

# Prakash vs The State Of Maharashtra on 20 December, 2024

**Author: B.R. Gavai**

**Bench: B.R. Gavai**

2024 INSC 1020

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.                      OF 2024  
(Arising out of SLP (Crl.) No.1073 of 2023)

PRAKASH AND OTHERS

...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA  
AND ANOTHER

...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. This appeal challenges the judgment and order dated 17th October 2022 passed by the learned Single Judge of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Writ Petition No. 246 of 2021, by which the learned Single Judge dismissed the Writ Petition preferred by the present appellants. The Writ Petition had been filed with the prayer to quash the order dated 24th December 2020 passed by the learned Assistant Sessions Judge, Sangamner, District Date: 2024.12.20 15:04:16 IST Reason:

Ahmednagar wherein the learned Assistant Sessions Judge had rejected the application preferred by the appellants seeking discharge from the charges punishable under Sections 306 and 34 of the Indian Penal Code, 1860, pending against the appellants before the Court of the Assistant Sessions Judge, Sangamner in Sessions Case No. 75 of 2015.

3. The facts which lead to the present appeal are as under:-

3.1. On 20th March 2015, the Police Station, Ashvi, District Ahmednagar, received an Accidental Death Report (Khabar) by one Vikas Bhausahab Sanap who stated that on

the same day at about 10 a.m. his sister Jyoti Nagre<sup>3</sup>, aged about 25 years, had committed suicide by hanging herself from the iron pipe situated in the bathroom of her paternal house where she had been residing for the past two years.

3.2. Subsequently, on 25th March 2015, Mrs. Sindhubai Bhausahb Sanap (Respondent No.2), mother of the deceased, lodged a complaint at the said police station. According to the complaint, the deceased had been married to Prakash, Appellant No. 1, on 19th November 2009, after which she had given birth to twin sons. After marriage, disputes arose For short, 'the IPC'.

Hereinafter referred to as the 'trial court'. Hereinafter referred to as 'the deceased'. between the deceased and her husband and in-laws from time to time, with the complainant alleging that the deceased had been mentally and physically tortured at her matrimonial house. However, on the intervention of the complainant and her family, the disputes were patched up and the deceased was sent back to her matrimonial home. Soon thereafter, owing to persisting acrimony at her matrimonial home, the deceased and Appellant No.1 started residing separately, away from the matrimonial home, in Lonikand, Pune. It was further alleged that on 8th August 2013, Appellant No.1 had physically abused the deceased over a demand of Rs.20 lakhs for the purchase of a new plot of land. After this incident, the deceased came to reside at her paternal house. Subsequently, a criminal case being Criminal M.A. No. 175 of 2013 came to be filed before the Court of Judicial Magistrate, First Class, Sangamner against the husband and in-laws of the deceased under Sections 12, 18, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005. During the pendency of the criminal case, a mahalokadalat was held in the court in Sangamner on 17th February 2015, which was attended by the complainant, the deceased and the present appellants, among others. The complainant (Respondent No.2) alleged that on the said day, the present appellants told the deceased that they were not ready to reach a compromise in the matter and further that she would not be allowed to go back to her matrimonial house. The deceased was further advised by Appellant No.1 to re-marry as he would not accept her or her children at the matrimonial house. Subsequent to this incident, the deceased would frequently say that she would commit suicide as her life no longer held any meaning. Thereafter, on 20th March 2015, the deceased committed suicide by hanging herself from an iron pipe with the aid of a saree.

3.3. On the basis of the complaint, a First Information Report<sup>4</sup> being Crime No.12 of 2015 was lodged under Sections 306 and 34 of the IPC against Prakash Pandurang Nagare (Appellant No.1), Pandurang Kundlik Nagare (Appellant No.2), the father- in-law of the deceased, and Pradip Pandurang Nagare (Appellant No.3), the brother-in-law of the deceased at the aforementioned police station.

For short, 'FIR' 3.4. Upon completion of the investigation, the chargesheet came to be filed on 28th September 2015.

3.5. Being aggrieved thereby, the appellants filed an application under Section 227 of the Code of Criminal Procedure, 1973<sup>5</sup> before the trial court, praying to be discharged from the said case. The trial court, by its order dated 24th December 2020, rejected the aforesaid application on the ground

that there was sufficient ground to proceed against the appellants.

3.6. Being aggrieved further, the appellants preferred a Criminal Writ Petition before the High Court for setting aside of the aforesaid order of the trial court. The High Court, vide the impugned judgment and order, dismissed the writ petition finding it to be devoid of merit.

3.7. Being aggrieved thereby, this present appeal.

4. This Court while issuing notice on 30th January 2023 had stayed the criminal proceedings bearing Sessions Case No. 75 of 2015 pending before the trial court, until further orders.

For short, 'Cr.P.C.'

5. We have heard Mr. Niteen V. Gaware, learned counsel appearing for the appellants and Mr. Aaditya Aniruddha Pande, learned counsel and Mr. Siddharth Dharmadhikari, learned counsel appearing on behalf of the respondent-State of Maharashtra.

6. Mr. Gaware, learned counsel, submitted that there was a delay of five days in lodging the FIR. He submitted that although an Accidental Death Report (Khabar) had been filed on the day of the incident by the brother of the deceased, there is not a whisper about any harassment caused by the appellants to the deceased. It also did not disclose any involvement of or instigation by the appellants which might have led the deceased to commit suicide. He further submitted that the FIR was an afterthought and no satisfactory explanation has been offered to justify the inordinate delay.

7. Mr. Gaware further submitted that it is not a case of prosecution that the appellants spoke in such a manner which would amount to abetment of suicide. He further submitted that the appellants met the deceased only on the day of the Mahalokadalat which was held on 17th February 2014 where Appellant No. 1 is alleged to have told her that he did not wish to cohabit with the deceased any longer and he did not wish to settle the proceedings initiated by her. Merely because the deceased was depressed about her situation, it would not be enough to convict the appellants, particularly since, prima facie, the ingredients of Section 306 IPC are not fulfilled.

8. Mr. Gaware submitted that the deceased had been residing separately from the appellants since 8th August 2013. In the intervening period between the date of separation and the date of the incident, the appellants had interacted with the deceased only on one occasion that is on the date of the Mahalokadalat which was held on 17th February 2014. He submitted that the FIR wrongly mentions the date of the mahalokadalat to be 17th February 2015. It is submitted that the deceased committed suicide after over a year had passed. However, the courts below did not consider this aspect or look into the roznama of court proceedings which clearly showed the date on which the mahalokadalat had been held. Therefore, he submitted that in view of the time gap between the alleged meeting and the date of suicide, there is no immediate instigation or abetment to commit suicide which can be attributed to the appellants.

9. Mr. Gaware placed reliance on the judgments of this Court in the cases of Mohit Singhal and Another v. State of Uttarakhand and Others<sup>6</sup>, Gurjit Singh v. State of Punjab<sup>7</sup>, State of West Bengal v. Indrajit Kundu and Others<sup>8</sup>, Madan Mohan Singh v. State of Gujarat and Another<sup>9</sup>, Yogesh alias Sachin Jagdish Joshi v. State of Maharashtra<sup>10</sup> and Sanju @ Sanjay Singh Sengar v. State of M.P.<sup>11</sup>. He submitted in view of the material placed on record and the authorities cited, the appeal deserves to be allowed and the appellants deserve to be discharged of all charges.

10. Per contra, Mr. Siddharth Dharmadhikari, learned counsel, submitted that no interference is warranted in the concurrent findings of the trial court and the High Court. He submitted that there is sufficient material against the appellants to proceed against them. He further submitted that in view of the allegations levelled against the appellants and the evidence collected by the investigating agency, it is not a (2024) 1 SCC 417 : 2023 INSC 1035 (2020) 14 SCC 264 : 2019 INSC 1281 (2019) 10 SCC 188 : 2019 INSC 1164 (2010) 8 SCC 628 : 2010 INSC 521 (2008) 10 SCC 394 : 2008 INSC 534 (2002) 5 SCC 371 : 2002 INSC 250 fit case to allow this appeal. Mr. Dharmadhikari, therefore, prayed for the dismissal of this appeal.

11. We have carefully considered the rival submissions and perused the material placed on record.

12. The relevant provisions of the IPC that fall for consideration are as under:

“306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing—A person abets the doing of a thing, who— First.— Instigates any person to do that thing; or Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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.”

13. Section 306 of the IPC has two basic ingredients—first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.

14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well- established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide.

16. This Court in the case of *S.S. Chheena v. Vijay Kumar Mahajan and Another*<sup>12</sup>, had an occasion to consider the scope of Section 306 of the IPC and the ingredients which are essential for abetment, as set out in Section 107 of the IPC. It observed as follows:

“16. The word “suicide” in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. “Sui” means “self” and “cide” means “killing”, thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

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18. In our country, while suicide in itself is not an offence, considering that the successful offender is (2010) 12 SCC 190 : 2010 INSC 506 beyond the reach of law, attempt to suicide is an offence under Section 309 IPC.

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21. The learned counsel for the appellant has placed reliance on a judgment of this Court in *Mahendra Singh v. State of M.P.* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] In *Mahendra Singh* [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the allegations levelled were as under: (SCC p. 731, para 1) “1. ... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.” The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

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23. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that:

(SCC p. 90, para 17) “17. ... The court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it [appears] to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

24. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

17. This Court held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing. Therefore, without a positive act on the part of the accused to instigate or aid a person in committing suicide, conviction cannot be sustained. This Court further observed that the intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 of IPC, there has to be a clear mens rea to commit the offence. Abetment also requires an active act or direct act which led the deceased to commit suicide seeing no other option and that act must have been intended to push the deceased into such a position that he committed suicide. However, this Court has cautioned that since each person reacts differently to the same provocation depending on a variety of factors, it is impossible to lay down a straightjacket formula to deal with such cases. Therefore, every such case has to be decided on the basis of its own facts and circumstances.

18. More recently, in the case of Jayedeepsinh Pravinsinh Chavda and Others v. State of Gujarat<sup>13</sup>, this Court has 2024 SCC OnLine SC 3679 : 2024 INSC 960 relied on S.S. Chheena (supra) to hold that the element of mens rea cannot simply be presumed or inferred, instead it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law, that is deliberate and conspicuous intention to provoke or contribute to the act of suicide, would remain unfulfilled. This Court observed as follows:

“18. For a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence of clear mens rea—the intention to abet the act—is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide.”

19. It is, therefore, evident that the positive act of instigation is a crucial element of abetment. While dealing with an issue of a similar nature, this Court in the case of Ramesh Kumar v. State of Chhattisgarh,<sup>14</sup> laid down the parameters of what (2001) 9 SCC 618 : 2001 INSC 515 would be constituted to be an act of instigation. This Court observed as follows:-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

20. It could thus be seen that this Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. It has been held that in order to satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence, however, a reasonable certainty to incite the consequence must be capable of being spelt out. Applying the law to the facts of the case, this Court went on to hold that a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. Relying on the decision in the case of Ramesh Kumar (supra), this Court in the case of Ude Singh and Others v. State of Haryana<sup>15</sup> observed as follows:

“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 behaviour 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 the accused is otherwise not ordinarily expected to induce a (2019) 17 SCC 301 : 2019 INSC 810 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 observe 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 no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set-ups, education, etc. Even



the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

22. It could thus be seen that this Court observed that 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 has been held that since the cause of suicide particularly in the context of the offence of abetment of suicide involves multifaceted and complex attributes of human behaviour, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. This Court further observed that a mere allegation of harassment of the deceased by another person would not suffice unless there is such action on the part of the accused which compels the person to commit suicide. This Court also emphasised that such an offending action ought to be proximate to the time of occurrence. It was further clarified that 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. It was further held that if the acts and deeds are only of such nature where the accused intended nothing more than harassment or a 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. This Court held that owing to the fact that the human mind could be affected and could react in myriad ways and that similar actions are dealt with differently by different persons, each case is required to be dealt with its own facts and circumstances.

23. In the case of Sanju @ Sanjay Singh Sengar (supra), the appellant before this Court was charged with having abetted the suicide by his brother-in-law (sister's husband). The prosecution story was that there were strained relations between the deceased and his wife who at the material time was staying with the appellant therein. On 25th July, 1998 the deceased went to the appellant to bring back his wife. There was a quarrel between the appellant and the deceased who came back alone. The deceased told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words. On 27th July, 1998 the deceased was found dead. The deceased left a suicide note which showed his disturbed state of mind but otherwise he blamed the appellant for the suicide. The appellant's petition for quashing of the charge-sheet filed under Section 482 Cr.P.C. was dismissed by the High Court which led him to file an appeal before this Court which came to be allowed. While taking note of the disturbed state of mind of the deceased as was evident from the suicide note and the lack of intention on the part of the accused to abet the commission of suicide by the deceased, the Court held that there was a time gap of 48 hours between the abusive language being used and the commission of suicide. As such, owing to the passage of 48 hours, giving the deceased enough time to reflect, there was no proximate link between the words uttered and the act of suicide. This Court observed as follows:

“8. In *Swamy Prahaladdas v. State of M.P.* [1995 Supp (3) SCC 438 : 1995 SCC (Cri) 943] the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked to the deceased “to go and die”. This Court was of the view that mere words uttered by the accused to the deceased “to go and die” were not even prima facie enough to instigate the deceased

to commit suicide.

9. In Mahendra Singh v. State of M.P. [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] the appellant was charged for an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under: (SCC p. 731, para

1) “My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law.

Because of these reasons and being harassed I want to die by burning.”

10. This Court, considering the definition of “abetment” under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618] this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set herself on fire. Acquitting the accused this Court said: (SCC p. 620) “A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty.”

12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25-7- 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased “to go and die”. For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 CrPC when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 CrPC is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him “to go and die”. 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 inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or

on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

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14. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of "abetment" are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death." (emphasis supplied)

24. It could thus be seen that this Court held that both the courts below had erroneously accepted the prosecution story that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July 1998 wherein it was alleged that the appellant therein had used abusive language and had reportedly told the deceased 'to go and die'. It was held that even if one accepts the prosecution story that the appellant did tell the deceased 'to go and die', that itself did not constitute the ingredient of 'instigation'. This Court held that it was common knowledge that the words uttered in a quarrel or on the spur of the moment could not be taken to be uttered with mens rea. It has been held further that the alleged abusive words were said to have been told to the deceased on 25th July 1998 during a quarrel and the deceased was found hanging on 27th July,

1998. This Court held that if the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and therefore, it could not be said that the abusive language which had been used by the appellant on 25th July 1998 drove the deceased to commit suicide on 27th July 1998. It has been held that the suicide by the deceased was not proximate to the abusive language used two days prior. Additionally this Court held that a plain reading of the suicide note made it clear that the deceased was in great stress and depressed and the suicide note also clearly suggested that it was not the handiwork of a man with a sound mind and sense. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased.

25. Relying on the decision in the case of Sanju @ Sanjay Singh Sengar (supra), this Court in the case of Gurjit Singh (supra) set aside the conviction under Section 306 of the IPC as it was clear from the evidence on record that there was a time gap of about two months between the last visit of the deceased to her parents with regard to the illegal demand for money by the accused-appellant and the date of commission of suicide by the deceased. As such, this Court held that there was nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the accused-appellant. This Court observed as follows:

“36. It could further be seen from the evidence on record that the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In Sanju v. State of M.P. [Sanju v. State of M.P., (2002) 5 SCC 371 : 2002 SCC (Cri) 1141] this Court found that there was time gap of 48 hours between the accused telling the deceased “to go and die” and the deceased “committing suicide”. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased.” (emphasis supplied)

26. Thus, this Court has consistently taken the view that instigation or incitement on the part of the accused person is the gravamen of the offence of abetment to suicide. However, it has been clarified on many occasions that in order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of instigation by the accused person.

27. This Court in the case of Mohit Singhal (supra) reiterated that the act of instigation must be of such intensity and in such close proximity that it intends to push the deceased to such a position under which the person has no choice but to commit suicide. This Court held that the incident which had allegedly driven the deceased to commit suicide had occurred two weeks prior and even the suicide note had been written three days prior to the date on which the deceased committed suicide and further, there was no allegation that any act had been done by the accused-appellant therein in close proximity to the date of suicide. This Court observed as follows:

“11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

12. Therefore, in our considered view, the offence punishable under Section 306IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law.” (emphasis supplied)

28. This Court in the case of Naresh Kumar v. State of Haryana<sup>16</sup>, observed as follows:-

“20. This Court in Mariano Anto Bruno v. State [Mariano Anto Bruno v. State, (2023) 15 SCC 560 : 2022 SCC OnLine SC 1387] , after referring to the abovereferred decisions rendered in context of culpability under Section 306IPC observed as under : (SCC para 45) “45. ... 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 306IPC is not sustainable.” (emphasis supplied) (2024) 3 SCC 573 : 2024 INSC 149

29. Having discussed the law on the subject, we now proceed to consider the facts of the present case in view of the established principles.

30. As per the version of the complainant, the following facts have emerged:

- i. Appellant No. 1 got married to the deceased on 19th November 2009.
- ii. Disputes arose thereafter, and the parties started residing separately from 8th August 2013 with the deceased residing at her paternal house with her child.
- iii. A mahalokadalat was held at the court in Sangamner on 17th February 2015 during which the appellants are alleged to have refused to cohabitate with the deceased or accept her or her child at her matrimonial house or settle the proceedings initiated by the deceased.
- iv. On 20th March 2015, the deceased committed suicide.

31. In the case of Sanju @ Sanjay Singh Sengar (supra), this Court, under similar circumstances, had quashed the chargesheet under Section 306 of the IPC against the accused- appellant. A factor that had weighed with the Court in the said case was that there was a time gap of 48 hours being the alleged instigation and the commission of suicide. This Court held that the deceased was a victim of his own conduct, unconnected with the quarrel that had ensued between him and the appellant, 48 hours prior to the commission of his suicide.

32. In the case at hand, taking the allegations in the FIR at face value, the incident at the mahalokadalat had occurred on 17th February 2015, while the deceased had committed suicide on 20th March 2015. There is a clear gap of over a month between the incident at the mahalokadalat and the commission of suicide. We therefore find that the courts below have erroneously accepted the prosecution story that the act of suicide by the deceased was a direct result of the words uttered by the appellants at the mahalokadalat.

33. We also find that the date of occurrence of the mahalokadalat is disputed. The appellants have vehemently argued before the trial court and the High Court that the mahalokadalat had not been held on the 17th February 2015 but instead had been held about a year earlier, and that the date of the mahalokadalat as mentioned in the FIR and in the statements of the witnesses, is factually incorrect. If this submission is to be accepted, the time gap between the two incidents would widen even further.

34. However, we do not wish to go into that issue. Even if we take the date of the mahalokadalat to be 17th February 2015 to be the factually correct one, there is enough gap between the two incidents to render the instigation or incitement by the appellants, nugatory. The cardinal principle of the subject- matter at hand is that there must be a close proximity between the positive act of instigation by the accused person and the commission of suicide by the victim. The close proximity should be such as to create a clear nexus between the act of instigation and the act of suicide. As was held in the case of Sanju @ Sanjay Singh Sengar (supra), if the deceased had taken the words of the appellants seriously, a time gap between the two incidents would have given enough time to the deceased to think over and reflect on the matter. As such, a gap of over a month would be sufficient time to dissolve the nexus or the proximate link between the two acts.

35. Apart from that, although an Accidental Death Report was lodged on the day of the incident by the deceased's brother, there is no mention about any involvement of the appellants in the suicidal death of the deceased. Further, there is no mention about the incident that had occurred at the mahalokadalat which had put the deceased in a state of depression such that she frequently spoke about committing suicide. These facts are alleged for the first time in the FIR which was lodged five days after the incident.

36. We are of the considered view that the reasoning given by the High Court for refusal to discharge the appellants is completely perfunctory. The High Court observed that there is no allegation about any harassment or cruelty meted out by the appellants to the deceased in the Accidental Death Report, however, held that the allegations in the FIR could not be overlooked and the Accidental Death Report and the statements made in the Accidental Death enquiry would be a matter of trial.

The High Court also took note of the disputed date of the mahalokadalat but held that incorrect mentioning of the date of the mahalokadalat in the FIR would not be a ground to discharge the appellants, considering the state of mind of the complainant, the deceased's mother.

37. We further find that the prosecution has failed to prima facie establish that the appellants had any intention to instigate or aid or abet the deceased to commit suicide. No doubt that a young woman of 25 years has lost her life in an unfortunate incident. However, in the absence of sufficient material to show that the appellants had intended by their words to push the deceased into such a position that she was left with no other option but to commit suicide, continuation of criminal proceedings against the appellants would result in an abuse of process of law and as such, we are inclined to allow the appeal.

38. In the result, we pass the following order:-

i. The present appeal is allowed.

ii. The impugned judgment and order of the High Court of Judicature at Bombay, Bench at Aurangabad passed on 17th October 2022 in Criminal Writ Petition No. 246 of 2021 and the order of the Assistant Sessions Judge, Sangamner dated 24th December, 2020 in Sessions Case No. 75 of 2015 are quashed and set aside; and iii. The appellants are discharged from Sessions Case No. 75 of 2015 on the file of Assistant Sessions Judge, Sangamner. Their bail bonds, if any, shall stand cancelled.

39. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI) .....J. (K. V. VISWANATHAN) NEW DELHI;

DECEMBER 20, 2024.