

**(2012) 04 BOM CK 0179**

**In the Bombay High Court**

**Case No :** Criminal Writ Petition No. 1113 of 2011

Shivaji Shitole and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

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**Date of Decision :** 26-04-2012

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)(i), 482  
Penal Code, 1860 (IPC) — Section 107, 108, 294(b), 306, 34

**Citation :** (2012) 04 BOM CK 0179

**Hon'ble Judges :** Thipsay, A.M.

**Bench :** Single Bench

**Advocate :** Niteen Pradhan with A.C. Mehta and instructed by Vigil Juris, for the Appellant; R.M. Gadhvi, Assistant Public Prosecutor, for State, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Thipsay A.M., J.—The petitioners are the accused in Sessions Case No. 35 of 2011 pending before the Sessions Court at Baramati. The said case is in respect of an offence punishable u/s 306 of the Indian Penal Code (IPC) read with section 34 thereof. The allegations against the petitioners has found in Column No. 16 of the printed proforma of the Police report is as under:

Translation of the above in English would be thus:

That the accused persons conspired to harass the husband of the first informant because he had formed a Union, and that the husband of the first informant was from time to time threatened that he would be removed from the job and harassed and that in order to harass him, deliberately he was transferred to Haryana, thereby causing mental torture to him and thus by making him impossible to live, instigated him to commit suicide by consuming some poisonous substance. Therefore, the accused have committed an offence punishable u/s 306 read with section 34 of IPC.

The petitioners, being aggrieved by the initiation of the criminal proceedings against them, have approached this Court by the present petition, invoking the jurisdiction of this Court under Article 227 of the Constitution of India and section 482 of the Code of Criminal Procedure ("the Code"), and praying that the criminal proceedings pending against them vide the said criminal case, may be quashed and set aside.

2. I have heard Mr. Niteen Pradhan, the learned Senior Advocate for the petitioners. I have heard Ms. R.M. Gadhvi, the learned APP for the State. Nobody appears for the respondent No. 2. The record shows that she has been duly served with the notice of this petition, for final disposal. Under the circumstances, I am not inclined to adjourn the hearing of the petition, only because the respondent No. 2 is not present. With the assistance of the Learned Counsel, I have gone through the entire police report u/s 173(2)(i) of the Code, on the basis of which the petitioners are being prosecuted.

3. As the facts disclosed in Column No. 16 of the Police report, reproduced above, are not sufficient to understand the nature of the prosecution case, the same can be ascertained from the First Information Report (FIR) and the statements recorded during investigation may be stated here :

One Dattatray Gund was working as a Machine Operator in Bil Tech Building Elements Ltd., Village Bundelwadi, District Pune. He had some disputes with the Management of the said company. He had complained that no primary facilities were provided at the work place. Because of the complaints made by him, he was being threatened from time to time, by the officers of the said company. He was being denied of his Privilege leave. Once he had fallen down while on duty and sustained a fracture, but at that time also, he was given only one day's leave. He was not taken to the dispensary also. The workers in the company therefore, formed a Union and the said Dattatray Gund was made the President of the said Union. Since Dattatray Gund started voicing the grievances of the labour through the Union, the petitioners who are the officers of the said company, started harassing him more.

As the said Dattatray Gund was taking an active interest in the Union activities, he and the Vice President of the Union, one Mandge, were suddenly transferred to the Company's unit at Palwal, Haryana.

Dattatray Gund approached the Industrial Court, Pune, by filing a complaint under the provisions of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971, challenging his transfer; but did not get any interim relief from the Industrial Court. The company insisted that he would have to go to Haryana. As the physical and mental torture caused to him by the petitioners, who were the officers of the said company, became unbearable to Dattatray Gund, he committed suicide on 16.6.2010, by consuming some poison.

On 21.6.2010, Smt. Diksha, wife of Dattatray Gund (Respondent No. 2 herein), lodged a report with the Haveli Police Station, alleging, that it is because of the

torture caused to her husband, by the petitioners, that her husband had committed suicide and that therefore, the petitioners were responsible for his suicide. It is on the basis of this report, which was treated as FIR, that a case in respect of offence punishable u/s 306 of IPC read with 34 thereof, came to be registered and investigation commenced. After investigation, on the basis of a report u/s 173(2)(i) of the Code, the petitioners are being prosecuted, as aforesaid.

4. It is contended by Mr. Niteen Pradhan, the learned Senior Advocate, that there is no satisfactory material to show that Dattatray committed suicide because of the acts of the petitioners, or any of them. It is also submitted that the allegations of harassment and torture caused to the said Dattatray Gund by the petitioners are baseless and unsubstantiated. It is submitted that even otherwise, and accepting the case of the prosecution at its face value, no case of an offence punishable u/s 306 of IPC was made out.

5. Dattatray Gund did not leave any suicide note. Therefore, his own version as to what exactly led to his committing suicide, is not available.

6. The allegation is that he consumed some poisonous substance and died. However, the cause of his death was not revealed in the post-mortem examination of his body. No opinion, as to the cause of probable cause of the death of Dattatray Gund, has been given in the Memorandum of the postmortem examination, which shows that the opinion was reserved and the viscera was preserved for chemical analysis. Admittedly, no report of the chemical analysis has been received so far.

7. Whether the death of Dattatray Gund was indeed suicide, and whether there is material to establish the same, is undoubtedly a relevant and material question that would need consideration; still in the present petition, it need not be gone into. It is because, there is a more fundamental question, which is purely a question of law, that needs to be decided. The real question is assuming that Dattatray indeed committed suicide because of the torments caused to him by the act and conduct of the petitioners, can the petitioners for that reason be prosecuted on the allegation of having abetted the commission of suicide by the said Dattatray ?

8. For answering this question, the legal concept of "abetment" needs to be fully comprehended. The law relating to it is found in Chapter V of the IPC. Section 107 of the IPC reads 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 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.

9. Section 108 of the IPC defines "abettor". It reads as under :

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." (Explanations and illustrations omitted as not relevant for the present)

10. Here, the case is of abetment by instigation; and other two modes of abetment, viz.: by conspiracy and by aiding, as contemplated under the clause "secondly" and thirdly" of section 107 are out of question. The issue then comes to this: when a person is said to "instigate" another? The word "instigate" literally means to goad, or urge, forward, or to provoke, incite, urge, or encourage, to do an (evil) act. It is well settled, that in order to amount to abetment, there must be mens rea or community of intention. 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.

11. The concept of "abetment" in the context of abetment of suicide, which is punishable u/s 306 of the IPC, has been often discussed by the High Courts and also by the Apex Court in their pronouncements. A reference to some of them would illustrate the correct legal position.

12. In (Manish Kumar Sharma Vs. State of Rajasthan), 1995 Criminal Law Journal 3066, 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 said accused and the said 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 "rMDI tU martI @yao nahI hO2 maoro saaqa cola nahI tao tUJao jaanasao aar

dUMgaa2"; whereupon Kusum Devi consumed some tablets of some poisonous substance and died. 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.

13. In (Vedprakash Bhaiji Vs. State of Madhya Pradesh), 1995 Criminal Law Journal 893, the facts of the prosecution case were that the accused Vedprakash and others had advanced a loan to the deceased Ramesh Kumar and that 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 some poisonous substance. In the suicide note left by him, he blamed the accused persons, who were charged of an offence punishable u/s 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.

14. In (Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh), 2002 Criminal Law Journal 2796, the Supreme Court of India extensively dealt with the concept of "abetment" in the context of the offence punishable u/s 306 of the Indian Penal Code. In that case, the allegation against the accused-appellant before the Supreme Court was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts appearing in the reported judgment show 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 charge-sheeted for an offence punishable u/s 306 of the Indian Penal Code, filed a Petition u/s 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. The petitioner had, therefore, appealed to the Supreme Court. While allowing the appeal, Their Lordships of the Supreme Court, inter alia, observed 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 undesirable

action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation." (Para 13 of the reported judgment).

15. A reference may also be made to a decision of the Kerala High Court in (Cyriac, S/o Devassia and another Vs. Sub-Inspector of Police, Kaduthuruthy and another), 2005 Criminal Law Journal 4322, in which the concept of abetment to commit suicide was dealt with extensively by the Learned Single Judge, after referring to a number of pronouncements including the decision of the Supreme Court of India in (Ramesh Kumar Vs. State of Chattisgarh), reported in 2002 Bom.C.R.(Cri.) 433(S.C.): 2001 Criminal Law Journal 4724. The facts of that case, as appearing from the reported judgment, 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 u/s 306 of the Indian Penal Code and had approached the Kerala High Court for quashing the proceedings initiated against them.

16. 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, 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 commission 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.

17. Mr. Niteen Pradhan has also brought to my notice the decision of the Supreme Court of India in Madan Mohan Singh Vs. State of Gujarat and Another, . The facts of the said case as appearing from the reported judgment were that the appellant before he Supreme Court was facing prosecution in

respect of the offences punishable under sections 306 and 294(b) 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 serving as a driver in Ahmedabad Bharat Sanchar Nigam Ltd., in the Microwave Project Department. He had undergone 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 tell his private errands to Deepakbhai and had been harassing him. Though Madan Mohan Singh was transferred, he kept on continuously using the services of Deepakbhai. Madan Mohan Singh was then again transferred in 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 and took the keys, on account of which Madan Mohan Singh was angry and had threatened him of suspension. He had also threatened Deepakbhai that if he had not listen to him, he would create difficulties for him. Madan Mohan Singh had said to Deepakbhai, as to how he was still alive, inspite of the insults. On 21.2.2008, Deepakbhai had left his house as usual, but did not return back 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 that because of this, Deepakbhai was depressed and had committed suicide. A suicide note was allegedly left by the said 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 for getting the prosecution against him quashed, but his petition was dismissed by the High Court of Gujarat. That is how, he had approached the Supreme Court of India. 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 as under :

In order to bring out an offence u/s 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 u/s 306 IPC."(paragraph 12 of the reported Judgment).

The Supreme Court set aside the order of the High Court, by allowing the petition filed by the appellant and quashed the proceedings in question.

18. The legal position that emerges from the above discussion is as follows :

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 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.

19. It is nobody's case that the petitioners intended that Dattatray Gund should commit suicide. As a matter of fact, the material collected during investigation itself indicates that Dattatray Gund was depressed on account of his general working conditions and mainly because of his transfer to Haryana. That transfer was prima facie, not felt to be unfair labour practice by the Industrial Court. However, assuming that he was being treated unfairly by the petitioners, no intention that he should commit suicide, can be attributed to any of the petitioners. On a fair reading of the allegations in the police report and accompanying documents, all that can be said is that the officers of the company wanted to shunt the said Dattatray out to Haryana, so as to get rid of the Union activities, which were being carried out by him. If, as a result of the strained relationship with the management, and the stress and discomfort caused to him on account of his transfer, regarding which, he failed to secure any immediate relief from the Industrial Court, Dattatray Gund committed suicide; it cannot be said that the commission of suicide was abetted by the petitioners. The petitioners cannot be attributed the requisite mens rea as to hold them guilty as abettors.

20. Thus, there is a fundamental defect in the prosecution case itself. It does not spell out any offence punishable u/s 306 of the IPC.

21. It does appear that the first informant Smt. Diksha, widow of Dattatray Gund, is having serious grievances against the said company, and in particular, against the petitioners, as the officers of the said company. She is holding them and the company, responsible for the suicide of Dattatray Gund. If the suicide has been caused by improper treatment given to the deceased by the petitioners /company, then certainly, a civil action for damages, can be initiated by the widow of the said Dattatray Gund. It however appears that she is not financially sound. It is clear that due to the suicide of her husband, she must be facing several problems and difficulties, including financial difficulties in her life. When this angle of the matter was looked at, Mr. Niteen Pradhan, the learned Senior Advocate, submitted that in addition to the entire dues, that were payable to her as the wife of the said Dattatray Gund, which have already been paid,

some further amount shall voluntarily be paid by the company to her, as a mark of goodwill and as an expression of their grief, about the suicidal death of Dattatray Gund. Mr. Niteen Pradhan also submitted that the possibility of providing a suitable employment to the first informant - Smt. Diksha, shall also be considered by the company, and efforts will be made to see that she gets some regular employment in the company. This gesture needs to be appreciated and indeed, it is hoped that the company acts accordingly.

22. The fact however remains that since the ingredients of an offence punishable u/s 306 of IPC are missing in this case, the prosecution against the petitioners cannot be permitted to be continued. It needs to be quashed by exercising the constitutional and inherent powers of this Court.

23. The petition is allowed in terms of Prayer Clause (a). Rule is made absolute accordingly.