



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.169 OF 2017

Mahendra s/o Manohar Shahare,
age – 35 years, occupation – business,
r/o Arjuni Mor, tahsil – Arjuni Mor,
district Gondia. **Appellant.**

:: VERSUS ::

State of Maharashtra,
through PSO Arjuni Mor,
district – Gondia. **Respondent.**

**Shri Aditya Pande, Counsel and Shri Amol Jaltare,
Advocate for the Appellant.
Shri N.B.Jawade, Additional Public Prosecutor for the
State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 13/08/2025

PRONOUNCED ON : 20/09/2025

JUDGMENT

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 27.3.2016 passed

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by learned Additional Sessions Judge, Gondia (learned Judge of the trial court) in Sessions Case No.51/2009.

2. By the said judgment impugned in the appeal, the accused is convicted for offence under Section 306 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and to pay fine Rs.5000/-, in default, to suffer simple imprisonment for 1 month.

3. Brief facts of the prosecution case are as under:

Maya (the deceased), daughter of Ganesh Hukre (the complainant) had love relation with the accused since 5 years. She got knowledge that the accused is performing marriage with another girl and, therefore, she visited the house of the accused on 28.1.2009 and asked him for marriage. The accused has declined to perform marriage with her. She was driven out of the house by his parents. Therefore, she

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approached the police station and lodged the report. She also filed complaint before the Tanta Mukti Samiti of the village on 30.1.2009. The compromise took place between the accused and the deceased and they agreed on the terms that they should not visit to each other and obstruct married life of each other. It is alleged that despite the terms and conditions agreed between them, the accused was obstructing her on road and threatening her. It is alleged that on 22.2.2009, at about 3:00 pm, the deceased informed the complainant that on 21.2.2009 the accused restrained her on road and taunted her that despite the report lodged by her against him, nothing happened to him and used the bad words for her. Therefore, she was under mental pressure and committed suicide by hanging herself. Thus, it was alleged that the accused abetted her by giving mental harassment which resulted into committal suicide by her. On the basis of the

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said report, the police registered the crime against the accused vide Crime No.22/2009. After registration of the crime, the investigating officer has visited the alleged spot of the incident and drawn spot panchanama. During investigation, the investigating officer has also seized her note books and suicide note by drawing panchanama. The statement of various witnesses are recorded and after completion of investigation, chargesheet was filed against the accused.

4. As the offence punishable under Section 306 of IPC was exclusively triable by the court of sessions, the case was committed to the Sessions Judge. Learned Sessions Judge framed charge vide Exh.7. The contents of the charge are explained to the accused in vernacular to which he pleaded not guilty and claimed to be tried.

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5. In support of the prosecution case, the prosecution examined in all 7 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Ganesh Hukre, the father of the deceased, the complainant	23
2	Ratnamala Kutare, neighbour	27
3	Durga Hukre, the mother of the deceased	28
4	Ramesh Bhagewant, member of Tanta Mukti Samiti	35
5	Vilash Shahare	40
6	Gopal Hatwar	44
7	Bansu Kodape, the Investigating Officer	67

6. Besides the oral evidence, the prosecution placed reliance on written report Exh.24, FIR Exh.25, oral report Exh.26, seizure memo Exh.29, spot panchanama Exh.30, inquest panchanama Exh.31, death report Exh.32, PM Report Exh.33, requisition to Tanta Mukti Samiti Exh.36, mutual settlement Exh.37, seizure panchanama Exh.45, note book Exhs.52, 54 and 55, suicide note Exh.53, requisition to handwriting expert

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Exhs.68 and 69, arrest panchanama Exh.70, and oral report by the deceased Exh.71.

7. On the basis of the said oral and as well as documentary evidence, the prosecution claimed that the prosecution has proved the guilt of the accused beyond reasonable doubt. The defence of the accused is of total denial and of false implication. All incriminating evidence is put to the accused in order to obtain his explanation regarding the evidence appearing against him.

8. After appreciating the evidence, learned Judge of the trial court held the accused guilty and convicted him as aforestated.

9. Heard learned counsel Shri Aditya Pande for the accused and learned Additional Public Prosecutor Shri N.B.Jawade for the State. They have taken me through the entire record and the evidence.

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10. Learned counsel for the accused submitted that the accused is charged for the offence punishable under Section 306 of the IPC. The allegations in the FIR show that the deceased was having love affair with the accused. The accused has promised her for marriage, but he performed the marriage with another girl. She was subjected for sexual assault on the promise of marriage. As the accused has not fulfilled the promise and performed the marriage with another girl, the deceased had been to his house, but the accused denied to perform the marriage with her. The dispute was referred to the Tanta Mukti Samiti wherein settlement took place between the accused and the deceased and it was decided that they both should not communicate with each other. Despite the said settlement, the accused was harassing her and on 22.2.2009, she was restrained by the accused and was abused and asked the deceased to keep the

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relationship with him and, therefore, she committed suicide.

11. The prosecution examined complainant PW1 Ganesh Hukre, the father of the complainant, and PW3 Durga Hukre, the mother of the deceased, who though have narrated about the incident, the evidence is inconsistent and nowhere discloses in what manner the deceased was abetted by the accused to commit suicide. The ingredients of the offence are not made out. There is no direct evidence adduced by the prosecution to prove that the accused, in any way, instigated or provoked the deceased to commit suicide. Mere breach of promise is not sufficient to show that there was abetment at the hands of the accused. The evidence of neighbour PW2 Ratnamala Kutare is contrary to the evidence of PW1 Ganesh Hukre and PW3 Durga Hukre. The suicidal note also nowhere reveals that in what manner she was abetted

to commit suicide and, therefore, the judgment impugned in the appeal is liable to quashed and aside.

12. Learned Additional Public Prosecutor for the State supported the judgment impugned in the appeal and submitted that the evidence of PW1 Ganesh Hukre and PW3 Durga Hukre shows that there was love affair between the deceased and the accused. The accused has promised her for marriage and subjected her for the sexual assault and subsequently denied to perform the marriage. The dispute was referred to the Tanta Mukti Samiti whereat the dispute was settled as per the settlement terms. As per the settlement terms, the accused was supposed to be not to contact with the deceased, but on 22.2.2009 he has restrained the deceased and harassed her and, therefore, she committed suicide by hanging herself. The suicidal note sufficiently shows involvement of the accused in the abetment of the

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deceased to commit suicide. In view of that, the appeal being devoid of merits is liable to be dismissed.

13. On hearing both the sides and perusing the entire evidence on record, it reveals that the prosecution mainly placed reliance on the evidence of complainant PW1 Ganesh Hukre and mother of the deceased PW3 Durga Hukre.

Complainant PW1 Ganesh Hukre narrated that there was love relation between the deceased and the accused. The accused is resident of the same village. On 20.1.2009, his daughter had been to the house of the accused where she came to know that the accused is performing marriage with another girl. The deceased was humiliated by his parents and driven out of the house. The accused has also declined to perform marriage with her and, therefore, she approached the police station and

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lodged the report. She also lodged the complaint with the Tanta Mukti Samiti. Both the parties arrived at settlement before the Tanta Mukti Samiti. The said Samiti directed the accused and the deceased not to communicate with each other. On 22.2.2009, the accused restrained his daughter on road and threatened her. The accused has also asked her to continue relationship with him and also threatened that if she performs marriage, he will disturb her matrimonial life. Therefore, she came home and committed suicide by hanging herself.

During the cross examination, it came on record that he was against the said marriage. On 22.1.2009, he came to know about love affair of his daughter with the accused. On that day, his daughter had been to the house of the accused to co-habit with him, but she was not accepted. He further admitted on 30.1.2009 in a meeting of Tanta Mukti Samiti, it was decided that

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the accused and his daughter should not meet each other. He admitted that in report dated 22.2.2009 he has not mentioned the name of the accused and allegation. His cross examination further shows that the police seized note books of the deceased. In the suicidal note, it was written that, “महेन्द्र च्या त्रासामुळे मी आत्महत्या करित आहे.” The said suicidal note is at Exh.53. The cross examination further shows that report of the incident was lodged by him twice on 22nd and 25th.

14. PW3 Durga Hukre, the mother of the deceased, reiterated the facts that there was love affair between her daughter and the accused. Prior to 5-6 days of the incident, her daughter had been to the house of the accused and after returning from his house, she informed that she had love affair with the accused and the accused drove her out of the house. Therefore, she lodged the report with the police. The settlement took place before

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the Tanta Mukti Samiti. Despite the settlement, the accused used to meet her and threatened her that he would not keep her alive and, therefore, the deceased has committed suicide. The material omissions are brought on record that she has not stated in her statement that before 5-6 days of the incident, her daughter had been to the house of the accused and the accused drove her out of the house. She admitted that they had not persuaded her daughter not to talk and meet the accused. She admitted that her daughter was unhappy as she was not allowed to talk with the accused. She also admitted that it did not happen that her daughter has restrained the marriage of the accused and she never resided in the house of the accused.

15. To corroborate the version of Complainant PW1 Ganesh Hukre, the father of the complainant, and PW3 Durga Hukre, the mother of the deceased, the

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prosecution examined PW2 Ratnamala Kutare who is neighbour of the complainant and the accused. Her evidence shows that prior to 2 years of the suicide, they found the deceased was roaming and talking with the accused. Thereafter, the meeting was held and it was decided that they should not talk with each other.

During the cross examination, she admitted that the father of the deceased was against the said marriage. He was beating her. The meeting of the Tanta Mukti Samiti was held in the house of the father of the deceased. She further admitted that the deceased disclosed to her that she does not want to live as her father refused to perform marriage with the accused. She further admitted that the deceased committed suicide due to the harassment of her father.

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Thus, the evidence of neighbour PW2 Ratnamala Kutare shows that Complainant PW1 Ganesh Hukre, the father of the complainant, was against the marriage of the deceased with the accused and that was the reason behind her suicide.

16. The evidence of PW4 Ramesh Bhagewant, who is member of Tanta Mukti Samiti, shows that on 29.1.2009 the deceased disclosed that there was love affair between her and the accused. However, family members of the accused as well as her parents opposed the marriage and requested to settle the dispute. She also filed an application Exh.36 and in view of the said application, a meeting was held and they arrived at a settlement that the accused and the deceased shall not communicate, interfere, and disturb each other. Accordingly, settlement was written.

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His cross examination shows that the father of the deceased and the father of the accused opposed the marriage. The father of the deceased refused to perform her marriage with the accused. His cross examination further shows that the deceased disclosed him the fact that her parents are not willing to perform the marriage with the accused, they should settle the dispute. He further admitted that after 30.1.2009, neighbours have seen the deceased and the accused meeting each other and no complaint was received thereafter.

17. PW5 Vilash Shahare, is the friend of the accused who narrated about the love affair between the accused and the deceased. His cross examination also shows that as the deceased and the accused are of different caste, their parents were not willing to perform the marriage.

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18. The evidence of PW6 Gopal Hatwar, who acted as a pancha, shows that in his presence three note books and one suicidal note was seized by drawing panchanama Exh.45.

Though he is cross examined, nothing incriminating is brought on record.

19. The evidence of PW7 Bansu Kodape, the Investigating Officer, shows that during the investigation it transpired that the accused gave promise of the marriage to the deceased and committed sexual intercourse with her and subsequently denied to perform the marriage with her. He further stated that prior to committal of the suicide, the deceased filed a complaint against the accused at the police station as well as before the Tanta Mukti Samiti and the dispute was settled. He has collected the settlement terms from the President of Tanta Mukti Samiti.

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During his cross examination, the material omission, that the accused was giving threats to the deceased, which is not stated by complainant PW1 Ganesh Hukre, the father of the complainant, is proved. The omission came in the evidence of PW3 Durga Hukre, the mother of the deceased, that prior to 5-6 days of the incident, the deceased went to the house of the accused and the accused beat her and drove her out of the house, which is not narrated by PW3 Durga Hukre, is also proved. It came in his cross examination that during the investigation it is not transpired that the parents of the deceased were not ready for the marriage between the deceased and the accused. He also admitted that he has not carried out the investigation to show that on the day of the incident the deceased had gone outside from her house.

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20. On the basis of the said evidence, the prosecution has claimed that the evidence adduced is sufficient to show that there was an harassment and abetment at the hands of the accused and, therefore, the deceased has committed suicide.

21. Appreciation of the evidence reveals that the deceased and the accused were in love relationship. The evidence further shows that the parents of the deceased and the accused were against the said marriage. As the accused has not performed the marriage, the deceased approached to the police station and lodged the report. She also filed the complaint before the Tanta Mukti Samiti of the village and with the interference of the Members of the Tanta Mukti Samiti and the villagers, the matter was settled and it was decided that the accused and the deceased should not communicate with each other.

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22. Thus, the evidence on record shows that there was consensual relationship between the deceased and the accused. As per the allegations, the accused declined to perform the marriage with the deceased and drove her out of the house. Therefore, she filed complaint. The evidence of neighbour PW2 Ratnamala Kutare shows that it was the parents of the deceased who opposed the marriage between the deceased and the accused and, therefore, the deceased was unhappy and she committed suicide.

23. Thus, the evidence on record shows that the deceased has committed suicide due to breaking of relationship between her and the accused.

24. Now, a question remains, whether breaking of the relationship with the deceased is sufficient to say that the accused has abetted her to commit suicide.

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25. The evidence on record shows that handwriting of the deceased was forwarded to the handwriting expert. Admittedly, the prosecution has not examined the handwriting expert though his opinion is received during the investigation.

26. The suggestion was given to the investigation officer that as the opinion is not in favour of the prosecution, the evidence to the extent of handwriting expert is not proved by the prosecution. Admittedly, the prosecution has not given any explanation behind non examination of the said handwriting expert. The handwriting expert's opinion is on record. Admittedly, the opinion of the handwriting expert is not substantial evidence, but if it is corroborated by the other evidence, it can be acted upon. The prosecution has not assigned any reason behind non examination of handwriting expert. The evidence on record shows that the deceased has

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committed suicide as the accused declined to perform the marriage with her and subsequently harassed her. As far as allegation is concerned, that on 22.2.2009, the deceased was restrained by the accused and harassed her and, therefore, she committed suicide, suicide note seized during the investigation by drawing seizure panchanama Exh.45 is proved by the prosecution through the evidence of PW6 Gopal Hatwar, who acted as a pancha.

27. Perusal of the suicidal note Exh.53 shows that it only mentions that as she was harassed by the accused, she is committing suicide. As the opinion of the handwriting expert is not proved by the prosecution, nothing is on record to show that the said handwriting is of the deceased and the chit containing suicidal note was written by the deceased. Moreover, it nowhere discloses that on 22.2.2009, the accused restrained and threatened the deceased and asked her to continue relationship with

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him and, therefore, she committed suicide. The evidence of complainant PW1 Ganesh Hukre, the father of the complainant, that the accused restrained, threatened, and forced her to continue relationship with him, is not substantiated by the said suicide note. The material omissions are already on record, which came in the evidence of PW1 Ganesh Hukre and PW3 Durga Hukre,, which show that PW1 and PW3 have improved their version. The omissions brought on record during the cross examination of PW1 show that he has not stated before the investigating officer that the accused was giving threats to his daughter by saying that after performing marriage, he would continue love relationship with her and if she refuses, he will harass her.

28. Thus, the material omissions are proved by the defence during the cross examination of the investigating officer. The omissions brought on record during the

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evidence of PW3 Durga Hukre, the mother of the deceased, that prior to 5-6 days of the incident, when the deceased had been to the house of the accused, the accused beat her and drove her out of the house, are also proved during the cross examination of the investigating officer.

29. Now, question is whether the evidence adduced by the prosecution is sufficient to hold the accused guilty of the offence punishable under Section 306 of the IPC (108 of the BNS).

30. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the Indian Penal Code defines abetment of suicide, which reads thus:

306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Classification of offence. - The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.

31. Section 107 of the Indian Penal Code (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

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 willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to

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cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.

32. Section 108 of the Indian Penal reads thus:

108. Abettor.—

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence

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with the same intention or knowledge as that of the abettor.

Explanation 1.— The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.— To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

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Explanation 3.— It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and

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had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

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Explanation 4.— The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.— It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

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A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

33. 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.

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The said Sections 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 of the Indian Penal Code. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

34. A question arises as to when is a person said to have instigated another. The word “instigate” means to goad or urge forward provoke, incite or encourage to do “an act” which the person otherwise would not have done.

35. It is well settled that in order to amount to abetment, there must be *mens rea*. Without knowledge or

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intention, there cannot be any abetment. The knowledge and intention must relate to the act said to be abetted which in this case, is the act of committing suicide. Therefore, in order to constitute abetment, there must be direct incitement to do culpable act.

36. In the case of **SLP (Cri.) Diary No.39981/2022 (Prabhu vs. The State represented by the Inspector of Police and anr)** decided by the Hon'ble Apex Court on **30.1.2024**, by referring the various earlier decisions, the Hon'ble Apex Court held that 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. In the said case, the Hon'ble Apex Court has considered its earlier decision in the case of **Kamlakar vs. State of Karnataka (Criminal Appeal No.1485/of 2011, decided on 12.10.2023** and explained

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ingredients of Section 306 of the Indian Penal Code and held, as under:

"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 vs. State of Chattisgarh**, reported in AIR 2001 SC 383, this Court has analyzed different meanings of "instigation". The relevant para of the said judgment is reproduced herein:

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“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 vs. State, AIR 2011 SC 1238**, as under:

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“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 “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 suitability 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

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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 106 IPC were also discussed in **Amalendu Pal alias Jhantu vs. West Bengal AIR 2010 SC 512**, in the following paragraphs:

“12. Thus, this Court has consistently taken the view that before holding an

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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

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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.”

37. In the case of **Sanju @ Sanjay Singh Sengar v. State of M.P., reported in (2002) 5 SCC 371**, the Hon'ble Apex Court extensively dealt with concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the accused/appellant therein was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts reveals that there were matrimonial disputes between sister of the appellant/accused and her husband and in connection with the said disputes, the appellant had allegedly threatened and abused Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant,

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who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. While allowing the appeal, the Hon'ble Apex Court, *inter alia*, observed as follows:

"Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation."

38. Thus, a direct influence or an oblique impact with the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide

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will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or ill-fated thoughts of the suicide, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of the Indian Penal Code. In order to bring out an offence under Section 306 of the Indian Penal Code specific abetment as contemplated by Section 306 of the Indian Penal Code on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for an offence under Section 306 of the Indian Penal Code.

39. The Hon'ble Apex Court in case of **Ramesh Kumar vs. State of Chattiness**, reported in AIR 2001 SC 383 referred in **Prabhu vs. The State represented by the Inspector of Police and anr** *supra*, relied upon by learned

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counsel for the applicant, in para No.20 has examined different meaning of 'instigation', which reads as, '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'.

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40. Thus, combine reading of Sections 306, 107, and 108 of the Indian Penal Code, shows the requirement is a positive act on the part of the accused to instigate or aid in committing suicide and in the absence of the same, the conviction cannot be sustained. There has to be a clear intention to commit the offence for being held liable under Section 306 of Indian Penal Code.

41. The Hon'ble Apex Court, in the case of **Mariano Anto Bruno vs. State, reported in (2023)15 SCC 560** in the context of culpability under Section 306 of the Indian Penal Code, observed as under :

“45. ... 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

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commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

42. After going through the catena of decisions, it reveals that test that the court should adopt in these types of cases is to make an endeavour to ascertain on the basis of the materials on record whether there is anything to indicate that the accused has actually instigated or aided in the victim act of committing suicide. There must be direct or indirect incitement to the commission of suicide and 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.

43. Learned counsel for the accused placed reliance on the decision in the case of **Sanju @ Sanjay Singh Sengar** *supra* wherein also the Hon’ble Apex Court considered the aspect of the ingredients of the offence of abetment and observed, by referring the decision in the

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case of **Ramesh Kumar vs. State of Chhattisgarh, reported in (2001)9 SCC 618** as follows:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires 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 for abetting the offence of suicide should be found guilty."

He further placed reliance on the decision in the case of **Prakash v. State of Maharashtra, reported in 2024 SCC OnLine SC 3835** wherein, by referring the provisions and catena of decisions, the Hon'ble held that

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Section 306 of the IPC has two basic ingredients-first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.

It has been further held that Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well- established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a

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clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide. The law on abetment has been crystallized by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide.

By referring the judgment in the case of **S.S.Chheena vs. Vijay Kumar Mahajan and anr, reported in 2010 AIR SCW 4938** the Hon'ble Apex Court observed that it is settled legal principle that, for a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence of clear mens rea, the intention to abet the act is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide.

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44. Thus, in view of the above said decisions, the positive act of instigation is a crucial element of abetment.

45. In the case of **Kamaruddin Dastagir Sanadi vs. State of Karnataka, reported in 2024 SCC OnLine SC 3541**, relied upon by learned counsel for the accused, also it is observed that 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 are 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 disease to commit suicide seeing no option and this act must have been intended to push the disease in two such a position that he/she committed suicide.

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46. If the present case is examined on the touchstone of the above principles of law, it reveals that there was love affair between the accused and the deceased which was opposed by their parents. Thus, even assuming that it is a case of only broken relationship, which by itself would not amount to abetment of suicide. Though it was alleged that after the settlement, the accused asked the deceased to continue relationship, as stated by complainant PW1 Ganesh Hukre, the father of the complainant, the same is not disclosed by deceased in the suicide note. The evidence of PW1, as to the threatening by the accused, is an improvement and came on record in the nature of omission. The evidence nowhere shows that it was the accused who provoked the deceased in any manner to kill herself. Even, assuming that there is no evidence that the accused promised her to marry and even accepting that there was a promise, it is

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again a simple case of broken relationship. However, the evidence on record is not sufficient to establish that it was the accused who abetted her to commit suicide and there was no alternative before her to commit suicide. Merely because the accused refused to marry her, that by itself would not amount to instigate or provoke the deceased to commit suicide. At the most, what is attributable to the accused is, that he has broken the relationship. On the contrary, the evidence of neighbour PW2 Ratnamala Kutare shows that it was the father of the deceased who opposed the marriage between the accused and the deceased, due to which the deceased was unhappy and which can be the reason behind her suicidal death.

47. A plain reading of Sections 107, 108, and 306 of the IPC and applying it to the facts of the present case, indicates that none of ingredients are attracted to the case in hand and, therefore, the appeal deserves to be allowed.

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48. In view of the facts and circumstances of the case, as the judgment impugned in the appeal cannot be sustained in law, I proceed to pass following order:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 27.3.2016 passed by learned Additional Sessions Judge, Gondia in Sessions Case No.51/2009 is hereby quashed and set aside.

(3) The accused is acquitted of the offence for which he was charged, convicted, and sentenced.

(4) The bail bonds of the accused stand discharged.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)