



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 567 OF 2023

Bhagwan S/o Vithoba Shitole
Age: 58 years, Occ.: Agri.,
R/o. At Post Ozar (Kh), Tq.Jamner,
Dist.Jalgaon.

....Appellant

Versus

01. The State of Maharashtra
Through Police Inspector,
Jamner Police Station,
Tq.Jamner, Dist.Jalgaon.

02. Chhayabai Shivaji Shitole
Age: 31 years, Occu.: Nil.

03. Tanaji Sadu Shinde
Age: 72 years, Occu.: Nil.

04. Vitthal Tanaji Shinde
Age: 37 years, Occu.: Nil.

05. Digambar Tanaji Shinde
Age: 29 years, Occu.: Nil.

06. Shivaji Tanaji Shinde
Age: 43 years, Occu.: Nil.

Respondent No.2 to 6,
R/o. Ozar (Kh), Tq.Jamner,
Dist.Jalgaon.

.....Respondents

(Resp.No.2 to 6 Orig. Accused)

.....

Advocate for Appellant : Mr. Arvind Keshavlal Tiwari

APP for Respondent no.1 : Mr.N.D.Batule

Advocate for Respondent nos.2 to 6 : Mr.Swapnil S.Dargad

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 APRIL, 2024

PRONOUNCED ON : 25 APRIL, 2024

JUDGMENT :-

1. By consent of both parties, matter is taken up for final hearing at the admission stage.

2. Original informant, getting dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.17 of 2016 dated 14-03-2023 acquitting respondent nos.2 to 6 from offence under Section 306 read with 34 of the Indian Penal Code (IPC), has preferred instant appeal.

FACTS IN BRIEF LEADING TO THE TRIAL

3. PW1 Bhagwan Vithoba Shitole, informant approached Jalgaon Police Station and lodged report informing that he has five children. Accused no.1 cousin daughter-in-law lived in their neighbourhood. Her husband Shivaji had left her and gone somewhere. Since that date, it is alleged that all accused persons were harassing informant as well as his children. Accused no.1 used to repeatedly ask him to search her husband and further threatened that on failure to do so,

she would commit suicide and implicate informant and his family members in a false case. On 16-11-2015, respondent nos.2 to 4 picked up quarrel with Ganesh, elder son of informant and since then Ganesh was scared. Again on 19-11-2015, respondent nos.2 and 3 picked up quarrel with Ganesh. Because of such consistent harassment, Ganesh hanged himself and committed suicide. Therefore, on such report of informant, Police registered crime, carried out investigation and finally chargesheeted five accused persons and they made to face trial before the learned Additional Sessions Judge, Jalgaon vide Sessions Case No.17 of 2016 alleging commission of offence under Section 306 read with 34 of the IPC.

At the trial, prosecution adduced evidence of nine witnesses and adduced documentary evidence. After hearing both sides, learned Judge, by his judgment and order dated 14-03-2023 acquitted all accused from charge of Section 306 read with 34 of the IPC.

It is above judgment and order, which is now sought to be questioned by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

4. Learned Counsel for the appellant would submit that husband

of accused no.1 Chhayabai left the house for reasons best known to him. However, all accused persons started holding informant responsible for the missing and continuously picked up quarrels, levelled false allegations and issued threat to commit suicide and to falsely implicate informant and his children. Therefore, they were continuously under pressure. It is pointed out that on 16-11-2015 as well as on 19-11-2015, accused persons picked up quarrels and again blamed informant and his children because of which Ganesh, who was elder son of informant, was under complete stress, he was thoroughly scared and he could not bare harassment.

5. Learned Counsel pointed out that because of continuous mental harassment and quarrels, finally Ganesh hanged himself. Thus according to learned Counsel, all necessary ingredients for attracting offence under Section 306 read with Section 34 of the IPC are available. That accused persons have abetted commission of suicide. That there was suicide note in the pocket of deceased making accused persons responsible for the same and as such learned Counsel for the appellant pointed out that with such full-proof and reliable evidence, prosecution had made out a case but unfortunately learned trial Court failed to appreciate evidence both

oral as well as documentary and even did not consider and appreciate settled law and committed error in acquitting the accused persons and therefore, he prays to set aside the judgment and order of acquittal and moreover, accused respondents nos.2 to 6 be convicted as per law.

On behalf of Accused :

6. In answer to above, learned Counsel for accused would submit that prosecution had miserably failed to bring home the charges. It is pointed out that mere some instances of quarrel would not amount to abetment. Learned Counsel pointed out that though prosecution claims that there was a suicide note, there was nothing in the said suicide note to connect accused persons and to held them responsible for suicide. That necessary ingredients for attracting offence under Section 306 of the IPC read with 34 are patently missing from the complaint.

Learned Counsel took this Court through the judgment, more particularly paragraph nos.21, 22, 23 and 24 and would submit that there is correct appreciation of available evidence. That in paragraph no.25 onwards law has been discussed and applied and as such it is his submission that no illegality or perversity could be attributed to

the findings reached at by the learned trial Judge.

GIST OF PROSECUTION EVIDENCE IN TRIAL COURT

7. **PW1** Bhagwan Vithoba Shitole, informant deposed that deceased was his elder son. His nephew was married to accused no.1 Chhayabai. His nephew left her and therefore, accused no.1 Chaayabai blamed informant and his family members and asked them to search for him and further threatened that if they failed to trace him and bring him, she would immolate herself and blame entire family members of informant by involving them in a false case. That on 16-11-2015 all accused quarreled with deceased Ganesh at 10:00 p.m. of which complaint was lodged by Ganesh. Again on 19-11-2015 accused Chhayabai and her father Tanaji picked up quarrel with Ganesh. As a result of which he was terrified. Entire day he remained alone and in the evening he went out of house and at around 10:00 p.m. while he was searched for, he was found hanging. According to him, he found a chit in the pocket of his son Ganesh. He read it wherein his son stated that getting fed up because of harassment of accused persons, whose names are mentioned in the chit, he committed suicide. Therefore, he approached Police, lodged FIR and handed over the chit.

8. **PW2** Sanjay Gansingh Patil is the Head Constable, who noted FIR lodged by PW1 Bhagwan Vithoba Shitole on the strength of which he lodged crime bearing no.188 of 2015 for offence under Section 306 read with 34 of the IPC.
9. **PW3** Suresh Jagan Lokhande is pancha to seizure panchanama of chit exh.80.
10. **PW4** Shishupal Ramlal Chaudhari is pancha to panchanama of seizure of PAN Card of deceased.
11. **PW5** Sagar @ Krushna Bhagwan Shitole is younger brother of deceased. He also deposed that husband of Chhayabai was his cousin. His father performed their marriage. Shivaji was wondering and therefore, Chhayabai picked up quarrel with them and threatened to search her husband and further threatened to immolate herself and involved them in a false case. He also stated that on 16-11-2015 and on 19-11-2015, there were quarrels by accused and therefore, his brother committed suicide by hanging. A chit was found in his pocket wherein he named all present respondents.

12. **PW6** Manjula Vilas Tiwari, a Police Head Constable stated about receiving complaint from deceased Ganesh against accused Tanaji, Vithal and Digambar.

PW7 Pradip Ramesh Pol is the carrier.

PW8 Munir Adam Shaikh is handwriting expert, who issued opinion exh.123, 124.

PW9 Vaishali Madan Pawar is the Investigating Officer.

LEGAL POSITION :

13. Here respondent nos.2 to 6 were chargesheeted for commission of offence under Section 306 read with 34 of the IPC.

Before advertent to the merits of the evidence, it would also be fruitful to spell out essentials for attracting charge of abetment to suicide and the settled legal position. For bringing home the said charge, it is duty of prosecution to prove that there was abetment to commit suicide. As to what amounts to abetment is also fairly settled. Section 107 of the IPC deals with abetment. It reads thus:

“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.

Section 306 of the IPC deals with abetment of suicide.

Ingredients of this section are as under :

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

JUDICIAL PRECEDENT :

14. In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to establish **incitement, instigation, aiding or abetment to commit suicide**. Law to this extent has been fairly settled in series of cases. Scope of Sections 107 and 306 IPC has been time and again decided by the Hon'ble Apex Court in the cases viz; *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *Ramesh Kumar v. State of Chhatisgarh* reported in (2001) 9 SCC 618; *Sanju @ Sanjay Singh Sengar v. State of M.P* reported in (2002) 5 SCC 371; *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605;

Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707; *State of West Bengal v. Indrajit Kundu and others* (2019) 10 SCC 188; *Rajesh v. State of Haryana* (2020) 15 SCC 359; *VP.Singh etc. v. State of Punjab and others* 2022 SCC Online SC 1999 and very recently in the case of *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided on 01.03.2024].

The principle or legal position i.e. enunciated by above series of judgments is that, harassment or cruelty meted out to deceased is of such nature and that the accused persons further intended that deceased should end up life and with such sole intention there is harassment. It is further required to be demonstrated that accused deliberately created such circumstances with sole intention that deceased should commit suicide and that deceased left with no other alternative but to end up life. Only then it can be said that offence of abetment to commit suicide is brought home.

Keeping above legal position in mind, evidence of prosecution is to be scrutinized.

ANALYSIS

15. On re-appreciation of entire substantive evidence, it is

emerging that informant's nephew was married to accused no.1 Chhayabai. However, after three years of marriage, his nephew Shivaji left Chhayabai and she was blaming informant and his family members and regularly harassing them to search for her husband and on failure, she threatened that she would burn herself and put the blame on informant and his son.

16. PW1 Bhagwan Vithoba Shitole, informant and his other son PW5 Sagar @ Krushna Bhagwan Shitole are the two witnesses. They speak about accusations raised by accused no.1 Chhayabai and other respondents accused. However, it is pertinent to note that there was some quarrel on 16-11-2015 but at that time only accused Chhayabai and Tanaji were shown to be involved in the quarrel with deceased of which deceased had lodged complaint. Second episode seems to have taken place on 19-11-2015 in the morning i.e. after three days of first episode and deceased Ganesh was found to be hanging at around 10:00 p.m.

Therefore, quarrels and threats to falsely implicate, which prompted deceased Ganesh to end up his life, seem to be the prime allegations.

However, witnesses are found to be merely speaking about

quarrel between accused no.1 Chhayabai, her husband and deceased Ganesh. There is nothing to show that there was incessant harassment, which was of such nature that deceased was left with no other alternative but to commit suicide. No doubt informant and accused are neighbours but there are no independent witnesses about alleged occurrence of 16-11-2015 or even otherwise of 19-11-2015. Deceased Ganesh has lodged report about incident of 16-11-2015 and therefore, he has taken recourse to law. Regarding occurrence of 19-11-2015 it apparently taken place in the morning but suicide committed at 10:00 p.m. In between such time, there is nothing to connect accused with the alleged hanging.

17. The only piece of evidence on which prosecution is heavily banking on is suicide note. The said suicide note, according to informant, was found in the pocket of his son. However, inspite of Police coming to spot or drawing the inquest, said chit has not been handed over to Police nor it is brought to the notice of Police. Evidence of informant goes to show that when he visited Police Station for lodging complaint, at that time, he allegedly handed over it to Police and said was shown to be seized in presence of pancha. The contents of chit which are discerned are as under :

“A request to the Hon’ble Senior Police Inspector

Chhayabai Tanaji Shinde, r/o Ozar Nath Nagar, is causing much injustice to us. Please save us. Protect my family.

All this is true. This person harasses us.
This is my signature:
Ganesh Bhagwan Gosavi,
Ganesh Bhagwan Gosavi.

I am signing hereby reading the foregoing contents.

I, Ganesh Bhagwan Gosavi, we are being harassed by several people.
I am committing suicide because of the following persons.

Chhayabai Shivaji Shitole
Vitthal Tanaji Shinde
Tanaji Shidu Shinde
Digambar Tanaji Shinde
Shivaji Tanaji Shinde

Please protect my family, Please save my parents!

These persons have compelled me to commit suicide.
The above-named persons are one of them.

I request you to punish
the above-named persons.

This is my signature,
Ganesh Bhagwan Gosavi

A request.”

(As translated by Sr. Translator, High Court, Aurangabad)

CONCLUSION

18. On careful appreciation of contents of the chit, it cannot be said that only and only because of harassment at the hands of accused persons, deceased committed suicide. Apparently only two

episodes are forthcoming i.e. first one of 16-11-2015 and second one after three days i.e. of 19-11-2015. As stated above, even quarrel of 19-11-2015 was taken place in the morning but deceased was found hanging at around 10:00 p.m. Therefore, there is nothing in the proximity to the suicide to connect respondents with alleged hanging. Mere threats to implicate falsely would itself cannot be held as mental harassment or abetment to commit suicide. Regarding occurrence of 19-11-2015, it was open for deceased to again report to Police machinery as he had done regarding first episode of 16-11-2015. However, no such steps seem to have been taken and he has unfortunately hanged himself. In the considered opinion of this Court, there is no iota of evidence about any inducement or abetment to commit suicide. Therefore, for said reasons, this Court is of the considered opinion that it is unsafe to implicate accused persons in the charge of 306 read with 34 of the IPC.

19. Perused judgment under challenge. Learned trial Court has correctly appreciated the oral and documentary evidence and law has been correctly applied. Therefore, there is no substance in the appeal. Hence, for want of merits, appeal is required to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.567 of 2023 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE

SPT