

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.470 OF 2023
WITH
INTERIM APPLICATION NO.3309 OF 2023
IN
CRIMINAL APPEAL NO.470 OF 2023**

1. Santosh Sakham Kamble)
Age: 45 years, Occ: Service)
R/at: Palu (Buddhawadi), Tal: Lanja)
Dist. Ratanagiri)
Presently lodged in Ratnagiri Prison,)
Ratnagiri)
2. Milind Devaji Kamble)
Age: 47 years, Occ: Service)
R/at: Palu (Buddhawadi), Tal: Lanja)
Dist. Ratanagiri)
Presently lodged in Ratnagiri Prison,)
Ratnagiri) ...Appellants

Versus

The State of Maharashtra)
at the instance of Inspector of Police,)
Lanja Police Station, Tal: Lanja)
Dist. Ratnagiri) ...Respondent

Mr. Prashant Pawar a/w Mr. Amit Diwale for the Appellants.
Mr. A. R. Patil, APP for Respondent-State.

CORAM : NITIN B. SURYAWANSHI, J.

DATED : 28TH NOVEMBER, 2023

JUDGMENT:

1. This Appeal takes exception to the judgment and order of

conviction passed by learned Additional Sessions Judge, Ratnagiri in Sessions Case No. 40 of 2021 thereby convicting Appellants/Original Accused u/s. 306 r/w. 34 of IPC and sentencing them to suffer rigorous imprisonment of four years and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment of three months and u/s. 506 r/w. 34 of IPC sentencing them to suffer rigorous imprisonment of one year and to a pay fine of Rs.2,000/- and in default to undergo simple imprisonment of one month.

2. Prosecution case is that, Bhikaji Kamble was residing at Baudhawadi, Palu Taluka-Lanja, District-Ratnagiri. He used to frequently visit house of one lady in Baudhawadi. Due to that both the accused who are resident of the same village used to doubt that Bhikaji had illicit relations with said lady. Accused No. 2- Milind abused Bhikaji and threatened to kill him in the month of January, 2021. Thereafter, on 07/04/2021 both accused assaulted Bhikaji. On 09/04/2021 both accused on suspicion of illicit relations of Bhikaji with said lady, threatened him not to stay in the village, else he will be killed. Because of constant harassment on the part of accused, Bhikaji committed suicide by hanging himself. A suicide note was found in the pocket of Bhikaji.

3. Vijay, brother of deceased-Bhikaji lodged FIR which was

registered at C.R. No. 39 of 2021 u/s. 306, 506 r/w. 34 of IPC. After completion of investigation, charge-sheet was filed and case was committed to the Sessions Court. Both Accused were charged for the offence punishable u/s. 306, 506 r/w. 34 of IPC.

4. In support of its case, the prosecution has examined 13 witnesses. Defence of the accused is that they were falsely implicated by P.W. No. 6-Police Patil, as he was under impression that Ramesh Wadekar lodged atrocity case against his brothers - Shashikant and Sandeep and for that accused No. 2 -Milind helped him. Deceased-Bhikaji was fed up of his married life and since deceased was addicted to liquor, he has committed suicide. There was no instigation on the part of accused. A forged suicide note was used to implicate accused persons in the crime. After recording evidence and hearing parties, Trial Court has convicted the accused as aforesaid, hence the present Appeal.

5. Learned Advocate for Appellants assailed the conviction submitting that there is no evidence on record to show that accused have abetted the suicide of Bhikaji. Admittedly, Bhikaji was illiterate and was not knowing reading or writing. P.W. No. 6-Police Patil has admitted that suicide note is in his handwriting, but he has not disclosed the same to the investigating agency for a period of more

than two months. Hence, the Trial Court has erred in relying on the evidence of PW-6 and the suicide note.

6. He submitted that there is no evidence to prove that any witnesses have seen accused persons slapping or harassing deceased-Bhikaji. There is no evidence to show that accused aided, abetted or instigated deceased-Bhikaji to commit suicide. In support of the submissions, he has relied on following judgments.

- (a) *Mahendra Singh and Another vs. State of MP*¹
- (b) *Sanju alias Sanjay Singh Sengar vs. State of MP*²
- (c) *Amalendu Pal alias Jhantu vs. State of West Bengal*³
- (d) *M. Arjunan vs. State* ⁴
- (e) *Bhagwan Das vs. Kartar Singh and Others*⁵
- (f) *Vithal vs. State of Maharashtra*⁶
- (g) *Netai Dutta vs. State of W.B*⁷
- (h) *Gurcharan Singh vs. State of Panjab*⁸
- (i) *Gulab s/o. Yohan Pandi vs. State of Maharashtra & Anr*⁹

7. Per contra, learned APP supported impugned judgment and order of conviction. He submits that four incidents dated 07/01/2021, 07/04/2021, 08/04/2021 and 09/04/2021 of harassment of deceased by Accused are proved by P.W. Nos. 2, 3, 4, 6 and 7. Because of constant harassment by Accused persons, deceased - Bhikaji has

1 1995 Supp (3) SCC 731

2 (2002) 5 SCC 371

3 (2010) 1 SCC 707

4 (2019) 3 SCC 315

5 (2007) 11 SCC 205

6 2023 SCC Online Bom 432

7 (2005) 2 SCC 659

8 (2020) 10 SCC 200

9 Criminal Writ Petition No. 164 of 2018

committed suicide. He submitted that there is sufficient evidence on record showing instigation and incitement at the instance of the accused and the cumulative effect of acts of accused has led to the commission of the suicide by the deceased-Bhikaji.

8. He distinguished the authorities relied upon by accused and has placed reliance on some of the paragraphs of the authorities relied upon by the accused. In support of his submissions, learned APP has placed reliance on the ***M. Arjunan (supra) and Ude Singh and Others vs. State of Haryana***¹⁰

9. I have duly considered rival submissions and perused records and citations relied upon by both parties. For considering rival submissions, it is necessary to appreciate the evidence led by prosecution.

10. P.W. No. 1-Ashish Kamble has proved spot panchanama (Exh-26). He has stated that a chit was found in Bhikaji's track pant's pocket. Thumb impression of deceased in blue ink was there on the said chit. He has admitted that Bhikaji was illiterate and he was not able to read and write. The chit was not written by Bhikaji and he was not in a position to state as to who has written the said chit.

11. P.W. No. 2-Vijay is brother of deceased-Bhikaji. He has lodged FIR (Exh-31) on the basis of which Crime No. 39 of 2021 was

¹⁰ (2019) 17 SCC 101

registered. He also admitted that Bhikaji was not able to read and write. He has also stated that on suspicion both accused had beaten Bhikaji on 07/04/2021 and Bhikaji had lodged a complaint to that effect. The said fact was informed to him by Bharat Kamble, PW. No. 3.

In cross examination, he has admitted that Bhikaji used to do labour work. He admitted that there are two groups of his community in village. Bhikaji was member of Akhil Baudhajan Gramin Vikas Mandal. He is also a member of said Mandal. He has admitted that at the time of lodging FIR against brothers of Police Patil accused had helped complainant - Ramesh Wadekar. In next breath, he has stated that he does not know about it.

12. P.W. No. 3-Bharat Kamble has deposed that on 07/04/2021 accused-Milind called him and informed him that they have caught Bhikaji, therefore he should accompany them. Accordingly, he alongwith Siddharth Kamble and Ramesh Kamble accompanied accused-Milind. He brought them near the house of Chandrakant Kamble at Baudhawadi. Accused-Santosh and Bhikaji were there. Santosh told them that Bhikaji has accepted everything and since he had committed mistake, he had slapped him twice. Accordingly, Bharat asked whether whatever Santosh is saying is correct? Bhikaji

said, yes. They all gave understanding to Bhikaji. He then informed the incident on telephone to P.W. No. 2-Vijay. On 09/04/2021 at about 7.45PM, one Namdeo Kamble called him and told him that Bhikya has deceived, he should come. He accordingly went there. The door of Bhikaji's house was open. In the torch light they saw that Bhikaji was hanging. He accordingly informed Police Patil-Jaisingh and Chairman of Tanta Mukti Samiti-Suresh Gade. He brought them to spot. Thereafter, Police Patil informed the Police Station. Police came. He showed spot of incident to Police. Accordingly, Spot Pachanama (Exh-26) was conducted. A chit was found in the pant's pocket of deceased.

In cross-examination, he deposed that because of the chit found in the pocket of deceased-Bhikaji, they formed an opinion that accused are responsible for the death of Bhikaji. He also admitted that Bhikaji was illiterate and was not able to read and write.

13. P.W. No. 4 - Saurabh Kamble states that incident dated 08/04/2021 took place at 7.30 in the evening when he alongwith Suhas Kamble were near Panchashil Budhavihar. They heard loud noise of quarrel from the house of Bhikaji. They both went there. Bhikaj was sitting on the floor in courtyard. Accused No. 1-Santosh was sitting in a chair and Accused No. 2-Milind was standing next to

him. Accused-Santosh was asking Bhikaji that they told him to leave and why he has not left? At that time Bhikaji told that he does not have money and he will leave tomorrow. He told Bhikaji that if Bhikaji is so desperate then he should sleep with his own wife. If he does not leave next day then, they will see to it.

In cross examination, he has admitted that Bhikaji was addicted to liquor. He said that he is not aware about Bhikaji's habit of borrowing money and not re-paying the same.

14. P.W. No. 5-Namdev Kamble is nephew of deceased Bhikaji. He has seen Bhikaji in hanging condition. He has admitted that Bhikaji was addicted to liquor and even he is in habit of consuming liquor

15. P.W. No. 6 - Jaisingh Chavan is Police Patil since 2009. He deposed that on 09/04/2021 at 11.30AM Bhikaji came to his house and complained to him that accused - Milind and Santosh are harassing him. They are asking him to leave village otherwise they will kill him. He asked Bhikaji to go to Lanja Police Station and lodge a complaint. At that time Bhikaji told him that he is not able to read and write and requested him to write a complaint. He, therefore, wrote a complaint as narrated by Bhikaji on paper and obtained Bhikaji's thumb impression on the said complaint. After writing complaint he read it over to Bhikaji and Bhikaji confirmed it. Bhikaji

then took away the complaint (Exh-29) written by him. On the same night he learnt that Bhikaji has committed suicide. He went to house of Bhikaji and saw the dead body. He informed Lanja Police about suicide Accordingly, Police came. Police found chit written by him in Bhikaji's pant. At that time, he was frightened and therefore he did not disclose to police that chit is in his hand writing. Thereafter, police recorded his statement on 14/06/2021, at that time, he disclosed the said fact. Because of harassment of accused, Bhikaji committed suicide.

In cross examination, he admitted that there are two societies i.e. Akhil Baudhjan Vikas Mandal and Baudhjan Vikas Mandal, Palu, Mumbai in his village. He denied that before arrival of police on spot he handled the dead body. He admitted that he did not disclose the police that chit is in his handwriting. For two and half months after the incident he was in the village. He accepted that it is his duty to help the police. He denied that he planted chit in the pocket of Bhikaji.

16. P.W. No. 7-Ramesh Kamble is resident of Palu, Baudhawadi. He is also Panch to the inquest panchanama (Exh-42). He has stated that on 07/01/2021 there was fair in the village. While he was in the fair accused-Milind called him and he alongwith Bharat and Siddharth

went near house of Chandrakant Kamble. Accused-Santosh and Bhikaji were present. Accused-Santosh told him that twice he slapped Bhikaji. Santosh also told him that since Bhikaji committed crime, he slapped him. He then asked Bhikaji, whether Santosh slapped him and Bhikaji said, yes.

In cross examination, he admitted that Bhikaji's family stayed at Mumbai and Bhikaji was addicted to liquor.

17. P.W. No. 8 is a lady with whom, according to accused, Bhikaji was having illicit relationship. She has deposed that she was acquainted with Bhikaji. His wife and son used to stay at Mumbai. Sometime she used to give tiffin to Bhikaji. She knows both Accused. Both accused used to harass her and say to her that she has illicit relationship with Bhikaji. On 07/04/2021 at night when she was sleeping, she came out hearing the quarrel. She switched on the outside light. Both accused were beating Bhikaji with hands. She got frightened and went inside the house. Both accused came near her house and threatened her. She opened the door and shouted, then accused left. On 08/04/2021, in the evening while she was standing in courtyard, both accused threatened Bhikaji that he should not be seen in the village. Thereafter, both accused came to her and also threatened her. On. 09/04/2021 in night Bhikaji came to her house

and took tiffin from her and went home. Thereafter, accused-Milind came to her and threatened her.

In her cross examination, she has admitted that Pravin Khanvilkar is her husband and denied that he has deserted her.

18. P.W. Nos. 9 to 12 are the police witnesses and P.W. 13 is medical officer, who has conducted post mortem.

19. Upon careful scrutiny of the evidence on record, it is clear that Bhikaji was an illiterate person and was not able to read and write. Chit (Exh-29), found in his pant's pocket is in handwriting of PW-6 Police Patil, who has claimed that he wrote the chit (Exh-29) at the instance of Bhikaji. The version of PW-6 is not believable, in view of the fact that if Bhikaji had complained about harassment by accused persons to PW-6 and PW-6 had written the chit (Exh-29), then PW-6 would have disclosed the said fact to police, at the first opportunity, when the police arrived at the spot. His explanation that he was frightened, is not acceptable. PW-6 is working as Police Patil since 2009 and, therefore, he has sufficient experience of the said post. Admittedly, it is his duty to help police and he has informed the police about suicidal death of Bhikaji. He was present when police arrived on the spot. At the time of recovery of chit (Exh-29) in his presence, PW-6 did not disclose that the chit (Exh-29) is in his

handwriting. In spite of he being present in the village for more than two months after the incident, he did not disclose the said fact to the police. These admitted facts on record cast serious doubt about the veracity of PW-6 and the authenticity of the chit (Exh-29).

20. In the statement recorded after more than two months of the incident, PW-6 has, for the first time, disclosed that the chit (Exh-29) is in his handwriting. It is settled position of law that, *"delay in recording statement of witness creates doubt about credibility of the witness, if delay is not explained"*. (Vide - **"Harbeer Singh V/s Sheeshpal"** reported in **AIR (2016) SCC 4985**). In this case, PW-6 is not a layman, but he is Police Patil of a village and, therefore, credibility of PW-6 is doubtful and he is unreliable witness.

21. Defense has brought on record the fact that PW-6 had reason to implicate accused persons as he was under impression that Ramesh Wadkar had lodged atrocity case against his two brothers and accused No.2 had helped Ramesh Wadkar in lodging the case. Therefore, there is every possibility that PW-6 has falsely implicated the accused persons, by planting the said chit (Exh-29).

22. The Trial Court has erred in placing reliance on the testimony of PW-6 and the chit (Exh-29) while convicting the accused.

23. By relying on the four incidents dated 07/01/2021, 07/04/2021,

08/04/2021 and 09/04/2021, the Trial Court has held that accused persons were constantly harassing the deceased, who was left with no other alternative but to commit suicide.

24. The word “*instigate*” is explained in **Sanju** (*supra*), as incitement or urging to do some drastic or unadvisable action or to stimulate or incite. It is further held that *mens rea* is a necessary concomitant of instigation.

25. In **Amalendu** (*supra*), it is held that -

"Before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. (Para 12)

In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (Para 13)"

26. In **M. Arjunan (supra)**, it is held in paragraph 7 that -

"7. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C."

Applying aforesaid ratio to the facts of the present case, even if the four incidents, as alleged by the prosecution are accepted to be true, they are not sufficient to prove instigation or abetment by accused to the deceased. It cannot be said that because of the 4 incidents Bhikaji was left with no other alternative but to commit suicide. Both the accused are cousins of Bhikaji and none of the witness has actually seen the accused beating Bhikaji. The four incidents as alleged by the prosecution, are not sufficient to prove that accused abetted or instigated Bhikaji to commit suicide.

27. Even if case of the prosecution, that accused gave threats to Bhikaji, is accepted, from the nature of alleged threats given by accused, it is clear that intention of accused was that Bhikaji should leave the village. Thus, the necessary *mens rea* to prove offence of abetment under section 107 of the IPC is absent in the present case.

There is no evidence on record that accused abetted or instigated Bhikaji to commit suicide. The prosecution has utterly failed to prove that suicide of Bhikaji is result of abetment or instigation by accused and the accused are directly involved in commission of suicide by Bhikaji.

28. It has come on record that Bhikaji was addicted to liquor and his family was staying away from him at Mumbai and he was staying in village-Palu, Baudhawadi. Therefore, the defence appears to be probable that being frustrated with said situation, Bhikaji committed suicide.

29. Learned APP has strongly relied on the observation in **M. Arjunan (supra)** particularly paragraph no. 7 as noted supra. The instances of abetment specified u/s. 107 of IPC are totally absent in the present case.

30. By placing strong reliance on paragraphs 15, 16, 16.1 and 16.2 of **Ude Singh and others (supra)**, learned APP argued that cumulative effect of constant harassment on the part of accused in proximate time has resulted into commission of suicide by Bhikaji. In **Ude Singh (supra)** it is held:

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide,

particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of

mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observed that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is not specific theorem or yardstick to estimate or assess the same."

31. In the present case, even if prosecution evidence is accepted as it is, it cannot be said that accused, by their acts and by their continuous course of conduct, created a situation which led Bhikaji perceiving no other option except to commit suicide. As held supra, the only intention that can be attributed to the accused while giving threats to Bhikaji can be that Bhikaji should leave the village.

32. In this view of the matter, *mens rea* which is a necessary

concomitant of instigation on the part of accused in abetting suicide of Bhikaji is totally absent in the present case. Hence, the above ratio is of not help to the prosecution.

33. The Trial Court has wrongly appreciated evidence on record and has erred in relying on testimony of PW-6, who is not a reliable witness. The Trial Court has failed to appreciate the true purport and meaning of abetment and instigation. Trial Court while recording the conviction has misread and misconstrued the rulings cited before it. The Trial Court has failed to consider the fact that there is no dependable evidence on record for convicting the accused under section 306 of the IPC. The impugned judgment of conviction is, therefore, unsustainable in law and facts of the case.

34. In the result, following order:

- (a) Appeal No. 470 of 2023 is allowed.
- (b) Impugned judgment and order dated 13/03/2023 passed by learned Additional Sessions Judge, Ratnagiri in Sessions Case No. 40 of 2021 thereby convicting the Appellants u/s. 306 and 506 r/w. 34 of IPC is hereby quashed and set aside.
- (c) Applicant No. 1- Santosh Sakharam Kamble and Applicant No. 2 - Milind Devaji Kamble are acquitted of all the charges.

(d) Applicant No. 1- Santosh Sakharam Kamble and Applicant No. 2 - Milind Devaji Kamble be released forthwith, if not required in any other case.

(e) Both the Applicants shall execute personal bond of Rs.15,000/- each with one or more sureties in the like amount, in terms of Section 437-A of the Code of Criminal Procedure.

34. The Interim Application also stands disposed of.

(NITIN B. SURYAWANSHI, J.)