of the oral and documentary evidence adduced by the prosecution.

9. PW-1, Dineshbhai Raghubhai, whose deposition is at Exhibit-8, is one of the friends of the late husband of the deceased, as mentioned in the complaint. The deceased has stated in the complaint that on 15.04.1992, when respondent No.3 had come to her house at 11.30 p.m. and made illicit demands by catching her arm, two friends of her late husband were passing by, to whom the deceased complained about the harassment by respondent No.3. This witness is one of those friends referred to in the complaint. This witness categorically denies any knowledge regarding the incident. He states that he does not recognize respondent No.3 and denies that the complainant had talked to him about any harassment by respondent No.3 to her. This witness has denied the entire case of the prosecution and has been declared hostile.

10. Similar is a case with PW-2, Vinodbhai

Gordhanbhai, who has been examined at Exhibit-9. He is the other friend of the late husband of the deceased, referred to in the complaint. The testimony of this witness does not support the case of the prosecution at all, and he has also been declared hostile.

11. PW-3, Nanji Virjibhai, is the brother of the deceased. His testimony is at Exhibit-10. This witness states that he has no knowledge how the deceased got burnt and he had no conversation with her in this regard when she was admitted in the Hospital. This witness has also been declared hostile.

12. PW-4, Kantilal Virjibhai, another brother of the deceased has deposed at Exhibit-11. He has also not supported the case of the prosecution and has been declared hostile.

13. Another witness who has not supported the case of the prosecution is PW-5, Ramjibhai Ghelabhai, who has deposed at Exhibit-12. He was a Sanitary Inspector in the Upleta Nagarpalika at the relevant point of time when the deceased was working there as a Sweeper. He denies having any knowledge regarding the incident or having had any conversation with the deceased, in this

regard.

14. PW-6, Kishorbhai Laljibhai, who has deposed at Exhibit-13, has also turned hostile by not supporting the case of the prosecution. This witness had a tea-stall where the deceased used to take tea frequently.

15. The next prosecution witness PW-7, is Dr. Ramprasad Rasiklal, who was serving in the Emergency Department at the Civil Hospital, at the relevant point of time. He has deposed at Exhibit-14. This witness states that on 16.04.1992, at about 9.40 p.m., a person named Rasiklal Bachubhai, brought the deceased to the Hospital, stating that she had sustained burns. Upon examination, it was found that the deceased had sustained first and second degree burns on her both hands, face, neck, upper abdomen, legs and on the region of the kidneys. The deceased had been referred from Upleta to the Civil Hospital, where this witness was serving. This witness further states that the deceased died on 05.05.1992 at 1.40 p.m. (the time recorded in the Inquest Form at Exhibit-35 is 13.40 hours), as her condition was serious.

16. PW-8 is Bhimjibhai Mohanbhai, who was the Deputy Mamlatdar, a post equivalent to that of Executive Magistrate, has recorded the Dying Declaration of the deceased on 16.04.1992, at Exhibit-20. He received a 'Yadi' at Exhibit-19, calling him to the Civil Hospital to record the Dying Declaration. On reaching there, he went to the Special Ward, where the deceased was admitted. This ward had no other patient in it. A man and a woman were sitting there, but were told to leave the room. Thereafter, this witness started recording the Dying Declaration of the deceased by asking her questions, to which she replied. This witness states that he started recording the Dying Declaration at 19.10 hours and concluded it at 19.15 hours. The deceased appended her signature on the Dying Declaration and the Doctor gave an endorsement that the deceased was conscious and in a fit condition. Thereafter, this witness signed the Dying Declaration.

In cross-examination, this witness has stated that the deceased was examined by the Doctor before the Dying Declaration was recorded and found to be conscious. He denies the suggestion that the deceased

was unconscious when the Dying Declaration was recorded.

17. PW-9, Tapubhai Hamirbhai, was working as a Sanitary Supervisor in the Upleta Nagarpalika at the relevant period. His testimony is at Exhibit-21. Nothing much turns upon the testimony of this witness, who has turned hostile.

18. PW-10, Mavjibhai Jasabhai, is one of the Panch witnesses of the Panchnama of the scene of offence, at Exhibit-23. He has deposed at Exhibit-22. He states that he has signed upon the Panchnama along with the other Panch witness. The Panchnama has been recorded as per the narration of the Panch witnesses and read over to them before they appended their signatures. In cross-examination, this witness states that he belongs to the same community as the deceased and there is a custom of "Dervata" prevalent in his community, (where the widow of the elder brother would get married to the younger brother).

19. PW-11, Rajendrasinh Fatehsinh, has deposed at Exhibit-24. He is one of the Panch witnesses of the Inquest Panchanama, at Exhibit-25. He submits that the

said Panchnama was prepared and his signature was taken thereupon.

20. The next witness is PW-12, Jivaji Memaji, Head Constable, whose testimony is at Exhibit-26. He has recorded the statements of the brothers of the deceased. Nothing much turns upon the testimony of this witness.

21. PW-13, Mangubhai Bhanjibhai, was serving as Head Constable at the Upleta Police Station, when the incident took place. He has recorded the statements of some of the prosecution witnesses, as well as the complaint made by the deceased. In cross-examination, he states that when he went to the Hospital to record the statement of the deceased, she was under treatment. Though this witness has stated that the deceased has not signed the complaint, on perusal of the original record, it is found that the signature of the deceased, Champaben, is appended to the complaint.

22. PW-14, P.S.I. Kuldeepsinh Vikramsinh, has deposed at Exhibit-31. He was the Investigating Officer of the case. His testimony is formal in nature and does not bear elaboration.

23. PW-15, Umedbhai Budhiabhai, is the Head Constable, Hospital Duty. He was on duty in the Civil Hospital when the deceased died and the Inquest Panchnama was prepared. He has identified his signature on the Inquest Form, which was appended to the Panchnama.

24. The next witness is PW-16, Dr.Kiranbhai Kalabhai Sagothia. He has deposed at Exhibit-36. He had provided the initial treatment to the deceased at Cottage Hospital, Upleta. This witness states that when the deceased was brought to the Hospital on 16.04.1992, she was fully conscious and had walked into the Hospital herself. He describes the nature of burn injuries suffered by the deceased and states that there were first and second degree burns. After providing initial treatment, the deceased was referred to Civil Hospital, Rajkot, for further treatment upon the request of her relatives. This witness states that he had informed the Police when the deceased was admitted to the Hospital. This witness was present when the Dying Declaration of the deceased was taken by the Executive Magistrate, Upleta. He further states that after the Dying Declaration was recorded, he had

made an endorsement, thereupon, that the deceased was conscious. In cross-examination, this witness reiterates that when the Dying Declaration was recorded, the deceased was in a conscious condition. He further states that the deceased was suffering from 60% burns and her condition was serious. Exhibit-37 is the MLC given by PW-16, wherein it is certified that the deceased was admitted for treatment on 16.04.1992 at 12.25 p.m. and transferred on 16.04.1992 at 7.30 p.m. to I.G.H. Jamnagar/Rajkot-C.H. for further treatment. It is endorsed that the patient was fully conscious and had walked to the Hospital, herself.

25. PW-17 is Kavajibhai Kuberbhai Bhagora. He is the Police Jamadar, who has registered the complaint.

26. The next witness is PW-18, Dr.Dharmesh Hasmukhlal Shah, who has been examined at Exhibit-41. He has performed the postmortem on the dead body of the deceased. He states that the deceased suffered 60-65% burns and septic had developed on the burns. According to this witness, the cause of her death was "burns and septicemia shock due to burns". He reiterates that the deceased died due to septicemia. The Postmortem Report

is at Exhibit-42.

In the above background, certain salient aspects emerge for consideration, as below.

27. Insofar as the documentary evidence is concerned, the complaint dated 16.04.1992, made by the complainant herself, is to be found at Exhibit-28. The complaint has been recorded at 17.30 hours whereas the Dying Declaration at Exhibit-20, though recorded on the same day, is later in point of time, having been recorded at 19.10 hours and concluded at 19.15 hours. The Dying Declaration is in question and answer form. The Executive Magistrate has asked fourteen questions to the deceased, who has answered them. There are endorsements of the Doctor as well as the Executive Magistrate on the Dying Declaration, to the effect that the deceased was conscious.

28. On appreciation of the evidence, as above, the Trial Court has not considered it fit to place reliance on the Dying Declaration, mainly on the ground that it has been recorded within a period of five minutes only. According to the Trial Court, in normal circumstances, considering the condition of the

deceased, it would have taken at least 15 to 20 minutes to record the Dying Declaration. The Trial Court has concluded that the contents of the Dying Declaration are not credible or trustworthy, and that the deceased cannot be said to be in a fit and conscious position when it was recorded. In short, this important piece of evidence has been discarded by the Trial Court only on the ground that it has been recorded within a period of five minutes.

29. Having given deep and thoughtful consideration to the evidence on record, especially the Dying Declaration, this Court finds itself unable to agree with the reasons advanced by the Trial Court for discarding the Dying Declaration. The evidence of PW-16, Dr.Kiranbhai Kalabhai Sagothia, is relevant, as this witness was the Doctor who imparted initial treatment to the deceased when she was admitted to Upleta Cottage Hospital, on 16.04.1992. He has categorically stated that the deceased was conscious when she came to the Hospital and had even walked to the Hospital, herself. The Dying Declaration has been recorded in the presence of this witness, who has stated that he has made an endorsement that the

deceased was conscious while the Dying Declaration was being recorded. He has identified his signature. It may be noted that the Dying Declaration has been recorded on the day of the incident. The deceased was admitted to the Hospital at 12.25 p.m. on 16.04.1992, and the Dying Declaration was recorded at 19.10 hours. Though the Dying Declaration was recorded after about seven hours, there is evidence to the effect that the deceased was conscious, throughout. The complaint, at Exhibit-28, has been recorded at 17.30 hours, on the same day. The complaint is prior in point of time and has been signed by the deceased, as has been verified from the original record. This shows that she was conscious on the day of the incident at the time when the complaint and the Dying Declaration were recorded. No suggestion has been made by the defence to any of the Doctors who have deposed as prosecution witnesses, whether the deceased was being given any tranquilizers or other medicine, which would have made her drowsy or unfit to understand what was being said to her. If the Dying Declaration is perused, it shows that the Deputy Mamlatdar/Executive Magistrate who recorded it, asked the deceased fourteen short questions. The nature of

questions is such that only short answers have been given by the deceased. It cannot be concluded from the questions asked by the Executive Magistrate and the answers given by the deceased, which are concise and to the point, that the Dying Declaration could not have been recorded in five minutes, as has been held by the Trial Court. The reason for not considering the Dying Declaration and ignoring its contents that has weighed with the Trial Court, namely that it was recorded in five minutes is, in the view of this Court, not a convincing one. The Dying Declaration ought to have been considered and appreciated and its effect evaluated in light of the entire evidence on record. As this has not been done by the Trial Court, it falls upon this Court to do the needful.

30. The first question that arises is whether the Dying Declaration is creditworthy, or not. In the complaint, the deceased has given a narration of two incidents that occurred on 14.04.1992 and 15.04.1992, describing the manner in which respondent No.3 came to her house and made illicit demands. The deceased has stated that respondent No.3 used to harass her and respondents Nos.1 and 2 used to cast aspersions on her

character. It may be kept in mind that the Dying Declaration is in question and answer form. The deceased is only answering the questions asked to her. In reply to question No.7 whether she has committed suicide, the deceased has answered in the affirmative and has added that all three respondents used to harass her, therefore, she has committed suicide. In question No.11, the deceased has been asked why the respondents used to harass her? In reply, the deceased has answered that the accused was harassing her for the last eight days. Accused No.3 wanted her to live with him, with which accused Nos.1 and 2 were in agreement. To question No.14 regarding whether she would like to add anything more, the deceased has replied that the respondents are torturing her and respondent No.3 is harassing her.

31. The essence of the complaint and the Dying Declaration is the same, that all the respondents used to torture and harass her in general, and respondent No.3, in particular, used to harass her by making illicit demands, encouraged by respondents Nos.1 and 2. Reading both the complaint (Exhibit-28) and the Dying Declaration (Exhibit-20) cumulatively, at best,

the allegations against respondents Nos.1 and 2 are that they used to call the deceased 'characterless' and mentally torture her by taunting her. Further, they used to support respondent No.3 in his illicit demands. The specific allegation against respondent No.3 is that he used to make illicit demands to the deceased by coming to her house at night. She has stated that he caught hold of her arm and asked her to live with him. In the above circumstances, there is nothing in the Dying Declaration that could detract from its credibility. In this view of the matter, if the Dying Declaration is believed and taken at its face value, it is to be ascertained whether the allegations made by the deceased therein would amount to 'cruelty' within the meaning of Section-498A of the Indian Penal Code and 'abetment to commit suicide' under Sections-107 and 306 of the Indian Penal Code, or not.

32. The case of the prosecution mainly rests upon the complaint and the Dying Declaration, as most of the prosecution witnesses have turned hostile. The main allegations are that the respondents used to torture and harass the deceased. These allegations are, at

best, general in nature. No incident regarding the alleged torture has been described by the deceased in the complaint or the Dying Declaration. Insofar as the illicit demands made by respondent No.3 are concerned, it is stated in the complaint that respondent No.3 made such demands on two occasions, that is, 14.04.1992 and 15.04.1992. On the third day, that is, 16.04.1992, the deceased committed suicide. In the Dying Declaration, the deceased has stated that the accused were harassing her for the last eight days. Whether two incidents of asking the deceased to watch a film with him and making illicit demands such as asking her to live with him, can be termed as 'cruelty', is the question to be determined. To this end, it may be germane to refer to certain judicial pronouncements, in order to elucidate the issue.

33. In **Sanju alias Sanjay Singh Sengar Vs. State of M.P. (Supra.)**, relied upon by the learned advocate for the respondents, the Supreme Court has elaborated Section-107 of Indian Penal Code, which defines 'abetment' in the following terms :

"6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he

firstly, 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."

34. Referring to several judgments, the Apex Court has concluded that the presence of *mens rea* is a necessary concomitant of instigation. Words uttered in a quarrel or on the spur of moment cannot be termed to be uttered with *mens rea*.

35. In **Gangula Mohan Reddy Vs. State of Andhra Pradesh (Supra.)**, relied upon by the learned advocate for the respondents, the Supreme Court has held as below :

"17. 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 this 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 this act must have been intended to push the deceased into such a position that he committed suicide."

36. The judgment in the case of **Sampath Kumar Vs. Inspector of Police, Krishnagiri (Supra.)**, has been relied upon by the learned advocate for the respondents on the ground that there is inconsistency in the version contained in the complaint and in the Dying Declaration. In the view of this Court, the submission regarding discrepancy in the versions of the deceased in the complaint and the Dying Declaration is a fallacious one. As this submission cannot be accepted, this judgment would not be relevant.

37. In **Ramesh Kumar Vs. State of Chhattisgarh, reported in (2001) 9 SCC 618**, the Supreme Court was considering the charges framed for offences under Section-306 of the Indian Penal Code. In that case the deceased had stated that there had been quarrel between her and her husband before the day of incident and her husband told her to go wherever she wanted to.

Thereafter, she had poured kerosene on herself and set herself on fire. In that background, the Supreme Court has held that :

"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.

21. In State of West Bengal v. Orilal Jaiswal , 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."

38. Testing the evidence on record upon the touchstone of the principles of law enunciated by the Supreme Court in the above-quoted judgment, it clearly transpires that the allegations against the respondents as contained in the complaint and the Dying Declaration do not satisfy the legal requirements of the offence of 'abetment', as there is no element of instigation, incitement or goading in the words or actions at the behest of the accused, to incite or intend the consequence of suicide. There was no quarrel or any other such incident between the deceased and the accused in the past. As per the complaint, on two occasions before the incident, respondent No.3 made illicit demands to the deceased. In her Dying Declaration, the deceased states that the accused were harassing her for the last eight days. However, the nature of such harassment has not been

elaborated upon. The allegation regarding giving taunts by respondents Nos.1 and 2 and calling her "characterless" cannot be said to fall within the definition of 'cruelty' or 'abetment', as required by the provisions of law, leaving the deceased with no option but to end her life. There is no evidence regarding any continuous harassment to the deceased from the accused, of such an unbearable nature that she was left with no other option but to end her life.

39. The other facts and circumstances of the case such as, the husband of the deceased having died a suicidal death five months prior to the incident, may have some bearing upon the mental frame of mind of the deceased, leading her to take the extreme step. It has come in evidence that the deceased had three sons. Her father-in-law and mother-in-law lived separately, though nearby. Respondents Nos.1 and 2 are stated to have been present in their house when the incident took place. At best, it can be said on the basis of evidence on record, including the Dying Declaration, that respondent No.3 tried to take advantage of the deceased, who was a widow and was suffering the emotional loss of her husband and the trauma of his

suicidal death, on two occasions. A combination of these circumstances may have worked on the psyche of the deceased and resulted in her committing suicide.

40. In order to bring home the charge of cruelty within the meaning of Section-498A of Indian Penal Code, it would be necessary for the prosecution to prove that the conduct of the accused is of such a nature that it is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, whether mental or physical. The evidence on record does not establish that the conduct of any of the accused satisfies the ingredients of abetment to suicide. Further, the element of mental torture does not emerge from the evidence in the present case.

41. The result of the above discussion is that even if the contents of the Dying Declaration are believed and considered, the offences with which the accused have been charged are not found to be proved against them.

42. Though this Court does not agree with the reasons advanced by the Trial Court, it does find itself in

agreement with the final conclusion of acquittal recorded by it.

43. At this stage, it may be apposite to take note of the principles of law enunciated by the Supreme Court, in **Murugesan S/o. Muthu and others Vs. State through Inspector of Police**, reported in (2012) 10 SCC 383. After noticing the entire law regarding the power of the Appellate Court in an appeal against acquittal, the Supreme Court held as below :

"16. xxxx

"42. xxxx

(1) xxxx

(2) xxxx

(3) xxxx

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the

appellate court should not disturb the finding of acquittal recorded by the trial court.

(emphasis supplied)"

44. Applying the above principles of law to the facts and evidence in the present case, it emerges that the conclusion arrived at by the Trial Court is possible and probable on the basis of the evidence on record. As the judgment of the Trial Court does not suffer from any perversity or material irregularity, there is no justifiable reason to interfere with the same.

45. For the aforestated reasons, the appeal fails and is dismissed.

(SMT. ABHILASHA KUMARI, J.)

Gaurav+