

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Appeal No.198 Of 2000.

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| <p>(1) Deelip Achuytrao Taur.
Age : 29 Years., Occ.: Business.
R/o.: Warola,
<u>At Present</u>
At Majalgaon, Tal. Majalgaon.
District – Beed.</p> <p>(2) Vitthal Rambhau Shendge.
Age : 30 Years., Occ.: Labourer.
R/o.: Pardi.
<u>At Present</u>
At Majalgaon, Tal. Majalgaon.
District – Beed.</p> | } | <p><u>Appellants.</u>
Ori.Accused.</p> |
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Versus

The State of Maharashtra.	}	<u>Respondent.</u>
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Appearance =>

Mr. S.J. Salunke, Advocate for the Appellants.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 23rd MARCH, 2015.

ORAL JUDGMENT :-

Being aggrieved by the Judgment and Order conviction dated 24th April, 2000 passed by the learned 4th Additional Sessions Judge, Beed in Sessions Case No.131 Of 1997; whereby the learned Judge of the court below convicted the appellants for the offences punishable under Section 306 read with 34 of the Indian Penal Code and directed to under Simple Imprisonment for five

years and to pay fine of Rs.3000/- [Rs.Three Thousand.] each and in default of payment of fine, to suffer Rigorous Imprisonment for six months, the appellants are before this court.

[2] The prosecution case, as it is unfolded during the course of trial, can conveniently be stated herein-under.

Joytiram Gundiba Suryawanshi (P.W.No.6) Police-Head-Constable, in the year 1997 was attached to Beed City Police Station. He was posted at Police Chowki, Civil Hospital, Beed. On 28th September, 1997 when he was on duty at Police Chowki, in the evening at about 8/30 p.m. Sangita Shejul having 97% burn injuries was admitted in the hospital. M.L.C. to that effect (Exhibit – 38) was received by Jyotiram (PW No.6). He conveyed the said fact to City Police Station by making a telephone call. Thereafter, he issued letter to the Executive Magistrate, Beed (Exhibit – 40) requesting him to record the dying declaration of patient. He also decided to record the dying declaration of Sangita; since when he made telephonic called to Police Station Officer of City Police Station about the information of M.L.C. Report, he was directed by P.S.O. of City Police Station, Beed to conduct the further investigation in the matter.

Accordingly he contacted Dr. Avinash Muniraj Deshpande (PW No.13) at 9/30 p.m. and enquired with him about the condition of patient and as to whether she is able to make statement or not. Upon getting permission from Doctor, he recorded the statement of Sangita, according to her say. Since both her hands of Sangita were burnt, he obtained thumb impression of her Left toe (Exhibit – 41).

[3] On 30th September, 1997 he received communication from the Medical Officer, District Hospital, Beed intimating that at 1/50 p.m., Sangita

died. Thereafter he prepared inquest panchnama (Exhibit – 18). Then he forwarded all papers with his report (Exhibit – 44) to the Police Station, Beed.

[4] P.W.No.7 Madhukar Tulshiram Mane is Police-Head-Constable. On 29th September, 1997 he was on P.S.O. duty in the Police Station, Majalgaon. Around 13.30 hrs. papers were received from Beed City Police Station about admission of victim. Accordingly, he registered offence vide CR No.122/1997 under Section 354, 509 read with 34 of the Indian Penal Code. Accordingly, he made endorsement on dying declaration (Exhibit – 41). He then handed over the investigation to Police Head Constable – Sunil Ramu Aitwar.

[5] Sunil Ramu Aitwar (PW No.10) was attached with Majalgaon Police Station on 29th September, 1997. Investigation papers were handed over to him by PW No.7 P.H.C. Madhukar Mane. Thereafter, he proceeded to the spot alongwith two panchas. He drew panchnama (Exhibit – 17) in their presence. He recorded the statements of some witnesses and thereafter handed over the investigation to P.S.I. Ramrao Patilbuwa Gadekar.

[6] Ramrao Gadekar (PW No.9) was attached to Majalgaon Police Station as as Senior P.S.I.. He took investigation from P.H.C. Sunil Mane (PW No.10), Ramrao Gadekar on 1st October, 1999 alongwith two panchas took the search of room of victim. That time he seized one chit and post-card. (Exhibit – 22 and 23). He then recorded the statement of ten witnesses. On 03/10/1997 he arrested the accused Deelip and on 6th October, 1997 he arrested accused – Vitthal. Thereafter, investigation was handed over to C.P.I. P.M. Shembole, who also interrogated some witnesses and submitted the charge-sheet.

[7] Charge sheet was presented in the court against the accused for the offence punishable under Section/s 354, 509, 506, 306 read with 34 of the Indian Penal Code.

The learned Magistrate, in whose court the charge-sheet was filed, committed the case to the Court of Sessions.

[8] The learned 3rd Additional Sessions Judge, Beed framed the Charge against the appellant in Sessions Case No.131 Of 1997 on 9th February, 1998 for the offences punishable under Section/s 354, 509, 506, 306 read with 34 of the Indian Penal Code. The accused denied the charge and claimed for their trial.

[9] In order to bring home the guilt of the accused, the prosecution has examined in all 13 witnesses and also relied upon various documents including the chit, dying declarations of Sangita.

[10] The learned 4th Additional Sessions Judge, Beed by impugned Judgment and Order dated 24th April, 2000 acquitted the accused for the offences punishable under under Section/s 354, 509, 506 read with 34 of the Indian Penal Code however, the appellants-accused were convicted for the offence punishable under under Section 306 read with 34 of the Indian Penal Code.

[11] I have heard Mr. S.J. Salunke, learned counsel for the Appellant sand Mr. A.S. Shinde, learned Additional Public Prosecutor for the State of Maharashtra.

With the assistance of learned counsel, I have gone through the Record & Proceedings. Notes of evidence and proved documents.

[12] In view of the inquest panchnama Exh.No.18 and post mortem report Exh.No.19, it is clear that, deceased Sangita died unnatural death. According to the prosecution, Sangita committed suicide by pouring kerosene on herself and then set herself ablaze. According to the prosecution, the

appellants-accused are responsible for her suicidal death. As per the case of the prosecution, due to harassment on the part of the accused, deceased was forced to commit suicide

[13] According to the prosecution, the accused have abated the deceased to commit suicide. “Abetment” is not defined under Section 306 of the Indian Penal Code. Section 107 of the Indian Penal Code deals with abetment of things, which reads as under :-

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.

In order to prove the Charge against the present appellants, the prosecution has relied upon two dying declarations and one chit, which was seized from the room of deceased Sangita.

[14] Let's first scrutinize whether the dying declaration are helpful for the prosecution or not.

Dying declaration Exh.No. 41 was recorded by PW No.6 Jyotiram Surywanshi; where as dying declaration Exh.No.58 was recorded on 28th September, 1997 itself by Ramchandra Vitthalrao Mule (PW No.12) Naib Tahasildar and Executive Magistrate, Tahasil Office, Beed.

[15] On the examination of Exh.No.41 it is clear that, no time is mentioned when statement was recorded by PW No.6 – Jyotiram. On the top of said document, there is endorsement of Doctor to the effect that patient is conscious and is not under the influence of any drug. Said noting was made by Doctor at 9/30 p.m.

Dying declaration (Exh.No. 58) recorded by Executive Magistrate – Ramchandra Mule shows that, it was recorded at 9/30 p./m on 28th September, 1997. On the top of said document also there appears an endorsement of Doctor about the fitness of the patient. Said is also made at 9/30 p.m. Thus, it is clear that, both the endorsement of Doctor on Exh.No.41 and Exh.No.58 were made simultaneously.

[16] Evidence of PW No.6 Jyotiram does not disclose when he recorded the dying declaration of Sangita, that time PW No.12 Ramchandra Mule was present; nor PW No.12 Ramchandra is claiming presence of PW No.6 Jyotiram when he recorded the dying declaration of Sangita (Exh.No. 58.)

In both the dying declaration there is no endorsement of Doctor that dying declaration was recorded in his presence and patient was conscious throughout.

[17] Dying declaration recorded by Ramchandra (PW No.12) does not show that after completion of recording of statement, the said was read over to Sangita and thereafter she has admitted its contents. Further even from the witness-box also Naib Tahasilar – Ramchandra Mule does not claim that he read over said statement to Sangita and she admitted its contents.

[18] Dying declaration is one of the most sacrosanct document. Declarant is not available for cross-examination, therefore, it is duty of the

Scribe to take all precaution so as to avoid of suspicion. Now, in so far as Exh.No.58 is concerned, there is nothing available on record that said declaration was written as per the Sangita's say, therefore, necessarily said document has to be kept out of consideration.

[19] The dying declarations Exhibit – 41 and Exhibit – 58 show that they are at variance on material aspect. In Exhibit – 41 deceased is referring only one incident of Thursday, where-as Exhibit – 58 shows that for last 2-4 days the appellants with bad intention were taunting.

[20] In so far as dying declaration Exh.No.41 is concerned, I have already discussed in preceding paragraphs that, said document is not having timing as to when said was recorded. Further in the said dying declaration also there is no endorsement, at the foot, by the Doctor that the same was recorded in his presence and patient was conscious throughout. Further evidence of Dr. Avinash Muniraj Deshpande, destroy authenticity of Exh.No.41 and Exh.No.58. He has admitted during his evidence as under :-

“I was with the patient when the police personnel and the Special Executive Magistrate meet me. I was present in the burn ward but not besides the patient when her statement was recorded by the police and Executive Magistrate. Further from his evidence, it is brought on record that, the distance between my table and concerned patient bed was 30 to 40 feet.

In that view of the matter, both the dying declaration are not helpful to the prosecution.

[21] Prosecution further relied upon the chit Exh.No. 22. The said chit recites as under :-

“आक्का मी या मुलाच्या वैतागाला कंटाळून मी माझया जीवाचार वीचार न करता आपल्या घराण्याची आब्रु जाउ नये म्हणून मी माझया जीवाचा घात करून घेत आहे तरी तुला राग मानु नको.”

Bare perusal of said chit shows that it is undated. Further it does not mention the name of any of the present appellant. If the said chit is minutely scrutinized then said chit reflects only to one person “या मुलाच्या”. In order to prove that handwriting on the said chit is of deceased Sangita, the prosecution has relied upon the post card written by deceased Sangita to Nagorao Deshmukh (Exhibit – 23). Chit (Exhibit – 22) is seized by PW No.9 Ramrao Gadekar. Said chit was seized by him on 01/10/1997 at (Exhibit – 16).

[22] Kailas Prabhakar-rao Shejul (PW No.8) was called at Police Station, at 4.00 a.m. at 01/10/1997. He was informed that search has to be taken of the room of Sangita. In the search, chit was found in grain box of jawar. PW No.1 Ganesh Shejul brother of deceased identified the handwriting of (Exhibit – 22) that it is of deceased Sangita. The chit was seized under the panchnama (Exhibit – 32). Though PW No.8 Kailas has stated in his evidence that search was taken in his presence, in the cross-examination he admitted that panchnama was already prepared and he was only asked to sign. Such admission on the part of panch witnesses creates doubt as to really in his presence search was taken.

[23] PW No.1 Ganesh Rajram Shejul, who is brother of deceased Sangita and he used to stay with her does not claim in his evidence that on 01/10/1997 search was taken by police of his room and chit was found in the grain box of jawar. What he claims is that Police had shown him a chit in the handwriting of Sangita. Thus, in view of the non corroboration from PW No.1 Ganesh about search of his room by police on 01/10/1997, the exercise of seizure panchnama of chit (Exhibit – 22) itself is doubtful.

[24] The Hon'ble Apex Court in its authoritative pronouncement in case of **Ramesh Kumar v. State of Chhatisgarh, reported in (2001) 9 S.C.C. 618**, examined and differentiate meaning of instigation. The Hon'ble Apex Court has observed that,

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."

Keeping the aforesaid principle in mind, we have to scrutinize the evidence of PW No.1 – Ganesh, PW No.2 – Babasaheb Janardhan Kachare and PW No.5 – Govind Ankushrao Shejul.

PW No.1 Ganesh is younger brother of deceased Sangita. At the relevant time, he was taking education in 9th Std.; while Sangita was in XIIth Std. Both were taking education in Siddheshwar Mahavidyalaya. Both were occupying rented room of one Chalak. Their room was on first floor whereas PW No.2 Babasaheb Kachare was occupying ground floor.

[25] Accused Vitthal used to reside in the premises of one Panpat. Accused Deelip used to come at laundry, situated near the residence of PW No.1 Ganesh. PW No.1 deposed that, for going to the school he and his sister were required to go by the in front of premises of Panpat.

[26] Evidence of Ganesh disclosed that on 25th September, 1997 i.e. just three days before the incident when he and his sister Sangita were proceeding to college on foot, in front of premises of Panpat his sister lost her balance on account of being came in contact with stone; that time, the accused Vitthal was present in front of Panpat premises and he say that Sangita lost her balance upon

noticing him. This is the only incident available in the entire prosecution case by which the prosecution wants to submit that Sangita was harassed.

PW No.1 Ganesh further claim that thereafter they returned to the home and narrated the said incident to Kachare Kaka. Thereafter he alongwith his other brother PW No.5 Govind and Kachare Kaka went to accused No.2 – Vitthal. That time, PW No.2 Kachare-kaka told Vitthal as to why he is harassing the Sangita. His evidence further disclosed that after ½ hour both the accused came in front of house with 5 to 6 boys and enquired with Kachare as to whether Sangita is related to him and he has no concern with the girl and they would lift her away.

[27] This claim of Ganesh is not at all finding support from the evidence of PW No.2 Babasaheb Kachare. His evidence would disclose that on 25/09/1997 Ganesh and Sangita came to his house and informed that they have been abused by boys thereafter he went to the room of said boy as pointed by Sangita however, boys were not found there. His evidence further discloses that thereafter till 5/30 p.m. nobody came to his house.

[28] Evidence of PW No.1 Ganesh shows that, incident dated 25/09/1997 was the first incident of his sister to which he was witness however, he no where claims in his evidence that his sister Sangita at any point of time, has disclosed to him about any earlier harassment to her from the accused.

In so far as evidence of PW No.5 Govind Shejul is concerned, he claims that Sangita made oral dying declaration to him when she was taken to the hospital that she could not tolerate the harassment of the accused and therefore, she set herself on fire.

[29] Dr. Suryakant Arjunrao Sable (PW No.3) is the Medical Officer. He was attached to Primary Health Center, Majalgaon. He was on duty around 6.00 p.m. Sangita was brought into the hospital by Kundlik Shejul. Though PW

No.5 Govind claims that oral dying declaration was made to him; it appears from the evidence of Dr. Suryakant that he was not accompanied Sangita. Dr. Suryakant disclosed from the witness-box that her relatives gave history of accidental burn. Therefore, he asked her to give cause of burn however, evidence of Dr. Suryakanat shows that, she refused to disclose anything to him.

Dr. Suryakant was independent person. He was Doctor, who attended Sangita firstly. It would have been most natural on the part of Sangita to disclose the reason to her attending Doctor as to why she has poured kerosene on her person and set her ablaze.

[30] Thus, in the entire prosecution case, except incident dated 25th September, 1997 there is nothing available on record that present accused at any point of time, used any utterance indulging themselves to such act, causing insult to Sangita. Further she poured kerosene on 28th September, 1997. There is nothing available on record that during these three days period, anything was happened to Sangita at the hands of present appellant. Thus, there is no live link in between the incident of dated 25/09/1997 and date of occurrence.

[31] In the present case, there is no evidence to show that at any point of time, accused indulged themselves in any act by which it could be said that they instigated Sangita to commit suicide. Incident dated 25/09/1997 cannot be said to be of such nature that the accused were intending that Sangita should take extreme step of her life by using word by Vitthal that Sangita has lost her balance due to noticing him.

[32] Aforesaid survey of the prosecution case, therefore, clearly established that the accused cannot be convicted for the offence punishable under Section 306 read with 34 of the Indian Penal Code as convicted by the court below. Hence, I pass the following order :-

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Judgment and Order of conviction dated 24th April, 2000 passed by the learned 4th Additional Sessions Judge, Beed in Sessions Case No.131 Of 1997 for the offence under Section 306 read with 34 of the Indian Penal Code is hereby set aside.
- (iii) The Appellant – accused are acquitted for the offence punishable under Section 306 read with 34 of the Indian Penal Code.
- (iv) Fine amount, if deposited, be refunded to the Accused-Appellants.
- (v) Bail bond stand cancelled.

(V.M. DESHPANDE, J.)