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00 02 30.**IN THE COURT OF THE ASSISTANT SESSIONS JUDGE-2,
JALNA.****(PRESIDED OVER BY S.B.KORHALE.)****Session Case No. 1/2018.****Exh. No. 29.**

The State of Maharashtra,	}	
Through Police Station Incharge,	}	
Police Station Mantha, Tq. Mantha,	}	
Dist. Jalna.	}	Prosecution.

Versus.

1. Santosh s/o Gulab Chavhan,	}	
Age 28 Years, Occ.Agriculturist	}	
2. Santu s/o Gulab Chavhan,	}	
Age 40 Years, Occ.Agriculturist	}	
3. Vitthal s/o Gulab Chavhan,	}	
Age 35 Years, Occ.Agriculturist	}	
4. Gulab s/o Megha Chavhan,	}	
Age 60 Years, Occ. Agriculturist	}	
5. Anusaya w/o Santu Chavhan,	}	
Age 35 Years, Occ. Household.	}	
6. Ladubai w/o Vitthal Chavhan,	}	
Age 30 Years, Occ. Household.	}	
All R/o Mohadari, Taluka Mantha	}	
District Jalna.	}	Accused.

Shri. W.A.Ghuge, A.P.P. for the State.Shri. H.T.Kakde, Advocate for the accused.
-----**JUDGMENT****(Delivered on 31st March, 2018)**

The accused are facing the trial for the offences

punishable under Section 498-A, 306 read with Section 34 of the Indian Penal Code('IPC' for short).

2. Briefly stated, it is the case of prosecution that the informant namely Vitthal Ramsing Rathod resides at village Dhoksal, Tq. Mantha, Dist. Jalna. He has two sons and two daughters. His elder daughter Renuka married with accused no.1 before four and half year. After the marriage she went to the house of the accused for cohabitation at village Mohadari. Accused no.1 is the brother of accused no. 3 and 4. Accused no. 2 is their father. Accused no.5 is the wife of accused no.3 and accused no.6 is the wife of accused no.4. They were living jointly.

3. It is stated that initially for a period of 2-3 months after marriage the deceased Renuka was treated properly by the accused. However, subsequently all accused started harassing her on the ground that she should bring Rs. 1,00,000/- to start the business from her parents. Whenever the deceased Renuka used to visit her parental home she used to narrate about harassment and illtreatment meted out to her at the house of accused.

4. Prior to 4 to 6 months accused no.1 had came to village Dhoksal at the house of the informant and he demanded Rs.1,00,000/-

to him in presence of his wife Kamlabai and his brother Atmaram. They showed inability to pay the amount and convinced him that after the harvesting of Soyabeen crop they would pay him money. He returned to his house at village Mohadari. In-spite of convincing to accused no.1 again all the accused subjected the deceased Renuka to cruelty on account of their demand of Rs.1,00,000/-. The deceased Renuka used to inform her parents about illtreatment from accused on phone. They used to convince her.

5. On 15/09/2013 in the morning accused no.1 informed the informant that Renuka left the house early in the morning without informing them. Therefore, they searched Renuka but she was not found. On 17/09/2013 at about 12 noon accused no.1 informed the informant on phone that dead body of Renuka found in the well in the field of Devidas Shelke within the local limits of village Mohadari. Therefore, the informant, his wife Kamlabai, brother Atmaram and other relatives went to village Mohadari. They noticed that dead body of Renuka was floating on the water in the well.

6. The accused were insisting Renuka to bring Rs. 1,00,000/- from her parents. She could not satisfy the demand. Thus, the accused subjected her to cruelty. Consequently, she

committed suicide by jumping into the well in the field of Devidas Shelke within the local limits of village Mohadari.

7. On 17/09/2013 PHC Charbhare was the Police Station officer of Mantha Police Station. He registered accidental death Case No.38/2013 about death of Renuka. The investigation was handed over to PSI Limbaji Shelke. He went on the spot. He found dead body of the Renuka was floating on the water in the well. He with the help of people fetched the dead body of Renuka from the well and prepared inquest panchnama in presence of panchas. The dead body was decomposed therefore, he gave letter to the Medical officer, Primary Health center, Dahiphal Khandare. The Medical officer conducted autopsy of dead body of Renuka on the spot of the incident and reserved viscera. The dead body was handed over to her relatives. Then panchnama of the spot of incident was prepared.

8. On the same day Vitthal Rathod, the father of deceased Renuka lodged report against the accused nos.1 to 6 that the accused have subjected Renuka to cruelty on account of their demand of money. They have abetted her to commit suicide. As per the report P.I.Vasave registered Crime no.87/2013 under Section 498-A, 306 read with section 34 IPC. PSI Limbaji Shelke carried out the further

investigation. He recorded the statement of witnesses, arrested to accused nos.1 to 6. The cloths of the deceased Renuka and viscera were sent to forensics Laboratory Aurangabad for chemical analysis. After conducting usual investigation he revealed that the accused nos.1 to 6 in furtherance of their common intention subjected the deceased Renuka to cruelty on the ground of their demand of Rs. 1,00,000/- to start the business and they abetted commission of suicide by her. Accordingly, the accused came to be charge sheeted for the offences punishable under Sections 498-A, 306 read with Section 34 of the IPC and submitted the charge sheet in the court Judicial Magistrate (First Class) Mantha.

9. Since the offence punishable under Section 306 of the IPC is exclusively triable by the court of Session, the learned Judicial Magistrate (First Class) Mantha committed the case to this court.

10. I have framed charge against accused nos.1 to 6 for the offences punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code vide Exh.6 and explained the contents thereof to them in vernacular. All the accused pleaded not guilty and claimed to be tried. Their defence is that of total denial.

11. In order to bring home the guilt of the accused the

prosecution has examined as many as five witnesses. Vithal Ramchandra Rathod (PW 1)(Exh.20). Kamlabai Vithal Rathod (PW 2) (Exh.23). Suman Atamaram Rathod (PW 3) (Exh.24). Vishwanath Uttam Rathod(PW 4) (Exh.27). Limbaji Daultrao Shelke(PW 5) (Exh.3).

12. Statements under Section 313 of Code of Criminal procedure of the accused nos.1 to 6 are recorded vide Exh. 29 to Exh. 34.

13. The learned A.P.P. for the state submits that the evidence adduced by the prosecution is cogent, reliable, sufficient to establish that the accused were living in joint family. They have in furtherance of their common intention used to demand Rs. 1,00,000/- to start the business from the deceased Renuka. She could not satisfy their demand therefore they have subjected her to cruelty and instigated her to commit suicide. The prosecution proved its case beyond reasonable doubt. He prayed that the accused may be severally punished.

14. Per contra the learned counsel for the accused submits that the evidence of parents of the deceased Renuka is vague and general in nature on the point of unlawful demand and illtreatment.

Their evidence is not corroborated by the independent witnesses. In order to prove the charge under Section 306 r.w. 34 IPC there is no iota of evidence. The evidence adduced by the prosecution is not reliable, cogent, sufficient to bring home the guilt of the accused for the offences punishable under Sections 498-A, 306 r.w. 34 IPC. He prayed that accused may be acquitted.

15. The points for determination alongwith my findings thereon as under-

POINTS	FINDINGS
1. Does the prosecution prove that accused nos.1 being husband of the deceased Renuka and accused nos. 2 to 6 being the relatives of accused no.1, in furtherance of their common intention subjected her to cruelty to meet their unlawful demand of Rs. 1,00,000/-?	No.
2. Does the prosecution prove that the accused nos. 1 to 6 in furtherance of their common intention abetted the deceased Renuka to commit suicide?	No.
3. What order?	The accused are acquitted.

REASONS

AS TO POINT NOS. 1 AND 2-

16. The evidence on these points being common and interconnected, they are taken up together for consideration.

17. Undisputedly, the deceased Renuka was the wife of accused no.1. Accused nos. 3 and 4 are the brothers of accused no.1. Accused no. 2 is their father. Accused no. 5 is the wife of accused no. 3 and accused no. 6 is the wife of accused no.4. At the very outset, it is relevant to note that commission of the suicide by the deceased Renuka has not been disputed by the defence. The spot panchanama, the inquest panchanama, the postmortem report have been admitted by the defence. From the evidence of the witnesses and the contents of spot panchanama (Exh.17), postmortem report (Exh.18) and inquest panchanama (Exh.19) it will be clear that incident of the death of the deceased Renuka is caused by drowning into the well in the field of Devidas Shelke at village Mohadari. The only relevant facts require to be established by the prosecution are that, the accused in furtherance of their common intention subjected to the deceased Renuka to cruelty and they have abetted her to commit suicide.

18. Vitthal (PW 1) (Exh.20) is the father of the deceased Renuka. He lodged FIR (Exh.22) of the incident. He states that the deceased Renuka was his daughter. She married with accused no.1. After the marriage she went to the house of the accused for cohabitation. Initially, for a period of 5-6 months she was treated

properly by the accused. However, subsequently all the accused started illtreatment to her on the ground of their demand of Rs. 1,00,000/-to start the business. He states that he himself, his wife Kamlabai (PW 2) and his brother's wife Suman(PW 3) convinced accused no.1 that they would give him money after the harvesting of Soyabeen crop. However, the accused did not listen them. Whenever, Renuka used to visit parental home, she used to tell them about illtreatment from the accused. Due to the illtreatment by the accused the deceased Renuka committed suicide by jumping into the well.

19. Kamlabai (PW 2) (Exh.23) states that she is the mother of the deceased Renuka. After the marriage of Renuka initially 2-3 months the accused treated her properly. Subsequently, they used to illtreat her on the ground of their demand of Rs. 1,00,000/- to start the business. Whenever the deceased Renuka used to visit parental home, she used to tell them about the illtreatment from the accused. Due to the illtreatment by the accused the deceased Renuka committed suicide by jumping into the well. Both the witnesses admitted in their cross examination that the deceased Renuka as well as accused no.1 were earlier married and this is second round of their marital life.

20. Suman (PW 3) (Exh. 24) is aunt of the deceased Renuka. Her evidence is vague and general in nature on the point of the accused nos. 1 to 6 used to demand Rs. 1,00,000/- to the deceased Renuka and on this ground they subjected her to cruelty. The evidence of Vishwanath(PW 4) (Exh. 27) appears to be hearsay. He does not state that he has personal knowledge of the allegations against the accused. He admitted in his cross examination that Vitthal (PW 1) told him about illtreatment to Renuka from the accused. It is settled that oral evidence must be direct. The hearsay evidence is not admissible. Thus, the evidence of this witness would be of no help to support the prosecution case.

21. Vitthal(PW 1) and Kamlabai (PW 2) are the parents and Suman (PW 3) is the aunt of the deceased Renuka. They do not state that the accused were living jointly and they have common intention to illtreat the deceased Renuka and instigated her to commit suicide. They do not state specific incident or incidents of illtreatment meted out to the deceased Renuka at the house of the accused. Their allegations against the accused are vague and general in nature.

22. The Hon'ble Bombay High Court in the case of **Vishwanath Namdeo Sirsath Vs. State of Maharashtra, 2002 ALL**

M R (Cri.),1961 observed that *in the instant case there are only vague statements in the evidence of the prosecution witnesses that there was demand and there was ill treatment. Exactly what was demanded and how the ill treatment was being given is not stated by any of the witnesses. If Sushila had complained about beating, it is not stated as to what type of beating was there and what steps were taken by Narayan and Gangaram to stop the beating of Sushila. It also appears that all those incidents pertained to the period prior to 1985 and death of Sushila had taken place on 17/11/1986. So, there is nothing to connect the alleged ill treatment with the death of Sushila. Thus, the prosecution evidence is not at all sufficient to hold that there was demand from the accused of money and as the same was not fulfilled, there was ill treatment to Sushila. The vague statements of the witnesses are not at all sufficient.*

23. It is seen from the evidence of PSI Shelke (PW 5) (Exh. 30) he carried out investigation of the case. Initially Accidental Death Case No. 38/2013 was registered about death of Renuka. On the same day of the registration of the accidental death case Vitthal (PW 1) lodged FIR(Exh. 22) against the accused alleging that the accused illtreated his daughter Renuka on account of their demand of

Rs. 1,00,000/- and they have abetted her to commit suicide. After completion of usual investigation he submitted the charge sheet in the court.

24. Vitthal (PW 1) states that one day accused no.1 informed him on phone that Renuka ran away. Therefore, they made search of Renuka for one day. But she was not found. On the next day, accused no.1 informed him on phone Renuka fell into the well. Therefore, they went to village Mohadari. There dead body of Renuka was floating into the well in the field of Shelke. It is seen from evidence of PSI Shelke (PW 5) after the postmortem of the deceased Renuka on the spot of the incident the dead body was handed over to the relatives of Renuka. The FIR (Exh.22) came to be lodged on 17/09/2013. Vitthal (PW 1) in his cross examination admitted that Renuka was searched for two days. She was not found. During said two days he did not file report in the police station. It means that the FIR came to be lodged after 2 days from the date on which Renuka ran away.

25. The prosecution has not examined the person who lodged report of accidental death of Renuka to clarify suicidal or accidental death of Renuka. Therefore, adverse inference will have to be drawn and accordingly drawn that if this person appeared before

the court as a witness his evidence would have gone against the prosecution.

26. Abetment is not defined under Section 306 IPC and therefore, one has to take aid of Section 107 IPC. In order to prove the charge of abetment, the accused must have instigated the person to do a thing, in the case in hand to commit suicide. The prosecution has to prove the accused must have intentionally aided the deceased to commit suicide. Section 306 of the IPC is deemed against the person abetting the commission of a suicide of another person. A person is said to instigate another to do act, when actively suggest or stimulates him to do an act by any means of language, direct or indirect, whether it takes the form of express solicitations, or hints, insinuation or encouragement. The word “instigate” means to goad or urge forward to provoke, invite urge or encourage to do an act.

27. The Hon'ble Apex Court made following observations-

I) In the case of **Randhir Singh Vs. State of Punjab, 2004 AIR SCW 5832**. *Abetment involved a mental process of instigating a person or intentionally aiding that person in doing of thing. In cases of conspiracy also it would be involve that mental process of entering into conspiracy for the doing of that thing more active role which can*

be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

II) In the case of **W.B. Vs. Orilal Jaiswal 1999, AIR SCW 844**. *The court should be extremely careful in assessing the facts and circumstances of each case and evidence adduced in the trial for the purpose of finding whether cruelty meted out to the victim in fact induced her to end the life by committing suicide.*

III) In the case of **Kishangiri Mangalgiri Swai Vs. State of Gujarat, AIR SCW 1399**. *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 their being 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 Indian penal Code is not sustainable.*

28. The Hon'ble Bombay High Court in the case of **Digambar Bhujang Kamble Vs. State of Maharashtra, 2012(3) Bom.C. R.(Cri.),460** has observed that as regards abetment punishable under Section 306 IPC legal position as emerges is that

even if a person would commit suicide before case of torments of an accused. Accused cannot be said to have abetted suicide by deceased unless accused intended while causing torments. Least it should be shown that accused could reasonably foresee that victim was likely to commit suicide. Thus, there is fundamental defect in prosecution case not making out an offence punishable under Section 306 of IPC hence, no merit in appeal.

29. I have gone through the above stated case laws and the ratios which can be culled is that, to constitute offence of abetment by instigation there must be a direct incitement to do culpable thing. Applying the ratio to the case at hand it can be said that there is no direct or indirect evidence to infer any direct or indirect incitement to the deceased Renuka by any of the accused. Initially Accidental Death case No. 38/2013 was registered about the death of Renuka. The prosecution has not examined the person who lodged the report of accidental death case.

30. Vitthal (PW 1), Kamlabai (PW 2) are the parents and Suman (PW 3) is aunt of the deceased Renuka. Their evidence is vague and general in nature. There is absolutely no evidence to show that there was any abetment to such suicide. The prosecution case

fails on this important legal test. The prosecution failed to establish that the accused in furtherance of their common intention subjected the deceased Renuka to cruelty on the ground of their demand of Rs.1,00,000/- to start the business and abetted her to commit suicide. Therefore, I answer point nos.1 and 2 in the negative.

AS TO POINT NO.3-

31. The prosecution failed to establish beyond doubt that accused nos.1 to 6 in furtherance of common intention subjected the deceased Renuka to cruelty on the ground of their demand of Rs.1,00,000/-. The prosecution further failed to establish that accused nos.1 to 6 instigated the deceased Renuka to commit suicide. The benefit of doubt is liable to be given to the accused. They are liable to be acquitted of the above mentioned offences. The muddamal property being useless and worthless will have to be destroyed after appeal period is over. In the result in answer to point no. 3, I pass the following order-

ORDER

1. Accused nos. 1 to 6 are acquitted of the offences punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code vide Section 235(1) of the Code of Criminal Procedure.
2. Their bail bonds stand cancelled. They are set at liberty.

3. The Muddemal property i.e. pink color Saree, red color Peticot, black color Blouse and black color Nicker being useless and worthless be destroyed after appeal period is over.
4. In compliance of Section 437-A of Code of Criminal Procedure, accused nos.1 to 6 executed P.B. and S.B. of Rs.5,000/-each.

Date 31/03/2018.

Sd/-
(S.B.Korhale)
Assistant Sessions Judge-2,
Jalna.

C E R T I F I C A T E

I affirm that the contents of this PDF file are word to word as per original Judgment.

Name of Stenographer - S.P.Gavhane

Name of the Court - Assistant Session Judge-2,Jalna

Date - 31/03/2018

Sd/-

Signature of Stenographer

