



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL NO. 276 OF 2023

BETWEEN:

SMT. MANGALA GOWRI,
W/O. JAGNATH,
AGED ABOUT 37 YEARS,
R/AT NO. 16/11,
MAHALAKSHMI LAYOUT,
SRIKANTESWARA NAGARA,
BENGALURU - 560 096.

...APPELLANT

(BY SRI. SIDDHARTH. B. MUCHANDI, ADVOCATE)

AND:

STATE OF KARNATAKA,
BY BANNERUGATTA P. S.,
REPRESENTED BY S. P. P.,
HIGH COURT BUILDING,
BENGALURU -560 001.

...RESPONDENT

(BY SRI. RANGASWAMY. R., HCGP)

THIS CRL.A IS FILED U/S 374(2) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 31.01.2023 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, SIT AT ANEKAL IN S.C.NO.5050/2020, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 306 OF IPC.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:



**JUDGMENT**

This appeal is filed against the judgment of conviction and order of sentence dated 31.01.2023 passed in S.C No. 5050/2020 by the III Additional District and Sessions Judge, Bangalore Rural District, Bangalore sit at Anekal, convicting the appellant/accused for the offence under Section 306 of Indian Penal Code sentencing to undergo with rigorous imprisonment for a period of 7 years and to pay fine amount of Rs.50,000/- in default to undergo with simple imprisonment for a period of 06 months.

2. The factual matrix of this case is that, the deceased Raju was elder son of the complainant and he married Kavita in the year 2010 and they have got one child namely Puneeth. The deceased and his wife are in cordial relationship. The deceased had friendship with the appellant/accused. The appellant/accused was torturing him as she has given loan to the deceased and she was threatening him. That on 21.04.2019 deceased Raju and



his wife Kavita went to Mysuru for a function, after function the Kavita with her child stayed at Mysuru and the deceased Raju came back to the Bangalore. That on 25.04.2019 the appellant/accused and her daughter came to the house of the deceased Raju and on that day deceased Raju committed suicide by hanging with a piece of saree. The appellant/accused called the brother of the deceased Raju namely Laxminarayana over phone and informed that Raju committed suicide by hanging. The said Laxminarayana informed to the Manjunath and Sagar and they also came to the house of the deceased Raju. The appellant/accused and her daughter Sapandana have untied the body from the hanging and blood was oozing from his mouth. Sagar shifted the Raju to Astra Super Speciality Hospital, the appellant/accused and her daughter accompanied them. Raju was treated in the Hospital till he died on 10.05.2019 at about 3.50p.m. In the complaint it is stated that Raju was intelligent, he was got properties and he was not a person to commit suicide. The appellant/accused caused



torture to Raju and therefore, he committed suicide. On the basis of the compliant the case came to be registered in crime No.69/2019 in the Bannerghatta Police Station for the offence punishable under Section 306 of Indian Penal Code. After investigation, charge sheet came to be filed and case committed to the Sessions Court. The Sessions Court filed charge against the appellant/accused for the offence under Section 306 of the Indian Penal Code. The prosecution in order to prove the charge examined 11 witnesses as PW-1 to PW-11 and got marked documents as EX.P1 to EX.P11. The statement of the appellant/accused was recorded under Section 313 of Cr.P.C. After hearing the arguments on both sides the Trial Court formulated points for consideration and convicted the appellant/accused for the offence under Section 306 of the Indian Penal Code. The said judgment of conviction and order of sentence has been challenged by the appellant/accused in this appeal.



3. Heard the arguments of learned counsel for the appellant and the learned High Court Government Pleader for respondent-State.

4. Learned counsel for the appellant argued that the evidence on record is not sufficient to attract ingredients of abetment as defined under Section 107 of the Indian Penal Code and ingredients of Section 306 of the Indian Penal Code. There are material contradictions in the evidence of the prosecution with regard to amount borrowed by the deceased from the appellant/accused. He argued that mere demand of repayment of the money borrowed will not amount to abetment to commit suicide. The witnesses examined by the prosecution have not stated any harassment by the appellant/accused to the deceased. The ligature material used by the deceased Raju to hang him has not been seized, since it is stated that it was burnt. The deceased was in Hospital for nearly 15 days and during that time the relatives of the deceased have not filed any complaint of any harassment by the



appellant/accused to the deceased Raju and there is delay in filing the complaint. PW-4 who stated the appellant/accused brought rowdies to the house of the deceased and made galata has not been stated the day and date of the same. PW-5, 6 and 8 who are Panchas to the inquest Mahazar, who have been given statements before the P.S.I who conducted the inquest and they have not supported the case of the prosecution. The pancha to Spot Mahazar-Ex.P4 namely PW-7 has also not supported to the case of the prosecution. There is no any allegation against the appellant/accused having any illicit relationship with the deceased Raju. Witnesses are examined by the prosecution have stated that this deceased having good relationship with the appellant/accused.

5. He further argued that mere appellant/accused telling to the deceased Raju to go and die does not amounts to abetments, since, there is no *mens rea* or intention on the part of the accused to drive the deceased Raju to commit suicide. There is no *mens rea* on the part



of the appellant/accused to drive the deceased to commit suicide. The appellant/accused only has asked for the deceased to repay the amount borrowed. The deceased was doing lorry business by borrowing money from the different persons and his lorry business was under loss and therefore, he might have committed suicide. There is no instigation by this appellant/accused to deceased to commit the suicide. The persuasion for repayment of borrowed money does not amount to abet to commit suicide. The prosecution has failed to establish the ingredients of abetment and therefore, there is no necessity for this appellant/accused to explain the circumstances under Section 106 of the Evidence Act. On the above contention, the learned counsel for the appellant has relied upon the following decisions:

- 1) Sanju v. State of M.P (2002) 5 SCC 371
- 2) Chitresh Kumar Chopra v. State(Government of NCT of Delhi) (2009)16 SCC 605
- 3) Ude Singh and Others v. State of Haryana (2019) 17 SCC 301



- 4) State of WB v. Indrajit Kandu and Others (2019)10 SCC 188
- 5) Amalendu Pal Alias Jhantu v. State of WB (2010)1 SCC 707
- 6) Shabbir Hussain v. State of MP and Others (2021) SCC Online SC 743
- 7) M. Mohan v. State (2011) 3 SCC 626
- 8) Jorubhai Amrubhai Varu v. State of Gujarat (2020) SCC Online Guj 1189
- 9) Nagendra Shah v. State of Bihar (2021)10 SCC 725

6. The learned High Court Government Pleader argued that the trial Court on proper appreciation of evidence on the record, Court has rightly convicted the appellant/accused. He has supported the reasons assigned by the trial Court. He has further argued that the evidence of PW-1 to 4 is sufficient to convict the appellant/accused for the offence levelled against him. The appellant/accused was present in the house of the deceased on the date of incident and there is no explanation by the appellant/accused regarding the same.



The appellant/accused continuously demanded the deceased to repay the money which drew the deceased to commit the suicide. On these grounds he sought for dismissal of the appeal.

7. On the grounds made out and considering the arguments advanced, the following point arises for my consideration:

- 1) Whether the Trial Court erred in convicting the appellant/accused for the offence under Section 306 of I.P.C?

8. My answer to the above point is in affirmative for the following

REASONS

9. The deceased Raju hanged himself with the piece of a saree in his house on 25.04.2019 and he was taken to the Hospital and treated for 15 days and he died on 10.05.2019. The doctor who conducted the post mortem examination of the deceased Raju has opined that cause of death is due to "Cerebral Anoxia Consequent



upon to attempted hanging". The said aspect itself establish that the death of the deceased is suicide as per EX.P7 Post Mortem Report.

10. The deceased Raju was taken to Hospital on 25.04.2019 and he died on 10.05.2019. The complaint as per EX.P10 came to be filed on 10.05.2019. The father of the deceased Raju has filed the said complaint. The father of the deceased has died and therefore, prosecution has not examined him. PW-1 is the elder brother of the deceased, PW-2 is the wife of the deceased, PW-3 is the younger brother of the deceased and PW-4 is the cousin brother of the deceased. The statements of PW-5 as per EX.P1, PW-6 as per Ex.P3 and PW-8 as per Ex.P6 recorded by the investigation officer at the time of the inquest. PW-5, 6 and 8 did not supported the case of the prosecution with regard to the harassment by the appellant/accused to the deceased Raju insisting him to repay the amount borrowed and giving him life threat.



11. PW-1 is the elder brother of the deceased Raju and he has deposed that on 25.04.2019 the appellant/accused was found in the galata between her and deceased Raju and he committed suicide. He went to the house and shifted Raju to the Hospital. He has deposed that the appellant/accused was harassing the deceased Raju regarding repayment of the money borrowed by her.

12. PW-2 is the wife of the deceased and she has deposed that her husband Raju introduced the appellant/accused as his friend. She used to come to her house in her absence. She has given Rs.10,00,000/- (rupees Ten Lakhs) loan to the deceased Raju. The deceased Raju told her that they both have to die as the appellant/accused is harassing him and she used to pacify him. She has deposed that the appellant/accused told her husband to repay the money or to leave his wife. In the cross examination she has denied that in her absence the appellant/accused used to come to her house.



13. PW-3 is the younger brother of the deceased and he has deposed that the deceased was acquainted with the appellant/accused. The deceased used to go to the house of the appellant/accused and the appellant/accused used to come to the house of the deceased Raju. On 25.04.2019 on receiving message regarding Raju committed suicide by hanging, he went and saw, at that time the appellant/accused was in his house and blood was oozing from the mouth of the deceased Raju and he has taken the deceased Raju to the Hospital. He has stated that he came to know that the appellant/accused used to harass deceased Raju asking him to repay the money borrowed from her.

14. PW-4 is the cousin brother of the deceased Raju and he deposed that on receiving the phone call on 25.04.2019 and he went to the house of the deceased at that time the appellant/accused and her daughter were there and he has taken the deceased Raju to the Hospital. He has further deposed that the appellant/accused had



given Rs.20,00,000/-loan and she was harassing the deceased and one day before she brought some rowdies and made galata and same was informed to him by deceased Raju.

15. On the basis of the above evidence, what can to be gathered is that the deceased Raju had borrowed money from the appellant/accused and the appellant/accused demanded the repayment of the money borrowed by the deceased and used to harass him. Whether the said aspect of insisting the deceased to repay the loan borrowed and asking him to die amounts to abetment to commit suicide or not.

16. Abetment is defined under Section 107 of the Indian Penal Code which reads as under:

"107. Abetment of a thing.- A person is said abet 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."

As per the aforesaid definition there should be instigation to do that thing and then it amounts to abetment. A person is said to have instigate another to an act when he actively suggests or stimulates him to act by means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.

17. The learned counsel for the appellant has placed reliance on the decision of the Hon'ble Apex Court in the case of **Sanju alias Sanjay Singh Sengar Vs Sate of M.P (2002) 5 SCC 371** wherein it is held as under:

".....Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that 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. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion....."

18. The learned counsel for the appellant has placed reliance of the Hon'ble Apex Court in the case of **Chitresh Kumar Chopra Vs Sate (Government of NCT of Delhi) (2009) 16 SCC 605** wherein it is observed as under:

"17. Thus to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying



somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, and "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by



his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on is inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life,



which may either be an attempt for self-protection or an escapism from intolerable self."

19. The appellant/accused insisted the deceased Raju to repay the money borrowed by him. There was no intention on the part of the appellant/accused to drive the deceased to commit suicide. The appellant/accused was interested in getting back the money lent to the deceased. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such an 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 is abetted in the commission of suicide by another or not, only be gathered from the facts and circumstances of each case.

20. How a human mind reacts has been observed by the Hon'ble Apex Court in the case of **Ude Singh and**

**Other Vs State of Haryana (2019) 17 SCC 301**

wherein it is observed as under:

"16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set-ups, education, etc. Even the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstance"

21. The person may attempt to commit suicide due to various reasons such as depression, financial difficulties,



disappointment in love, tired of domestic worries, acture or chronic ailments and so on and need not be due to abetment. The same has been observed by the Hon'ble Apex Court in the case of **Mangat Ram Vs State of Haryana** reported in **AIR 2014 SC 178**.

22. PW-1 the brother of the deceased Raju in his cross examination has stated that the deceased had purchased the lorry by taking loan and he has sustained loss in his lorry business. The very said admission given by PW-1 itself show that the deceased has barrowed money for purchase of lorry and he has sustained loss in the said lorry business. That may be one or the reason for the deceased to commit suicide.

23. The Hon'ble Apex Court in the case of the **M.Mohan Vs State (2011) 3 SCC 626** wherein it is observed as under:

"44. Abetment involves a mental process of instigating a person or intentionally



aiding a person in doing 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."

24. The appellant/accused has lent money to the deceased Raju. She was interested in getting back the said money. She had no intention of taking the life of the deceased Raju. Therefore, there is no clear mens rea on the part of the appellant/accused to abet the deceased to commit suicide. The Hon'ble Apex Court in the said decision also observed that "*Human sensitivity of each individual differs from person to person. Each individual*



has his own idea of self-esteem and self-respect. Different people behave differently in the same situation"

25. In the similar situation that the deceased committed suicide as the accused insisted the deceased to repay the loan amount, the Hon'ble Apex Court in the case of **M.Arjuna Vs State reported in AIR 2019 SC 43** has observed reads as under:

"8. 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."



26. In the said case the deceased had left a suicide note stating that he is unable to repay the loan and taking the extreme steps.

27. Having advanced money to the deceased the appellant/accused have uttered some abuse words and threatened him to take his life; but that by itself is not sufficient to constitute the offence under Section 306 of I.P.C. From the evidence brought on record and in facts and circumstances of the case, the ingredients of 306 of I.P.C is not established. The trial Court placed much reliance on the evidence wherein accused was present in the house of the deceased Raju along with her daughter and deceased committed suicide. There is no evidence on record to show that at what time the appellant/accused has come to the house of the deceased. The trial Court has held that what happened on that day in the house of the deceased was within the knowledge of the appellant/accused and burden of proving of that fact is upon the appellant/accused placing reliance on provision



contained under Section 106 of the Evidence Act. Considering said provision under Section 106 of the Evidence Act the Hon'ble Apex Court in the case of **Nagendra Sah Vs State of Bihar (2021) 10 SCC 725** wherein it is observed as under:

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is



required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

28. The circumstances established by the prosecution do not lead to only possible inference regarding the guilt of the appellant/accused. Therefore, the Trial Court was not right in placing burden on the appellant/accused under Section 106 of the Evidence Act, as the prosecution has not established its burden as required under Section 101 of the Evidence Act.

29. The Gujarat High Court in the similar set of facts has quashed the proceedings for the offence under Section 306, 384, 385, 387 of Indian Penal Code and Section 40 of the Gujurath Money Lenders Act, in the case of the **Jorubhai Amrubhai Varu Vs State of Gujarat 2020 SCC Online Guj 1189** wherein it is observed as under:



"11. Admittedly, the allegation in FIR is of deceased having borrowed money from the present applicant. The deceased failed to repay the amount with interest. The applicant was constantly demanding the money and alleged to have threatened the deceased. Such act of demanding the repayment of money would not bring case within the meaning of section 306 of the Indian Penal Code. There would not be any mens rea of the applicant as he would not benefited from the act of suicide of the deceased and thus, prima facie the allegation in the FIR, taken at its face value do not prima facie constitute any offence or make out a case against the accused."

30. On the consideration of the evidence on record, there is no evidence to show that the appellant/accused had intention to drive out the deceased Raju to commit suicide. Looking from any angle the act of the appellant/accused harassing the deceased for repayment of money borrowed and threatening him to take his life does not amounts to abetment. Therefore learned



Sessions Judge has committed an error in holding that the act of the appellant/accused amounts to abetment to the deceased Raju to commit suicide. In the result the following:

ORDER

- i) Appeal is ***Allowed.***
- ii) The judgment of conviction and order of sentence passed in S.C No.5050/2020 dated 31.03.2023 by the III Additional District and Sessions Judge, Bangalore Rural District, Bangalore sitting at Anekal convicting for the offence punishable under Section 306 of Indian Penal Code is set aside.
- iii) Consequently, the appellant/accused stands acquitted for the offence under Section 306 of the Indian Penal Code. Fine if any, paid by the appellant/accused is ordered to be refunded to her.



- iv) In view of the disposal of appeal pending
IA's does not survive for consideration.

**Sd/-
JUDGE**

DSP
List No.: 1 Sl No.: 13
CT: AVB