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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on: 20.01.2026

Judgment delivered on: 18.02.2026

CRA No. 178 of 2015

1 - Horilal Yadav S/o Malikram Yadav Aged About 30 Years R/o CIMS Colony D-01, Type - 03, Guru Ghashidas Vishaw Vidhalay, Bilaspur, P.S. Koni, District Bilaspur C.G.

--- Appellant

versus

1 - State of Chhattisgarh Through - P.S. Koni, District Bilaspur C.G.

--- Respondent(s)

with

ACQA No. 618 of 2019

1 - Suman Yadav W/o Ram Narayan Yadav Aged About 43 Years Occupation- Aganbadi Worker, R/o Kushalpur, Tulsinagar, P.S. - Purani Basti, District- Raipur Chhattisgarh.

---Appellant

Versus

1 - Horilal Yadav S/o Malikram Yadav Aged About 31 Years R/o CIMS Colony D-01, Type - 03, Guru Ghasidas Vaishnav, Bilaspur, P.S.- Koni, District Bilaspur Chhattisgarh.

2 - State of Chhattisgarh Through District Magistrate Bilaspur, District Bilaspur Chhattisgarh.

--- Respondent(s)

For Appellants	:	Ms. Hamida Siddiqui, Advocate in CRA No. 178/2015 Mr. Kishan Kumar Yadav on behalf of Mr. Awadh Tripathi, Advocate in CRA No. 618/2019
For Objector	:	Ms. Pooja Lonia on behalf of Mr. Ajay Chandra, Advocate in CRA No. 618/2019
For State	:	Mr. Krishna Gopal Yadaw, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Radhakishan Agrawal

C A V Judgment

Per Rajani Dubey, J.

1. Since the aforesaid criminal appeal and acquittal appeal arise out of the same judgment, they are being heard together and decided by this common judgment.
2. The aforesaid Criminal Appeal No. 178/2015 and Acquittal Appeal No. 618/2019 are directed against the judgment dated 27.01.2015 passed by VI Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 185/2013 whereby the appellant in CRA No. 178/2015 has been convicted under Section 306 of IPC

and sentenced to undergo RI for 10 years with fine of Rs. 200/-, with default stipulation, and respondent No.1 in ACQA No. 618/2019 has been acquitted of the charges under Section 302, 201 of IPC.

3. It is admitted that the deceased, Asha Yadav, was the daughter of Smt. Suman Yadav (PW-4) and Ramnarayan Yadav (PW-7). She was married to the accused on 16.05.2013 and they lived in Government Residential House No. D-1, Type-3, Guru Ghasidas University Campus. On information furnished by the accused, a merg intimation was registered at Police Station Koni (Ex.P/4). On 26.07.2013, the deceased had come alone to her parental home at Raipur. Her mobile phone was seized from the house of the accused Horilal Yadav vide Ex.P/7 and an application for post-mortem was submitted vide Ex.P/8. The accused was subsequently arrested under arrest panchnama Ex.P/15.
4. The prosecution case, in brief, is that on 29.07.2013 at about 00:15 hours, the accused informed the police that his wife had allegedly committed suicide by hanging from the ceiling fan in the room. Acting on the said information, Head Constable Chhotelal Jaltare registered merg/inquest proceedings at Police Station Koni vide Ex.P/4. Sub-Inspector Durga Kiran Patel issued notice to the witnesses to attend the inquest proceedings (Ex.P/9) and prepared the spot map (Ex.P/13). Tehsildar Narendra Kumar Banjara conducted the inquest over the dead body in the presence of witnesses and prepared the inquest report (Ex.P/10).

The dead body was sent for post-mortem examination and Dr. Anshul Lal submitted the post-mortem report (Ex.P/8). Thereafter, the dead body of the deceased Asha Yadav was handed over to the accused vide Ex.P/16, and duty certificate (Ex.P/14) was issued to Constable Santosh Tirki.

During investigation, the Investigating Officer seized from the place of occurrence a scarf hanging from the ceiling fan, a knife, a dongle, a Nokia mobile phone, spectacles, a railway ticket and the ceiling fan vide seizure memos Ex.P/5 and Ex.P/6. The Crime Mobile Unit, Bilaspur, inspected the spot and submitted its inspection report (Ex.P/11). On the basis of the statements of the family members of the deceased and the post-mortem report, the investigating agency concluded that the deceased had been strangled. Accordingly, FIR No.131/2013 was registered against the accused (Ex.P/12) and intimation was sent to the concerned Judicial Magistrate. The accused was arrested vide arrest panchnama (Ex.P/15), statements of witnesses were recorded and a Nokia mobile phone was also seized from the accused at Police Station Koni (Ex.P/7). Patwari Rupesh Gurudiwan prepared the site map (Ex.P/2) and panchnama (Ex.P/3) in presence of witnesses. After completion of investigation, a charge-sheet was filed against the accused for the offence punishable under Section 302 IPC and the case was committed to the Court of Sessions for trial, where proceedings commenced on 07.11.2013. Thereafter, learned trial Court framed

charge under Section 302/201 of IPC, to which accused abjured his guilt and claimed to be tried.

5. In order to bring home the guilt of the accused, the prosecution examined as many as 14 witnesses. The statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure, wherein he denied all the incriminating circumstances appearing against him and pleaded innocence alleging false implication in the case. The accused did not lead any evidence in defence.
6. Upon due appreciation of the oral and documentary evidence available on record and after hearing learned counsel for the respective parties, the learned Trial Court convicted the accused for the offence punishable under Section 306 of the Indian Penal Code, instead of Sections 302 and 201 IPC, and sentenced him as mentioned in para 2 of this judgment.
7. Acquittal Appeal No. 618/2019 has been filed by complainant (mother of the deceased) against acquittal of accused Horilal Yadav of the offence under Section 302 ,201 of IPC.
8. **In CRA No. 178/2015-** Learned counsel for the appellant submits that the impugned judgment of conviction and sentence is illegal, improper and contrary to law and facts on record. The learned Trial Court gravely erred in holding the appellant guilty for the offence punishable under Section 306 IPC. Firstly, the appellant has been convicted under Section 306 IPC without any charge

having been framed for the said offence. In fact, prior to final arguments the prosecution itself moved an application seeking framing of charges under Sections 302, 304-B and 306 IPC, which was rejected by the Trial Court on 19.08.2014. Therefore, the subsequent conviction under Section 306 IPC is unsustainable in law. Secondly, the essential ingredients of abetment as defined under Section 107 IPC were neither alleged nor proved and the presumption under Section 113-A of the Evidence Act was not attracted. There is no evidence of cruelty, harassment or any unlawful demand against the appellant. The evidence of prosecution witnesses, namely the parents and relatives of the deceased Smt. Suman Yadav (PW-4), Ramnarayan Yadav (PW-7), Ku. Nilima Yadav (PW-8), Narendra Yadav (PW-13) and Mahesh Yadav (PW-14) does not disclose any specific act of instigation or cruelty. On the contrary, independent witnesses Akhilesh Tiwari (PW-1) and Deepak Rathore (PW-2) have stated that the relationship between the appellant and the deceased was cordial and they shared love and affection having married of their own choice. The prosecution witnesses have made omnibus and contradictory allegations and admitted material omissions in cross-examination, creating serious doubt about the prosecution case. The appellant is also a physically handicapped person suffering from polio, which further renders the prosecution story improbable. In absence of reliable and cogent evidence proving abetment of suicide beyond

reasonable doubt, the conviction of the appellant under Section 306 IPC cannot be sustained. Hence, the impugned judgment and order of conviction and sentence deserve to be set aside and the appellant is entitled to acquittal.

Reliance has been placed upon the decision of the Hon'ble Supreme Court in ***Bimla Devi & Anr. v. State of Jammu and Kashmir, AIR 2009 SC 2387*** as well as the judgment of this Hon'ble Court dated **10.12.2025** passed in **CRA No. 82 of 2013** and the connected appeal in ***Hari Singh v. State of Chhattisgarh.***

9. **In Acquittal Appeal No. 618/2019-** Learned counsel for the appellant submits that that the impugned judgment is illegal, perverse and contrary to the evidence on record. The learned Trial Court failed to properly appreciate the oral and medical evidence of the parents, sister and other relatives of the deceased, which, read along with the testimony of the doctors and the Investigating Officer, clearly establishes the commission of the offence punishable under Sections 302/34 IPC. The medical evidence indicates injuries on the person of the deceased and opines that the cause of death was cardiorespiratory failure due to asphyxia resulting from throttling, thereby ruling out a natural or suicidal death. In absence of any expert opinion supporting suicide, the learned Trial Court erred in granting acquittal from the charges under Sections 302 and 201 IPC. The death occurred inside the matrimonial home while the

respondent No.1 was present, and he failed to furnish any plausible explanation regarding the circumstances of death, attracting adverse inference. The learned Trial Court ignored material evidence and the conduct of the accused and recorded findings contrary to the evidence available on record. Accordingly, the acquittal of accused Horilal Yadav under Sections 302 and 201 IPC is unsustainable in law and deserves to be set aside and he is liable to be convicted and punished in accordance with law.

10. In ACQA No. 618 of 2019, learned counsel for the respondent No.1/accused submits that the impugned judgment of acquittal is legal, well-reasoned and based on proper appreciation of the evidence on record. The prosecution has failed to prove the charge beyond reasonable doubt and the evidence of interested witnesses is inconsistent and unreliable. There is no direct evidence connecting the respondent with the alleged offence and the medical evidence does not conclusively establish homicidal death. Therefore, no interference is warranted in an appeal against acquittal and the appeal is liable to be dismissed.

11. Per contra, learned counsel for the State, supporting the impugned judgment, submits that the learned Trial Court has meticulously appreciated the oral and documentary evidence on record and has rightly convicted the accused Horilal Yadav for the offence punishable under Section 306 IPC. It is, therefore,

contended that the impugned judgment is well-reasoned and does not warrant any interference by this Court.

12. We have heard learned counsel for the parties and perused the material available on record.
13. It is evident from the record of the learned Trial Court that charges under Sections 302 and 201 IPC were framed against the accused, Horilal Yadav. However, upon appreciation of the oral and documentary evidence, the learned Trial Court acquitted him of the offences under Sections 302 and 201 IPC and instead convicted him for the offence punishable under Section 306 IPC.
14. Before the learned Trial Court, it was not in dispute that the deceased, Asha Yadav, was the legally wedded wife of the accused Horilal Yadav. Their marriage was solemnized on 16.05.2013 and Asha Yadav died on 28.07.2013.
15. Dr. Anshul Lal (P.W.-10) who conducted the post mortem of the deceased, opined that the cause of death of the deceased was asphyxia leading to cardiac arrest, caused by pressure over the neck. He further opined that the time since death was approximately 15 to 18 hours prior to the post-mortem examination and that the death was unnatural in nature. He also deposed that only a specialist could give a definite opinion as to whether the death was suicidal or homicidal. He gave postmortem report vide Ex.P/8.

16. Dr. S.N. Vishwas (PW-11), a forensic expert, inspected the place of occurrence and prepared the spot inspection report, which has been exhibited as Ex.P-11.
17. Akhilesh Tiwari (PW-1) and Deepak Rathore (PW-2), neighbours of the deceased and the appellant, deposed that at about 10:30 p.m. the accused knocked at their door and informed them that his wife had committed suicide.
18. Smt. Suman Yadav (PW-4), the mother of the deceased, deposed that Asha Yadav was her elder daughter and her marriage was solemnized with the accused Horilal on 16.05.2013. She further stated that after the marriage, the accused began subjecting the deceased to harassment and ill-treatment. The witness stated that on 26.07.2013 Asha came to Raipur alone and informed her that she was under mental distress and wished to stay for a few days. On the morning of 28.07.2013, the accused Horilal came to their house and insisted on taking Asha back, but she refused, which led to a quarrel between them. The accused left between 11:00–11:30 a.m., and thereafter they again had a heated telephonic conversation, after which Asha was crying.

She further stated that later Asha expressed her intention to return to Bilaspur as she feared her husband would be upset and she accordingly left for the railway station with her father and travelled alone by train. During the journey, the witness spoke to

her two-three times, and upon reaching Bilaspur Asha said she would call after reaching home, but thereafter her phone remained unanswered and was later switched off. Despite repeated attempts by the family to contact her, they were unable to reach either Asha or the accused. Subsequently, upon contacting the accused through Neelima, the accused informed them that Asha had committed suicide. She further stated that on seeing the dead body of the deceased, they suspected that she had been murdered by the accused.

In her cross-examination, the witness denied the suggestion that prior to her marriage with the accused Horilal in Arya Samaj, Asha had threatened to commit suicide if she was not married to him and admitted that the deceased had two pre-existing cut marks on her hand. She admitted that, prior to narrating the alleged incident, her daughter had once cut her wrist in connection with her intention to solemnize marriage in Arya Samaj. She further deposed that her daughter was pursuing an MBA course and had secured admission in Chouksey Engineering College with a fee of Rs. 30,000/-, which had been arranged by her husband.

She stated that upon reaching Koni after receiving the information regarding her daughter's death, they did not immediately approach the police station to lodge any report. She admitted that her daughter used to talk to her friends on her mobile phone and that the deceased Asha used to converse with

Subham and Ravi. She further admitted the defence suggestion that due to his disability, Horilal used to face difficulty in performing his daily chores.

19. Ramnarayan Yadav (P.W.-7), father of the deceased, stated that on 26.07.2013 Asha had come to Raipur to obtain a migration certificate. He deposed that the accused, his son-in-law Horilal Yadav, arrived on 28.07.2013 at about 11:00 a.m., whereafter a dispute took place between him and Horilal, due to which Horilal returned to Bilaspur while the girl remained at Raipur.

He further stated that on the evening of 28.07.2013, while he was sleeping, Asha received a call from Horilal at about 5:00 p.m. and she was crying. Upon being asked, Asha told him that Horilal had called and asked him to drop her at Bilaspur. Thereafter he left her at the railway station at about 5:15 p.m. He deposed that he tried to contact Asha from about 8:00 p.m. onwards to confirm her arrival at Bilaspur, but her phone was switched off. He then called his daughter Neelima and asked her to inquire from Horilal regarding Asha's whereabouts. At about 10:00 p.m., Neelima informed him that Asha had committed suicide, which information she had received from Horilal. Thereafter he reached Bilaspur with his family at about 2:00 a.m. He expressed the opinion that Asha had not committed suicide and that she had been murdered by the accused Horilal. He further stated that there were no visible injury marks on the body of his daughter. He admitted that in his examination-in-chief he

had stated that his daughter's marriage took place on 16.05.2013 and that, prior thereto, she had married the accused in an Arya Samaj temple. He also stated that his daughter and the accused were living happily.

He admitted that after the post-mortem they returned to their house at Raipur and did not lodge any report against the accused there.

20. Ku. Neelima Yadav (P.W.-8) stated that Asha had told her that the behaviour of Horilal had changed after the marriage. She deposed that on 26.07.2013 her sister Asha came to their house at Raipur for obtaining a migration certificate and stayed there for about two days. She further stated that on 28.07.2013 at about 11:30 a.m. to 12:00 noon, Horilal came and asked Asha to go to Bilaspur, but Asha refused, stating that she would stay in Raipur for two to three more days. A quarrel took place between them on this issue, after which Horilal returned. Thereafter Asha went to Bilaspur and subsequently they received information regarding her death from Horilal. She expressed her belief that her brother-in-law, i.e., the accused Horilal, had killed her sister.

In her cross-examination, she admitted that there used to be disputes between her sister (the deceased) and the accused over trivial matters. She further admitted that when she called her brother-in-law on the night of the incident, he told her that he had been cooking at home and was unaware as to when her sister

had arrived at Bilaspur and questioned why she had not informed him about her arrival.

21. It is evident from the testimony of all prosecution witnesses read in conjunction with the medical evidence on record that the prosecution has failed to establish the essential ingredients constituting the offence punishable under Section 302 of the Indian Penal Code. The learned Trial Court has rightly held that the charges under Sections 302 and 201 IPC were not proved against the appellant Horilal Yadav beyond reasonable doubt. However, despite recording such a finding, the learned Trial Court proceeded to convict the appellant for the offence punishable under Section 306 IPC on the premise that the death of the deceased was homicidal and that she committed suicide on account of alleged torture by the accused.
22. It is further significant that the charges framed against the appellant were only under Sections 302 and 201 IPC. No charge under Sections 304B or 306 IPC was framed at any stage of the trial. Therefore, the conviction of the appellant under Section 306 IPC, in absence of a specific charge and without affording an opportunity of defence in respect thereof, is legally unsustainable and contrary to the settled principles of criminal jurisprudence.
23. In **Bimla Devi** (supra), the Hon'ble Supreme Court held in paras 4, 5 and 6 as under:-

4. The respondent-State on the other hand supported the judgment. So far as the ingredients are concerned, in *Sangaraboina Sreenu v. State of A.P* (1997 (5) SCC 348) it was noted as follows:

"2. This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC-- which was the only charge framed against him the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 CrPC entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 CrPC for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof."

5. Similarly, in *Lokendra Singh v. State of M.P.* (1999 SCC (Criminal) 371) it was observed as follows:

"3. Law is well settled that in respect of a charge once framed, there can only be an order of conviction or acquittal. Therefore, notwithstanding the fact that the trial

court did not record a formal finding in respect of the charge under Section 306 IPC, the appellant stood acquitted thereof. This apart, the trial court having convicted the appellant of the charge under Section 302 IPC could not have convicted him of the alternative charge (under Section 306 IPC). Such acquittal could be converted into conviction by the High Court only in an appeal preferred by the State. Admittedly, no such appeal was filed. Of course, by exercising its suo motu revisional power under Section 401 CrPC, the High Court could also have set aside the acquittal under Section 306 IPC but this question is now purely academic for the High Court did not exercise such power and, even if it had, it could not have converted the finding of acquittal recorded in favour of the appellant to one of conviction in view of the express bar of sub-section (3) of Section 401 CrPC. We reach the same conclusion through a different route.

6. In *Shamnsaheb M. Multtani v. State of Karnataka* (2001 (2) SCC 577) in paras 16 to 19 it was noted as follows:

"16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the

major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis--vis the other offence.

17. The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis--vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (husband or relative of husband of a women subjecting her to cruelty). As the word "cruelty" is explained as including, inter alia, "harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

24. In the matter of **Hari Singh** (supra), this Court held in paras 32 and 33 as under:-

32. Hon'ble Apex Court in the **Patel** (supra), held in para 18 to 25 and 40 to 45 as under :-

"18. In *Ramesh Kumar v. State of Chhattisgarh*¹, this Court held that to 'instigate' means to goad, urge, provoke, incite or encourage to do 'an act' To satisfy the requirement of 'instigation', it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then 'instigation' may be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be 'instigation'.

19. Elaborating further, this Court in *Chitresh Kumar Chopra versus State (Govt. of NCT of Delhi)*² observed that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goadings' or 'urging forward'. This Court summed up the constituents of 'abetment' as under:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or

conduct to make the deceased move forward more quickly in a forward direction, and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above.

Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. *Amalendu Pal alias Jhantu versus State of West Bengal*³ is a case where this Court held that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) 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 deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Similar view has been expressed by this Court in case of *Ude Singh versus State of Haryana*⁴.

21. After considering the provisions of Sections 306 and 107 of IPC, this Court in *Rajesh versus State of Haryana*⁵⁶ held that conviction under Section 306 IPC is not sustainable 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.

22. Abetment to commit suicide involves a mental process of instigating a person or intentionally aiding a person in the doing of a thing. Without a positive proximate act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Besides, in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence.

23. This Court in *Amudha versus States*⁶ held that there has to be an act of incitement on the part of the accused proximate to the date on which the deceased committed suicide. The act attributed should not only be proximate to the time of suicide but should also be of such a nature that the deceased was left with no alternative but to take the drastic step of committing suicide.

24. Again, in the case of *Kamaruddin Dastagir Sanadi versus State of Karnataka*⁷, this Court observed that discord and differences in domestic life are quite common in society. Commission of suicide largely depends upon the mental state of the victim. Until and unless some guilty intention on the part of the accused

is established, it is ordinarily not possible to convict the accused for an offence under Section 306 IPC.

25. Prakash versus State of Maharashtra⁸ is a case where this Court after analysing various decisions on the point summed up the legal position in the following manner:

14. 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 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.

25.1 In the aforesaid judgment, this Court referred to its earlier decision in Sanju @ Sanjay Singh Sengar versus State of M.P and held that in a given case, even a time gap of 48 hours between using of abusive language by the accused and the

commission of suicide would not amount to a proximate act.

26. XXXX

27. XXX

40. This takes us to the suicide note (Ex. 33). We have already noted the delayed and controversial circumstances under which the suicide note surfaced which makes it highly suspect. Nonetheless, since it was exhibited, let us deal with the same. Sum and substance of the suicide note allegedly written by Dashrathbhai Karsanbhai Parmar (the deceased) with the date given as 24.04.2009 is that appellant No. 3 had joined his office following the illness of the existing cleaner She used to come to the office daily for cleaning purposes. Slowly they developed intimacy. It is alleged that appellant No. 3 had performed 'black art' on the deceased so much so that, he fell in love with her Taking advantage of the situation, she took photographs and video of them in compromising position. All the accused persons were shameless persons. As they started blackmailing him, he initially paid Rs. 80,000.00 to them and thereafter started giving them ornaments. He also gave them his passbook and cheque books after signing on the cheques. Because of such blackmailing, he had

to misappropriate money from his office for which he was suspended. It is stated that he was totally ruined and, therefore, he had committed suicide as he had no other alternative.

41. The suicide note was sent to the Forensic Science Laboratory (FSL) for examination. The Deputy Chief Handwriting Expert of FSL, Gandhinagar opined that the handwriting was of the deceased. However, the prosecution did not examine the Deputy Chief Handwriting Expert as an expert witness. The records also do not indicate that the accused had admitted genuineness of the report of the handwriting expert.

42. In *Shashi Kumar Banerjee versus Subodh Kumar Banerjee (since deceased)*¹¹, this Court observed that expert's evidence as to handwriting is opinion evidence. It can rarely, if ever, take the place of substantive evidence. Before acting on such opinion evidence, it is necessary to see if it is corroborated either by clear direct evidence or by circumstantial evidence.

43. In the case of *Murari Lal versus State of M.P.*¹², this Court opined that having due regard to the imperfect nature of the science of identification of hand-writing, the approach of the court should be one of caution. Reasons for the opinion must be carefully probed and

examined. In an appropriate case, corroboration may be sought. Where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, uncorroborated testimony of a handwriting expert may be accepted.

44. This Court dealt with the effect of placing reliance on the opinion of handwriting expert without examining him in court in *Keshav Dutt versus State of Haryana*¹³. One of the questions which fell for consideration in that case was whether the opinion of a handwriting expert can be admitted in evidence without examination of the handwriting expert. In this connection, this Court took the view that when the trial court chose to rely on the report of the handwriting expert, it ought to have examined the handwriting expert in order to give an opportunity to the accused to cross-examine the said expert. In that case, it was found that there was nothing on record to show that the accused persons had admitted to the report of the handwriting expert.

45. Finally, even if we take the suicide note as correct and genuine, we do not find any act of incitement on the part of the appellants proximate to the date on which the deceased committed suicide. No act is attributed to the appellants proximate to the time of suicide which was of such a nature that the deceased was left with no

alternative but to commit suicide. In such circumstances, it cannot be said that any offence of abetment to commit suicide is made out against the appellants."

33. Further, in **Abhinav** (supra), the Hon'ble Apex Court held in para 13 to 25 and 40 as under :-

"13. It is very pertinent that a reading of the above decisions would only indicate that always a proximate incident or act prior to the suicide was held to be a very relevant aspect in finding the death to be a direct causation of the acts of the person accused of abetting the suicide. We think it apt to look at the decisions discussed in **Ude Singh**⁷. **Ramesh Kumar v. State of Chhattisgarh**⁹ which was a case in which the husband pursuant to a quarrel asked the wife to go wherever she pleased, after which she set herself ablaze. This Court opined that the wife, on the husband freeing her, impulsively felt that she could do nothing but kill herself. It was held so in paragraph 20:

"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."

(underlining in all the extracts, by us, for emphasis)

14. This Court also relied on **State of West Bengal v. Orilal Jaiswal**¹⁰, wherein it was held so:

"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 of abetting the offence of suicide should be found guilty."

15. **Pawan Kumar v. State of Himachal Pradesh**¹¹ was a case of elopement which resulted in a criminal prosecution against the boy, later acquitted on the girl's testimony in his favour. The boy continued to harass the girl, holding her responsible for the criminal proceeding initiated and even threatened to kidnap her, which proximate threat led to the girl setting herself ablaze. A dying declaration in the form of a letter, pinned the responsibility of her death on the accused. While upholding the conviction entered into by the High Court reversing the acquittal by the Trial Court, this Court held so on the scope of the words 'abetment' and 'instigate':

"43. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable, A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action

that creates a situation for the victim to put an end to life.

44. In the instant case, the accused had by his acts and by his continuous course of conduct created such a situation as a consequence of which the deceased was left with no other option except to commit suicide. The active acts of the accused have led the deceased to put an end to her life. That apart, we do not find any material on record which compels the Court to conclude that the victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged. On the other hand, the accused has played active role in tarnishing the self-esteem and self-respect of the victim which drove the victim girl to commit suicide. The cruelty meted out to her has, in fact induced her to extinguish her life spark."

Here again the live link, to the just prior threat was emphasised while also noticing the fact that a young girl living in a village setting, also belonging to the poor strata of society, was threatened and teased constantly, resulting in her resort to the extreme step. The accused would have known that his acts would lead to the drastic consequence.

16. **Amalendu Pal vs. State of West Bengal**¹¹ also held:

"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."

17. **S.S.Cheena v. Vijay Kumar Mahajan**¹³

emphasised the requirement of a positive act on the part of the accused to instigate or aid in committing suicide.

Looking at Section 306, it was held so:

"... 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 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."

18. **Chitresh Kumar Chopra v. State (NCT of Delhi)** spoke on the suicidal ideation and behaviour in human beings which were complex and multifaceted (sic) It was held that:

"Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for

individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self protection or an escapism from intolerable self."

19. **Madan Mohan Singh v. State of Gujarat**¹⁵ was a case in which the accused was alleged to have continuously harassed and insulted the deceased and spoken as to how he was still alive despite the insults levelled. There was also a suicide note in which the deceased, a driver, accused his employer of having driven him to suicide. Despite such an allegation in the suicide note, this Court found that there was absolutely nothing in the suicide note or the F.I.R. which could even distantly be viewed as an offence, much less under Section 306 of the I.P.C.

20. Again, the ingredients under Sections 107 and 306 of the I.P.C. was interpreted by one of us in **Prakash and Ors. v. State of Maharashtra and Anr.**¹⁶ (B.R. Gavai J., as he then was) in the following manner:

"14. 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 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.

15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally adding 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."

21. It was held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused, in

aiding or instigating or abetting the deceased to commit suicide, a conviction cannot be sustained.

22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, the straw that broke the camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim.

23. The victim may have felt that there was no alternative or option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible

from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. Did the thought of goading the victim to suicide occur in the mind of the accused or whether it can be inferred from the facts and circumstances arising in the case, as the true test of mens rea would depend on the facts of each case. The social status, the community setting, the relationship between the parties and other myriad factors would distinguish one case from another. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

24. We have already seen that even a rebuke to "go, kill yourself", often a rustic expression against distasteful conduct, cannot by itself be found to have the ingredients to charge an offence of abetment to suicide. There is no uniformity in how different individuals respond and react under pressure. Many stand up, some fight back, a few runaway and certain people crumble and at times take the extreme step of suicide. To put the blame on the pressure imposed and the person responsible for it, at all times, without something more to clearly discern an intention, would not be the proper application of the penal provisions under Section 306.

25. In this context, useful reference can be made to Sections 113A & 113B of the Indian Evidence Act, 1872 providing statutory presumptions in aid of Sections 498A & 304B respectively, of the IPC. When a woman dies by suicide within seven years of her marriage, if it is shown that she was subjected to cruelty by her husband or his relative there arises a presumption that the husband or such relative abetted the suicide, in which event the penalty under Section 306 is attracted. The presumption under Section 113A was statutorily employed by the Parliament, realizing the menace and in an attempt to prevent domestic violence unleashed on women in the patriarchal society, by deterrence. This exercise would not have been necessary if Section 107 did provide for finding abetment without conscious instigation constituting mens rea. This Court held in **Mangat Ram v. State of Haryana**¹⁷ that the provision only enabled the court to presume on the abetment, having due regard to all other circumstances of the case and drawing such presumption is purely within the discretion of the Court.

26. XXXX

27. XXXX

40. True, a person unable to bear the pressure or withstand a humiliation or unable to oppose, may succumb to the extreme act of ending his own life, in desperation; but that would not necessarily mean that the alleged perpetrator had an intention to

lead the victim to eventual death by his own or her own hands. We find no such instigation on the part of the accused in this case, or a definitive abetment to suicide, as alleged in the FIR. There arises a cloud on the suicide note, when looking at the admitted statements recorded in the proceedings of the Committee of Privileges and also the manner in which the note was introduced in the case. Before the Committee of Privileges, no reference was made to the various allegations in the suicide note, against the named officers. We have found the suicide note to be suspect and we are not convinced that there is any modicum of material in the case to find abetment of suicide. The High Court was not in error, when it quashed the FIR, when no case is made out from the FIR."

25. In light of the foregoing, the evidence available on record clearly demonstrates that the neighbours of the deceased have admitted that the relationship between the appellant and the deceased was cordial. The parents and other relatives of the deceased have also deposed that the marital relationship between the husband and wife was normal and harmonious. They further admitted that the appellant had borne the expenses of the deceased for her higher education. Although certain relatives expressed a mere suspicion that the appellant might have caused the death of the deceased, there is not even a whisper in their testimony regarding any act of instigation, intentional aid or active participation attributable to the appellant so as to constitute

“abetment” within the meaning of Section 107 IPC, which is a sine qua non for bringing home a charge under Section 306 IPC.

26. In absence of any cogent evidence establishing the essential ingredients of abetment to suicide, the conviction of the appellant Horilal Yadav recorded by the learned Trial Court in CRA No. 178/2015 is legally unsustainable and liable to be set aside.

27. So far as the acquittal of the accused/respondent in Acquittal Appeal No. 618/2019 is concerned, it is apparent from the material available on record that the learned Trial Court has rightly held that the prosecution failed to prove the charges under Sections 302 and 201 of the Indian Penal Code against the accused beyond reasonable doubt.

28. The Hon’ble Apex Court in its latest judgment dated **12.02.2024 (Criminal Appeal No 1162 of 2011)** passed in **Mallappa and Ors. Versus State of Karnataka**, has held in para 36 as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

“(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be

comprehensive--inclusive of all evidence, oral and documentary;

(ii Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

29. The Hon'ble Supreme Court, in its judgment dated 12.02.2024 passed in ***Mallappa*** (*supra*) has reiterated the settled principles governing appeals against acquittal and has held that if two views are possible, the view favourable to the accused must be adopted and that a legally plausible view taken by the Trial Court cannot be interfered with unless the findings suffer from perversity, illegality, or manifest error of law or fact.

30. Applying the aforesaid settled principles to Acquittal Appeal No. 618/2019, and upon a careful scrutiny of the statements of the witnesses as well as the findings recorded by the learned Trial Court, this Court is of the considered opinion that the acquittal of the respondent/accused of the offences punishable under Sections 302 and 201 of the Indian Penal Code is based upon proper and reasonable appreciation of the oral and documentary evidence on record. It is further a well-settled position of law that the scope of interference by the High Court in an appeal against acquittal is limited, and unless the findings of the Trial Court are perverse, manifestly illegal, or wholly unsustainable, the appellate court ought not to disturb the order of acquittal.
31. In Criminal Appeal No. 178/2015 preferred by the appellant Horilal Yadav, this Court finds that the learned Trial Court failed to correctly appreciate and apply the provisions of Sections 107 and 306 of the Indian Penal Code, particularly with regard to the essential requirement of proof of abetment to suicide.
32. Consequently, the findings recorded by the learned Trial Court acquitting the respondent/accused in Acquittal Appeal No. 618/2019 are affirmed and the said acquittal appeal preferred by the complainant/appellant stands **dismissed**.
33. Criminal Appeal No. 178/2015 filed by the appellant Horilal Yadav is **allowed**. The impugned judgment, in so far as it relates to the conviction of the appellant Horilal Yadav, is set aside, and he is

acquitted of the charge under Section 306 of the Indian Penal Code.

34. The appellant Horilal Yadav is reported to be on bail. Keeping in view the provisions of Section 437-A of Cr.P.C. (481 of the B.N.S.S.), the appellant is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

35. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Rajani Dubey)
JUDGE

Sd/-
(Radhakishan Agrawal)
JUDGE