

Atchutuni Saibaba and ors. Vs. State

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Court : Andhra Pradesh

Decided On : Sep-15-2004

Reported in : II(2005)DMC387

Judge : P.S. Narayana, J.

Acts : [Evidence Act, 1872](#) - Sections 32 and 113A; [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 1249 of 1998

Appellant : Atchutuni Saibaba and ors.

Respondent : State

Advocate for Def. : Additional Public Prosecutor

Advocate for Pet/Ap. : P.V. Vidya Sagar, Adv.

Disposition : Appeal allowed

Judgement :

P.S. Narayana, J.

1. A1 to A3 in Sessions Case No. 155 of 1993 on the file of the Sessions Judge, Manila Court, Vijayawada, are the appellants. As against A4 an order of acquittal was recorded and it had attained finality. However, A1 to A3 were convicted by the

learned Judge vide judgment dated 2.9.1998 under Sections 498-A and 306 of the Indian Penal Code (IPC) and they were sentenced as follows:

(i) A1 and A3 were sentenced to undergo rigorous imprisonment for a period of one year each; A2 was sentenced to undergo simple imprisonment for a period of six months and in addition to it, A1 to A3 were imposed a fine of Rs. 2,000/- each, in default, to suffer simple imprisonment for a period of three months each, for the offence under Section 498-A, Indian Penal Code.

(ii) A1 and A3 were also sentenced to undergo rigorous imprisonment for a period of two years and A2 to undergo simple imprisonment for a period of one year and in addition to it, A1 to A3 were imposed a fine of Rs. 5000/- each, in default, to undergo simple imprisonment for a period of six months each, for the offence under Section 306, Indian Penal Code.

2. Episode of the prosecution:

(i) A1 to A4 were charged with Sections 498-A and 306, Indian Penal Code in Crime No. 82 of 1992 L & O Satyanarayanapuram Police Station, Vijayawada. The III Metropolitan Magistrate, Vijayawada, had taken the same as PRC No. 40 of 1992, committed the same to the Metropolitan Sessions Judge, Vijayawada and the same was transferred to the Sessions Judge, Manila Court, Vijayawada. The learned Judge had tried the accused, acquitted A4, convicted A1 to A3 and sentenced them as referred to supra.

(ii) The case of the prosecution is that due to harassment of A1 to A4, A. Swarjyam (hereinafter referred to in short as 'the deceased'), wife of A1, daughter-in-law of A2 and sister-in-law of A3 and A4, committed suicide on 13.3.1992 at about 5.30 p.m., by pouring kerosene over herself and setting herself ablaze.

3. The evidence on record:

(i) The prosecution examined P.Ws. 1 to 14 and got marked Exs. P 1 to P 14 and M.Os. 1 to 6. On behalf of defence, Exs. D1 and D2, relevant portions in 161, Cr.P.C. statements of P.Ws. 1 were marked.

(ii) P.W. 1 and P.Ws 4 to 8 are the brothers of the deceased. P.W. 3 is the wife of P.W. 8. P.W. 2 is the daughter of one of the brothers of the deceased. P.W. 9 is the photographer. P.W. 11 is one of the mediators of the observation of the scene of incident and inquest proceedings. P.Ws. 13 and 14 are the investigation officers. P.Ws. 10 and 12 were declared hostile.

4. Findings of the learned Sessions Judge, Mahila Court, Vijayawada:

The learned Judge observed that much weight cannot be attached to the contents of Ex. P1. P.W. 1 is not a trustworthy witness. Exs. P2, P3, P4 letters would show that the deceased was not happy. The evidence of P.Ws. 4 and 7 had been relied upon. The evidence of P.Ws. 5, 6, and 8 also had been discussed and reliance was also placed on the evidence of P.W. 7 regarding the demand of Rs. 80,000/-. The version of P.W. 11 that kerosene was poured on the deceased and she was burnt alive was specifically disbelieved. Ultimately, A1 to A3 were convicted and sentenced as aforesaid.

5. Submissions of Mr. P.V. Vidhyasagar:

Mr. P.V. Vidhyasagar, Counsel representing the appellants-accused 1 to 3 made the following submissions: The learned Counsel would submit that the evidence of P.W. 1, especially, in the light of Ex. P1, definitely cannot be believed, inasmuch as P.W. 1 is not a layman, but a responsible and an educated man and in the light of the same, the learned Judge had rightly recorded the findings that the evidence of P.W. 1 is not trustworthy. The learned Counsel also would maintain that having recorded such a finding, the conviction of the accused 1 to 3 cannot be sustained. The learned Counsel also would submit that the evidence of all these brothers also is not consistent and the explanation given in relation to Ex. P1 that P.W. 1 was not aware of the harassment also cannot be believed, in the light of the version given by the other witnesses. The learned Counsel also had drawn the attention of this Court to the evidence of P.W. 1 and P.W. 8 and the Counsel also pointed out that the presence of P.W. 8 had not been specified in Ex. P1. The learned Counsel also would point out that P.W. 3 had not spoken anything about this episode, and P.Ws. 10 and 12 were declared hostile. The learned Counsel further commented on the nature of evidence, which had been let in, in relation to the inquest

Panchayatdar, who had gone a step further and deposed that, in fact, the accused had poured kerosene over the deceased and set her ablaze. This extreme version of the inquest Panchayatdar-P.W. 11 would definitely go to show at every stage P.W. 1 and other brothers of the deceased thought of improving the version of the prosecution and Ex. P1 would definitely disclose that initially, all was well, but subsequent thereto, as an afterthought, they thought of implicating these accused and had foisted the present case. The learned Counsel also had drawn the attention of this Court to Exs. D1 and D2 and also Exs. P2, P3 and P4. The learned Counsel would contend that at the best Exs. P2, P3 and P4 would go to show that the deceased was not willing to continue with her mother-in-law since she had some dislike towards her and her mother-in-law is having lot of affection towards her daughter and hence, the deceased wanted to be away from Vijayawada and to be with her husband and in that context, she was seeking help of her brothers to see that the husband was taken away from his mother i.e., her mother-in-law. Except that, nothing more, nothing beyond can be culled out from Exs. P2 to P4. The learned Counsel also had taken this Court through Ex. P5 diary and would contend that absolutely there is nothing incriminating circumstances or otherwise, which can be reflected from Ex. P5. The learned Counsel while further elaborating the submissions would contend that absolutely, there is no evidence in relation to what actually happened on the fateful day, and the test of proximity in relation to Exs. P2, P3 and P4 also may have to be considered. The learned Counsel would contend that though findings had been recorded by the learned Judge on the strength of the postal seals, these letters do not bear any dates at all. In the light of the same, the letters may have to be viewed with suspicion. The learned Counsel also would submit that except the vague evidence of P.W. 7, there is no other evidence relating to the demand of money and even otherwise, this demand of money had been only for the purpose of having some more accommodation and nothing more and nothing beyond, and it may not amount to such harassment or cruelty within the meaning of Section 498-A, Indian Penal Code and hence, the ingredients are not established. The learned Counsel meticulously had taken this Court through the evidence of P.Ws. 1, 4 to 8 and had pointed out the inconsistencies in between the testimonies of these witnesses. The learned Counsel also pointed out that it is not as though these brothers were not

meeting and there is evidence available on record and hence, the stand taken by these brothers that at the time of setting the law in motion (Ex. P1), P.W. 1 was not aware of the harassment definitely cannot be believed. The learned Counsel also would contend that when two views are possible definitely, the view, which is in favour of the accused, may have to be preferred. While concluding the learned Counsel also would contend that to establish the ingredients of Sections 306 and 498-A, Indian Penal Code, reasonable nexus in between the alleged harassment and the cause of death may have to be established and in the absence of the same, conviction and sentence definitely cannot be sustained and they are liable to be set aside. The learned Counsel also placed reliance on certain decisions to substantiate his contentions.

6. Submissions of Additional Public Prosecutor:

Per contra, the learned Additional Public Prosecutor would contend that the evidence of relative witnesses definitely is available on record, which would go to show the demand of Rs. 80,000/-, and harassment, which also had been deposed by these brothers and hence, the conviction and sentence as imposed are to be confirmed.

7. First Information report by P.W. 1:

On 13.3.1992 P.W. 1 has given report to the Sub-Inspector of Police, Satyanarayanapuram Police Station, which reads as hereunder: 'Today i.e., on 13.3.1992 while I was present at my house, my younger brother's wife by name Jayasree asked me over phone to come to their house at Governerpet urgently. I thereby went to my younger brother's house. Then, my brother's wife informed me that my sister Swarjyam poured kerosene on her and set fire to herself and thereby asked me to go there immediately. At about 6.30 p.m. I went to the house of my sister at Satyanarayanapuram and found my sister burnt in the flames. My sister is having the blood pressure, due to that, my sister might have committed this act due to uncontrollable condition and there might not be any other reasons. It was two years after her marriage. I, therefore, request you to take necessary action. Her mother-in-law and her husband have been well looking after my sister.'

This is the earliest version given by P.W. 1. It is pertinent to note that P.W. 1 is a retired Superintending Engineer of R and B. Such a responsible person having given Ex. P-1 report, had deposed that by the time he went to police station to give report, his brother Satyanarayana was already there to report the matter, but the police have refused to receive it from his brother and Ex. P-1 is the report given by P.W. 1 to the police. He further deposed that Satyanarayana knows about the affairs of the deceased and that P.W. 1 met him outside the police station, then his brother informed him that the deceased has been harassed by her in-laws and then P.W. 1 went back to the police station and requested for an opportunity to mend the report given by him but the police refused to allow him to do so and then, he went to the house of the accused. He deposed that the police have not taken any action till he reported to the Commissioner of Police, who was his neighbour and only after the Commissioner of Police has given instructions to the concerned police, they had taken action in this matter. This is the nature of evidence of P.W. 1. This evidence of P.W. 1 was rightly disbelieved by the learned Judge and a finding had been recorded that this witness is not a trustworthy witness.

8. Evidence relating to demand of Rs. 80,000/- and harassment:

(i) The evidence of the relative witnesses of the deceased alone is available as far as what happened on the fateful day. None of the neighbours or none concerned with had been examined except these relative witnesses.

(ii) P.W. 7 Anjaneyulu, who is one of the brothers of the deceased, had deposed about the details of negotiations. He also deposed that accused 1 to 3 used to ask the deceased to remain in the hall and used to state that if she wanted a separate room for herself, she has to bring Rs. 80,000/- from her brothers to enable the accused to construct a house, by saying that they were having Rs. 1,50,000/- with them for that purpose. No doubt, this witness deposed that A3 sent a word to him stating that he wanted to talk with him urgently and he went there, A1 to A4 were there, then they stated to him that they have to give Rs. 80,000/- immediately as there was an offer for sale of a house, and otherwise, they have to take away the deceased to their house and they would throw away the deceased to the road.

But, however, this witness deposed that he pleaded for some time from the accused and pacified them. This witness also deposed that on the occasion of Diwali, A1 and deceased came to their house and the deceased expressed P.W. 7, and his brother Murty and mother that the accused were pressuring for an amount of Rs. 80,000/- to be collected from the brothers. No doubt, this witness deposed about certain other details. This witness also deposed that it is not true to suggest that A4 is residing in Nandigama. He also deposed that it is true that he stated to the police that A4 was sent to Nandigama to her husband's house and that thereafter accused were looking after the deceased properly. This witness also deposed that it is not true to suggest that he did not state to the police that the then deceased came to his house on the occasion of Diwali and she stated to him that the accused were pressuring for Rs. 80,000/- and that he was to pay that amount by collecting the same from his brothers. He further deposed that he did not remember whether he stated to the police that after return from training, he made a phone call to A1 and that A1 stated that as he (P.W. 7) did not pay the amount, he was to take away the deceased to his house. He also deposed that it is not true to suggest that they did not pay any dowry to the accused and they got no capacity to pay the same and that A1 married the deceased without taking any dowry. P.W. 7 also deposed that he does not remember whether he stated before police that there used to be only one bedroom in the house of the accused and that A2 used to ask the deceased to leave that room for the use of A4 and her husband, and she has to bring Rs. 80,000/- from her brothers, if she wants to have a separate room. This witness further deposed that he must have stated these things to the police since the main cause of dispute is the money. Certain suggestions, no doubt, were denied by this witness.

(iii) P.W. 3 deposed that the deceased was her sister-in-law and she came to know what happened. It is pertinent to note that P.W. 3 had not deposed about any of these aspects. Except the vague evidence of the other brothers of P.W. 7, there is no other evidence available on record relating to the demand of Rs. 80,000/- and harassment. The evidence of P.W. 2 is not of much help relating to this aspect. No doubt, P.W. 2 had deposed that the deceased was worrying herself. The other brothers also deposed relating to the aspect of demand of Rs. 80,000/-.

(iv) On a careful scrutiny of the evidence of these witnesses, all these statements are more in the nature of hearsay, since what had been stated by the deceased, had been repeated by these witnesses and the version of these witnesses also appears to be not consistent. On the strength of the evidence of these relative witnesses viz., the brothers of the deceased especially, the evidence of P.W. 7, the learned Judge had arrived at a conclusion that the demand for Rs. 80,000/- had been established and hence, it would amount to harassment within the meaning of Section 498-A, I.P.C. This approach adopted by the learned Judge definitely cannot be sustained, in view of the fact that these are all statements made by these witnesses on the strength of the alleged statement made by the deceased and such statements definitely would not fall within the purview of Section 32 of the [Evidence Act, 1872](#). Strong reliance was also placed on G.M. Ravi @ G. Purushotham v. State of A.P., 2003 (2) ALD (Cri.) 344 (A.P.), in this regard.

9. Letters and concept of proximity theory:

Exs. P2 to P4 are the letters and Ex. P5 is the diary as already referred to supra. Ex. P5 does not contain any incriminating material as such, in relation to harassment or otherwise. Exs. P2 to P4 undated letters read as hereunder:

'To the dearest elder brother written by Raji with Namaskarams,

All are safe here and I hope that all are safe there. Here my condition is as usual. I am thinking that why I am surviving. Say how long can I be there? Every one must feel happy in their house. B.P. is raising and decreasing. You promised me to see my matter. Have you forgotten? I hoped you alone. When will you undertake that work you got studied me. You got performed marriage to me; you gave life to me by wandering around the doctors; I hope a lot on you to set right my life. Why are you thinking for this? I am unable to bear as previously. My muscles are shaking. I am facing what will happen to me. Day before yesterday Vijaya came and went. Convey my Namaskarams to my elder sister-in-law. Younger sister-in-law came to my in-laws' house and saw me and went away. Convey my Namaskarams to the younger sister-in-law. Even though brother, I am unlucky. You are also troubling regarding my hard destiny. I have to suffer. But that will show attack on you. There

is no pleasure with me to anybody. Mother spoiled too much. I am responsible for that. How many persons I have to trouble in this way. I wrote this out my displeasure. Don't think otherwise. Excuse me for the errors. No more.

'To the dearest elder brother, written by Raji with Namaskarams,

All are safe here. I hope that all are safe there. Here is as usual to me. It will not change as the tail of a dog. What about my matter, you promised to see me. When will you see that. I got heavy B.P. last week I went to the doctor, then B.P. is 170/115. I am feeling with fear. That the B.P. will not decrease. You will try to transfer to Vijayanagaram. I will be near to all of you. Durga sister is also coming to Visakhapatnam. If you make to put off him to Vijayanagaram, then my brother-in-law will go to Madras and transfer him to here. Manager in Madras is well known to my brother-in-law and my mother-in-law. So, I hope that you will think that what can you do, you do that, they should not know what we did. Let be the B.P. not down by transfer off him. I may live with peaceful mind. Here I am residing with fear movement by movement, better than I lived with B.P. I got hope on you. So, you think what will you do. Convey my Namaskarams to elder sister-in-law' convey my Namaskarams to younger brother and younger sister-in-law. Excuse me if I trouble you. You say what shall I to do? I was married with mother pecked. I adjusted with them. I will go away from here before the big Galata happens, that is good. Take care of your health. I shall remain. Excuse me if any mistakes in hurry.

'To

The dearest elder brother written by Raji with Namaskarams,

All are safe here. I hope that all are safe there. Here my position is as usual. I went to the Doctor on last Friday. B.P. raised again. Adjustment was not made in recent to my mother-in-law and myself. Both we are quarrelling either about her daughter (or) about her grand daughter (or) about the cook (or) break-fast if nothing suggests. She will keep her daughter here only. She asked him if willing to stay here if not to go. I do not bother about her daughter if she lives here. I do not satisfy her though I am doing work up to my capacity. My sister-in-law did not work. Anything though she was here. She Fells to be a devil on me, as the B.P.

raised to her, when she will not do anything to them i.e., to her daughter and children. She further states that I am not willing her daughter to live here. You tell how much will I bear? If she will not have capacity, she will put on my head. When you came to my house, then she told you about myself as I could not cook meals with cooker. I do anyone, she used to complain like so. I was cooking food twice and also I prepare the breakfast. Now and then she makes the soup curries to the children. I do not know how to satisfy her. Why should angry with me is as I do not carry and play with the children of her daughter. Before his coming to home, I go to bed after completion of my work. She might do the work if any to her. No fault in that. She (sister-in-law) will see to her children and to eat to them, that is enough, but she did not do the work in the house. Brother please see his matter, do not forget. Don't forget me. You see to come over Vijayanagaram. My mind is not well. I wrote this taken out of displeasure. Don't feel otherwise. Convey my Namaskarams to elder sister-in-law; and also to the youngest sister-in-law and youngest brother and I hope on you as to see my matter and help to me. She will give all and abuses till they digest. Where is happiness. Though she gives, I may have and may not have with pleasure I want to live peacefully. He also agreed. But I did not inform about you. He thinks that the salary becomes less due to transfer from here. You do not say anybody of this act done by you. How is your health. Take care of your health. That's enough.

No doubt submissions at length were made relating to the concept of proximity and as to how the contents of the letters may have to be appreciated in relation to the point of time. On a careful scrutiny of the contents of these letters at the best, it can be said that the deceased was not willing to continue to stay with the mother-in-law since her mother-in-law was more affectionate towards her daughter and she wanted to move away from the mother-in-law along with the husband and she was seeking help of the brothers. For the purpose of taking away the husband from Vijayawada to elsewhere, nothing more, nothing beyond can be culled out from these letters. In this view of the matter, the concept of proximity theory need not be elaborately discussed, in view of the fact that there is no incriminating material as such as against the accused which can be culled out from Exs. P2 to P4.

10. Reasonable nexus between harassment and suicide:

Reliance was placed on *Ravindra Pyarelal Bidlan v. State of Maharashtra*, 1993 CrI.L.J. 3019, wherein it was held that--

'If cruelty is by itself established and the fact of suicide is also established; it would not be sufficient to bring home the guilt of committing cruelty as defined in Explanation (a). A reasonable nexus has to be established between the cruelty and the suicide in order to make good the offence of cruelty. Alternatively, the cruelty established has to be of such a gravity as is likely to drive a woman to commit suicide. If suicide is established it has further to be established that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide.'In the present case, the harassment alleged by the prosecution itself had not been established so as to attract the ingredients of Section 498-A, I.P.C. and Section 498-A reads as hereunder:

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. Section 306; I.P.C. reads as hereunder:

Abatement 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 also be liable to be fine. In *Paparambaka Rosamma v. State of A.P.*, III (1999) CCR 151 (SC) : 1999 CrI.L.J. 4321, the three Judge Bench of the Apex Court while dealing with the cruelty within the meaning of Section 498-A, I.P.C. held as follows:

'Where there was no evidence to show that the deceased was meted out ill-treatment or there was a dowry demand and mere statements in dying declaration that she wanted to live separately from her relations, out her husband, accused beaten her for the same on previous day and her grandmother disliked her, the same was not sufficient to substantiate prosecution case that she was meted out

with ill-treatment and an offence punishable under Section 498-A, I.P.C. was made out.'It is no doubt true that the charges under Sections 306 and 498-A, I.P.C. are independent to each other as held by the Apex Court in *Girdhar Shankar Tawade v. State of Maharashtra*, II (2002) CCR 177 (SC) : 2002 Cr.L.J. 2814. On a careful scrutiny of the evidence available on record, especially in the absence of any evidence as to what actually happened on the fateful day, a reasonable nexus between the harassment and suicide definitely cannot be inferred and hence, the prosecution failed to establish the same in the present case.

11. The evidence relating to the incident proper:

As already referred to supra, there is absolutely no evidence relating to the incident proper and what actually transpired on the fateful day. The prosecution had not let in any evidence whatsoever.

12. Seizure and inquest:

Having discussed the evidence of the relative witnesses, the evidence of P.W. 11 is available on record who deposed about the seizure of M.Os. and also certified the deceased as a brave woman and she would not have committed suicide and as per his observation of the scene of incident, he was thinking that the deceased had not committed suicide and that kerosene was poured on her and was burnt alive. No doubt, it was suggested to this witness-P.W. 11 that he was otherwise interested in the deceased and the family members of the deceased. It is nobody's case, but, however, this witness P.W. 11 deposed in such a fashion.

13. Investigation:

P.Ws. 13 and 14 are concerned with the investigation. P.W. 13 is the S.I. of police who had registered the crime and had deposed about the details of investigation. P.W. 14 is the Inspector of Police who had verified the investigation conducted by P.W. 13 and the investigation was continued by his successor and he filed charge-sheet after receiving the post-mortem certificate. P.W. 13 admitted that P.W. 1 stated as in Exs. D1 and D2. Exs. D1 and D2 the relevant portions in 161, Cr.P.C. statements of P.W. 1 read as hereunder:

Ex. D1 reads as hereunder--

'My sister's husband and her mother-in-law look after her properly' Ex. D2 reads as hereunder--

'My sister Swarjyam poured kerosene over herself and burnt herself due to the uncontrollable condition caused by the blood pressure from which she was suffering and that there might not be any other cause for the incident.' These contradictions were proved through the Investigating Officer. All the other omissions also had been put to this witness in detail in the cross-examination. Thus, the evidence of P.Ws. 1, 4, 7, 8 and 11 would suffer from several important omissions, which were put to this witness-P.W. 13, in the course of his cross-examination.

14. Decision of this Court:

(i) On appreciation of the overall evidence available on record and also on perusal of the findings recorded by the learned Judge, this Court is of the considered opinion that the said findings cannot be confirmed for the reasons that there is no legally acceptable evidence on record so as to sustain the conviction and sentence imposed by the learned Judge.

(ii) In *Ramesh Kumar v. State of Chhatisgarh*, IV (2001) CCR 177 (SC) : 2001 (2) ALD (CrL.) 873 (SC), the Apex Court observed as hereunder--

'The picture which emerges from a cumulative reading and assessment of the material available is this. Presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate convenience the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the

accused may have said some such thing--you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had 'freed' her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the Trial Court mis-spelt out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free to go whoever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free 'to commit suicide' as held by the Trial Court and upheld by the High Court.

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 *State of West Bengal v. Orilal Jaiswal and Anr.*, : 1994 CriLJ2104 , this Court has cautioned that 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 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 circumstance 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.'

(iii) In *State of West Bengal v. Orilal Jaiswal*, 1994 Cr.L.J. 2104, the Apex Court held that in spite of the introduction of Section 113(A) of the Indian [Evidence Act, 1872](#) in relation to the offence under Section 498-A, I.P.C. a requirement of proof beyond reasonable doubt is not altered. In the light of the same, the present facts of the case may have to be appreciated.

(iv) As already referred to supra, the harassment must have reasonable nexus to the commission of suicide. Human element is not uniform. Some may be hard, tough, some may be sensitive, very sensitive, super sensitive as well. This theory of reasonable nexus in a given case may have to be examined in the backdrop of the facts of a particular case. The standard of reasonable nexus also may have to be determined in the standard of the thinking of an ordinary prudent man.

(v) Except the evidence of P.W. 7, there is no other clear evidence and the rest of the evidence of the other brothers of the deceased appears to be more in the nature of hearsay and the statements are of general nature what had been communicated by the deceased to these brothers, such evidence cannot be said to be legally acceptable evidence. What is significant to be noted in the present case is that the deceased wanted to be independent away from her mother-in-law and her daughter and the main grievance ventilated even through the letters would reflect the same and nothing more and nothing beyond. Further, it is highly improbable that P.W. 1 a responsible person could have made Ex. P1 and the explanation given by him in this regard is definitely highly suspicious. Evidently, initially, the relatives of the deceased were not particular of setting criminal law into motion, but subsequently, changed their mind and thought of further proceeding with the prosecution as against the appellants. It is nothing but an afterthought.

(vi) Hence, from the overall facts and circumstances, this Court is thoroughly satisfied that the findings recorded by the learned Judge definitely cannot be sustained and, accordingly, the said findings are hereby set aside.

15. In the result, the conviction and the sentence recorded by the learned Judge are hereby set aside and the appellants are entitled for an acquittal and, accordingly, acquittal is hereby recorded and the criminal appeal is allowed. Bail bonds shall stand cancelled.

It is needless to say that the fine amount, if any paid by the appellants, they are entitled to refund of the same.

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