

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. _____ OF 2024
@ SLP (Crl.) No. _____ /2024
(@ SLP (Crl.) Diary No. 39981/2022)

PRABHU

APPELLANT(s)

VERSUS

THE STATE REP BY
THE INSPECTOR OF POLICE & ANR.

RESPONDENT(s)

ORDER

1. Delay condoned. Leave Granted.
2. This Appeal arises from the judgment dated 29.07.2022 delivered by the High Court of Judicature at Madras in Crl. O.P. No. 8327 of 2021. By the said judgment, the High Court has refused to quash the criminal proceedings initiated against the appellant under Sections 417, 306 of the Indian Penal Code [‘IPC’] read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002 [‘TNPHW Act’]. The substance of the allegation in the charge-sheet is as follows:

"The aggrieved party in this, Kousalya, aged 21, residing at Mariyamman Koil street, Vengathur colony, Tindivanam district had been living with her (sic.)

parents. Kousalya, had studied B.A. History at Govindasamy Government Arts College, Tindivanam and at the time of the incident, she was at home. She had acquaintance with the accused, shown in column 11 and both loved each other. Both have had intercourse for so many times. In that stage for the said accused, at his home, they searched for alliance to him and knowing the fact when Kousalya enquired, he replied that since his younger brother and mother told that they would die, he accepted for the marriage. Because of this the said Kousalya was under severe mental tension, on 22.06.2019 at about 8.30 night, she (sic.) had taken the rat poison and had eaten. Kousalya informed this fact to her mother. On that day itself, Kousalya was brought to a private hospital at Rettanai and first aid was given and then she was brought to Government hospital, Mundiampakkam through 108 ambulance and she had been under treatment for 5 days and then she was sent to Stanley medical hospital for further treatment, and on 04.07.2019 at about 04.20 a.m. without response to the medical treatment, she died.

The accused in this case, with the intention to cheat Kousalya, she had informed that he is loving her and changed her mind and had intercourse with her for so many times, thereafter refused to marry her, and thus induced the victim to commit suicide and thus he is responsible for the death of Kousalya, he is liable to be prosecuted under Sections 417, 306 r/w 4 of TPHW (sic.) Act.

3. The filing of the charge sheet led to the proceedings in P.R.C. No. 24 of 2020 pending before the Learned Judicial Magistrate No. II, Tindivanam, Villupuram District. At that stage the Appellant filed a petition under Section 482 of the Code of Criminal Procedure [‘Cr.P.C’] to quash the criminal proceedings. The Single

Judge of the High Court dismissed the same and hence the appellant is before us.

4. The question for consideration is whether, taking the prosecution case as it is, any case for proceeding with the trial under Sections 306, 417 of IPC read with Section 4 of TNPHW Act is made out.

5. The undisputed facts as it emerges from the prosecution's story, as set out hereinabove, are as follows:

5.1 The Appellant and the deceased were on intimate terms and they fell in love in 2014.

5.2 Admittedly they had physical relationship out of the love they had for each other.

5.3 It appears that the appellant, when he got the job with the CRPF, left the town and even thereafter they were in touch with each other.

5.4 It is only when the marriage alliance was being broached at the house of the appellant and when his family started looking for a bride, the deceased appears to have become upset.

5.5 The deceased had inquired about this fact from the appellant. The appellant had replied that his mother and his younger brother have said that they would die and as such he acceded to their view. The appellant advised her that she should also act according to the words of her parents.

5.6 The deceased came under mental stress and on 22.06.2019 at about 08:30 PM, she ate rat poison kept in the bathroom of the house. Based on her statement, the First Information Report was lodged.

6. Having heard the learned counsel for the parties and having perused the material on record, we are of the opinion that none of the ingredients to the offences set out in the charge-sheet are attracted.

Offence under Section 306 IPC

7. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

8. Abetment is defined in Section 107 IPC and it reads as follows:

“107. Abetment of a thing. —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 wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

9. In a recent judgment of this Court in ***Kamalakar vs. State of Karnataka*** in ***Criminal Appeal No. 1485 of 2011 [decided on 12.10.2023]***, one of us (Vikram Nath J.) explained the ingredients of Section 306 IPC.

The Court has held as follows:

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria

detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In *Ramesh Kumar v. State of Chhattisgarh*¹, this Court has analysed different meanings of “instigation”. The relevant para of the said judgment is reproduced herein:

“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.”

8.4. The essentials of Section 306 IPC were elucidated by this Court in *M. Mohan v. State*², as under:

“43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of 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 “goadings”. 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.”

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in *Amalendu Pal alias Jhantu v. State of West Bengal*³ in the following paragraphs:

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there 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.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

10. On a perusal of the above, and relying upon this Court’s previous judgments discussing the elements of Section 306 IPC, the following principles emerge:

10.1 Where the words uttered are casual in nature and which are often employed in the heat of the moment between quarrelling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [**Swami Prahaladdas**

v. State of M.P 1995 Supp. (3) SCC 438, Paragraph 3;
Sanju v. State of M.P (2002) 5 SCC 371, Paragraph
12]

10.2 In order to constitute ‘instigation’, it must be shown that 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. The words uttered by the accused must be suggestive of the consequence [**Ramesh Kumar v. State of Chhatisgarh (2001) 9 SCC 618**, Paragraph 20]

10.3 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. [**Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605**, Paragraph 20]

10.4 There must be direct or indirect acts of incitement to the commission of suicide. The accused must be

shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide [***Amalendu Pal v. State of West Bengal (2010) 1 SCC 707***, Paragraph 12-14]

10.5 The accused must have intended or known that the deceased would commit suicide because of his actions or omissions [***Madan Mohan Singh v. State of Gujarat (2010) 8 SCC 628***]

11. Applying the above yardstick to the facts of the present case in question, even if we take the case as a whole and test the prosecution case on a demurrer, it could not be said that the actions of the accused instigated Kousalya to take her life or that he conspired with others to ensure that the person committed suicide or any act of the appellant or omission instigated the deceased resulting in the suicide.

12. Broken relationships and heart breaks are part of everyday life. It could not be said that the appellant by breaking up the relationship with Kousalya and by advising her to marry in accordance with the advice of

her parents, as he himself was doing, had intended to abet the suicide of Kousalya. Hence the offence under Section 306 is not made out.

13. In the teeth of the statement of the deceased which led to the FIR, statement [dated 25.06.2019] and revised statement [dated 04.07.2019] of her mother to whom the deceased narrated the events leading to her consuming the poison, the version of the father and the three paternal uncles of the deceased do not inspire confidence. While the father, in his statement dated 25.06.2019, had given a version identical to the deceased and her mother, in his revised statement, dated 04.07.2019, he states that the deceased purportedly told her mother that the Appellant had told the deceased that he would be happy only if she were to die. This is then repeated by the three paternal uncles in their statements dated 04.07.2019. This version of the father and the paternal uncles is far-fetched since neither the deceased, nor the mother of the deceased to whom the statement was made, or the maternal uncle

and aunt, who admitted the deceased at the hospital, have made out such case.

Offence under Section 417 of IPC and Section 4 of the TNPHW Act

14. As is clear from a complete reading of the F.I.R and the Chargesheet, the physical relationship over a considerable period of time was out of mutual love between the Appellant and the deceased, and not based on the promise of marriage. We are of the view that the offence under Section 417 of IPC is therefore not made out in the facts of the present case.

15. The gravamen of the charges extracted above also do not attract the offence under Section 4 of TNPHW Act. The offence under the TNPHW Act is set out in the following terms:

“2. Definitions – In this Act, unless the context otherwise requires-

(a) “*harassment*” means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force.

4. Penalty for harassment of woman. - Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational

institution, temple or other place of worship, bus stop, road, railway station, cinema theater, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees.”

16. A plain reading of the Section and applying it to the undisputed facts of the present case indicates that none of the ingredients are attracted to the case at hand.

17. In view of the above, the judgment of the High Court is set aside and the Appeal is allowed. The proceedings before the Judicial Magistrate-II, Tindivanam, District Villupuram in P.R.C. No. 24 of 2020 will stand quashed.

.....J.
[**VIKRAM NATH**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
January 30, 2024.

ITEM NO.17

COURT NO.8

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 39981/2022
(Arising out of impugned final judgment and order dated 29-07-2022
in CRLP No. 8327/2021 passed by the High Court of Judicature at
Madras)

PRABHU

Petitioner(s)

VERSUS

THE STATE REP BY THE INSPECTOR OF POLICE & ANR. Respondent(s)
(IA No.205486/2022-CONDONATION OF DELAY IN FILING and IA
No.205487/2022-EXEMPTION FROM FILING O.T.)

Date : 30-01-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. S. Nagamuthu, Sr. Adv.
Mr. M.P. Parthiban, AOR
Ms. Priyaranjani Nagamuthu, Adv.
Mr. R. Sudhakaran, Adv.
Mr. T. Hari Hara Sudhan, Adv.
Ms. Shalini Mishra, Adv.
Mr. Bilal Mansoor, Adv.
Mr. Shreyas Kaushal, Adv.

For Respondent(s) Mr. V. Krishnamurthy, Sr. Adv.
Mr. D. Kumanan, AOR

Mr. G. Ananda Selvam, Adv.
Mr. Mayilsamy K, Adv.
Mr. N.B.V. Srinivasa Reddy, Adv.
Mr. Arun Pandian S., Adv.
Ms. Lakshmi Ramamurthy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed
order.

Pending application(s), if any, shall stand
disposed of.

(SONIA BHASIN)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

[Signed Order is placed on the file]