



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 163 OF 2016

Shri Vijay s/o Amrit Patil
Age : 35 years, Occupation : Nil,
R/o : Eklahare, Taluka Amalner,
District Jalgaon. ... Appellant.

Versus

The State of Maharashtra
Through the PSO, Marwad Police Station,
Marwad, Taluka Amalner, District Jalgaon. ... Respondent

.....
Mr. Paresh B. Patil, Advocate for the Appellant.
Mr. V. V. Jahagirdar, APP for the Respondent/State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.10.2026

Pronounced on : 06.10.2026

JUDGMENT :

1. Appellant, a convict, hereby challenges the judgment and order of conviction dated 28.01.2016 passed by learned Ad-hoc Additional Sessions Judge, Amalner in Sessions Case No. 44 of 2013 convicting appellant for charge under Section 306 of IPC.

2. Informant PW2 Prakash, father of deceased Surekha, set law into motion alleging that his daughter was married to accused 15 years prior to the incident and out of said wedlock, she had a son as

well as a daughter. Accused husband was addicted to liquor and he, under its influence, used to beat Surekha and forcibly take away her earnings from labour work. That, on 25.07.2013, husband came home drunk, picked up quarrel with her and then poured kerosene over her and suggested her to die. Surekha, in the rage of anger, incinerated herself and suffered 98% burns and her dying declaration was recorded both, by Police Head Constable as well as by Magistrate. While undergoing treatment, she succumbed to the burns. On report of father, crime was registered bearing No. 25 of 2013 for offence under Section 498-A, 306, 323, 504 and 506 of IPC. Investigation was carried out by PW7 and he duly chargesheeted accused, who was tried by above referred court and the trial ended up in conviction but only for offence under Section 306 of IPC. Accused has been acquitted from charge under Sections 498-A, 323, 504 and 506 of IPC. Hence, instant appeal by convict.

BRIEF ACCOUNT OF EVIDENCE BEFORE THE TRIAL COURT

3. PW1 mother, in her evidence at Exhibit 32, deposed about marriage of her daughter with accused. That, accused used to consume liquor, beat Surekha and demand amount earned by her from labour work. That, for some period, they both shifted to Surat but there also he used to quarrel with her. He also beat her in the

marriage of a relative. After they had returned at Eklahare, accused had beaten her daughter, poured kerosene on her and set her on fire.

While under cross, she admitted that her daughter used to come for festivals. She denied that when she and her husband went to meet her in Civil Hospital, she was unconscious and was unable to speak. Omission is brought only to the extent that after birth of children, accused and Surekha had been to Surat for job. Rest is all denial.

4. PW2 informant father also deposed as like his wife about accused husband consuming liquor, quarreling with deceased, in a marriage he beating Surekha on the head and demanding cash from her and on such count, beating her. He deposed about message being received regarding her burns on 25.07.2013. He claims that in the hospital, there was dying declaration by Surekha. That, accused poured kerosene on her. However, he deposed that he does not remember what she stated thereafter and that he passed information to police and lodged report.

While under cross, he admitted that her daughter and accused stayed at Surat for five to seven years and that, he and his wife used

to visit her on festivals and she also came for festivals to their place. He denied that, he falsely stated that accused demanded money earned by Surekha and that he beat her under influence of liquor. Rest is all denial. He identified *khavar* Exhibit 34 and report Exhibit 35.

5. PW3 and PW4 have acted as pancha to spot and seizure respectively, but they did not support prosecution.

6. PW5 is the autopsy surgeon who conducted postmortem and issued cause of death as “shock due to burns”.

7. PW6 is the Executive Magistrate, who on receipt of communication from police, claims to have visited Civil Hospital, approached Medical Officer and requested him to examine fitness to give dying declaration and obtained necessary endorsement. He identified dying declaration noted by him at Exhibits 53 and 54.

While under cross, he admitted not mentioning timing of receipt of Exhibit 51 i.e. requisition. He answered that burns ward and office of Civil Surgeon are at distinct places. He admitted noting dying declaration on a printed form. He admitted that when he

inquired with the patient as to who was present at the time of incident, she did not reply said question. He admitted there to be no noting on the dying declaration about statement being read over and he admitted not obtaining signature of a person for attestation over toe impression.

8. PW7 is the Investigating Officer who carried out investigation and chargesheeted accused.

9. PW8 is the Medical Officer who, on request of Special Executive Magistrate, examined patient and finding her conscious and oriented, gave certification of her fitness over Exhibit 54 after which, she claims that, in her presence dying declaration was recorded and she was present there till its end. She deposed that after some time, Police Constable Khairnar also came there for recording dying declaration and he also gave remark of fitness.

While under cross, she answered that patient suffered deep burns. She denied that, pulse rate of the patient was feeble. She admitted that, in cases of burns blood pressure reduces and patient may go in coma, but she denied that in such case, patient is not in position to make statement. She volunteered that in this case, the patient was conscious and oriented.

SUBMISSIONS

On behalf of the Appellant-Accused :

10. Pointing to the above evidence, learned counsel for appellant, at the outset, would submit that learned trial court has acquitted accused husband from charges under Sections 498-A, 323, 504 and 506 of IPC. According to him, evidence before learned trial court on behalf of prosecution was, statements of parents and dying declaration. According to him, parents have hearsay information and dying declaration is not free from doubt as there was no attestation to the toe impression and he doubts capacity of deceased to give dying declaration.

11. Learned counsel pointed out that, oral dying declaration is rightly discarded by learned trial court and according to him, dying declaration by Police Constable cannot be gone into because the author Constable is not examined before learned trial court. He would point out that here, the incident apparently seems to have happened in a rage of anger resulting from quarrel. He further pointed out that, there are mere allegations that husband poured kerosene, but ignition is by deceased herself and that too in annoyance. According to him,

accused was not responsible for burning as he had no intention or *mens rea* that deceased should ignite herself. That, it was act attributable to deceased herself and accused cannot be held responsible by imputing instigation or abetment. According to him, husband did not abet, induce or instigate so as to attract offence of Section 306 IPC. According to him, learned trial court has failed to consider and appreciate the settled law, and he seeks reliance on the judgments of the Hon'ble Apex Court in ***Ramesh Kumar v. State of Chhattisgarh*** (2001) 9 SCC 618; ***Prakash and others v. State of Maharashtra and another*** (2026) 6 SCC 251 and the judgment of Telangana High Court in ***Cherukupally v. The State of Andhra Pradesh*** MANU/TL/2651/2022 [Criminal Appeal No. 447 of 2009 decided on 02.08.2022], and ultimately prays to apply the same and set aside the impugned judgment by allowing the appeal.

On behalf of the Respondent-State :

12. Per contra, learned APP would support the judgment and order of conviction by pointing out that, accused allegedly beat deceased on the relevant day and thereafter he poured kerosene on her after which, he also suggested her to die and consequent to such instigation only, deceased ignited herself. According to him, there is

voluntary and trustworthy dying declaration and the same has rightly been considered and appreciated by learned trial court. For above reasons, he prays to dismiss the appeal by maintaining the judgment of conviction.

ANALYSIS AND CONCLUSION

13. On re-appreciating the entire evidence, it is emerging that, here, though prosecution has adduced evidence of 8 witnesses, crucial evidence is of parents and the dying declaration recorded by the Special Executive Magistrate.

14. Admittedly, there is no dispute that accused and deceased are husband and wife. There is also no dispute that deceased suffered 98% burns and succumbed to the same. Charge of prosecution is that, accused abetted the suicide.

15. Here, both parents PW1 and PW2, who are examined at Exhibits 32 and 33 respectively, are consistent about accused husband addicted to liquor, he picking up quarrel and beating Surekha. They are also found to be consistent about he forcibly taking away her earnings. To this extent, both witnesses are lending support to each

other. Both of them have indeed received message about their daughter suffering burns and they visited her at Civil Hospital. However, PW1 mother has not stated about any oral dying declaration given by their daughter which PW2 has deposed. However, his testimony is ambiguous as he merely stated that his daughter informed him that there was quarrel between his daughter and accused and that accused poured kerosene on her daughter. Stating so much, he deposed that he does not remember what else she disclosed. He is silent about the part of his daughter igniting herself.

16. Another piece of evidence here is the dying declaration Exhibit 54 recorded by PW6 Special Executive Magistrate. This witness at Exhibit 51 deposed about receiving requisition from police Exhibit 52, carrying the same to Dhule Civil Hospital, approaching Medical Officer on duty, requesting him to examine the patient and to ascertain whether she was in a position to give statement, and after examination and endorsement, he recording dying declaration Exhibit 54. Though cross examined and though this witness has admitted that he did not mention the timing of receiving Exhibit 51, the patient to be wrapped in bandage and undergoing treatment, and though he admitted that dying declaration was recorded on a printed form, except stating that patient did not reply to his question as to who was

present at the time of incident, there is nothing to doubt the exercise taken by him i.e. visiting Civil Hospital for recording dying declaration and after meeting doctor, on his examination, receiving certification of fitness, he recorded dying declaration.

17. In the dying declaration at Exhibit 54 deceased reported that on 25.07.2013 at around 11.30 a.m., her husband came home under influence of liquor and without reason, abused her and on being questioned to that extent, he allegedly poured kerosene from the drum available in the house and suggested her to die. She deposed that, out of annoyance and anger, she ignited herself.

18. In the above dying declaration, there is certification of doctor at the beginning as well as at the end, and the same has been identified by Medical Officer PW8. Therefore, mere failure to take attestation over the toe impression will not render the entire dying declaration, which is otherwise convincing and voluntary, doubtful or unworthy of credence. The same is recorded on the same day and is thus a prompt dying declaration.

19. Learned counsel for the appellant would strenuously submit that accused husband did not ignite her, but deceased ignited herself.

Therefore, according to him, appellant cannot be said to be having *mens rea* or that he abetted or instigated the suicide and thereby learned counsel finds fault in the conclusion drawn by learned trial court and guilt recorded for offence under Section 306 of IPC. He would add that, deceased had incinerated herself in the rage of anger and accused never desired the suicide by burning.

20. However, here, it is to be noted that on the relevant day, after coming home in aberrated condition, he allegedly abused her and on being questioned, he allegedly beat her and thereafter he went to the extent of pouring kerosene on her and he did not stop there, but also suggested her to die, and it is thereafter that deceased ignited herself, though in anger. Here, there is active participation by accused in pouring kerosene.

21. The Hon'ble Apex Court in the case of ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*** reported in (2009) 16 SCC 605, dealt with the aspect of abetment, the meaning of words 'instigation' and 'goading' and opined that, "*there should be an intention to provoke, incite or encourage the doing of an act by the later. 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”.

22. Similarly in the case of ***S. S. Chheena v. Vijay Kumar Mahajan and another*** (2010) 12 SCC 190, in para 25, the Hon’ble Apex Court has observed as under :

*“25. Abetment involves a mental process of instigating a person or intentionally **aiding** (emphasis laid) 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.”*

23. Applying the above settled legal position and reverting to the facts of the case in hand, here, as stated above, after beating deceased, appellant had done a positive act first by pouring kerosene on his wife, and he further went to the extent of suggesting her to die. This, in the considered opinion of this Court, is clear instigation and

provocation. Even his *mens rea* is explicit as his intentions are clear, for he himself had poured kerosene on her and suggested her to die. Therefore, even though deceased completed the rest of the part in anger, accused had landed deceased in such situation wherein she had taken the extreme step of igniting herself. Applying the Explanation 2 of Section 107, responsibility can be fixed on accused husband. Hence, in the considered opinion of this Court, in the light of peculiar facts of this case, the same is a fit case for attracting charge of abetment to commit suicide. Facts in the case in hand and the cases relied by the learned counsel for the appellant are distinct and the same does not come to the rescue of the appellant.

24. Perused the judgment impugned herein. Learned trial court has thereby committed no error in returning guilt of the appellant for offence under Section 306 of IPC. There being no perversity or illegality in the impugned judgment and order of conviction, the following order is passed :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]