



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

**CRIMINAL APPEAL NO. 557 OF 2007**

The State of Maharashtra,  
Thr. Police Station Officer,  
Police Station, Ramnagar,  
Chandrapur.

**.. APPELLANT**

**...Versus...**

Ramkishor s/o Lakhan Kewat,  
Aged about 35 years, Occ. Driver,  
R/o. Chandrapur,  
Th. & District Chandrapur

**.. RESPONDENT**

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Shri I.J. Damle, APP for the Appellant – State.  
Ms. A.S. Wanjari, Advocate h/f Shri M. Anilkumar, Advocate for  
the Respondent.  
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**WITH**

**CRIMINAL REVISION APPLICATION NO. 211 OF 2007**

Shri Ramkishor s/o Lakhan Kewat,  
Aged about 35 years, Occ. Driver,  
R/o. Chandrapur.  
At present in Chandrapur Jail.

**.. APPLICANT**

**...Versus...**

The State of Maharashtra,  
Thr. Police Station Officer,  
Police Station, Ramnagar,  
Chandrapur.

**.. RESPONDENT**

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Ms. A.S. Wanjari, Advocate h/f Shri M. Anilkumar, Advocate for  
the Applicant.

Shri I.J. Damle, APP for the Respondent – State.  
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**CORAM : MRS. SWAPNA JOSHI, J.**

**DATED : 04<sup>th</sup> February, 2020.**

**JUDGMENT :-**

Since the Appeal and Revision are arising out of the same Judgment and order delivered in this case. Both the matters are heard together and decided together.

2. Criminal Appeal No.557/2007 is preferred by the State against the judgment and order dated 16.08.2007 delivered by the Sessions Judge, Chandrapur in Criminal Appeal No.20/2001, whereby the learned lower Appellate Court, partly allowed the appeal preferred by the accused, confirming the conviction under Section 498-A of the Indian Penal Code, however, set aside the conviction of the accused under Section 306 of the Indian Penal Code. The Criminal Revision Application No.211/2007 is filed by the accused-Ramkishor, challenging the conviction order under Section 498-A of the Indian Penal Code.

3. The learned Assistant Session Judge-3, Chandrapur has convicted the accused under Section 498-A of the Indian Penal Code and sentenced him to suffer R.I. for a period of one year and to pay a fine of Rs.500/- in default to suffer R.I. for a further period of one month, whereas under Section 306 of the Indian Penal Code, he had sentenced the accused to suffer R.I. for a period of four years and to pay a fine of Rs.1,000/- in default to suffer R.I. for a further period of three months.

4. The prosecution case, can be summarized as under: The accused is the husband of deceased-Dayawati with whom he got married in the year 1978 at Village Amboli, District Fatehpur (U.P.). After the marriage, they started residing at Ballarsha and then shifted to Chandrapur. Out of the wedlock Dayawati has begotten three children, out of which one son survived who was aged about one year at the time of incident which took place on 15.03.1993. It is the case of the prosecution that the accused used to abuse and assault deceased-Dayawati because of his illicit relationship with a girl by name Indu alias Rekha, who was residing in his neighbourhood. Whenever, deceased-Dayawati used to meet her father she used to complain against the accused about the said

illicit relationship.

5. The last visit of deceased-Dayawati to Amobli was in the year 1992-93 when she stayed with her father for about 2-3 months. At that time also, she complained to her parents that she was being ill-treated by the accused due to the said illicit relationship with Indu alias Rekha. On 15.02.1993, deceased-Dayawati reached back to Chandrapur by her brother PW4-Ashoksingh. While leaving the house of his sister Dayawati, at that time deceased-Dayawati handed over a letter to him, written to her father, stating that she was being assaulted by the accused-husband and mother-in-law due to Indu alias Rekha and Panchfula. She also complained that her husband was demanding one Bullet motorcycle from her father, failing which she was threatened with dire consequences. The said letter also indicates that deceased-Dayawati stated in that letter that if the beating continued, she alongwith her son would burn herself to death and if she got burn to death alone, it should be taken that she was killed by the accused.

6. On 15.03.1993 at about 2.00 p.m., deceased-Dayawati died of extensive burn injuries in her house. On the

same day at about 4.30 p.m., the accused reported her death to Police Station, Ramnagar. On the basis of which accidental death was registered. On 16.03.1993, police visited the place of incident and recorded the Spot Panchnama (Exh.14), so also Inquest Panchnama (Exh.15) was drawn and also obtained a PM. Report (Exh.17).

7. It is the case of the prosecution that the complainant PW3-Ramdeosingh Kewat came to know about the death of his daughter Dayawati, when he received a registered letter from the accused in respect of 13<sup>th</sup> day rituals of deceased-Dayawati. PW3-Ramdeosingh Kewat then immediately proceeded to Chandrapur and reached to Chandrapur on 01.04.1993 and on the same day he lodged oral report (Exh.44) against the accused with Ramnagar Police Station. On the basis of the said report, offence came to be registered under Sections 306 and 498-A of the Indian Penal Code against the accused vide Crime No. 90/1993. The statement of the witnesses were recorded. After completing the formal investigation, charge-sheet came to be filed in the Court of learned Judicial Magistrate First Class, Chandrapur.

8. Since the offence was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The learned Trial Judge after recording the evidence and hearing both the sides convicted the accused, as aforesaid.

9. Being aggrieved by the said order the appeal was preferred by the accused, whereby the learned Sessions Judge partly allowed the appeal upholding the conviction of the accused under Section 498-A of the Indian Penal Code, whereas he set-aside the conviction of the accused under Section 306 of the Indian Penal Code and acquitted the accused for the same. In these circumstances, the present appeal is preferred by the accused against the order of conviction under Section 498-A of the Indian Penal Code.

10. The prosecution has relied upon the testimony of PW3-Ramdeosingh Kewat, who is the father of the deceased-Dayawati, PW4-Ashoksingh, who is the brother of the deceased-Dayawati and letter (Exh.33) written by the deceased-Dayawati.

11. I have heard Ms. A.S. Wanjari, Advocate h/f Shri M. Anilkumar, Advocate for the accused and Shri I.J. Damle,

learned APP for the State. With their able assistance, I have gone through the record and proceedings of the case.

12. The learned APP for the State contended that the evidence has not been scrutinized by the learned Appellate Court and the learned Appellate Court has erroneously convicted the accused.

13. Per contra, Ms. A.S. Wanjari, the learned Advocate for the accused contended that there is absolutely no convincing evidence on record to show that there was any abetment on the part of the accused and there was cruelty of such a nature that drove the deceased-Dayawati to commit suicide. She submitted that there was no continuous harassment, either physical or mental by the accused so much so that he made life of the deceased-Dayawati miserable and forced her to commit suicide.

14. She further submitted that the allegations are made against the accused that he ill-treated deceased-Dayawati by demanding motorcycle and by beating her on the count that he was having illicit relationship with one Indu alias Rekha. It is submitted that if at all the illicit relationship continued from 1993 i.e. from the year of her marriage till her death which

occurred on 15.03.1993, certainly, deceased-Dayawati would have lodged a report against the accused in the Police Station. It is submitted that neither the deceased-Dayawati or her father lodged any complaint against the accused in that regard, nor there were any matrimonial disputes of civil nature pending in the Civil Court. In these circumstances, she submitted that the allegations made against the accused are after thought and the letter (Exh.33) allegedly written by the deceased-Dayawati two days prior to her death, does not in any manner indicate any illicit relationship of the accused with Indu alias Rekha and Panchfula. In these circumstances, it cannot be said that there was any illicit relationship between the accused and Indu alias Rekha. On the point of demand of motorcycle, it is submitted that there is an improvement pointed out in the evidence of PW3-Ramdeosingh Kewat in that regard, so also the evidence of PW4-Ashoksingh, whose statement was not recorded by the police does not speak about any demand of motorcycle. Therefore, the said aspect should not have been considered by both the Courts below.

**15.** In order to consider the rival contentions of both the sides, it would be necessary to scrutinize the evidence of the



prosecution witnesses PW3-Ramdeosingh Kewat and PW4-Ashoksingh carefully.

16. The testimony of PW3-Ramdeosingh Kewat shows that deceased-Dayawati was married with the accused in the year 1978. When deceased-Dayawati visited to her Village Amboli, District Fhatepur (U.P.) in the year 1983, she disclosed that the accused was having illicit relationship with Indu alias Rekha and upon questioning the accused over the same, the accused used to beat her. Thereafter, in the year 1992-93 i.e. nearly after 10 years when deceased-Dayawati visited his house again, she stayed with him for 1 to 3 months, at that time also she complained her father that the accused used to beat her and did not behave with her properly. Significantly, PW3-Ramdeosingh Kewat did not mention the reason for the said beating at that time.

17. As seen from the deposition of PW3-Ramdeosingh Kewat, on 15.02.1993 his son PW4-Ashoksingh alongwith deceased-Dayawati reached to her matrimonial home at Chandrapur and he returned back on 24.02.1993. At that time, deceased-Dayawati handed over one letter(Exh.33) to PW4-

Ashoksingh addressed to her father PW3-Ramdeosingh Kewat and it was received by PW3-Ramdeosingh Kewat on 24.02.1993 itself.

18.           Thereafter, on 27.03.1993, PW3-Ramdeosingh Kewat received a letter by registered post requesting him to attend the 13<sup>th</sup> day rituals. It was also mentioned in the said letter that deceased-Dayawati died due to burn injuries and 13<sup>th</sup> day rituals-Tervi were on 30.03.1993. On 01.04.1993, PW3-Ramdeosingh Kewat reached to Chandrapur to the house of accused, however, the accused did not discuss with him about the death of deceased-Dayawati, and therefore, he lodged report at Chandrapur Police Station vide Exh.11. At that time he had not brought the said letter (Exh.33) with him, and therefore, on 12.04.1993 he handed over the letter (Exh.33) to the police which was seized by the police vide seizure memo (Exh.28). PW3-Ramdeosingh Kewat deposed that deceased-Dayawati had also informed him that the accused used to threaten her that if her father did not give a motorcycle, he would kill her.

19.           The cross-examination of PW3-Ramdeosingh Kewat

shows that he admitted that he did not lodge any report in respect of harassment at the hands of the accused meted out to deceased-Dayawati, although, he had read the letter (Exh.33) on 24.02.1993. Surprisingly, although deceased-Dayawati stayed at her parental home for 2-3 months, it is not clear as to why she did her complain against the accused and if at all complained, why PW3-Ramdeosingh Kewat kept mum and did not lodge complaint against the accused. So also it is not clear as to what made the deceased-Dayawati to write a letter (Exh.33) immediately after reaching home. An improvement was pointed out in his testimony with regard to the fact that the accused demanded motorcycle from him and threatened that on his failure to give the same, he would kill his daughter. It is noticed from the cross-examination of PW3-Ramdeosingh Kewat that the marriage of deceased-Dayawati with the accused had taken place in the year 1978 and she had delivered four children, out of which three died and her last child was her son who was one year old at the time of her death and the said son is staying with the accused. It was further suggested to PW3-Ramdeosingh Kewat that prior to her death, deceased-Dayawati was affected with Tuberculosis (T.B.) and she was suffering from

the said ailment, and therefore, she had been to his Village and due to the said suffering she used to be restless and not feeling well.

20. Thus, upon the careful scrutiny of PW3-Ramdeosingh Kewat, it is noticed that deceased-Dayawati was married with the accused in the year 1978, whereas, first time in the year 1983 she disclosed to her father about the illicit relationship between the accused and Indu alias Rekha. Thereafter, after the gap of 10 years, deceased-Dayawati met PW3-Ramdeosingh Kewat and she stayed there about 1 to 3 months and at that time she complained to her father that the accused used to beat her and was not behaving with her properly. Thus, the said version of PW3-Ramdeosingh Kewat indicates that the allegations about the illicit relationship between the accused and Indu alias Rekha made by the deceased-Dayawati to her father PW3-Ramdeosingh Kewat in the year 1983, whereas, when she met her father in the year 1992-93 and stayed about for 1 to 3 months, at that time she simply made allegations of beating to her by the accused and he did not behave with her properly. Thus, the allegations about the illicit relationship were not made by the deceased-Dayawati

to PW3-Ramdeosingh Kewat in the year 1992-93. Thus, those allegations were general in nature which were made by the deceased-Dayawati in the year 1992-93, and therefore, this may be the reason that no report was lodged either by the deceased-Dayawati or her father PW3-Ramdeosingh Kewat against the accused immediately on her visit in the year 1992-93.

**21.** The testimony of PW3-Ramdeosingh Kewat also shows that his son PW4-Ashoksingh went to reach deceased-Dayawati at Chandrapur from Village Amboli, District Fatepur (U.P.). At that time, deceased-Dayawati handed over a letter (Exh.33) to him which was received on 24.02.1993. According to him, in the said letter the allegations of illicit relationship between accused and Indu alias Rekha were made by deceased-Dayawati, so also the demand of motorcycle was made. However, on perusal of the said letter (Exh.33), it is noticed that there are no such allegations of any illicit relationship made by deceased-Dayawati to her father. It is mentioned in the said letter (Exh.33) that due to Indu alias Rekha and Panchfula her husband and mother-in-law used to beat her. It is, however, not clear in the said letter (Exh.33) that the accused was having illicit relationship with Indu alias Rekha and Panchfula. It is also

not clear from the said letter (Exh.33) as to why the accused and his mother used to beat deceased-Dayawati due to those two ladies. There is also a reference of demand of motorcycle from the accused to deceased-Dayawati, so also it reveals that he used to threaten to kill her, if at all, she did not bring motorcycle from her father.

**22.** The letter (Exh.33) further reveals that deceased-Dayawati said that if at all she was beaten by her husband, she would commit suicide by setting herself ablaze with her son and if at all her son survives, it should be noted that she was set on fire by the accused and his mother. Thus in the said letter (Exh.33) the allegations were made against the accused as well as his mother. However, no offence was registered against the mother of the accused. So also, it reveals from the letter (Exh.33) that for the first time accused had made demand of motorcycle from deceased-Dayawati. Significantly, although it is the case of PW3-Ramdeosingh Kewat that the accused has made a demand of motorcycle, however, he failed to satisfy as to when exactly the said demand was made by the accused from deceased-Dayawati. General statement is made by PW3-Ramdeosingh Kewat that the accused used to threaten

deceased-Dayawati that if her father would not give a motorcycle to him, then he would kill her. If at all, such demand was made by the accused from deceased-Dayawati, the deceased-Dayawati would communicate the same demand to PW3-Ramdeosingh Kewat. Hence, it is not clear as to why any report was not lodged by PW3-Ramdeosingh Kewat against the accused. It is also not clear from the version of PW3-Ramdeosingh Kewat as to when exactly the said demand was made and when PW3-Ramdeosingh Kewat came to know about the said demand. It appears that directly in the letter (Exh.33) there is a reference of demand of motorcycle.

**23.** So far as the testimony of PW4-Ashoksingh is concerned, at the outset, it may be mentioned here that the statement of PW4-Ashoksingh under Section 161 of the Code of Criminal Procedure was not recorded by the police. Even PW6-PI, Abdul Rajjak, Investigating Officer has admitted the said fact. The record shows that the application was filed by the prosecution vide Exh.35 for permission to record the evidence of PW4-Ashoksingh, who is the brother of the deceased-Dayawati and thereafter, PW3-Ramdeosingh Kewat deposed before the Court. His testimony shows that on 15.02.1993 he

brought his sister deceased-Dayawati from Village Amboli, District Fatepur (U.P) to Chandrapur. He stayed with his sister at Chandrapur till 21.02.1993. At the time of leaving Chandrapur, his sister deceased-Dayawati handed over one letter (Exh.33) addressed to his father. He also stated that the accused assured that he would not beat and harass his sister deceased-Dayawati.

**24.** In the cross-examination PW4-Ashoksingh admitted that after receiving the letter (Exh.33) from deceased-Dayawati, he did not lodge report with the Police Station. He also admitted that he did not handover the letter (Exh.33) to the police, so also, he did not give any statement before the police.

**25.** The evidence of PW4-Ashoksingh demonstrates that he had not mentioned about his sister deceased-Dayawati complaining him against the accused in respect of the illicit relationship of the accused with Indu alias Rekha or about the demand of the motorcycle. The role of PW4-Ashoksingh is that he had handed over the letter (Exh.33) to his father PW3-Ramdeosingh Kewat. However, PW3-Ramdeosingh Kewat did not produce the said letter while lodging his report.



Surprisingly, PW4-Ashoksingh did not make any efforts to handover the said letter (Exh.33) to the police or to lodge any complaint against the accused. Significantly, the suicidal death of deceased-Dayawati has not been challenged by the defence. The Post Mortem Report shows 92% burn and the cause of death is due to shock and due to burns. The spot panchnama (Exh.14) shows that the death had taken place in one room of the house, particularly not in the kitchen. Thus, it is not disputed by the defence that deceased-Dayawati committed suicide. It is, however, the contention of the defence that no abetment made by the accused has been proved by the prosecution. Significantly, there is no evidence on record to show as to in what under circumstances deceased-Dayawati died.

**26.** The prosecution examined PW2-Vimal Bankar, who was the neighbour of deceased-Dayawati. However, PW2-Vimal Bankar did not support the case of the prosecution and PW2-Vimal Bankar was declared hostile. Even, PW1-Baban Chicholkar was examined by the prosecution in respect of seizure of the letter (Exh.33), even PW1-Baban Chicholkar did not support the prosecution.

**27.** The testimony of PW5-Suman Potdukhe, who is the neighbour of deceased-Dayawati and accused, shows that one Rekha was residing in the house adjoining to the house of the accused and she was a married lady. Even, PW5-Suman Potdukhe did not support the case of the prosecution with regard to the illicit relationship between Rekha and accused. PW5-Suman Potdukhe denied that there was a quarrel between deceased-Dayawati and the accused on the day of incident, due to which deceased-Dayawati was disturbed, and therefore, she committed suicide. There is absolutely no evidence on record to show that there was illicit relationship between Rekha and accused, due to which deceased-Dayawati got disturbed and committed suicide.

**28.** As discussed above, the letter (Exh.33) also does not disclose about any illicit relationship between accused and Indu alias Rekha. In this regard, simply the evidence of PW3-Ramdeosingh Kewat shows that in the year 1992-93, his daughter has complained that there was a illicit relationship between the accused and Indu alias Rekha. However, as discussed above, when deceased-Dayawati visited her father's house in the year 1992-93, she did not repeat her complaint in

that regard. Even, the evidence of PW4-Ashoksingh does not throw any light in respect of illicit relationship between the accused and Indu alias Rekha. As far as the demand of motorcycle is concerned, there is no convincing evidence on record. PW4-Ashoksingh remained silent on this aspect. PW3-Ramdeosingh Kewat agreed that although he has stated about the said demand of motorcycle, but, he had not stated as to when exactly the accused demanded the said motorcycle from deceased - Dayawati and when deceased - Dayawati communicated the same to him. The only evidence available, is the letter (Exh.33) dated 22.02.1993, which speaks about the demand of motorcycle. However, in this regard it may be mentioned here that deceased-Dayawati got married with the accused in the year 1978. From that period till her death which had occurred on 15.03.1993, she did not complain to him about the said demand of motorcycle. As discussed above, PW3-Ramdeosingh Kewat has not specified as to when exactly the said demand was made by the accused from deceased – Dayawati.

**29.** Now, the discussion of letter (Exh.33) comes in picture. So far as, the letter (Exh.33) is concerned, it was

produced by PW3-Ramdeosingh Kewat after a period of 12 days from the date of lodging of the report. Moreover, the said letter (Exh.33) has not been sent to the Handwriting Expert by the Investigating Agency. The handwriting of the deceased-Dayawati has not been confirmed by the Investigating Agency and by tallying the handwriting in the letter (Exh.33) with any other document which was maintained by deceased-Dayawati. Police also failed to record the statement of PW4-Ashoksingh to whom the said letter (Exh.33) was handed over by the deceased-Dayawati. Admittedly, the letter (Exh.33) cannot be termed as statement which comes under Section 32 of the Indian Evidence Act. In view thereof, it is necessary to the prosecution to verify whether it was in the handwriting of the deceased-Dayawati, so also there is no convincing evidence on record to show that deceased-Dayawati was an educated lady so also, there is no signature of deceased-Dayawati on the letter (Exh.33). There is no evidence on record to show that deceased-Dayawati had written letters to her father or she used to write anything. Apart from the words of PW4-Ashoksingh, whose statement was not recorded by the police and who has directly come before the Court for the first time, and stated that the said

letter (Exh.33) was written by his sister deceased-Dayawati in his presence, the letter (Exh.33) cannot be believed as such. So also, the said letter (Exh.33) was not produced by PW3-Ramdeosingh Kewat while lodging his oral report (Exh.11). Similarly, if at all, the letter (Exh.33) was written by deceased-Dayawati and handed over to her brother PW4-Ashoksingh, then, PW4-Ashoksingh would have handed over the said letter (Exh.33) to the police immediately for lodging the report, being a contemporaneous document. So also PW3-Ramdeosingh Kewat neither took any pains to immediately lodge complaint in the Police Station either at Amboli, District Fatepur (U.P) or at Chandrapur, nor he made any efforts to proceed to his daughter's place. Letter (Exh.33) is found to be doubtful document.

**30.** It is argued by the learned Advocate for the accused that even considering the contents in the letter (Exh.33) are true, it is necessary to the prosecution to prove that the cruelty was continuous and there was continuous harassment mental or physical as such by the accused, due to which deceased-Dayawati committed suicide.

31. The learned Advocate for the accused has relied upon the judgment, in the case of ***Bansi Lal Vs. State of Haryana, reported in 2011 DGLS (SC) 51***, the Hon'ble Apex Court has stated and observed para 15 as under:

***“While considering the case under Section 498-A, cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide.”***

32. In the instant case, the letter (Exh.33) was allegedly written by the deceased-Dayawati on 22.02.1993 and was handed over to her brother PW4-Ashoksingh, whereas, she committed suicide on 15.03.1993. Thus, the prosecution has failed to point out any nexus between the letter (Exh.33) and the death of deceased-Dayawati. The prosecution has failed to prove that the accused aided and abetted the commission of suicide.

33. In 2012 CRI.L.J. 658 : [2012 ALL SCR 1138], the Hon'ble Apex Court has observed that every quarrel between a husband and wife which results in a suicide cannot be taken as an abetment by the husband and the standard of a reasonable and practical woman as compared to a headstrong and over sensitive

one has to be applied. The Hon'ble Apex Court in the case of **Amalendu Pal alias Jhantu .vs. State of W.B.** reported in **AIR 2010 SC 512 : [2009 ALL MR (Cri) 3755 (S.C.)**, has categorically observed that before holding accused guilty of offence u/s 306 of IPC the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative except to put an end to her life. Thus, 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. To attract offence u/s 306 of IPC, there must be positive act on the part of the person who is said to have abetted the commission of suicide. The person must have played an active role either to instigate or to facilitate the commission of suicide by the person committing suicide. In the instant case, there is no iota of evidence even to remotely connect the accused to infer that the accused committed such act with a view to abet the deceased to commit suicide. Neither any act of instigation nor any act of facilitation to commit suicide by the deceased can be inferred on the part of the accused in the light of the evidence on record.

34. A useful reference can be made of the case *Sanju alias Sanjay Singh Sengar .v. State of M.P. reported in (2002) 5 SCC 371* wherein a quarrel took place between the appellant and the deceased. The appellant said to the deceased ‘to go and die” and two days thereafter the deceased committed suicide. She made a suicide note. The Hon’ble apex Court observed that “to go and die” itself does not constitute the ingredient of instigation. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. It is further held that the presence of *mens rea* is the necessary concomitant for instigation.

35. In *(2017) 1 SCC 433 in case of Gurcharan Singh v. State of Punjab*, the Hon’ble apex Court has observed in para 21 as under :-

*21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the*



***indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.”***

36. The Hon'ble apex Court in the case of ***S. S. Chheena .vs. Vijay Kumar Mahajan and another, reported at 2010 Mh.L.J. Online (Cri.) (S.C.) 4 = (2010) 12 SCC 190***, in para 25 observed that, the abetment involves 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 the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under section 306 of the Indian penal Code there has to be a clear mens rea to commit the offence. It also requires an overt 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.

37. At this juncture, it may be noted here that it is the case of the accused that deceased-Dayawati was suffering from Tuberculosis (T.B.) from three to four years preceeding to her death. So also, she was depressed, as she had lost her three children consecutively. This may be the reason for her suicide and there is substance in the case put up by the defence.

38. In view of the above facts and circumstances, it is held that the prosecution has failed to prove its case beyond reasonable doubt. The learned trial court should have assessed the evidence led by the prosecution witnesses in its proper perspective. Hence, the Judgment passed by the learned Sessions Judge, Chandrapur, deserves to be quashed and set-aside. Hence, the following order.

**ORDER**

- (i) Criminal Appeal No. 557/2007 filed by the State is hereby **dismissed**.
- (ii) Criminal Revision Application No. 211/2007 filed by the accused is **allowed**.
- (iii) The Appellant-Accused is hereby acquitted of the offence punishable under Section 498-A of the Indian Penal Code.
- (iv) The bail bonds of the accused shall stand cancelled.

39. Criminal Appeal and Criminal Revision Application are disposed of accordingly.

( MRS. SWAPNA JOSHI, J.)

*S.D.Bhimte*