



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 488 OF 2005

01. Gulab s/o Sukhlal Borse,
Age – 45 years, Occ – at present Nil,
R/o. Shramsafalya Graha Nirman
Sanstha, Walwadi, Dhule.
 02. Sanjay s/o Sukhlal Borse
Age – 36 years, Occ – Medical Practitioner,
R/o. Amrali, Tal- Sindhkheda,
Dist – Dhule.
 03. Vishram s/o Pitambar Borse,
Age – 70 years, Occ – Agril,
R/o Amrali, Tal – Sindhkheda,
Dist – Dhule.
- ... Appellants

Versus

The State of Maharashtra

... Respondent

**WITH
CRIMINAL REVISION APPLICATION NO. 283 OF 2005**

Ratnamala w/o Suresh Borse
Age : 49 years, Occ : Household,
R/o Sahakar Nagar, Savedi,
Ahmednagar.

... Petitioner
[orig. complainant]

versus

1. Shivaji s/o Pandit Jadhav
Age : 38 years, Occ : Agri.,
R/o Borsenagar, Dhule,
Dist. Dhule.
**[Cri. Revision dismissed as
against respondent no.1 as
per order dated 29.01.2013]**

2. Dnyaneshwar Sukhlal Borse
Age : 40 years, Occ : Agri.,
R/o Karkampurla, Tq. Sindhkhed,
Dist. Jalgaon.

3. Sanjay Sukhlal Borse
Age : 35 years, Occ : Agri.,
R/o Amrali, Tq. Sindhkhed,
Dist. Dhule.
**[Respondent no.3 deleted as per
order dated 24.04.2006]**

Sukhlal Pitambar Borse,
Age – 76 years, Occu : Agri.,
R/o. Amrali, Tq. Sindhkhed,
Dist. Dhule

**[Orig Accused No.2 added as
per order dated 24.04.2006]**

4. Rajendra Vishram Borse
Age : 42 years, Occ : Agri.,
R/o Shivajinagar, Tq. Wada,
Dist. Thane.

5. Sambhaji Vishram Borse
Age : 32 years, Occ : Agri.,
R/o Dolkhan, Tq. Shahpur,
Dist. Thane.
**[Revision Application is dismissed
as against respondent nos. 5 and 7
vide order dated 27.09.2022]**

6. Shriram Pitambar Patil (Borse)
Age : 53 years, Occ : Agri.,
R/o Amrali, Tq. Sindhkhed,
Dist. Dhule.

7. Sham Shriram Borse
Age : 25 years, Occ : Agri.,
R/o Chetna Garden at and Post
Onde, Tq. Vikramkhed, Dist. Thane.
**[Revision Application is dismissed
as against respondent nos. 5 and 7
vide order dated 27.09.2022]**

8. The State of Maharashtra ... Respondents
[ori. accused 1, 2, 4, 5, 7 to 10]

....

Mr. N. L. Chaudhari & R. S. Shinde, Advocates for Appellants.

Mr. S. M. Ganachari, APP for Respondent-State.

Mr. Z. H. Farooqui, Advocate h/f Mr. N. V. Gaware, Advocate for the Revision Applicant.

....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.09.2024

Pronounced on : 08.10.2024

JUDGMENT :

1. In this appeal there is challenge to judgment and order dated 27.06.2005 passed by learned 3rd Adhoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 131 of 2004 convicting appellants-original accused nos. 3, 5 and 6 for commission of offence under section 306 r/w 34 and 506 r/w 34 of the Indian Penal Code [IPC].

PROSECUTION CASE

2. In brief, prosecution version is that, deceased Suresh Borse worked in Government Milk Dairy, Beed. He gave hand-loan to accused no.1 Shivaji Jadhav, i.e. his brother in law. Its repayment was demanded, but accused no.1 avoided to repay, resulting into quarrel. Accused nos.1 Shivaji, 2 Sukhlal, 4 Dnyaneshwar, 5 Sanjay and 6 Vishram used to quarrel with Suresh for demanding back the

loan and Suresh had filed complaint with police. PW5 Ratnamala-wife of Suresh received land by way of *streedhan* and said land was given for cultivation to accused no.9 Shriram. He alone enjoyed the yield for two years and did not give account of income-expenditure and therefore, land was taken back for personal cultivation. In 1998, accused nos. 2 Sukhlal, 4 Dnyaneshwar, 5 Sanjay, 6 Vishram, 8 Sambhaji and 9 Shriram obstructed cultivation by issuing threats. They also threatened deceased that he would be foisted in a false case and started harassing Suresh for withdrawing the complaint lodged by him. 7 to 8 months prior to the incident in question, Suresh was given insulting treatment and even he was beaten. When accused Vishram, Gulab, Dnyaneshwar and Shyam outraged modesty of wife of deceased, she lodged private complaint in the court of JMFC.

3. On 24.01.2004, accused Shukhlal, Gulab, Sanjay, Vishram and one Ravindra paid visit to the house of Suresh at around 11.00 p.m. and threatened to withdraw complaint lodged for commission of offence under Section 354 of IPC. They threatened to disrupt the marriage of daughters of Suresh and also threatened to see how he cultivates land. Because of said threats and harassment, Suresh was under mental pressure and he, after writing suicide note, hanged himself on the intervening night of 24.01.2004 and 25.01.2004.

4. PW5 Ratnamala, i.e. wife of deceased, lodged report with police on the basis of which, crime was registered for offence under Sections 306, 504, 506 r/w 34 of IPC and in all 10 accused were chargesheeted and finally tried by learned 3rd Adhoc Additional Sessions Judge, Ahmednagar vide Sessions Case No. 131 of 2004 which culminated into conviction of accused nos. 3 Gulab, 5 Sanjay and 6 Vishram, and rest of the accused stood acquitted by judgment dated 27.06.2005, which is now assailed before this Court by filing instant appeal by invoking Section 374 of the Code of Criminal Procedure [Cr.P.C.]

EVIDENCE IN TRIAL COURT

5. The status and role of the prosecution witness is as under :

PW1 Krushna acted as pancha to seizure of suicide letter/chit Exhibit 53 and 54.

PW2 Deepak is the handwriting expert who issued opinion Exhibit 59.

PW3 Rakesh, staff of Government Dairy, Ahmednagar, who acted as pancha to seizure of documents vide panchanama Exhibit 65.

PW4 Vimalbai is sister of informant PW5 Ratnamala.

PW5 Ratnamala is the informant and wife of deceased.

- PW6** Uttam, another staff of Government Milk Dairy, Ahmednagar, who also acted as pancha to seizure of documents vide Exhibit 65.
- PW7** Deepali is daughter of informant Ratnamala and deceased Suresh.
- PW8** Shaligram is acquaintance of deceased.
- PW9** A.P.I. Kuvar is the first Investigating Officer.
- PW10** Shaikh Nisar, P.S.O. who registered crime.
- PW11** P.S.I. Shaikh Anwar is the second Investigating Officer.

SUBMISSIONS

On behalf of the appellants :

6. Pointing to above evidence, learned counsel for appellants submitted that there is false implication. He pointed out that alleged suicide is of the intervening night of 24.01.2004 and 25.01.2004, but FIR is after almost more than two weeks, and is there no plausible explanation for the delay. He pointed out that though 10 accused were impleaded and indicted, only 3 are held guilty, that too, on the same set of evidence.

7. He would further submit that, at the outset, essential ingredients for attracting offence of abetment to suicide are not available in the prosecution evidence. He pointed out that important witnesses like informant, her daughter and sister are not consistent. He emphasized that there is said to be suicide note, but it is handed over at a belated stage and not immediately when it was alleged to be found. That, son of deceased, namely, Prashant, who handed it over, has not been examined. He pointed out that mere handwriting expert's opinion itself is not sufficient to implicate the accused when, according to him, the contents of the suicide note do not suggest appellants to be responsible for abetting suicide.

8. According to learned counsel, deceased was facing action through anti-corruption department. He was worried and bothered for the same. There is no convincing evidence that because of any harassment or ill-treatment by appellants, he hanged himself. Learned counsel submitted that there is solitary episode alleging visit of appellants to the house of deceased on the night of 24.01.2004, but except testimony of family members, it is submitted that, there is no independent evidence. He pointed out that appellants are residents of

distinct places. He would submit that even if contents of the chit are considered, according to him, it would not constitute abetment to commit suicide or inducement to commit suicide.

9. Challenging legality of the impugned judgment, learned counsel submitted that reasons assigned by learned trial judge for accepting the prosecution case are not convincing and have no sound base or foundation. Therefore, according to him, the impugned judgment is a produce of erroneous appreciation and prays to interfere by allowing the appeal. He seeks reliance on the decision of this Court in *Narendra Sahebrao Patil and others v. State of Maharashtra* [Criminal Appeal No. 36 of 2002 decided by this Court on 23.01.2024].

On behalf of the respondent-State :

10. While opposing the above submissions, learned APP laid much stress on suicide note and testimony of informant wife. He pointed out that informant's evidence has remained intact. She has narrated several instances in which appellants were involved in continuously harassing her husband deceased Suresh on one or the other count. He pointed out that she is very categorical about mental harassment at

the hands of accused. That, her evidence is supported by daughter PW7 Deepali as well as evidence of her sister PW4 Vimalbai. They all are consistent regarding role of each of the appellants. Their material evidence has remained intact. That, suicide note was authored by deceased and this is got confirmed by investigating machinery by extracting services of hand writing expert, who is also examined. He submitted that admittedly FIR was delayed, but there was reason for delay as, according to him, family was in grief and sorrow. There was no other reason for deceased to commit suicide. There were repeated threats to kill, threats to implicate, due to which life of deceased was made miserable and according to him, only because of it, deceased hanged himself. He pointed out that, out of several accused implicated, only present appellants are held guilty and not all and thus, according to him, this itself indicates that there is proper appreciation of evidence by trial court. Resultantly, for all above reasons, he supports the conviction and prays to dismiss the appeal for want of merits.

On behalf of the Revision Applicant :

11. Learned counsel for original complainant, who has taken exception to the acquittal of some accused, pointed out that their role

was also established. They too were involved in several instances in subjecting deceased to continuous harassment and mental torture. All of them were responsible and they were named by informant. However, learned trial court has not appreciated their role in proper perspective and therefore, by way of revision, he prays to hold all acquitted accused also guilty as like appellants-accused nos. 3, 5 and 8, and punish them .

LEGAL PRECEDENTS ON SECTION 306 IPC

12. Admittedly conviction is for offence under Sections 306 and 506 of IPC. Before attracting and applying charge under Section 306 IPC, it is bounden and statutory duty of prosecution to establish that there was abetment, inducement, instigation to commit suicide. Coupled with *mens rea*, positive role must be shown to have been played by accused.

13. Law to the above extent is time and again dealt and discussed in numerous judgments, including recent judgment of ***Kumar @ Shiva Kumar v. State of Karnataka*** 2024 SCC OnLine SC 216, wherein, from para 60 onwards, the Hon'ble Apex Court has discussed the legal aspect of abetment to suicide, as to what amounts to abetment as

dealt under Section 107 of IPC and also, after discussing previous legal pronouncements in *M. Mohan v. State* (2011) 3 SCC 626; *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *Rajesh v. State of Haryana* (2020) 15 SCC 359 and *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73, culled out a principle that, in order to prove guilt of accused for abetment to commit suicide, prosecution has to prove :

- (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.

Referring to the case of *Amalendu Pal* (supra), it has been observed in para 69 that :

69. ... this Court after referring to some of the previous decisions held that it has been the consistent view 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 to put an end to her life. It must be borne in mind 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. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 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.”

APPRECIATION AND ANALYSIS

14. Going by the prosecution version, here, evidence of informant PW5 Ratnamala, her daughter Deepali (PW7) and sister PW4 Vimalbai is crucial as they are family members and relatives.

Sum and substance of testimony of PW5 Ratnamala [Informant] :

15. PW5 Ratnamala deposed at Exhibit 74 that her husband Suresh worked in Government Milk Dairy at Beed. According to her, in 1991 her husband extended hand-loan to accused Shivaji and when he demanded repayment, it was avoided, followed by quarrel between them. Accused Shivaji used to threatened her husband. Accused no. 2 Sukhlal, accused no.5 Sanjay, accused no.6 Vishram and accused no.4 Dnyaneshwar also quarreled with her husband for demanding money back and so her husband filed complaint at Sindhkheda police station. According to her, land received by her from her father, due to her husband's government service, was given for cultivation to accused no.9 Shriram and as he failed to give accounts of income and expenditure, said land was taken back from him. However, accused nos. 2, 4, 5, 6, 8 and 9 obstructed their cultivation by giving threats to kill and also threat to outrage her modesty. Therefore, partition was constrained to be filed, but accused gave threats to withdraw the same. Accused persons also insulted her husband at the time of 10th

day of rituals after demise of mother-in-law, and her husband deceased Suresh was beaten by all accused and accused Vishram, Gulab, Dnyaneshwar and Shyam also outraged her modesty. Therefore she lodged complaint at Sindhkheda police station and case to that extent being pending before court of JMFC. She deposed that whenever her husband Suresh went to Amrale, accused threatened by saying that they would see how he cultivates land and that they would obstruct marriage of daughters. Because of such conduct of accused, her husband was under mental pressure. On the night of 24.01.2004, accused Sukhlal, Gulab, Sanjay Vishram and one Ravindra paid visit to their house and pressurized for withdrawal of proceedings under section 354 of IPC. They picked up quarrel, issued threats and left and due to such incidence, her husband sustained mental as well as physical torture and in anguish he hanged himself on 25.01.2004. Her husband also wrote suicide note and therefore she lodged report Exhibit 75.

She is subjected to extensive cross running in several pages. Relevant and gist of her cross is only dealt and reproduced as under.

She admitted that last posting of her husband was at Beed and she did not go to Beed but her husband used to come to Nagar on holidays. In para 15 she answered that her husband gave hand-loan

to accused no.1 in her presence at Dhule in the year 1990-1991. Quarrel by accused no.1 with her husband took place in her presence. Accused no.1 also dispatched letters to her husband regarding such transaction. She admitted that there are complaints from accused against she and her husband and even they had filed complaint against accused. She admitted that in 1994, her husband gave land for cultivation to accused no.9 Shriram and relations with him for two years were cordial. She denied that accused no.9 gave account of income and expenditure. She admitted that accused no.2 Sukhalal, accused no.4 Dnyaneshwar, accused no.5 Sanjay and accused no. 6 Vishram quarreled with them over harvesting of wheat crop.

She further admitted about not specifically mentioning in the complaint Exhibit 75 that in 1998 all accused gathered and gave threats to her about outraging her modesty; that, accused were giving threats to proposed purchasers of the land; accused were issuing threats to withdraw partition suit. She answered that she does not remember whether there was compromise in 2001. She admitted that her complaint is silent on the point that her husband became afraid due to threats of accused on the count of partition suit.

In para 17 she answered that she did not specifically mentioned in Exhibit 75 that her husband said to accused that her husband

served his mother, helped in marriages of sisters and not to cut him off from mourning; that accused no.6 Vishram asked others to drive her out threatening to commit suicide and accused no.10 Shyam and accused no.6 Vishram pulling her. She also admitted about not specifically mentioning in the complaint that all accused were issuing threats to her husband whenever he used to go to village Amrale. In para 19 she admitted that accused no.2 Sukhlal did not visit their house on the night of 24.01.2004 and answered that it is not mentioned in the complaint that accused came and gave threats that they would engage one lady and falsely implicate her husband if he comes to the village. She admitted that her husband said that on following day they would file complaint against the accused.

In para 20 of the cross she stated that she and her husband slept in one bedroom on 24.01.2004 and about 3.00 to 3.30 in the night, she heard cry of her daughter and went and saw husband hanging, Dr. Deepak was called and on his instructions, her husband being shifted to civil hospital. She admitted that police were visiting their house from 25.01.2004 to inspect spot, they seized nylon rope and they were daily visiting their house for inquiry and even made inquiry with her as well as her son. She answered that letter cum chit written by her husband was found after two to three days of the

incident and after reading it, she became confident that accused are responsible for suicide of her husband. She answered that because of her mental condition, there was delay in filing complaint and also admitted that none of the accused resides at Nagar.

In para 21 she answered and admitted that she does not know whether other accused had filed anti-corruption complaint against her husband and also denied that in November-December 2003 inquiry of her husband was made in that regard and that on 27th and 28th January 2004, Dhule and Nasik ACB authorities had informed her husband that they would come for inquiry and so her husband was terribly afraid.

Sum and substance of testimony of PW7 Deepali [daughter of informant] :

16. PW7 Deepali, who is daughter and was very much in the house along with informant and deceased father, has testified at Exhibit 82 that her father served at Beed, he used to come to Nagar on holidays. There were disputes between his father and uncles i.e. Shivaji, Sukhlal, Vilas, Dnyaneshwar, Sanjay, Vishram, Rajendra, Sambhaji and Shyam. According to her, her parents went to Dhule and after two to three days, they returned back to Nagar. She noticed mental

condition of her father to be not good. He was seen to be under tension. She learnt from mother that accused no.1 Shivaji quarreled with her father on the ground of money and that he issued threats to her father that he would see how her father comes to village, cultivates land and how he would perform marriage of this witness and that he would implicate her father in false case. (**hearsay as there is no interaction directly by deceased**)

In para 3 she deposed that her father told that accused no.2 lodged complaint against him with ACB and picked up quarrels over ancestral fields. As mental condition of her father was not good, they did not send him to service station at Beed. In para 4 and 5, she deposed that :

*“On 24.01.2004, I, my father and mother were in the house in the night time and we were waiting for my brother Prashant. At about 11 in the night accused no.3 Gulab, accused no.5 Sanjay Sukhlal accused no.6 Vishram Pitambar and one Ravindra came in our house. They quarreled with my **parents**. (**not alone deceased**). They asked my father to withdraw the case u/s 354 of I.P.C. which was pending in the Court about the incident of Amrale, and also asked that we should not attend that Court for evidence. My father refused their demand. **They gave abuses**. They again gave threats that they would see how we would come to our*

village and how my father would perform marriages of daughters. They also gave threat that they would not allow my father to cultivate the land. They also gave threat that they would destroy us and after abusing us they left our house.

5. *We were terribly afraid of the accused. My father was also terribly afraid about the said incident. We consoled our father by pressing his hands and legs. My father was mentally depressed due to the threats of the accused. Thereafter we all went to sleep.*

6. *On 25.01.2004 at about 3 to 3.30 in the night, I heard cry of my sister Leena. I woke up. My mother, brother also woke up due to loud cry of my sister. We went towards kitchen. My sister was standing in the door of kitchen. My father was hanging by taking a nylon rope around his neck.”*

In para 7 she deposed that in the night after funeral of her father, accused Sukhlal, Sanjay, Gulab, Dnyaneshwar, Vishram and Rajendra came and gave threats and abuses to her mother and warned that they would see how her mother would come to village to cultivate the land and due to threats, her mother fell ill. She further deposed that two to three days after funeral, while she was checking personal file of her father, letter cum chit was found mentioning that

he committed suicide due to trouble of father, brothers and she identified the chit at Exhibit 54. According to her, all accused gave trouble to her father. They gave mental and physical torture to her father and therefore he committed suicide.

She too is subjected to extensive cross and therefore relevant cross is reproduced as under which commences from paragraph 12 onwards:

She answered that her statement was recorded by police on 28.01.2004 and her mother gave complaint on 13 or 14 February 2004. Since 24.01.2004 till 14.02.2004 she was with her mother and police were visiting their house for inquiry. She is unable to state whether she found suicidal note of her father on 27.01.2004 but admitted that before recording her statement, suicidal note was found and she had shown it to her brother and mother. On 24.01.2004 during visit of accused, her brother was not in the house. After two to three days, she informed him regarding visit of accused to their house. She also answered that her father was saying that complaint should be lodged against accused. She admitted that her parents told about threats of accused for anti-corruption raids and she fairly admitted that **she had no detail knowledge about the dispute of land and money between her father and accused.**

In para 16 following omissions are brought:

That, accused no.1 gave threat that he would see how her father would come to the village, cultivate the land and how he would perform her marriage and that he would be implicated in false case; accused no.2 made complaint against her father to ACB and was quarreling for ancestral fields; about marriages of the kids of her father and about threat of cultivation of lands and accused abused and threatened to destroy them; that father was mentally disturbed due to threats of accused.

In para 20, she stated that suicidal note was found to her and she denied stating portion marked “B” to the police to the effect that, “we found the suicidal note”, and she is unable to state how it is appearing. Rest is all denial.

Further in para 22, she answered that she had stated to police whatever she stated in para 7 of examination-in-chief and is unable to state why it is not specifically mentioned in her statement. She stated that she had not informed police in her first statement about finding suicide note in the file of father and she volunteered to have stated it in second statement.

Sum and substance of testimony of PW4 Vimalbai [sister of informant] :

17. PW4 sister of PW5 testified that her father purchased land for PW4 and it was given for cultivation to accused no.9, but he did not give income to deceased. Sukhlal (accused no.2), Vishram (accused no.6), Shriram (accused no.9), Gulab (accused no.3), Dnyaneshwar (accused no.4) and Sanjay (accused no.5), according to her, were giving **trouble** in cultivation of land to Suresh. Deceased Suresh filed civil suit for partition. Therefore accused gave threats saying that how he comes to village. She came to meet her sister Ratnamala at Nagar. At that time, accused no.1 Shivaji sent letter by post with some documents. **In that letter he gave abuses.** According to her quarrel took place between Shivaji and Suresh once at Nagar and once at Amrale. Nobody informed Suresh about demise of his mother. On the day of *dashakriya vidhi* at Amrale, accused no.3 Gulab directed deceased Suresh to not to come to the funeral and said that they have cut their relations. That time, when her sister questioned accused no.3 for not informing about demise, accused no.6 asked all others to drive her sister out of the house and that time, Vishram, Gulab, Dnyaneshwar, Shyam gave dashes to her, even pulled her sari and outraged her modesty. Therefore her sister lodged report with Sindhkheda Police Station. On 25.01.2004, she got phone call about

suicide by Suresh. In para 6 she stated that at 11.00 p.m. in the night, Sukhlal, Vishram, Shriram, Sharad, Dhondu, Gulab, Sanjay, Ravindra came to the house of Suresh, **quarreled with her sister** and accused her for committing murder of Suresh. **(informant has not stated so)** In para 7 she claims that letter written by deceased was found holding Vishram, his sons, his father, three brothers responsible for his death and said letter was Exhibit 54.

In Para 8 she further deposed that she learnt from Ratnamala that before suicide, Gulab, Sanjay, Dnyaneshwar, Shriram came to her house and threatened to withdraw case of outraging her modesty saying that they would see how he would come to village and perform marriages of daughters. Suresh became frightened and he suffered mental torture and therefore he committed suicide.

In her cross para 10, she has admitted that accused who are in service, are residing with their families at their respective service stations and that, she came to know about partition suit from Ratnamala and deceased Suresh. She answered that she has no knowledge of result of that partition suit. She answered that the loan transaction between accused no.1 Shivaji and deceased Suresh took place prior to partition suit and that, the talk of demand of money

and demand for refund of loan made by deceased Suresh to accused no.1 was in her presence at Nagar.

In para 11 of her cross, she denied remembering whether her statement was recorded by police on 06.03.2004 and whether she had stated before police that accused no.1 got hand-loan from deceased Suresh and he gave threat to deceased Suresh. She further answered that she does not remember whether she had stated before police that accused no.1 Shivaji sent one letter giving threats to Suresh. She admitted that police did not record statement of informant Ratnamala in her presence.

In para 12, she answered that Ratnamala got the suicide note after 2 to 3 days of suicide and that, Ratnamala did not show it to her. In para 13 she answered that she does not remember whether she had stated before police that accused Vishram asked other accused ie. Gulab, Shyam, Dnyaneshwar to drive Ratnamala out of the house and outraged her modesty and gave threat that they would see how Ratnamala would cultivate her land. In para 15 she answered that she does not remember whether she had stated before police that accused came and gave threats to Ratnamala that they would see how Ratnamala would cultivate at Amrale and quarreled with Ratnamala and left Ahmednagar. She answered that she saw accused at 11.00

p.m. in the night and they were in the house of Suresh for 10 to 15 minutes and that time neighbours were not present. She answered that Prashant was present when accused gave threats to Ratnamala.

18. Apart from above evidence, in trial court, case of prosecution also hinges on alleged letter cum suicide note Exhibit 54 which was seized vide panchanama dated 31.01.2004 Exhibit 53. This letter is produced by Prashant Suresh Borshe i.e. son of deceased Suresh, in presence of two panchas conveying that his father, before committing suicide, wrote suicide note and kept it in his personal file and it was accordingly found.

19. Exhibit 54 is the said chit and its contents, in translated form, are as under :

“Following persons are responsible for my suicide.

- 1. Vishram Pitambar and his children*
- 2. My three brothers and father*
- 3. Brother-in-law Shivaji*
- 4. Shriram Pitambar and his son Shyam*

*Strict action be taken against all named above.
Because of their terror, there is harassment to my family.*

Signature

*Salutation to all kinsmen. Injustice done to us may
kindly be rectified and my children be taken care of.”*

20. Therefore, panchanama Exhibit 53 is in presence of two panchas i.e., one Prashant Wagaskar and another Krishna Babanrao Mote (PW1). Pancha **PW1 Krishna** is examined at Exhibit 52 and sum and substance of his evidence is that, Topkhana police called him and another pancha Prashant Wagaskar at police station at 8.00 p.m. That time Prashant Suresh Borshe was present. PI Kavar told that father of Prashant Borshe had committed suicide and there is one letter-chit which Prashant wanted to produce in presence of panchas. Witness deposed that said letter was seen and read and its contents are reproduced in the panchanama Exhibit 53.

While under cross, above pancha has stated that he knew Prashant, i.e. son of deceased. He admitted that it is not noted in the panchanama as to when Prashant got letter Exhibit 54 from the file of deceased. He denied that because Prashant was his dear friend, he cause signature over panchanama Exhibit 53.

21. Investigating machinery seems to have dispatched suicide note Exhibit 54 along with other material Exhibit 58 purported to be in the handwriting of deceased for examination and **PW2 Deepak**, who is examined at Exhibit 56, deposed about comparing handwriting and drawing conclusion that questioned documents Q1, Q1(s) and N1 are

written by one and same person i.e. Exhibits 54 and 58. He issued his opinion vide Exhibit 59.

Above witness is subjected to cross wherein he answered that he did not mentioned whether writings in Exhibit 54 and 58 are in ink pen or ball pen. He admitted that there are three characteristics of hand-writings viz. angular, curve and round handwriting. He admitted that he has not mentioned date of examination of the document. He admitted that mental condition of the writer is to be considered during examination. Rest all suggestions are denied, except admitting that he did not use ultra violate rays, and failed to note alignment and relative size of the writing.

ANALYSIS

22. Above is the material adduced by prosecution and is accepted by trial Judge while recording guilt of appellants herein for offence under Sections 306, 506 r/w 34 of IPC. This court has already, in foregoing para, dealt with the settled legal precedents with regard to offence under Section 306 of IPC.

23. Admitted position is that, out of in all 10 accused who faced trial, only appellant Gulab (original accused no.3), appellant Sanjay

(original accused no.5) and appellant Vishram (original accused no.6) are held guilty by the learned trial Judge. It is not in dispute that suicide by hanging is of intervening night of 24.01.2004 and 25.01.2004 in the very house of deceased and **admittedly, wife of deceased has set law into motion by lodging report on 13.02.2004.** i.e. almost 19 days after suicide.

24. Precisely what is to be seen in this case is whether prosecution has discharged its burden of proving beyond reasonable doubt that appellants herein have abetted the alleged suicide by Suresh. The two sets of evidence on which prosecution case hinges is evidence of wife and daughter of deceased as well as sister of informant. Amongst all relatives, only they are examined. It needs to be noted that son Prashant, who allegedly handed over the alleged suicide note Exhibit 54 to police, has not been examined. It emerges from evidence of PW7 Deepali that while going through personal file of her father, she came across the said suicide note.

25. PW5 wife and PW7 daughter were very much in the house at the time of alleged suicide. On carefully and meticulously going through evidence of informant **PW5 Ratnamala** (wife of deceased), she has alleged quarrel initially by accused Shivaji, who on demand of

repayment of hand-loan, allegedly not only refused to repay, but even according to informant wife, he issued threats. That, he used to pick quarrel with deceased. Then she alleged quarrel by accused Sukhlal, Sanjay, Vishram and Dnyaneshwar for demanding money back. Second allegation by her is that accused nos. 2 Sukhlal, 4 Dnyaneshwar, 5 Sanjay, 6 Vishram, 8 Sambhaji and 9 Shriram obstructed cultivation of the land received by her from her father. Third allegation is that at the time of 10th day rituals of mother-in-law, her husband was insulted and there was utterance in reference to her, i.e. for outraging modesty, but such allegations are attributed to accused Vishram, Gulab, Dnyaneshwar and Shyam. She has also alleged beating to her husband by all accused, and then she alleged her husband to be under mental pressure and during visit of accused Sukhlal, Gulab, Sanjay, Vishram and Ravindra on the night of 24.01.2004 exerting pressure to withdraw proceedings under Section 354 of IPC, she has alleged that, her husband had suffered mental and physical torture and in anguish he hanged himself.

Her cross discussed above, shows that deceased alone, by virtue of his service, stayed at Beed whereas informant and her children were placed at Ahmednagar and that only on holidays or weekends, her husband used to come to Ahmednagar. She has admitted in cross

that there were complaints from the side of accused against herself as well as her husband. She admitted that in her complaint, she specifically did not mention that all accused gathered and gave threats to outrage her modesty; that, they issued threats to withdraw partition suit, and she also conceded and admitted in cross that her complaint is silent on the point that her husband was afraid due to threats of accused. Episode of quarrel and insult at the time of 10th day rituals of mother-in-law involving accused no.6 threatening to commit suicide and scuffling with her is also shown to be missing from report. She also admitted that her complaint is silent about accused issuing threats to her husband whenever he visited Amrale.

26. Likewise, daughter of above witness, i.e. **PW7 Deepali**, in her substantive evidence stated that there were disputes between her father and uncles, whom she has named. She has not elaborated, like her mother, the instances of threats, quarrels or episode which allegedly took place during 10th day ritual of her grandmother. She merely has deposed that when her parents returned from Dhule, she noticed that mental condition of her father was not good. Except deposing to that extent, she has not elaborated the background. Whatever she deposed, she claims to have learnt from her mother, but that too only against accused Shivaji quarreling with her father on the

ground of money and threatening to implicate her father in false case. Then she directly deposed about visit of accused Gulab, Sanjay, Vishram and one Ravindra to their house on the night of 24.01.2004. She has alleged that these persons quarreled with her parents. Her such testimony shows that quarrel involved even her mother and not deceased alone. She has alleged abuses but by whom and in what form, has not been stated by her. She claims that accused persons threatened that they would not allow her father to cultivate the land and would create obstruction in marriages of daughters. Therefore, according to her, her father was terribly afraid and mentally depressed.

In cross she answered that her father, after the occurrence of night of 24.01.2004, was saying that complaint should be filed against the accused and she fairly admitted that she had no detail knowledge about dispute of land and money between her father and accused. Material omissions are brought in her cross para 16 and 20 regarding threats to see how land is cultivated and how marriages of children would be performed and to see that deceased would be destroyed. Para 22 of the cross also carries material omissions.

27. Similarly, **PW4 Vimalbai** claims that accused no.2 Sukhlal, 6 Vishram, 9 Shriram, 3 Gulab, 4 Dnyaneshwar and 5 Sanjay were giving trouble to Suresh in cultivation of land. Accused no.1 Shivaji dispatched abusive letter. According to her, **once** in her presence there was quarrel between accused Shivaji and deceased Suresh. That, during rituals after demise of mother of Suresh, she alleges directions by accused no.6 Vishram to other accused to drive informant out of the house and accused Vishram, Gulab, Dnyaneshwar and Shyam pulled her sari, of which her sister PW5 lodged report. This witness deposed that on 25.01.2004 at night, Sukhlal, Vishram, Shriram, Sharad, Dhondur, Gulab, Sanjay and Ravindra quarreled with her sister by visiting her house. They also alleged murder of their brother at the hands of her sister.

However in cross, she has admitted that all accused are at respective places of their service and she had no knowledge about the fate of civil suit.

28. Consequently, on appreciating above evidence, there is no evidence whatsoever suggesting harassment of such extent or creation of such circumstances due to which deceased was left with no other alternative but to hang himself. Four accused allegedly paid visit on

night of 24.01.2004, i.e. accused Sukhlal, Gulab, Sanjay and Vishram. However, guilt of Section 306 IPC is imputed only against Gulab, Sanjay and Vishram. In what manner they abetted suicide is not coming on record. Alleged visit by accused persons is around 11.00 p.m. Deceased, who shared bedroom with informant, seems to have realized suicide around 3.30 a.m. i.e. almost after four to five hours. Daughter has admitted that after accused left, her deceased father had expressed his intention to lodge report with police. Going by such material, it is not a case that deceased was facing such a precarious situation that he had no other alternative but to hang himself. Admittedly, relations were strained but it is emerging from the evidence of above witnesses that deceased worked at Beed and he used to come only on holidays. It is not shown that they all resided under one roof or jointly. In fact, relations between deceased on the one hand, and his father and brothers on the other hand, were strained on account of land and its cultivation, of which proceedings were instituted. Evidence also shows that there were attempts to compromise. Though informant expressed her ignorance, there is suggestion to that extent. When and who all issued threats except Shivaji, and that too was of which nature or kind of threat, has not come on record. There is nothing to suggest that prior to 24.01.2004, there was continuous harassment, threats or trouble of any sort at the

hands of appellants-accused compelling deceased to hang himself. How these three appellants were involved in abetting, inducing or enticing deceased to end up life is not satisfactorily coming on record. It has not been shown that accused appellants visited house of deceased on 24.01.2004 and subjected deceased to such harassment with sole intention to see that Suresh hangs himself.

Consequently, in the considered opinion of this Court, in view of the oral account of PW4, PW5 and PW7 and the manner of answers given by them in cross, it is unjust to impute abetment to commit suicide.

29. No doubt vide Exhibit 53, suicide note Exhibit 54 is brought on record. However, it is pertinent to note that it is not handed over immediately to the police in spite of PW7 finding it after 2 to 3 days of funeral. The contents of the suicide note reproduced above are also cryptic. Therefore, even such piece of evidence cannot be considered as cogent piece of evidence. Mere strained relations cannot be made a ground to hold abetment or inducement to commit suicide. It is expected of prosecution in such cases to prove beyond reasonable doubt that accused intended that deceased should end up his life and with that sole intention, they harassed deceased or created such

circumstances that deceased was left with no other alternative but to end up his life. As stated above, mother as well as daughter admit that after departure of accused from their house that night, there were talks of lodging complaint against accused. Therefore, when recourse and alternative was available and was also given thought of, then, it is doubtful whether accused could be held responsible. Daughter has admitted in cross that there were threats by accused to inform ACB authorities against deceased. Therefore, there are other possibilities and circumstances for deceased to take the extreme step. For said reasons, charge of Section 306 of IPC against the appellants must fail.

30. There is also conviction under Section 506 of IPC, which provision reads as under :

“506. Punishment for criminal intimidation.- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. - and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life

or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Law on the point of applicability of Section 506 is also dealt in ***Manik Taneja and another v. State of Karnataka and another*** (2015) 7 SCC 423, ***Romesh Chandra Arora v. State of*** AIR 1960 SC 154 and recently, the Hon’ble Supreme Court in the case of ***Mohammad Wajid and another v. State of U.P. and others*** AIR 2023 SC 3784, observed in para 27 as under :

“27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.”

31. In the case in hand, it is noticed from the evidence of informant PW5 Ratnamala that, in para 5, she reported occurrence taking place in 1998, naming accused nos.2 Sukhlal, 4 Dnyaneshwar, 5 Sanjay, 6 Vishram, 8 Sambhaji and 9 Shriram entering the field and giving threats that this witness and deceased Suresh should not enter the field, otherwise they would kill them. The incident in question, on the

strength of which crime is registered is of 2004. Evidence of Ratnamala is conspicuously silent about issuance of life threats so as to attract charge of Section 506 IPC. Therefore, even this charge is not proved beyond reasonable doubt.

32. Original complainant has preferred criminal revision challenging acquittal of remaining accused persons. But after considering the above discussed evidence, no fault can be found in the findings recorded by trial Judge as regards to such accused. Consequently, revision has no substance and is devoid of merits. Hence, following order is passed :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants, i.e. appellant no.1 Gulab s/o Sukhlal Borse, appellant no.2 Sanjay s/o Sukhlal Borse and appellant no.3 Vishram s/o Pitambar Borse, by learned 3rd Adhoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 131 of 2004 under Sections 306 r/w 34 and 506 r/w 34 of IPC on 27.06.2005 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 306 r/w 34 and 506 r/w 34 of IPC.

- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. Criminal Revision Application No. 283 of 2005 stands dismissed.
- VII. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]