

(2015) 02 GUJ CK 0080
In the Gujarat High Court
Case No : Criminal Appeal No. 781 of 1995

Punambhai Ramjibhai Patani

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 313
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 306, 498(A), 498A

Citation : (2015) 3 DMC 123

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : K.G. Sheth, for the Appellant; M.H. Bhatt, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kaushal Jayendra Thaker, J—This is an appeal by the original accused No. 1-appellant, herein, challenging the judgment and order of the learned Sessions Judge, Ahmedabad (for short, "Trial Court"), dated 19.7.1995, rendered in Sessions Case No. 401 of 1991, whereby, the Trial Court convicted and sentenced the original accused No. 1-appellant as under:

"(1) For the offence under Section 498(A) of the IPC to undergo rigorous imprisonment for two years and to pay fine of Rs. 500 and in default to under go further rigorous imprisonment for three months;

(2) For the offence under Section 306 of the IPC to under go rigorous imprisonment for three years and to pay fine of Rs. 500 and in default go further rigorous imprisonment for three months."

The Trial Court, however, acquitted the original accused Nos. 2 to 6 of all the charges.

2. The brief facts of the case of the prosecution, as set out before the Trial Court,

are that the mother of the deceased, namely Shantaben, lodged a complaint before the Meghaninagar Police Station, wherein, she stated that she resides at Chamanpura, Ahmedabad, along with her family. It is stated in the complaint that the complainant has two sons and one daughter, i.e. the deceased, who was married to original accused No. 1 about 10 years prior to the alleged incident. Out of the said wedlock, the deceased had given birth to two sons. It is stated in the complaint that after marriage, the deceased was residing in a joint family, i.e. original accused Nos. 2 to 6, and her husband, original accused No. 1-appellant, herein. According to the complainant, accused No. 1 was not doing any work and he used to beat the deceased frequently under the influence of alcohol. It is, further, stated in the complaint that accused Nos. 2 to 6 used to instigate accused No. 1 and on account of that he used to beat the deceased, and therefore, the deceased frequently used to come to her parental house and used to complaint about the same. According whenever deceased used to come to her parental house, accused No. 1 used to come to the parental house of the deceased after consuming alcohol and used to beat the deceased. It is stated in the complaint that one day before the alleged incident, the deceased had come to her parental house and had complained to his father, in the presence of her two brothers, that she had been ill for about two months, but accused No. 1 nor original accused Nos. 2 to 6 care about her and that she is being harassed. However, the mother of the deceased persuaded and sent the deceased to her matrimonial home. Next day, i.e. on 1.11.1990, while the complainant and the others were sleeping, police came to her house and informed them that the deceased has sustained burn injuries. Therefore, the complainant went to the hospital and on inquiring from the deceased, the deceased told her that she has set herself ablaze. Thereafter, D.D. of the deceased came to be recorded. The complainant, then, lodged the complaint in question against original accused Nos. 1 to 6. The deceased succumbed to her injuries on 2.11.1990.

3. On registration of the offence police carried out the investigation and on finding sufficient evidence lodged a charge-sheet against the accused, i.e. original accused Nos. 1 to 6. At the time of trial, since, the accused did not plead guilty and claimed to be tried, the case was committed for trial.

4. Before the Trial Court, to bring home the charges levelled against the accused, the prosecution examined the following witnesses:

5. Over and above the oral evidence, the prosecution also produced the following documentary evidences in support of its case:

6. At the end of the trial, the further statements of the accused under Section 313 of the Cr.P.C. came to be recorded, and then, the Trial Court passed the impugned judgment and order, as referred to in Paragraph-1, hereinabove. Hence, the present appeal.

7. Mr. Sheth, learned Advocate for accused No. 1-appellant, submitted that Trial Court committed a grave error in convicting accused No. 1, inasmuch as it failed

to appreciate the evidence on record in its proper perspective. He submitted that the Trial Court ought to have appreciated that there is no material on record to suggest harassment by the accused No. 1 to the deceased. He, therefore, prayed that the present appeal be allowed and the accused No. 1 be acquitted.

8. In support of his submissions, Mr. Sheth has placed reliance on the following decisions:

"(1) Shivanand Mallappa Koti Vs. The State of Karnataka, AIR 2007 SC 2314 : (2007) 2 DMC 166 : (2007) 8 JT 462 : (2007) 8 SCALE 408 : (2007) 13 SCC 68 : (2007) 7 SCR 930 ; and

(2) Kishangiri Mangalgiri Goswami Vs. State of Gujarat, AIR 2009 SC 1808 : (2009) CLT 633 : (2009) CriLJ 1720 : (2009) 2 JT 84 : (2009) 1 SCALE 31 : (2009) 4 SCC 52 : (2009) 1 SCR 672 : (2010) AIRSCW 468 : (2009) AIRSCW 1399 : (2009) 1 Supreme 491 ."

9. As against this, Ms. Bhatt, learned APP for the respondent-State, supported the judgment and order of the Trial Court and submitted that the Trial Court convicted the accused No. 1, after perusing the entire material on record, and hence, no interference is called for at the hands of this Court. Ms. Bhatt, in support of her submission, pressed into service a decision of the Apex Court in Vajresh Venkatray Anvekar Vs. State of Karnataka, (2013) 1 AD 274 : AIR 2013 SC 329 : (2013) 1 Crimes 1 : (2013) 1 CTC 614 : (2013) 1 JCC 586 : (2013) 1 JT 238 : (2013) 1 RCR(Criminal) 983 : (2013) 1 SCALE 56 : (2013) 3 SCC 462 : (2013) AIRSCW 2569 : (2013) AIRSCW 320 : (2013) 1 Supreme 79 : (2013) 1 Supreme 780 , wherein, the Apex Court, on the aspect of reliability of related witnesses, observed that the relatives of the deceased were the only witnesses to the cruelty meted out to the deceased within four walls, and hence, if their evidence get support from the attendant circumstances and stand corroborated by the evidence on record, same cannot be discarded or overlooked just because they are interested witnesses and there is some exaggeration.

10. Heard learned Advocate for the accused No. 1-appellant, herein, and the learned APP for the Respondent-State and perused the material on record with their assistance.

11. To prove the charges leveled against the accused-appellant, the prosecution examined the mother of the deceased as P.W. 1. P.W. 1, in her deposition (Exhibit-13), stated that her daughter was married to accused No. 1 and she used to reside in a joint family including her husband and original accused Nos. 2 to 6. P.W. 1, then, identified all the accused before the Court. In an answer to a question, i.e. who used to harass the deceased?, put to P.W. 1, she stated that all the accused used to harass her. P.W. 1, further, stated that accused No. 1 neither used to give food nor money to the deceased. P.W. 1, then, stated that before one day prior to the alleged incident, the deceased had come to her house and informed her that she has been ill, but, no one cares for her. P.W. 1 stated that she does not know as to what happened at the house of her daughter. P.W. 1

stated that she had gone to hospital along with her neighbours, two sons and their wives and on enquiring from the deceased about the reason, she told the complainant that she was harassed very much. In her cross-examination, P.W. 1 stated that she did not state in her statement before the police that when, she and the son of her cousin, Ramabhai Amthabhai, who serves in police, asked the deceased as to how she sustained burns, the deceased answered that there is no one, who care for me, and hence, I have set myself ablaze. She, then, stated that in her statement before the police she stated that when she inquired from the deceased, the deceased told her that she was harassed very much. This witness, then, stated that after recording the complaint, she was not read out the same. P.W. 1 stated that since she is illiterate, she did not read the complaint. P.W. 1 denied the suggestion that accused No. 1 used to work and he do not consume alcohol. She, further, denied the suggestion that, since, the deceased was a spendthrift and wanted to live separately from the joint family, she used to complaint about harassment.

12. P.W. 2 was discharging duty as Home Guard near the place of incident at the time it took place and he had just informed the police about the same. The evidence of this witness, as such, is not of much importance.

13. P.W. 3 was the Executive Magistrate, who recorded the D.D. of the deceased. P.W. 3, in his deposition (Exhibit-16), stated that on receiving the memorandum to record the D.D. of the deceased, he went to the hospital at about 3.10 a.m., and on reaching there, he enquired about the deceased and a nurse showed her the bed of the deceased. Since, doctor was not present, he was sent for. P.W. 3, then, asked one-two questions to the deceased and on finding that the deceased was conscious, he sent the police and relatives of the deceased out of the room and started recording her D.D. in the question answer form. After completing the D.D. at 3.40 a.m., P.W. 3 read over the same to the deceased and obtained her right-hand thumb impression, thereon. Doctor came at 3.50, i.e. after the D.D. was recorded, and made an endorsement on the D.D. that the deceased was conscious.

14. P.W. 4, who happened to be the cousin of the complainant, in his deposition (Exhibit-19) stated that on the date of the alleged incident, he was posted at Civil Hospital and on seeing the deceased, he identified her and he found the complainant crying. P.W. 5, then, stated that when he inquired from the deceased, the deceased told him that she set herself ablaze and that she has no one. In his cross-examination, this witness denied the suggestion that when the deceased was brought to the Civil Hospital, he was not present and that he was called after the complainant reached the hospital.

15. P.W. 5, who happened to be a neighbour of the complainant, in her deposition (Exhibit-27), stated that whenever deceased used to come to her parental house, the accused No. 1 used to come there following the deceased, after consuming alcohol. This witness stated that one day accused No. 1 had come to the parental house of the deceased under the influence of alcohol and

had beaten up her. P.W. 5, then, stated that the accused No. 1 was not doing anything and he was not giving money to the deceased even for her treatment. In her cross-examination, this witness admitted that it is true that, in her statement, she did not state that accused No. 1 used to beat the deceased under the influence of alcohol, whenever the deceased used to come to her parental house. This witness, then, stated that she had accompanied the complainant to Hospital, however, she was not permitted to see the deceased.

16. P.W. 6, who was a witness to the Panchnama of place of incident, fully supported the prosecution case on the aspect of said Panchnama.

17. P.W. 7, who happened to be the brother of the deceased, in his deposition (Exhibit-33) stated that after the marriage, the deceased used to come to her parental house, whenever accused No. 1 used to beat her. P.W. 7 stated that the deceased used to complaint that accused do not give her money for her treatment. This witness, then, stated that the deceased had come to his house one day prior to the alleged incident and at that time, she complained that she had been ill for about two months, but, no body cares for her. In his cross-examination, P.W. 7 stated that it is not true that in my statement before the police I did not state that in hospital, on inquiring from the deceased, she told that she has no one and she is harassed at her matrimonial house.

18. The evidence of P.W. 8, who happened to be the father of the deceased, in his deposition (Exhibit-34) recited the facts and allegations already narrated by his wife (P.W. 1) and his son (P.W. 7), and hence, there is no need to examine the same in detail.

19. P.W. 9, who was the Medical Officer and had performed PM on the body of the deceased, in his deposition (Exhibit-35) stated that the cause of the death of the deceased was shock as a result of burns and its complications.

20. P.W. 10 was the Investigating Officer, who carried out investigation into the alleged offence. P.W. 10, in his deposition (Exhibit-39), narrated the entire procedure of investigation undertaken by him, stating that on receiving the information about breaking of fire in a house near Kalapinagar Cross Roads, he went there and on finding the deceased in burnt condition took her to the hospital in his jeep, then, the mother of the deceased was informed and on her arrival, her complaint was recorded, and then, a memorandum was sent to P.W. 3 for recording the D.D. of the deceased and he also recorded the statement of the deceased. Then, P.W. 10 carried out the Panchnama of the place of offence and also recorded the statements of the witnesses, He, then, narrated as to how he arrested the accused and on finding sufficient evidence against them, as to how he filed charge-sheet against them. In his cross-examination, this witness stated that it is not true that the document Exhibit-40 was created subsequently and due to that it was not produced along with the charge-sheet. This witness, further, stated that when he recorded the statement of P.W. 1, she stated that when she, i.e. P.W. 1, asked the deceased in presence of P.W. 4, as to how she

sustained burns, the deceased replied to her that she has no one and that she set herself ablaze. P.W. 10, then, conceded that it is true that P.W. 1, in her statement before him, did not state that when she went to the hospital and inquired from the deceased as to why did she set herself ablaze, the deceased replied that she was harassed at her matrimonial home. P.W. 10, further, admitted that it is true that P.W. 1, in her statement before him, did not state that the accused did not use to give her food or medicine. P.W. 10 also conceded that even P.W. 4 also did not state, in his statement before him, that the deceased had told him, i.e. P.W. 4, that the accused used to harass her and they also used to taunt and tell her that she has to do the household works, even, while she is ill. The evidence of P.W. 10 further reveals that P.W. 4, in his statement before this witness, did not state that the deceased was ill for about two months and despite that nobody was taking care of her.

21. Now, before this Court proceeds further to examine whether the prosecution can be said to have successfully established the offence under Section 498(A) of the IPC, it would be relevant to refer to the said section, which reads as under:

"498A. Husband or relative of husband of a woman subjecting her to cruelty-- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation--For the purpose of this section, "cruelty" means--

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman;

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

22. Thus, from a bare reading of the said section it becomes clear that, if a woman is subjected to "cruelty" either by her husband or any relative of her husband, then, such person/persons are liable to be punished under the aforesaid Section. Further, the term "cruelty", as explained under the said Section, means any "wilful act", which would drive a woman to commit suicide or cause grave injury or danger to her life or to harass a woman in order to derive monetary benefit from her or any of her relatives or on her/their failure to do so.

23. Now, in the light of the provisions of Section 498(A) of the IPC, if the case of the prosecution is examined, then, as per the allegations made by P.W. 1, i.e. the complainant, in her complaint and in her deposition, are that the accused No. 1-appellant did not use to give the deceased either food or medicine. P.W. 1 also stated that when she inquired from the deceased about the reason for setting herself ablaze, the deceased replied that she had much harassment. P.W. 1 had,

before the Trial Court, in an answer to a question also stated that all the accused used to harass the deceased mentally and physically. However, from the evidence of this witness, it is not discernible as to why the accused, including accused No. 1-appellant, herein, used to harass the deceased. Further, according to P.W. 1, accused No. 1 was not doing any work and used to consume the alcohol. However, if the evidence of P.W. 7, who happened to be the brother of the deceased is examined, then, this witness, in his cross-examination, stated that accused No. 1 knows the work of screen-printing and that he, i.e. accused No. 1, had helped him in getting the work of screen-printing to him. Now, if, statement of the deceased recorded by police (Exhibit-40) is examined, then, the deceased also has stated that the accused No. 1 used to do the work of printing cards at home. Thus, the allegation of P.W. 1 and P.W. 4 that the accused No. 1 was not doing any work stands falsified by the aforesaid piece of evidence. Now, so far as the evidence of P.W. 1, P.W. 7 and P.W. 8 with regard to the not giving of food or medicine to the deceased or taunting of the deceased with regard to household work by accused No. 1 and other accused is concerned, P.W. 10, in cross-examination (Exhibit-39), admitted that P.W. 1, in her statement before him, did not state that when she went to the hospital and inquired from the deceased as to why did she set herself ablaze, the deceased replied that she was harassed at her matrimonial home. Further, P.W. 10, admitted that it is true that P.W. 1, in her statement before him, did not state that the accused was not giving food or medicine to the deceased. P.W. 10 also conceded that even P.W. 7 also did not state, in his statement before him, that the deceased had told him, i.e. P.W. 7, that the accused used to harass her and they also used to taunt and tell her that she has to do the household works, even, while she is ill. The evidence of P.W. 10, further, reveals that P.W. 7, in his statement before this witness, did not state that the deceased was ill for about two months and despite that nobody, i.e. none of the accused, was taking care of her. Therefore, the evidence of P.W. 10 falsifies the allegations made by P.W. 1, P.W. 7 and P.W. 8 in their respective evidence that accused No. 1 was not giving either food or medicine to the deceased and that the deceased used to be taunted P.W. 7 and P.W. 8 with regard to the not giving of food or medicine to the deceased or taunting of the deceased with regard to household work by accused No. 1 and other accused is concerned, P.W. 10, in cross-examination (Exhibit-39), admitted that P.W. 1, in her statement before him, did not state that when she went to the hospital and enquired from the deceased as to why did she set herself ablaze, the deceased replied that she was harassed at her matrimonial home. Further, P.W. 10, admitted that it is true that P.W. 1, in her statement before him, did not state that the accused was not giving food or medicine to the deceased. P.W. 10 also conceded that even P.W. 7 also did not state, in his statement before him, that the deceased had told him, i.e. P.W. 7, that the accused used to harass her and they also used to taunt and tell her that she has to do the household works, even, while she is ill. The evidence of P.W. 10, further, reveals that P.W. 7, in his statement before this witness, did not state that the deceased was ill for about two months and despite that nobody, i.e. none of the accused, was taking care of

her. Therefore, the evidence of P.W. 10 falsifies the allegations made by P.W. 1, P.W. 7 and P.W. 8 in their respective evidence that accused No. 1 was not giving either food or medicine to the deceased and that the deceased used to be taunted and was asked to do household work even while she was ill. Now, if the evidence of P.W. 5, who happened to be a neighbour of the complainant, with regard to the harassment by the accused No. 1 to the deceased is examined, this witness, in her evidence (Exhibit-27) narrated an incident, stating that once the deceased was beaten-up by accused No. 1, who was under the influence of alcohol at that time, at her parental house. P.W. 5, in her evidence, even went on to state that the deceased had tried to hide herself to save herself from beating of accused No. 1. However, none of the relatives of the deceased, i.e. P.W. Nos. 1, 7 and 8, refers to any such incident in their respective deposition. It, therefore, becomes clear that P.W. 5 is exaggerating. Thus, there are general allegations made against all the accused, including accused No. 1-appellant, herein, by P.W. 1, P.W. 5, P.W. 7 and P.W. 8, which stand falsified by the evidence of P.W. 10, before whom, none of the aforesaid witnesses, made the said allegations, as conceded by P.W. 10 in his cross-examination.

24. So far as the case of the prosecution with regard to the physical cruelty to the deceased is concerned, P.W. 9, in his deposition (Exhibit-35), nowhere states that, at the time of PM, he had seen any external injuries on the body of the deceased either recent or the past, which could be attributed to the beating by accused No. 1, in that regard, here; it would be relevant to refer to Column Nos. 17 and 18 of the PM Note (Exhibit-36) of the deceased, which read as under:

25. From a perusal of the PM Note of the deceased, it becomes clear that even, therein, also no injury is mentioned either recent or any old injury, which would support the case of the prosecution on the aspect of beating of the deceased by the accused.

26. In regard to the above, further, if, we examine the statement of the deceased (Exhibit-40), she has stated, therein, that she had some quarrel with her husband-accused No. 1, and then, she went to her parental home and on persuasion by her parents she came back to her matrimonial home on the fateful day, where, again a quarrel took place with accused No. 1, when he came home in drunkard condition, and which continued till late night. If we read the Exhibit-40, then, the deceased has stated that, when again quarrel took place, accused No. 1 was taunting her, and thus, there is no allegation by the deceased, herself, with regard to any physical violence against her by accused No. 1. Even, the deceased in her D.D. (Exhibit-18) in answer to question No. 10 stated that her husband accused No. 1 has not been taking care of her children for about past one month and used to quarrel with her and that there is no allegation with regard to beating by the deceased against accused No. 1. Then, the deceased, in an answer to question No. 13 in her D.D., replied that accused No. 1 used to quarrel over the issue of children and there again, there is no mention of physical violence of accused No. 1 by the deceased. Further, the deceased, in her

statement (Exhibit-40), has nowhere stated that she had been ill and that the accused No. 1 was not providing her food or medicine. So, even the evidence of deceased, herself, also falsifies the allegations made by P.W. 1, P.W. 7 and P.W. 8 with regard to mental and physical harassment of the deceased by accused No. 1 and his indifferent attitude towards the deceased. It is neither the case of the prosecution nor is there any allegation that the deceased used to be harassed by the accused No. 1 with a view to derive any monetary benefit from her through her relatives. From the record it transpires that the incident took place after nearly 10 years of the marriage of the deceased with accused No. 1, and therefore, also it cannot be said that the deceased was harassed for some monetary gain. Further, from the evidence of P.W. 1, P.W. 7, P.W. 8 and even the statement of the deceased (Exhibit-40), though, it can be said that the deceased and the accused No. 1 used to quarrel frequently, from the same it is not coming out on record as to what was the proximate harassment or reason, which compelled the deceased to put an end to her life, on the basis of which accused No. 1 can be held guilty for an offence under Section 306 of the IPC. In fact, from the entire material on record, no clear reason is coming out, which can be held against accused No. 1 and attributed to the death of the deceased. Under the circumstances, in the opinion of this Court, the judgment and order of the Trial Court cannot be sustained. In above view of the matter, here, it would be relevant to refer, to the various decisions of the Apex Court in regard to Section 306 of the IPC.

27. In the case of " S.S. Chheena Vs. Vijay Kumar Mahajan and Another, (2010) 4 Crimes 101 : (2010) 8 JT 331 : (2010) 12 SCC 190 : (2011) 2 SCC(Cri) 465 : (2010) 9 SCR 1111 , the Apex Court observed as under in Paragraph Nos. 19 to 27:

"19. "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which reads as under--

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.

20. Explanation 2 which has been inserted along with Section 107 reads as under:

"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."

21. The learned Counsel for the appellant has placed reliance on a judgment of

this Court in Mahendra Singh and Another, Gayatribai Vs. State of M.P., (1996) CriLJ 894 : (1995) 3 SCC 731 Supp . In Mahendra Singh, the allegations levelled were as under-- (SCC p. 731, Para 1)

"1. ... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306, IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

22. The learned Counsel also placed reliance on another judgment of this Court in Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 AD 133 : AIR 2001 SC 3837 : (2001) CriLJ 4724 : (2001) 2 DMC 636 : (2001) 8 JT 599 : (2001) 7 SCALE 298 : (2001) 9 SCC 618 : (2001) AIRSCW 4282 : (2001) 7 Supreme 737 . In this case, a three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in Para 20 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 this case, the 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 may necessarily be drawn.

23. In State of West Bengal Vs. Orilal Jaiswal and another, AIR 1994 SC 1418 : (1994) CriLJ 2104 : (1994) 1 DMC 138 : (1993) 6 JT 69 : (1993) 3 SCALE 845 : (1994) 1 SCC 73 : (1993) 2 SCR 461 Supp , this Court has cautioned that--

"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 the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

24. This Court in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, AIR 2010 SC 1446 : (2009) CLT 1619 : (2009) 10 JT 698 : (2009) 11 SCALE 24 : (2009) 16 SCC 605 : (2009) 13 SCR 230 : (2010) AIRSCW 645 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "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 other. 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.

25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

27. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under Section 306, IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under Section 306, IPC against the appellant is quashed and all proceedings pending against him are also set aside."

28. In the instant case, from the material on record, it is clear that the conviction of the original accused No. 1 is largely based on dying declaration and the complaint and there is no other evidence to, indicate that the accused No. 1 was

causing mental and physical harassment to the deceased. The question of reliability of the dying declaration is considered by Hon"ble Supreme Court in the case of " Gopal Vs. State of M.P., AIR 2009 SC 2111 : (2009) CriLJ 2434 : (2009) 4 JT 515 : (2009) 4 SCALE 516 : (2009) 12 SCC 600 : (2009) 4 SCR 1213 : (2009) 4 UJ 1577 . While deciding the said case, the Supreme Court observed as under in Paragraph Nos. 8 to 10:

"8. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon, without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See: Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh, (1993) CriLJ 1635 : (1993) 1 Crimes 1169 : (1993) 1 DMC 507 : (1993) 2 JT 559 : (1993) 2 SCALE 214 : (1993) 2 SCC 684 : (1993) 2 SCR 666 . However, if some inconsistencies are noticed between one dying declaration and the other, the Court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the Court has to examine the same in the light of the various surrounding facts and circumstances.

9. It is to be noted that the High Court had itself observed that the dying declaration (Exh. P11) scribed by the Executive Officer, (PW 9) at about 0435 hours in the same night was not in conformity with the FIR and the earlier dying declaration (Exh. P3) scribed by ASI Balram (PW 8) as different motives have been described. That is not the only variation. Several other discrepancies, even as regards the manner in which she is supposed to have been sprinkled with kerosene and thereafter set on fire.

10. Therefore, the discrepancies make the last declaration doubtful. The nature of the inconsistencies is such that they are certainly material. That being so, it would be unsafe to convict the appellant. The conviction is set aside and appellant is acquitted of the charges. He be set at liberty forthwith."

29. From the above observations, it is clear that if a dying declaration is found to be voluntary, reliable and made in fit state of mind, then only, it can be relied upon without any corroboration. In the present case, the allegations of P.W. Nos. 1, 4, 5, 7 and 8 of mental and physical harassment to the deceased at the hands of the original accused No. 1, get no support from any other evidence. Not only that, the prosecution is not even in a position to demonstrate as to how the accused abetted the offence.

30. From the observations of the Apex Court in "S.S. Chheena " (supra), it is clear that without a positive act on the part of the accused to instigate or aid an

act of suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by the Apex Court is clear that in order to convict a person under Section 306 of the 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 other option and that act must have been intended to put the deceased into such a position that she is compelled to committed suicide. Therefore, even on the touchstone of the latest decision of the Apex Court, as referred to herein above, the prosecution has not even brought home the charge that the conduct of the accused No. 1 was such, which perpetrated and fastened the death of the deceased.

31. The Apex Court in the case of Kuldeep Kaur Vs. State of Uttarakhand, (2014) 4 CCR 350 : (2015) 1 Crimes 1 : (2014) 3 DMC 779 : (2015) 1 JCC 620 : (2014) 10 SCJ 508 , observed as under in Paragraph Nos. 11 to 15:

"11. Mr. Ahmadi contended that the finding of the Trial Court holding the petitioner guilty under Section 306, IPC is on the basis of surmises and conjectures. The Trial Court in its judgment pertaining to the appellant has reproduced a line from the diary of the deceased, which reads as, "Still she wants me to work till late". It is contended that the Trial Court erred in presuming that when the deceased writes the above line in her diary she is inferring to the appellant. It is further contended that conviction of the appellant deserves to be set aside as both the Courts below failed to appreciate that the prosecution did not led any evidence on record to show that there was direct reasonable nexus between suicide and alleged cruelty. As both the Courts below gave findings that there was no demand of dowry or any cruelty committed with the deceased in connection with demand of dowry and acquitted the appellant from charge under Sections 304B, 498A IPC and under Sections 3 and 4 of the Dowry Prohibition Act, the Courts below could not have come to a contradictory view that the deceased committed suicide due to cruelty committed by the appellant. Even in the diary, deceased has not written even a single word against the appellant. Perusal of the diary only shows, as also observed by the Trial Court in its decision in the trial of other accused persons including deceased's husband, that the deceased was depressed and has left no interest in life.

12. Learned Counsel appearing for the State has not disputed that although against the judgment of acquittal passed by the Trial Court acquitting the husband, father-in-law, brother-in-law and two sisters-in-law, the State preferred appeal but the same was dismissed by the High Court. However, no further appeal has been filed by the State before this Court. Learned Counsel submitted that the conviction of the appellant under Section 306, IPC is fully justified.

13. We have perused the judgment passed by the Trial Court as also by the High Court. We have also gone through the judgments by which the husband, father-in-law, brother-in-law and two sisters-in-law have been acquitted by the Trial Court and affirmed by the High Court. So far this appellant is concerned, she has also been acquitted against the charges of dowry harassment but she has been

convicted under Section 306, IPC.

14. A perusal of Trial Court judgment pertaining to deceased's husband would show that P.W. 1, father of the deceased, in his cross examination stated that no dowry was demanded by the accused persons from the day of alliance till solemnization of marriage. Whatever stridhan was given was as per the custom and as per his will in the form of gift to his daughter. He further stated that his daughter had not told him that in the absence of Upkar Singh she remained dejected in her matrimonial house because of her mother-in-law, father-in-law, sister-in-law and husband and elder brother-in-law on the issue of dowry. Witness himself stated that only God knows why her daughter committed suicide without any reason. This witness has stated that it is true to say that neither the accused persons abetted his daughter to commit suicide nor they harassed her.

15. We have given our anxious consideration in the matter and analyzed the evidence of the prosecution witnesses. In our considered opinion, the evidence adduced as against the appellant does not establish the case under Section 306 of the Code. On the basis of evidence of the prosecution witnesses, conviction of the appellant only cannot be sustained. Having regard to the fact of the case and the evidence of the prosecution witnesses, the Trial Court acquitted all the accused persons except the present appellant and the said judgment was affirmed by the High Court. We do not find any strong reason to agree with the judgment of conviction passed by the Trial Court and affirmed by the High Court as against the appellant."

32. In view of the ratio laid down by the Supreme Court in the aforesaid decisions and the factual scenario which emerges from record, it cannot be said that the accused, more particularly, accused No. 1 meted out cruel treatment to the deceased so as to see that the deceased commits suicide. In light of aforesaid observations of the Apex Court and considering the evidence on record, it cannot be said that the prosecution successfully proved the offence under Section 498(A) and Section 306 of IPC. This Court is, therefore, of the opinion that the judgment and order passed by the Trial Court requires interference at the hands of this Court.

33. In view of the above discussion, the decision of the Apex Court in the case of " Vajresh Venkatray Anvekar v. State of Karnataka " (supra) relied on by the learned APP will not apply to the facts of the case on hand and instead the decisions relied on by the learned Advocate for the appellant in the case of "Shivanand Mallappa Koti v. State of Karnataka" (supra), and "Kishangiri Mangalgiri Goswami v. State of Gujarat" (supra), will enure for the benefit of accused No. 1-appellant, herein. In the result, present appeal is allowed. The judgment and order of the Trial Court, dated 19.7.1995, convicting the original accused No. 1-appellant, herein, for the offence under Section 498(A) and Section 306 of the IPC, is Quashed and set aside and the accused No. 1 is Acquitted. The bail bonds of the original accused No. 1 stands discharged. The amount of fine, if any, paid by accused No. 1, be refunded to him. R and P be

sent back to the concerned Trial Court, forthwith.