

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1287 OF 2013

David S/o Bhagwan Gaikwad,
Age 53 years, Occu.: Service,
R/o. Ashti, Taluka Ashti,
District Beed

.. Applicant

Vs.

1. The State of Maharashtra
through Ashti Police Station,
District Beed
2. Pradeep Daniel Kamble,
Age : 53 years, Occu.: Service,
R/o. Hatampura, Ahmednagar,
Taluka and District Ahmednagar
3. Saw. Surekha Pradeep Kamble,
Age : 48 years, Occu.: Service,
R/o. Hatampura, Ahmednagar,
Taluka and District Ahmednagar .. Respondents

WITH
CRIMINAL APPLICATION NO. 2084 OF 2013

The State of Maharashtra,
through Ashti Police Station,
Tq. Ashti, Dist. Beed

.. Applicant

Vs.

- 1] Pradip Danial Kamble,
Age 52 years, Occu.: Service,
R/o Hatampura, Ahmednagar,
Tq. & Dist. Ahmednagar
- 2] Surekha W/o Pradip Kamble,
Age 45 years, Occu.: & R/o
as above .. Respondents

Mr. S.S. Jadhavar, Advocate for applicant (1287/2013)
Mrs. B.B. Gunjal, A.P.P. for respondent – State (1287/2013)
and for applicant / State (2084/2013)
Mr. Joydeep Chatterji, Advocate for respondent nos.2 and 3
(1287/2013) and for the respondents (2084/2013)

CORAM : M.T. JOSHI, J.**DATE : 16/04/2015****ORAL ORDER :**

1. Heard both sides.
2. Aggrieved by the recording of acquittal of the present respondents by the learned Sessions Judge, Beed vide judgment and order dated 9/1/2013 in Sessions Case No. 126 of 2010 from the offence punishable under section 306 r/w. 34 of the Indian Penal Code, these applications are filed by the State as well as the complainant, seeking leave to file appeals.
3. The prosecution case in nutshell is as under:-
 - . That respondent – Pradip Kamble is working as Principal of Union D.Ed. College at Ahmednagar. Co-respondent Surekha Kamble - his wife used to look after the management of Girls Hostel in the school as Rector. Deceased Vandana was a student of Union D.Ed. College and she had taken admission in the first year in the

year 2005. The respondent – Pradip constantly used to harass the deceased and tease her on her average intelligence. He always used to call deceased Vandana in his chamber and molest her. In the situation, deceased always used to be in a depressed mood. Ultimately, she left the hostel and went back to reside at the house of her father at Ashti and continued to attend the College. However, respondent – Pradip used to harass her thereafter on trivial grounds like late attendance by 5-10 minutes. He used to make demand of donation from the deceased. The deceased however was not able to pay the donation. Therefore, the respondent – Pradip always used to humiliate her. Due to this, one academic year of the deceased was lost. In the circumstances, on 16/3/2006, the deceased set herself on fire in her house. She was immediately rushed to the hospital at Ashti and, thereafter, she was taken to Civil Hospital at Ahmednagar on the very same day. Ultimately, she died on 22/03/2006. Accidental death case was registered after her death.

. D.W.1 - Pratap Landge has conducted the enquiry into the accidental death case. Statements of witnesses

were recorded. Statement of father of the deceased i.e. David Gaikwad, which was allegedly recorded by D.W.1, would show that the deceased had suffered accidental burn injuries while working on a stove. However, complaints were filed with the Ashti Police Station on 7/6/2009 with the allegations that the deceased has died due to the harassment by both these respondents i.e. Pradip as well as his wife – Surekha and the allegations, as detailed supra. Ultimately, the crime came to be registered and the investigation started.

4. The post-mortem examination notes were collected and spot panchanama was recorded. During investigation, various documents were collected. It was found that after the death of the deceased, an Enquiry Committee was set up and certain departmental enquiry was made, wherein it was transpired that the respondent – Pradip used to harass and ill-treat the girl students in the College. He always used to roam around in the girls hostel during the night barely on his underwear and particularly, he used to call deceased Vandana in his cabin and even used to humiliate and molest her. The papers of the enquiry were included in the papers of

the investigation. After recording statements of various witnesses, chargesheet came to be filed and the case was committed to the Sessions Court.

5. Before the learned Sessions Court, in all 11 witnesses were examined. Defence also examined three witnesses. Material witnesses are P.W. 5, P.W. 6 and P.W. 7, who are the employees of the said College, who deposed about the earlier harassment to the deceased at the hands of the respondent – Pradip and the oral dying declaration is stated to have been made to them, by the deceased in the hospital.

6. The defence witnesses were D.W. 1 – Pratap Landge – Police Head Constable, who has carried the enquiry into the accidental death. D.W. 2 – Dr. Chavan and D.W. 3 – Dr. Bhaskar Bhavar, who were the Medical Officers of the Civil Hospital, who had attended the deceased and who deposed about the history allegedly either given by the deceased or her relative of the accidental burn injuries.

7. The learned Sessions Judge found that the relevant prosecution witnesses are interested in the

case. It was further found that the behaviour of the respondent – Pradip may be objectionable and not becoming of his post as the Principal, however, disbelieving the case of the molestation at the hands of the respondent – Pradip, the respondents came to be acquitted. Hence, the present applications.

8. Perused the reasoning forwarded by the learned Sessions Judge. It could be found that the initial enquiry revealed that the death of deceased Vandana has occurred due to the accidental burn injuries. The glaring fact highlighted from the side of the appellants is that no dying declaration of the deceased was recorded though P.W.1-Police Head Constable clearly stated that when he visited the hospital during lifetime of the deceased, she was able to talk. It was further pointed out that there was material variance between the statements of D.W.2-Dr. Chavan and D.W. 3 Dr. Bhaskar Bhavar on the point who had given the history at the time of admission of the deceased in the hospital. D.W. 3 - Dr. Bhaskar Bhavar had in particular deposed about the history given at the time of admission of the deceased in the hospital, though on his own statement,

he had examined the deceased later-on.

9. On the other hand, from the side of the respondents, Mr. Jadhavar points that while P.W. 6 – Prashat Gaikwad the Professor working in the same college is admittedly on inimical terms with the respondents, as the issue of seniority and the claim to the post of Principal was fought tooth and nail between them much prior to the present incident. The said witness has admitted these facts. Rest of the two witnesses i.e. P.W. 5 – Timathi Chandekar and P.W. 7 – Sunil Venon i.e. the Peon and the Hostel Clerk respectively in the College have deposed that when they met the deceased in the hospital, she made oral dying declaration regarding the cause of commission of the suicide. These statements however are conspicuously missing in the statements recorded during the investigation.

10. Upon going through the entire material on record and upon perusal of the reasoning forwarded by the learned Sessions Judge, it can very well be found that a reasonable and probable view has been taken by the learned Sessions Judge on the basis of the evidence

before him. The findings cannot be termed as perverse one. There is a possibility that the objectionable behaviour of the present respondent – Pradip who was working as the Principal and the issue of non-payment of donation may have caused a reasonable suspicion in the minds of the relatives of the deceased, which has been amplified by P.W. 5-Timathi Chandekar, P.W. 6-Prashant Gaikwad and P.W. 7-Sunil Venon.

11. It is further to be observed that the findings in the departmental enquiry are not of any assistance in the present criminal case.

12. In view of the above material, grant of leave to file appeals, would be an exercise in futility. In the result, the following order:-

13. Leave to file appeals is hereby refused. Both Criminal Applications are therefore dismissed.

Sd/-
[M.T. JOSHI]
JUDGE

arp/