

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.3376 of 2014

The State of Maharashtra. .. **Applicant.**

Versus

Pandurang s/o Tukaram Jadhav
And Others. .. **Respondents.**

Smt. M.S. Patni, Additional Public Prosecutor, for the
applicant.

Shri. G.J. Pahilwan, Advocate, for respondent Nos.1 to 3.

With

Criminal Appeal No.248 of 2014

Tatyarao Baburao Mane. .. **Applicant.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. Aniruddha A. Nimbalkar, Advocate, for appellant.

Smt. M.S. Patni, Additional Public Prosecutor, for
respondent No.1.

Shri. G.J. Pahilwan, Advocate, for respondent Nos.2 to 4.

CORAM: T.V. NALAWADE, J.

DATE : 12th AUGUST 2015

ORDER:

1) Both the proceedings are filed to challenge the judgment and order of Sessions Case No.55/2911 which was pending in the Court of Additional Sessions Judge, Ambajogai. The trial Court has acquitted the respondents of the offence punishable under section 306 read with 34 of the Indian Penal Code. The first proceeding is filed by the State for grant of leave to file appeal and the second proceeding is filed by the original complainant and it is heard for admission purpose.

2) Deceased Arun was the brother of the complainant Ashok. Accused No.2 Smt. Rani @ Sujata is the widow of the deceased. Deceased had two wives but he was cohabiting with accused No.2 at Magarwadi. In the vicinity of the house of Arun of Magarwadi there is the house of accused No.1 Pandurang. Pandurang used to visit house of Arun to watch T.V. programmes and that way he developed relations with Sujata. Arun and his relatives

had advised Pandurang and Sujata not to do such things but they had continued the illicit relations.

3) On 11-2-2011, in the evening time Arun saw accused Nos.1 and 2 in compromising position in his house. Due to this incident he drove Sujata out of his house and she returned to her parents house, to Ambajogai. The house of the complainant is situated in the vicinity of the house of parents of Sujata in Ambajogai. On 13-2-2011 Arun first went to the place of Ashok and he informed that Sujata was not behaving properly. At about 7.00 p.m. he left the house of Arun by saying that he would go to the house of the parents of Sujata.

4) In the house of Sujata when Arun questioned Sujata about her conduct, Sujata gave blunt reply that she would continue to have relations with Pandurang and Arun cannot do anything about it. Due to such reply Arun took out a bottle insecticide, Endosulfan which was already brought by him and consumed that insecticide. After seeing this incident relatives of Sujata started shouting and then the relatives of the complainant, who

include sister-in-law Shital rushed to the house of parents of Sujata. They shifted Arun to hospital in one auto rickshaw but Arun died due to poisoning. Funeral was done on the dead body on 15-2-2011 and Ashok gave report on 16-2-2011.

5) During course of investigation post mortem was conducted on the dead body and panchanama of the spot of offence, the house of the parents of Sujata, was prepared. From the vicinity of this house empty tin of Endosulfan was recovered and seized. Police recorded statement of the persons who had rushed to the house of parents of Sujata and then charge sheet came to be filed against the respondents.

6) The trial Court has acquitted the respondents by holding that F.I.R. was given late and there was no convincing evidence to show that accused No.1 had illicit relations with accused No.2 and due to that Arun committed suicide. One circumstance that in the past accused No.2 had left the matrimonial house and on that occasion notice was given through Advocate by Arun to

Sujata is brought on the record and at that time Arun had contended that it was desire of Sujata to shift to town from Magarwadi and as Arun was not ready for that so she had left his company.

7) Evidence of Ashok (PW 2) is not that specific. He has not stated in the evidence as to what was disclosed to him on 13-2-2011 by the deceased. He has vaguely stated that Arun had disclosed that Sujata was not behaving properly. The evidence of Shital (PW 3), sister in law of Ashok shows that she tried to say that in her presence on 13-2-2011 Arun had disclosed about illicit relationship between Sujata and Pandurang in Ambajogai. Such specific evidence is not coming from Ashok and the evidence of the two witnesses shows that disclosure was made at one and the same time to these witnesses by Arun. In any case, the evidence of these witnesses does not show that the incident dated 11-2-2011 was specifically disclosed to them. They have given evidence that they had learnt about the illicit relations prior to the date of incident.

8) The incident in question took place in the house of parents of Sujata. As to what happened in this house on 13-2-2011 is not known. Arun had gone there with bottle of poison, insecticide and due to this circumstance it cannot be inferred that some incident took place in the house in which there was instigation to Arun to commit suicide and then he consumed poison. The evidence of defence witness, who is an Advocate, shows that in the past he had given notice for Arun to accused No.2 and that was given on 12-2-2008. The contents of the notice show that accused No.2 had left matrimonial house on 1-1-2008 by saying that she will cohabit with Arun only if he was ready to shift to Ambajogai. The notice shows that she had filed maintenance proceeding against Arun and then compromise had taken place. It appears that after receipt of the notice, Sujata had returned to the matrimonial house but there is no specific evidence from the side of prosecution as to when she had returned to the matrimonial house. Thus, there was dispute of other nature also between accused No.2 and the deceased and this circumstance creates another probability.

9) The evidence of post mortem, the CA report and the oral evidence of the aforesaid witnesses is sufficient to show that Arun committed suicide. Though suicide is proved, it was necessary for the prosecution to prove that the suicide was abetted by accused Nos.1 and 2. When on 11-2-2011 the deceased had driven accused No.2 from his house then there was no reason for him again to visit the house of the parents of Sujata and that too with a bottle of poison. This circumstance creates doubt about the case of the prosecution that there was abetment from the side of accused to commit suicide.

10) Learned counsel for the complainant has placed reliance on a case reported as **AIR 2009 SC 2532 (Dammu Sreenu v. State of A.P.)**. The facts of the reported case were altogether different. In that case the person who had illicit relations with the wife of deceased had visited the house of the brother of the wife of the deceased and from that he had taken the wife of the deceased with him. They had admitted that they had illicit relationship and they had said that they would continue to have such relations. Due to this circumstance suicide was

committed by the husband in that case. The Apex Court held that there was proximity and nexus between the conduct and behaviour of accused No.1 and the wife of the deceased with that of suicide of the deceased. The evidence was sufficient to prove that on account of humiliation and insult due to the conduct of the wife and her paramour the deceased had committed suicide. The facts of the present case are not that strong and most of the evidence is of hear-say nature. There is also other probability. In view of these circumstances, this Court holds that nothing can be achieved by granting leave to the State to file appeal and by admitting the appeal filed by the original complainant.

11) In the result, both the proceedings stand dismissed.

Sd/-
(T.V. NALAWADE, J.)

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