



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 326 OF 2016

1. Sagar @ Amol Dnyaneshwar Patil
Age : 23 years, Occupation : Agriculture,

2. Dhiraj Vijay Patil
Age : 23 years, Occupation : Agriculture,

Both R/o : Kurukwade, Taluka Shindkheda,
District Dhule.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra
Through Dondaicha Police Station,
Dondaicha, Taluka Shindkheda,
District Dhule.

... Respondent

.....
Mr. Azizoddin R. Syed, Advocate for the Appellant.
Mr. N. D. Raje, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.09.2026

Pronounced on : 24.09.2026

JUDGMENT :

1. Appellants, who stood convicted for offence under Sections 306 and 201 of IPC, respectively, vide judgment and order dated 11.05.2016 passed by learned Additional Sessions Judge, Dhule in Session Case No. 193 of 2014, hereby take exception to the same.

2. In nutshell, case of prosecution in trial court was that, deceased Nayana was studying in 10th standard and was put up with her grandmother while her parents stayed at Surat. According to prosecution, accused persons were repeatedly making phone calls to Nayana and they teased her. Precisely getting fed up of the same, she immolated herself on 07.04.2014. On report of PW2, crime was registered which was duly investigated and after gathering sufficient evidence, both accused were chargesheeted and tried vide Session Case No. 193 of 2014 which ended up in conviction. There is challenge to the same by instant appeal.

3. Learned counsel for the appellants would plead innocence and allege false implication. According to him, prosecution has miserably failed to establish the charges. He pointed out that going by the prosecution story, by no stretch of imagination it can be said that accused persons indulged in abetment to commit suicide or induced deceased to commit suicide. Learned counsel took this Court through the length and breadth of the prosecution evidence, more particularly testimonies of PW4, PW5 and PW6. He also took this Court through the cross faced by these witnesses and would submit that their testimonies are full of material omissions and contradiction. He would

emphatically submit that case of prosecution is that, there were repeated calls to deceased for teasing her but what was the nature and manner of teasing has not been brought on record by prosecution. He pointed out that mere CDR is gathered but the exact teasing has not come on record.

4. Learned counsel further pointed out that, there are two accused facing above charge but there is use of only one mobile phone which is seized, and moreover, the SIM card inserted and used in the said phone was allegedly standing in the name of PW6 Jitendra Gosavi and there was no evidence on behalf of prosecution to show that either the SIM card or mobile phone was used by accused only. Furthermore, according to him, even otherwise, mere frequent calls without any specific text or message, is of no consequence and cannot be applied to attract charge of abetment to commit suicide.

5. Learned counsel also pointed out that, it is also not sure whether deceased committed suicide or whether she suffered accidental burns. He pointed out that, there is no dying declaration and therefore case of prosecution cannot be said to be proved beyond reasonable doubt. However, according to him, learned trial court has failed to correctly appreciate the evidence, to apply correct law and

also erred in convicting the accused. He therefore, urges to allow the appeal by setting aside the impugned judgment.

6. Per contra, learned APP, while supporting and justifying the order of conviction, also reiterated the prosecution case in trial court and would submit that it has come on record that accused persons were continuously making phone calls to deceased and they teased her. Repeated and frequent calls to tease forced her to end up her life. That, there is reliable evidence of PW4, PW5 and PW6 to connect the accused. He would submit that, prosecution has placed on record CDR to show that there were frequent and repeated calls and the same was the sole reason for the girl to commit suicide. For above reasons, he prays to dismiss the appeal for want of merits.

7. After hearing both sides and having gone through the record, it emerges that the case of prosecution is rested on the evidence of as many as 11 witnesses and their status is as under :

PW1 is the autopsy surgeon who opined death to be due to shock due to 100% burns. PW2 has given *khabar*/intimation to police. PW3 is pancha to spot panchanama as well as seizure of mobile phones. PW4 is father of deceased. PW5 is acquaintance of deceased.

PW6 is the witness who lent SIM card to accused no.1 Sagar. PW7, PW8, PW9 and PW10 are Investigating officers who carried out investigation at respective times. PW11 is the Nodal Officer of Idea Cellular company who endorsed CDR Exhibit 41.

8. As stated above, precise charge of prosecution against accused is that, they abetted suicide of deceased by making her frequent calls and by teasing her.

9. After hearing both sides, CDR which demonstrates use of mobile by accused is the linchpin around which entire story of prosecution revolves. The same is at Exhibit 41. Case of prosecution is that, SIM card standing in the name of PW6 was given to accused no.1 for use.

10. On this point, testimony of **PW6** does go to show that he had given SIM card to accused no.1 for use, i.e. bearing no. 8380985592. He deposed that, accused no.1 being his friend, he gave his own Aadhar Card and photograph to accused no.1, who on the basis of the same obtained SIM card and as such SIM card is registered in the name of this witness. In chief itself he denied knowing deceased.

While under cross, he claims to be unaware that SIM card is non transferrable. He admitted not sending letter to the Idea company about giving his SIM card to accused no.1 for use. He admitted that he learnt from Chandrabhan that the said mobile number had come in talks in connection with death of Nayana, but admitted not going to police to clarify that said SIM card was not used by him.

Therefore, this witness merely speaks of lending sim card standing in his name to accused no.1 for use.

11. **PW9** is the Investigating Officer who applied to the office of Superintendent of Police to issue CDR of mobile number 8698275317 (used by deceased) and 8380985592 (allegedly used by accused) and he identified the same to be at Exhibit 41.

While under cross, he has admitted that Exhibit 41 is for SIM Card 8698275317 which was inserted in the handset having IMEI No. 351970033210680. He admitted that Article 4 is the mobile handset having IMEI No. 351970033210682 and he admitted that IMEI is a unique number and that, IMEI number in CDR Exhibit 41 and IMEI number mentioned on the seized mobile handset Article 4 are different. He admitted that, there was no seizure of handset having

IMEI number 351970033210680. He also admitted that handset article no.4 which was used by deceased, was received by him in switched off condition and he did not switch it on for checking the details of said mobile handset. He also admitted that there are continuous phone calls at odd times in the night between mobile no. 8698275317 (used by deceased) and mobile number 9421495579 and that, on the day of incident there were conversations as well as exchange of messages between these two numbers. He admitted that he did not investigate to whom mobile no. 9421495579 belong to and he made no inquiry with Ishwarsingh, Rakesh and Yogesh as to with whom deceased was talking to and sending messages at odd times in night on mobile no. 9421495579. He also further admitted that from CDR Exhibit 41, it appeared that there were numerous phone calls and messages at odd hours and also at 08.06 a.m. on 07.04.2014 between number 8698275317 belonging to deceased and other number 9637326109. He also admitted that as per Exhibit 41, there were several messages from 9637326109 on phone no. 8698275317 on 07.04.2014 at 5.29 p.m., but he admitted about not inquiring to whom mobile no. 9637326109 belong to. He admitted not obtaining contents of SMSs sent or received on phone no. 8698275317. He further admitted that there were several calls and SMSs between mobile no. 8698275317 and 9673658395, but he made no inquiry to

whom the later number belong to. In para 20 he further admitted that, on the basis of CDR Exhibit 41 it appeared that mobile no. 8380985592 belong to Jitendra Gosavi and he did not obtain any document to show that said mobile number was given by Jitendra Gosavi to accused no.1 for use.

12. Thus, here, it is emerging that, Exhibit 41 carries CDR of various other numbers and the mobile possessed by deceased has received several multiple calls from other numbers than the one which was allegedly used by accused Sagar. However, the lender of SIM card, namely, Jitendra, has admitted that there is nothing to show that he lent Aadhar card and his photograph to accused Sagar to purchase SIM card in his name and to further use it.

13. Consequently, as far as CDR is concerned, nothing concrete has come on record except repeated calls being made and messages being sent, but from various numbers on the mobile allegedly possessed by deceased. Admittedly, when it was specific case of prosecution that, by making repeated calls there was teasing to the deceased which made her upset and annoyed and she thereby committed suicide only due to it, then it was incumbent upon prosecution to demonstrate what was the exact manner and nature of teasing to deceased.

However, apparently there is no material with regard to teasing. Therefore, it is difficult to comprehend that mere frequent and repeated calls amounted to abetment of suicide. The crucial evidence about manner and nature of teasing has not come on record. It is further difficult to comprehend that there could be two accused using one mobile to make calls to deceased and to tease her.

14. Prosecution seems to be heavily banking on the evidence of **PW5** Rakesh as this witness claimed in his evidence at Exhibit 35 that on the day of incident, i.e. on 07.04.2014 deceased came to his place between 9.30 to 10.00 a.m. and she told him that two boys were continuously teasing her by calling her every now and then and according to him, she named those boys as Dhiraj and Sager. He further claimed that the deceased told him that she was fed up with the continuous teasing. Around 01.30 p.m. he claims to have received information about burns suffered by deceased and shifting her to the hospital in ambulance. He claims that he came to know names of two boys as Sagar Dnyaneshwar Patil and Dhiraj Vijay Patil but apparently he seems to have hearsay information to that extent. He deposed that it was his opinion that deceased burnt herself because of continuous teasing by two boys and as such, both boys are responsible for her death. He specifically deposed that deceased showed her list of

incoming calls and he claims to have seen calls being received from phone no. 8380985592 six to seven times and therefore he formed above opinion. He claims that he passed this information to the father of deceased after the funeral.

However, while under cross, in para 11, he answered that when deceased came to him, she told him full name of Dhiraj and he in turn passed it on to the police while his statement was recorded. But full name of Dhiraj is missing in his statement. He also admitted that deceased told him that accused were teasing her but she had not told about the exact manner in which she was teased. Omission is also brought on record regarding six to seven times incoming calls received by deceased from accused. In further cross at the hands of accused no.2 he admitted that he happens to be grandfather of deceased.

Therefore, the above witness who is crucial witness for prosecution, though claims to have heard from deceased that she was receiving repeated phone calls from Sagar and Dhiraj and they teased her and he formed an opinion that getting fed up by the same, deceased ended up her life, but in cross, as stated above, he admitted that she did not inform him what was the manner of teasing.

15. Likewise, **PW4** father is examined by prosecution, but admittedly he was at Surat when the incident occurred and he has directly attended the last rituals and as such he has mere hearsay information i.e. from relative namely Rakesh (PW5). Even father in cross has admitted that when he first received phone call, he was not informed about any teasing to his daughter. He candidly admitted that even deceased never told him anything about it in spite of regular conversation with her including the morning of the day of incident. Therefore his such answers also render prosecution story about accused persons repeatedly calling her and teasing her doubtful.

16. Law is fairly settled as regards the applicability of Section 306 IPC is concerned. Time and again, in umpteen judgments, Hon'ble Apex Court as well as this Court has reiterated that, apart from inducement, direct instigation, active participation, there has to be *mens rea* also. The proximate trigger which led to suicide is also time and again clarified while dealing with above provision.

Few cases that could be named are, *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, *S. S. Chheena v. Vijay Kumar*

Mahajan and Others (2010) 12 SCC 190 as well as *M. Mohan v. The State represented by The Deputy Superintendent of Police* MANU/SC/0161/2011, wherein standard of “instigation” is elaborately dealt and discussed.

Even, recently in the case of *Abhinav Mohan Delkar v. State of Maharashtra and others*, MANU/SC/1103/2025 the Hon’ble Apex Court has reinforced “proximate trigger” doctrine emphasizing that there has to be close temporal and casual connection between the conduct of accused and the alleged suicide. Continuous harassment, without recent instigation, is held to be not sufficient to sustain the charge.

17. Bearing in mind the above settled law, it is clear that here, there is nothing to hold that accused abetted suicide or induced deceased or instigated her to commit suicide. Both accused are residents of distinct villages. There is no positive act shown to be played by them which impelled deceased to end up her life. Call records on 07.04.2014 are up to 9.25 hours, but incident is of afternoon around 1.00 to 1.30 p.m. What transpired in between has not come on record and therefore, benefit of the same has to go to the accused.

18. For attracting Section 201 of IPC, there has to be evidence to show that accused caused disappearance of evidence to screen themselves. Here, there is only one mobile and there are two accused and according to prosecution, both accused used it, but who amongst them indulged in causing disappearance of evidence has not been demonstrated. Therefore, for above reasons, both charges fail.

19. Perused the judgment under challenge. It is seen that learned trial court, in paragraph 87 of the judgment, has formed opinion that from the entire evidence on record, exact word and sentences uttered during various calls and SMS have not come on record, but merely on the strength of frequency of calls, learned trial court seems to have formed an opinion that accused no.1 made phone calls frequently with *mala fide* intention while he was in the company of accused no.2. Observations made in paragraphs 88, 89 and 90 are apparently based on assumptions, presumptions and surmises and therefore, such judgment cannot be allowed to be sustained and it requires interference. Hence, the following order :

ORDER

I. The Criminal Appeal is allowed.

- II. The conviction awarded to the appellants Sagar @ Amol Dnyaneshwar Patil and Dhiraj Vijay Patil by learned District Judge-4 and Additional Sessions Judge, Dhule in Session Case No. 193 of 2014 under Section 306 r/w 34 and Section 201 of IPC respectively, on 11.05.2016 stands quashed and set aside.
- III. The appellant Sagar @ Amol Dnyaneshwar Patil stands acquitted of the offence punishable under Sections 306 r/w 34 and 201 of IPC and the appellant and Dhiraj Vijay Patil stands acquitted of the offence punishable under Section 306 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. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]