

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.675 OF 2003

State of Maharashtra	)....Appellant
V/s.	
1) Ramchandra Dadaso Ladkat-Patil	)
Age-28 years, Occ.Business, R/o 9-E	)
Navdurg Galli,Vikramnagar,Kolhapur	)
2) Shridhar Vishwanath Ghorpade	)
Age 38 years, Occ. Business	)
R/o 2074, E, Rajarampuri,	)
13 th Lane, Kolhapur	)
3) Janardan Shankarrao Kore	)
Age-41 years, Occ. Business	)
R/o as above	)
4) Atul Madhusudan Ranganekar	)
Age-41 years, Occ. Business	)
R/o. Ranavare Complex, Rajarampuri	)
2 nd Lane, Plot No.5, Kolhapur	).....Respondents

Ms.Pallavi Dabholkar APP for appellant-State.
Mr.Manoj Apagonda Patil for respondent nos.1 to 4.

CORAM : K.R.SHRIRAM,J

DATE : 12.12.2019

ORAL JUDGMENT :-

1. This is an appeal impugning an order and Judgment dated 17.10.2002 passed by the VI Additional Sessions Judge, Kolhapur

acquitting all the accused of charges under Sections under Sections 306 (*Abetment of suicide*), section 384 (*Punishment for extortion*), section 420 (*Cheating and dishonestly inducing delivery of property*), section 323 (*Punishment for voluntarily causing hurt*), read with section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC). After the appeal was filed, there is a noting that the name of accused no.5 has been deleted by an order dated 26.7.2005 passed in Criminal Application No.2308 of 2003.

2. A person by name Sanjay Vasant Rao Jadhav (hereinafter referred to as Sanjay Jadhav) was found dead on 22.5.1998 in a hotel room in Balgare. A suicide note (Exh.49) was found near the dead body. In that note the persons to be contacted was also mentioned.

3. The prosecution case in brief :

(a) The deceased Sanjay Jadhav was working as the Manager of the Baburao G.Maharaj Nagri Pat Sanstha at its branch at Gangavesh, Kolhapur. In the beginning the financial position of the Pat Sanstha was good. However, in the year 1996-97 the financial position of the Pat Sanstha became bad. The agriculturists who had taken loan from the Pat Sanstha did not repay the same as they were

unable to recover their sugarcane bills. At the same time the depositors started withdrawing their amounts leading to a great financial crisis. The Chairman of the Pat Sanstha directed Sanjay Jadhav to collect maximum deposit by paying commission to those who collect deposits. The Chairman Anandrao Patil PW-6 introduced original accused no.5 Allabux Desai to Sanjay Jadhav and asked him to take the help of Allabux in securing deposits. In due course Allabux collected deposits to the tune of Rs.9.5 lakhs and he was paid agreed commission.

(b) In the month of August-1996 Allabux introduced accused no.4 Atul Ranganekar to Sanjay Jadhav. At that time accused no.4 Ranganekar represented to Sanjay Jadhav that his Uncle is an Industrialist at Bombay and is ready to invest one crore in the Pat Sanstha provided he is paid Rs.7 lakhs as commission. Then Allabux-(original accused no.5) Sanjay Jadhav and Ranganekar (accused no.4) went to meet the Chairman at his native place at Konawade, Tal.Bhudargad. After discussion, the Chairman agreed to pay commission of Rs.7 lakhs. Out of these Rs.7 lakhs the Chairman arranged an amount of Rs.4 lakhs and asked Sanjay Jadhav to make arrangement of remaining Rs.3 lakhs. Accordingly, Sanjay Jadhav took loan of Rs.1,50,000/- from private moneylenders and from accused no.2 and paid the amount of balance Rs.3 lakhs. After the

receipt of amount of Rs.7 lakhs the accused no.4 Ranganekar took Sanjay Jadhav to Mumbai to meet his uncle under the pretext of collecting the deposit of Rs.1 crore. The deposit of Rs.1 crore did not materialize. The accused no.4 Ranganekar used to promise Sanjay Jadhav that his uncle would pay the amount within 15 days. Thereafter, during the next 6 months the accused no.4 Ranganekar took Sanjay Jadhav to Bombay 4 to 5 times but returned without getting any amount. When the Chairman Anandrao Patil insisted to return the amount, the accused no.4 Ranganekar paid Rs.4 lakhs to the Chairman and promised to repay Rs.3 lakhs to Sanjay Jadhav within short time but never did. However, for 4 to 5 months thereafter the accused no.4 Ranganekar did not pay the amount of Rs.3 lakhs. In the meantime private moneylenders including accused no.2 Ghorpade were demanding from Sanjay Jadhav to pay back their money. Sanjay Jadhav had collected many deposits from his relatives and they were also compelling Sanjay Jadhav to return their deposits. Thus, Sanjay Jadhav was under great mental tension.

(c) On the night of 17.5.1998 at 11.00 p.m. accused no.1 Ladkat Patil came to the house of Sanjay Jadhav. Accused no.1 asked Sanjay to get ready as they were to go out. At some distance from the house, accused nos.2 & 3 were standing. After about half an hour Sanjay Jadhav left the house along with accused no.1 Ladkat Patil.

Thereafter, accused no.2 Ghorpade and accused no.3 Kore took Sanjay Jadhav to his old house near Kasaba Gate. Accused nos.2 & 3 started demanding their money and asked Sanjay Jadhav to pay the same immediately or they asked him to give possession of his house to them. When Sanjay Jadhav requested for time, accused no.3 Kore started beating Sanjay Jadhav with a belt. Accused nos.2 & 3 forcibly got written by Sanjay Jadhav, a letter Exh.59, to the effect that he has given the possession of his old house to accused nos.2 & 3 along with its key and they will give back its possession to Sanjay Jadhav only after Sanjay Jadhav repays their loan. They also threatened Sanjay Jadhav that he should execute a stamped document to that effect the next morning. Thereafter, they let him go.

(d) At about 1.00 a.m. Sanjay Jadhav returned home. His wife Deeplaxmi PW-4 and his father Vasant PW-10 opened the door. They found Sanjay Jadhav to be scared or frightened. On being asked about the reason Sanjay Jadhav told them that he is required to go to Pune the next morning for some urgent work.

(e) At 5.00 a.m. on 18.5.1998 Sanjay Jadhav left his house and told his wife that he is going to Pune and would return in 2-3 days. The family members waited for 2 days and then they telephoned to the brother-in-law of Sanjay Jadhav who was residing at Pune to enquire whether Sanjay Jadhav was there. The family members of

Sanjay Jadhav learnt that Sanjay Jadhav has not reached Pune. On 22.5.1998 a telephone message was received by Arun Powar, the other brother-in-law of the deceased, residing at Kolhapur, that Sanjay has committed suicide in Amar Hotel, at Bangalore.

4. On 22.5.1998 Arun Ramchandra Powar (PW 3) went to the house of deceased with one Umesh Palkar (not a witness) and informed the family that Umesh Palkar has received a message from Bangalore police about suicide of deceased. On the same night, Arun R.Powar (PW 3) with his friends one Shivajirao Chorge (not a witness), one Kumar Kitturkar (not a witness) and one Milind Potdar (not a witness) left for Bangalore with an ambulance. After reaching Bangalore the body was identified by PW-3. The Police at Bangalore prepared spot panchanama and attached a chit lying near the dead body (Exh.49). On 24.5.1998, after post mortem they returned in the morning along with the dead body of Sanjay Jadhav and body was cremated. It is not disputed that Sanjay Jadhav had consumed poison and committed suicide. Post mortem report and the Chemical Analysis report are on record at Exh.31 and Exh.32, respectively and have been accepted by the defence.

5. On 27.5.1998 one Ajit Kharade (not a witness) but a friend

of deceased went to the house of deceased with copies of letter that was written by Sanjay Jadhav to one Mr.Sanap, Superintendent of Police, Kolhapur and handed over the said letter to Vasantrao D.Jadhav (PW 10) the father of Sanjay Jadhav. Learned APP Ms.Dabholkar and Shri Manoj Patil for respondent nos.1 to 4 state that this letter which is at Exh.48 and a copy at Exh.51 are both proved to be in the handwriting of deceased.

6. The suicide note is at Exh.49 which also has been admitted. Based on this letter at Exh.48 in which names of accused nos.2 to 5 have been mentioned, the prosecution registered a complaint and commenced investigation. Accused no.1 was also roped in as he was a friend of Sanjay Jadhav and on 17.5.1998 in the night at 11.00 P.m. it was accused no.1 who went to the house of Sanjay Jadhav and asked him to go out with him and at that meeting, it is alleged in Exh.48 that accused nos.2 & 3 are alleged to have assaulted Sanjay Jadhav, taken away the keys of his father's self acquired house and also exhorted to write a letter by which Sanjay Jadhav was supposed to have handed over possession of father's self acquired property to be kept as security until he paid the amounts due to accused no.2.

7. After the investigation was over, charge was filed and as

this matter could be decided only by Court of Sessions, the learned Magistrate committed the case to the VIth Additional Sessions Judge, Kolhapur. The trial Court framed the charges for offences punishable under Sections 306 (*Abetment of suicide*), section 384 (*Punishment for extortion*), section 420 (*Cheating and dishonestly inducing delivery of property*), section 323 (*Punishment for voluntarily causing hurt*), read with section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC). All the accused pleaded not guilty and claimed to be tried.

8. The stand of the defence has been total denial.

9. To drive home the case, prosecution led evidence of 13 witnesses viz. PW-1 Govindappa-Police Inspector who carried out the inquest panchanama and spot panchanama in Amar Hotel at Bangalore, PW-2 Mallikarjun More-Panch witness in whose presence the postal receipts found in the suite case of Sanjay Jadhav were attached, PW-3 Arun Powar brother-in-law of Sanjay Jadhav who brought the dead body from Bangalore, PW-4 Deeplaxmi the wife of Sanjay Jadhav, PW-5 Ajit Kharade, a friend of Sanjay Jadhav who produced copy of the letter written to him by Sanjay Jadhav, PW-6 Anandrao Patil- the Chairman of Pathsanstha, PW-7-Tanaji More- the

clerk working in the Patsanstha, PW-8 Ayya Fakir, a panch in whose presence the loan documents in the handwriting of Sanjay Jadhav were attached, PW-9 Vijay Patil, a panch witness in whose presence accused no.2 Ghorpade made voluntary statement and produced the keys, belt and chit got written from Sanjay Jadhav, PW-10 Vasant Rao Jadhav- the father of Sanjay Jadhav, PW-11 Vishwanath Ranganekar from whom accused no.4 had assured to collect the deposit of Rs.1 crore, PW-12 Salimkhan- Handwriting expert and PW-13 Narendra Waghmare- the Police Inspector who investigated into the case and filed charge-sheet.

10. Learned APP, in fairness, as an officer of the Court, submitted that in the testimony of the witnesses, no case has been spelt out to prove the charges levelled and the entire case of the prosecution hinges on the contents of Exh.48. Learned APP submitted that in Exh.49 there is a specific reference to the letter at Exh.48 and therefore, it is Exh.48 which is important. Ms.Dabholkar submitted that in Exh.48 deceased has stated accused nos.2 & 3 also threatened to kill him if he would not pay and therefore, that also could be considered as abetment to commit suicide. I am afraid I cannot agree with the learned APP because, that, by no stretch of imagination could be taken as an instigation to commit suicide as held in a rather similar

matter ¹*Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh* and it is not the prosecution's case that the accused killed Sanjay Jadhav. It was submitted by learned APP that the contents of Exh.48 make it clear that respondents, who are the accused, are responsible for suicide by Sanjay Jadhav. It was submitted that by their conduct and utterances they have abetted the crime as such they were rightly charged for the offences punishable under Section 306 read with section 34 of IPC. By considering Exh.48, I am of the view that the present case does not present any picture of abetment allegedly committed by the accused. Suicide committed by Sanjay Jadhav cannot be said to be the result of any action on part of accused nor can it be said that commission of suicide by Sanjay Jadhav was the only course open to him due to action of the accused. There was no goading or solicitation or insinuation by any of the accused to Sanjay Jadhav to commit suicide.

11. I have been provided English translation of Exh.48 by learned APP. Advocate Mr.Patil having considered the same, states that the translation is rather accurate barring some typographical errors. I have considered Exh.48 with the assistance of the learned APP and Mr.Patil.

¹ (2002) 5 SCC 371

12. Let us deal with each of the charges separately. The first one is section 306 and the same reads as under :-

“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”.

13. Sections 107 and 108 of the IPC read as under :-

“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 wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing 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.

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

14. Learned APP submitted that here is a case of abetment by instigation. Therefore, when is a person said to instigate the other ? The word ‘instigate’ literally means to goad, or urge, forward, or to provoke, incite, urge or encourage to do an untoward act which person in normal circumstances, would not have. It is well settled that in order to amount to abetment, there must be *mens rea*. To accuse a person of having instigated another to commit suicide would require the prosecution to prove that the accused intended that deceased should go and commit suicide. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted i.e., suicide in this case. In order to constitute ‘abetment by instigation’ there must be a direct incitement to do the culpable act. In my view, offence for abetment must naturally confirm to the definition as given in section 107, i.e., there must be instigation or intentional assistance given to commit suicide. When is an accused stated to have abetted in the

context of abetment or suicide which is punishable under Section 306 of IPC has been often discussed by various High Courts and the Supreme Court of India. The following are some of those judgments :-

(a) In ²*Manish Kumar Sharma Vs. State of Rajasthan*, the prosecution story was that the accused Manish Kumar had advanced some money to the victim Kusum Devi and that there were frequent quarrels between the accused and Kusum Devi. Kusum Devi started living a life full of tension, which was accentuated on account of persistent demands made by the accused in respect of money. On the fateful day, the accused had, allegedly, demanded his money back and uttered the words " रंडी तू मरती क्यों नहीं है ! मेरे साथ चल नहीं तो तूझे जानसे मार दूंगा !" whereupon Kusum Devi committed suicide by consuming poison. After carefully considering the legal position and the concept of 'abetment', Rajasthan High Court held that, it could not be said that accused wanted, or intended, Kusum Devi to commit suicide. There was no evidence to suggest or indicate that the accused knew or had reason to believe that Kusum Devi would commit suicide.

2 (1995 Criminal Law Journal 3066)

(b) In³ *Vedprakash Bhajji Vs. State of Madhya Pradesh* , the facts of the prosecution case were that the accused Vedprakash and others had advanced a loan to the deceased Ramesh Kumar and on the day prior to the incident, the accused had filthily abused Ramesh Kumar and had demanded an amount of Rs. 30,000/- from him, threatening that otherwise he would be killed. Again, in the night of the same day, demand was made from Ramesh Kumar for the repayment of the loan advanced. Ramesh Kumar was abused and threatened repeatedly. On the next day, Ramesh Kumar wanted to lodge a report in Police Station against the accused person; but instead committed suicide by consuming poison. In the suicide note left by him, he blamed the accused persons, who were charged of an offence punishable under [Section 306](#) of the IPC and were prosecuted. The Madhya Pradesh High Court, after considering the concept of 'abetment' in the light of certain previously decided cases, quashed the prosecution, holding that no case of abetting the commission of suicide had been made out.

(c) In *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh* (supra) the Supreme Court of India extensively dealt with the concept of 'abetment' in the context of the offence punishable under [Section 306](#) of the Indian Penal Code. In that case, the allegation

3 (1995 Criminal Law Journal 893)

against the accused-appellant was that he had abetted the commission of suicide of his sister's husband-one Chander Bhushan. The facts of that case were that there were matrimonial disputes between Neelam-sister of the appellant/accused- and her husband and that, in connection with these disputes, the appellant had allegedly threatened and abused the said 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, 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. While allowing the appeal, the Supreme Court, inter alia, observed in paragraph-13 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."

(d) The Kerala High Court in ⁴*Cyriac, S/o Devassia and another Vs. Sub-Inspector of Police, Kaduthuruthy and another*, dealt with the concept of abetment to commit suicide extensively after referring to a number of pronouncements including the decisions of the Supreme Court of India. The facts of that case were that the deceased Joseph owed Rs. 200/- to one of the accused and was not able to pay back the money. The accused had called Joseph to the bakery of accused, wrongfully restrained him and abused him in public. One of the accused also beat Joseph on his face. Joseph felt insulted. On reaching home, he divulged his embarrassment to his wife and on the same night, committed suicide by consuming poison. According to the prosecution, it was because of the words uttered by the accused persons and the manner in which the deceased was dealt with by them in public, that the deceased had committed suicide. The accused were being prosecuted for an offence punishable under section 306 of the Indian Penal Code and had approached the Kerala High Court for quashing the proceedings initiated against them.

The Learned Single Judge ultimately summarized the legal position as follows :

"17. From the discussion already made by me, I hold as follows : The act or conduct of the accused, however,

4 (2005 Criminal law Journal 4322)

insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Even if the words uttered by the accused or his conduct in public are sufficient to demean or humiliate the deceased and even to drive him to suicide, such acts will not amount to instigation or abetment of suicide, unless it is established that the accused intended by his acts, consequence of a suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide.

18. An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in [Section 306 IPC](#). In short, it is not what the deceased 'felt', but what the accused 'intended' by his act which is more important in this context."

(e) In ⁵***Madan Mohan vs. State of Gujarat*** the appellant before the Supreme Court was facing prosecution in respect of the offences punishable including under [Section 306](#) of the IPC. The prosecution against him had been initiated on the basis of the FIR lodged by one Harshidaben, widow of Deepakbhai Joshi. The substance of allegation against the accused was that her husband Deepakbhai was working as a driver in Ahmedabad Bharat Sanchar Nigam Ltd., in the Microwave Project Department. He had undergone

5 (2010) 8 Supreme Court Cases 628

bypass surgery and was advised by the doctor to avoid lifting heavy weights. The accused - Madan Mohan Singh, who was the superior of Deepakbhai, used to make Deepakbhai run his private errands and had been harassing him. Though Madan Mohan Singh was transferred, he kept on making Deepakbhai run errands. Madan Mohan Singh was then re-transferred to the Microwave Project department. On the very first day, he told Deepakbhai to keep the keys of the vehicle on the table. Deepakbhai however, did not listen to him on account of which Madan Mohan Singh was angry and had threatened him of suspension. He had also threatened Deepakbhai that if he did not listen to him, he would create difficulties for him. Madan Mohan Singh had told Deepakbhai, as to how he was still alive, inspite of the insults. On 21.2.2008, Deepakbhai left his house as usual, but did not return in the evening. A missing report was lodged with the police. Ultimately, Deepakbhai's dead body was found lying in a vehicle. His wife Harshidaben then lodged a report with the police, alleging that Deepakbhai had been harassed by Madan Mohan Singh and that he had been insulted in front of the staff several times and because of that, Deepakbhai was depressed and had committed suicide. A suicide note was allegedly left by Deepakbhai, blaming Madan Mohan Singh for his acts and stating that he was committing suicide due to his functioning style. Madan Mohan Singh approached

the High Court at Gujarat and later the Supreme Court of India for getting the prosecution against him quashed. The matter was extensively examined by the Supreme Court of India, in the light of various contentions raised before it, with respect to the applicability of the provisions of [Section 306](#) of IPC. It was observed in paragraph-12 as under :

"In order to bring out an offence under [Section 306](#) IPC specific abetment as contemplated by [Section 107](#) IPC 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 this particular offence under [Section 306](#) IPC."

(f) A learned single Judge of this Court in ⁶***Shivaji Shitole & Ors. Vs. State of Maharashtra & Anr.*** has culled the legal position emerging from the various judgments as to what would amount to abetment to commit suicide. Para-19 of the said judgment reads as under :-

"Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain-or at least quite likely-to commit suicide. Unless that the victim should

6 2012(3) Bom. CR (CRI) 534

commit suicide, is either intended, or can be reasonably foreseen and expected a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as "go and die", in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.

15. In fairness, learned APP stated that the testimony of none of the witnesses point any finger towards the accused having abetted Sanjay Jadhav to commit suicide and the entire case of prosecution hinges on Exh.48. I am afraid Exh.48 also does not meet the ingredients required for abetment of suicide. In the entire letter, Sanjay Jadhav does not even state that the accused told him to go and commit suicide. I would add accused would not have wanted him to commit suicide because if he died, accused would not be able to recover the money lent by them to him. In the letter, Sanjay Jadhav also does not state that he told the accused if they continued with the harassment, he would end up his life. In fact, even when the accused, i.e., only accused nos.1, 2 & 3 met Sanjay Jadhav last on 17.5.1998, Sanjay Jadhav had no intention to commit suicide. Sanjay Jadhav in Exh.48 states that after leaving the house with the bag, he went straight to the bus stand and instead of boarding a bus for Pune,

boarded a bus for Bangalore, while travelling, he decided firmly that there was no point in arguing or picking up quarrel with Kore or Ghorpade who are accused no.3 and 2 respectively, and he felt it was very difficult to live and everyday accused nos.2 & 3 would keep troubling him by demanding money. Sanjay Jadhav also states that he had not told anybody in the family about his troubles and because he was unable to pay accused no.2/accused no.3 and the ill-treatment by accused no.4 and accused no.5 (what ill-treatment is not stated anywhere in the letter) he has no option but to commit suicide. Sanjay Jadhav also felt that his decision to commit suicide was not right but it was better to end up his life instead of messing up with Kore, Ghorpade, Desai and Rangnekar. This decision, in fact from the contents of the letter is clear, has been taken after Sanjay Jadhav boarded the bus to Bangalore. The reason why Sanjay Jadhav committed suicide is because he was unable to face pressure of having to return money and therefore, by no stretch of imagination can it be stated that the accused intended that Sanjay Jadhav should commit suicide. Therefore, the charge under Section 306 of IPC cannot stick.

16. So far as section 384 and section 323 are concerned, they can be dealt with together. Section 384 reads as under :-

“384. Wrongful confinement to extort confession, or compel restoration of property- Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine”.

Extortion is defined under Section 383 and it reads as under :-

“383. Extortion – Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”

Section 323 reads as under :-

323. Punishment for voluntarily causing hurt – Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both”.

17. The entire basis of prosecution to press the charge under section 384 and Section 323 is Exh.48 and Exh.59. In Exh.48 of course, there is a reference to a letter which is similar to Exh.59. Whether Exh.59 has been proved is the main question here. The panch witness Malaikarjun Khandu More PW-2 through whom the prosecution tried to prove recovery of the letter at Exh.59 and black belt with which accused was alleged to have assaulted on 17.5.1998, turned hostile.

18. PW-2 Malaikarjun K.More has stated that he does not know what sort of panchanama was prepared and the police just obtained his signature on the panchanama. Though he admits panchanama Exh.43 bears his signature, he, however, denies its contents are correct. He also states, in his presence, no postal receipts were produced. He also states that the seizure panchanama was not prepared in his presence. He also states on 29.5.1998 police obtained his signature on other panchanama Exh.44 and Exh.45. Exh.44 is the panchanama in which a self incriminating statement by accused no.2 has been recorded. For this panchanama PW-2 states the police only obtained his signature, he does not know its contents and its contents are not correct. PW-2 also states that accused no.2 did not make any

voluntary statement in his presence when the memorandum was prepared. As regards Exh.45 which is the panchanama for recovery of the chit (Exh.59) and two keys and the waist belt which was hidden in an Ambassador car, also PW-2 states that its contents are not correct. He also states that it is not true to say that accused no.2 led the panch witnesses and police to Rajarampuri and produced one chit written by the deceased and two belts which were hidden in the Ambassador car. Though he admits that Exh.44 & Exh.45 also bear his signature, he denies that the articles before the Court were attached in his presence. The other panch witness was not called to give evidence. Therefore, prosecution's case to press on the charge under Sections 323 and 384 that hinges on Exh.59 has to fail.

19. As regards section 420 of the IPC is concerned, learned APP submitted that we have to again look into Exh.48. The only allegation, so to say from Exh.48 could be found only against Ranganekar, accused no.4. In Exh.48 Sanjay Jadhav states that he had paid Rs.3,00,000/- to accused no.4 as part of Rs.7,00,000/- commission in advance on the basis of the promise made by accused no.4 to help to get deposit of Rs.1 crore from his Uncle. According to Sanjay Jadhav, because that Rs.1 crore was never brought in, Rangnekar was to return Rs.3,00,000/- which he failed and neglected

to return. According to Sanjay Jadhav he had borrowed Rs.1,50,000/- from money lenders of Kolhapur promising to pay within few days and balance Rs.1,50,000/- was borrowed by original accused no.5 in the name of Sanjay Jadhav from accused no.2 and handed over to accused no.4. First of all, there is no evidence to show that these amounts were borrowed from anybody. There is no evidence to show when it was borrowed and in what form.

20. Moreover, sections 415 and section 420 of IPC read as under :-

“415. Cheating- *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.*

420. Cheating and dishonestly inducing delivery of property- *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

Reading these provisions together, the essential ingredients of Section 420 of IPC are (a) cheating; a person must commit the offence of cheating under Section 415; (b) the person cheated must be dishonestly induced to; (i) deliver property to any person; or (ii) make, alter or destroy a valuable security or anything signed or sealed and capable of being converted into a valuable security; and (iii) *mens rea* of the accused at the time of making the inducement.

Therefore, it is clear that at the time a person is induced to part with any property, accused should have an intention to cheat the person who parts with the property. Accused by deceiving any person fraudulently or dishonestly should induce the person to part with any property. Therefore the mens rea relates to the time accused makes the inducement. The Apex Court in its most recent judgment in the matter of ⁷**Prof. R. K. Vijayasarthey & Anr Vs. Sudha Seetharam & Anr.** has laid down this preposition. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. (⁸**The State of Kerala Vs. A. Pareed Pillai & Anr.**)

7 2019 SCC online SC 208

8 AIR 1973 Supreme Court 326

21. From letter at Exh.48 I am unable to come to a conclusion that accused no.4 could be stated to have committed the offence of cheating by making a promise of getting deposit of Rs.1 crore with no intention of getting that deposit or fraudulently inducing Sanjay Jadhav to part with Rs.3,00,000/- as commission. I have to also note that in Exh.48, Sanjay Jadhav has stated that accused no.4 Rangnekar returned Rs.4,00,000/- to the Chairman of the Credit Society with whom deceased was working. Therefore, charge under Section 420 also has to fail.

22. As regards accused no.1 who was a friend of Sanjay Jadhav as stated by PW-10 and PW-4 and others, there is no allegation to speak of in Exh.48. Therefore, all charges against accused no.1 also has to fail.

23. It is settled law that onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. There are many inconsistencies and omissions mentioned in the impugned judgment which for the sake of brevity, I am not reproducing.

24. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court observed that prosecution had failed to prove its case.

25. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

26. Appeal dismissed.

(K.R.SHRIRAM,J)