

KASHIBAI & ORS.

V.

THE STATE OF KARNATAKA

(Criminal Appeal No. 627 of 2023)

FEBRUARY 28, 2023

[AJAY RASTOGI AND BELA M. TRIVEDI*, JJ.]

Penal Code, 1860 – ss.498A, 306 r/w 34 – Appellants-accused were convicted u/ss.498A, 306 r/w 34 and sentenced – Held: Deceased was subjected to harassment at the instance of appellants – Prosecution has successfully brought home the charges levelled against them for the offence u/s.498A r/w s.34 – However, it failed to adduce any clinching evidence to conclude that the appellants abetted the deceased to commit suicide – Mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption u/s.113A, Evidence Act, and to hold the accused guilty of s.306 – In absence of any satisfactory evidence on record, both the Courts below committed grave error in holding the appellants guilty of the offence u/s.306 – Conviction of the appellants u/s.498A upheld, however they are acquitted from the charges levelled u/s.306 by giving them benefit of doubt – Further, since the appellants have already undergone the imprisonment for two years for the offence u/s.498A r/w s.34, as directed by the courts below, to be set free forthwith – Evidence Act, 1872 – s.113A.

Penal Code, 1860 – ss.306, 107 – Held: In order to convict a person for the offences u/s.306, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in s.107 have to be established – Further, in order to bring the case within the purview of ‘abetment’ u/s.107, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused – For proving the charge u/s.306, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

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M. Mohan vs. The State Represented By The Deputy Superintendent of Police (2011) 3 SCC 626 : [2011] 3 SCR 437; Mangat Ram vs. State of Haryana (2014) 12 SCC 595 : [2014] 4 SCR 988 – relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.627 of 2023.

From the Judgment and Order dated 06.03.2021 of the High Court of Karnataka at Kalaburagi in CRLA No.200027 of 2014.

Ms. Afshan Pracha, Prakash Jadhav, Anirudh Sanganeria, Ravichandra Jadhav, Advs. for the Appellants.

Shubhranshu Padhi, Vishal Bansal, Ms. Rajeshwari Shankar, Niroop Sukirthy, Md. Ovais, Advs. for the Respondent.

The Judgment of the Court was delivered by

BELA M. TRIVEDI, J.

1. Leave granted.
2. The judgment and order dated 06.03.2021 passed by the High Court of Karnataka, Kalaburagi Bench in Criminal Appeal No.200027/2014 is underchallenged before this Court, whereby the High Court has dismissed the said appeal filed by the appellants-accused against the judgment and order dated 11.02.2014 passed by the II Additional Sessions Judge, Bijapur (hereinafter referred to as “the Sessions Court”) in Sessions Case No.5/2011. The Sessions Court vide the said judgment and order had convicted and sentenced the present appellants.i.e., the accused nos. 1, 2 and 3 for the offences under Section 498A and Section 306 read with Section 34 of IPC, and acquitted the accused no.4 Santosh Jangamshetti, son of Kallappa Jangamshetti, who happened to be the brother-in-law of the deceased Jayashree, from the said charges.
3. The deceased Jayashree had married the appellant no.3, Chandrashekhar about three years prior to the alleged incident. The appellant nos.1 and 2 happened to be the mother-in-law and father-in-law of the said deceased respectively. Smt. Annapurna, wife of Sadashiv Limbikai, mother of the deceased lodged a complaint before the Bableshwar Police Station alleging *inter alia* that her daughter Jayashree was given in marriage to accused no.3, Chandrashekhar. After the marriage, her parents-in-

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law, brother-in-law and her husband ill-treated Jayashree both physically and mentally on account of demand of dowry. Her daughter Jayashree because of such harassment committed suicide on 07.02.2010 at about 11:00 am by jumping into an open well situated in a land bearing Survey Number 53/4 at the TiganiBidari village. The said complaint came to be registered against the accused for the offences under Section 498A and 306 read with Section 304 of IPC. The Sessions Court conducted the trial and after appreciating the evidence on record, convicted the appellants for the said offences and sentenced them to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 2,000/- each for the offences under Section 498A read with Section 34 of IPC, and to undergo simple imprisonment for a period of five years and to pay a fine of Rs.5,000/- each for the offences under Section 306 read with Section 34 of IPC. The High Court confirmed the said conviction and sentence as per the impugned order.

4. After having heard the learned counsels for the parties and thoroughly gone through the record of the case, it appears that the prosecution to bring home the charges levelled against the appellants-accused had examined 21 witnesses and also adduced the documentary evidence. However out of the 21 witnesses, PW-10, PW-11, PW-12 and PW-14 had turned hostile and not supported the case of the prosecution. The case of the prosecution as such mainly depended upon the PW-1 and PW-4 who happened to be the parents of the deceased and PW-6 who happened to be the uncle of the deceased. They all had deposed *inter alia* about the demand of the dowry in the form of cash and gold, and about the harassment meted out by them to the deceased mentally and physically. PW-5 who happened to be the person known to both the sides and who was instrumental in arranging the marriage between the deceased and the appellant no. 3 also had deposed that there was a demand for additional gold and cash made by the appellants-accused and that there was harassment caused by the appellants to the deceased Jayashree. The neighbours, PW-7 and PW-9 also had supported the case of the prosecution by deposing *inter alia* that the deceased was subjected to mental and physical harassment by the appellants-accused.
5. Having regard to the said evidence, which has been also appreciated by the Sessions Court and High Court, there remains no shadow of doubt that the deceased was subjected to the harassment at the instance of the appellants-accused and that the prosecution had successfully brought home the charges levelled against them so far

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as the offence under Section 498A read with Section 34 of IPC was concerned. However, the next question that falls for consideration before this Court is whether the prosecution had proved beyond reasonable doubt the charge levelled against the appellant with regard to the offence punishable under Section 306 read with Section 34 of IPC.

6. At this juncture, it would be beneficial to reproduce the relevant provision contained in Section 306 IPC pertaining to Abetment of suicide.

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

7. What is “Abetment of a thing” has been described in Section 107 which reads as under: -

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

*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.”

8. From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established.
9. In ***M. Mohan Vs. State Represented by the Deputy Superintendent of Police***¹, this Court has elaborately dealt with the provisions contained

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in Section 306 read with Section 107 IPC, and after discussing various earlier decisions has observed as under:-

“41. This Court in SCC para 20 of *Ramesh Kumar* [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of “instigation”. Para 20 reads as under : (SCC p. 629)

“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.”

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant’s wife therein) may necessarily be drawn.

42. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

43. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of*

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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 self-esteem and self-respect. 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 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.”
10. In view of the above, it is quite clear that in order to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.
11. So far as facts of the present case are concerned, the prosecution had sought to lead the evidence by examining the witnesses to prove that the deceased had committed suicide because of the mental and physical harassment of the appellants-accused. The PW-21 Dr. Jayashree Masali, who had carried out the post-mortem of the deceased, had narrated in her deposition the injuries found on the body of the deceased as mentioned in the post-mortem report (Exhibit-14). As per her final opinion, the cause of death was “due to drowning as a result of Asphyxia”. It may be noted that nothing comes out from her evidence as to whether the death was suicidal or not. The PW-1 Annapurna Limbikai, who happened to be the mother though had alleged in her

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examination-in-chief that her daughter was murdered by the accused by throwing her in the well, she had admitted that when she reached at the spot, she had not seen the dead body of her daughter in the well. She had also admitted that she had not stated in her complaint that her daughter had committed suicide by jumping into the well on account of the mental and physical harassment caused by the accused. At this juncture she was declared hostile, and the public prosecutor was permitted to cross examine her. In the cross-examination she had stated that she did not remember the incident as it had occurred long back. In the further cross-examination by the learned advocate for the accused she had admitted that the accused no. 3 had informed her on telephone that her daughter-Jayashree had accidentally slipped, and as a result thereof she fell down in the well at about 12.00 O'clock. She also stated that when she, her husband, other relatives and the neighbours went to the place of occurrence at about 4.30 p.m., they had not seen the dead body floating in the well.

12. PW-4 Sadashiv Limbikai, the father of the deceased also had stated in his evidence before the Court that he did not know whether her daughter- Jayashree had committed suicide, or the accused had thrown her body into the well. PW-5 Rudrangouda Patil who was instrumental in arranging the marriage of the deceased with accused no. 3, had stated that he did not know how Jayashree had fallen down into the well. PW-6 GangappaLimbikai, who happened to be the uncle of the deceased also had no knowledge as to how the deceased fell down in the well. In the cross-examination, he had admitted that when the dead body was taken out from the well, all the four accused were present near the well. In short, none of the witnesses examined by the prosecution had any knowledge as to whether the deceased had jumped into the well or she had accidentally slipped into the well.
13. The PW-21 Dr. Jayashree Masali though had opined that the death of the deceased was due to the drowning as a result of Asphyxia, there was no opinion given by her nor any opinion was sought from her as to whether it was a suicide committed by the deceased or it was an accident by which she fell down in the well. Even if it is presumed that the deceased had committed suicide, there was no evidence whatsoever adduced by the prosecution that there was an abetment on the part of any of the accused which had driven her to commit suicide. There is no evidence worth the name to show that any of the appellants-accused had either instigated or intentionally aided or abetted the deceased to commit suicide or had caused any abetment as contemplated under

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Section 107 of the IPC.

14. Though it is true that as per Section 113A of the Evidence Act, when the question arises as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and when it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court can presume, having regard to the other circumstances, that such suicide has been abetted by her husband or such relative of her husband. However, mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption under Section 113A of the Evidence Act, and to hold the accused guilty of Section 306 IPC.
15. In ***Mangat Ram Vs. State of Haryana***², this Court considering the provisions of Section 498A and 306 of IPC in the light of the presumption under Section 113A of the Evidence Act, observed as under:-

“30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.

31. In this connection, we may refer to the judgment of this Court in ***Hans Raj v. State of Haryana*** [(2004) 12 SCC 257 : 2004 SCC (Cri) 217], wherein this Court has examined the scope of Section 113-A of the

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Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subjected her to cruelty. Even though those facts are established, the court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A IPC."

16. So far as the evidence adduced by the prosecution in the instant case is concerned, in our opinion the prosecution had failed to adduce any clinching evidence to enable the Court to conclude that the appellants-accused had abetted the deceased to commit suicide. In absence of any satisfactory evidence having been brought on record, in our opinion both the Courts below had committed grave error in holding the appellants guilty of the offence under Section 306 of IPC.
17. In that view of the matter while upholding the conviction of the appellants under Section 498A, we acquit the appellants from the charges levelled against them under Section 306 of IPC by giving them benefit of doubt. Since the appellants have already undergone the imprisonment for a period of two years for the offence under Section 498A read with Section 34 of IPC, as directed by the courts below, it is hereby directed to set free the appellants forthwith.
18. The appeal stands partly allowed accordingly.

*Headnotes prepared by: Divya Pandey Result of the case: Appeal partly allowed.
(Assisted by: Bhavyata Kapoor, LCRA)*