

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.159 OF 2014

Sagar Balasaheb Jagtap ... **Appellant**
V/s.
Bapu Tukaram Babar & Ors. ... **Respondents**

WITH
CRIMINAL APPEAL NO.153 OF 2015

The State of Maharashtra ... **Appellant**
V/s.
Bapu Tukaram Babar & Ors. ... **Respondents**

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Mr.Shriram S. Chaudhari, Advocate for the Appellant in C.A.No. 159 of 2014.
Ms.S.S.Kaushik, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 5TH MARCH 2015

ORAL JUDGEMENT :

1. These two appeals can be conveniently disposed of by this common order as they have been filed challenging the same order of acquittal viz:- the order of acquittal passed by the Additional Sessions Judge, Solapur in Sessions Case No. of 39 of 2010. Criminal Appeal No.153 of 2015 has been filed by the State

of Maharashtra, while Criminal Appeal No.159 of 2014 has been filed by the son of the deceased claiming to be the victim of the alleged offence and entitled to file an appeal in view of the proviso to Section 372 of the Code of Criminal Procedure.

2. Since the victim's appeal was already filed, leave to file an appeal was granted to the State also and that is how now both the appeals are before me for admission.

3. I have heard Ms.Kaushik, the learned Additional Public Prosecutor for appellant/State in Criminal Appeal No.153 of 2015 and also Mr.Choudhari, the learned counsel for the appellant in Criminal Appeal No.159 of 2014.

4. I have carefully gone through the impugned judgment.

5. The prosecution case was to the effect that there used to be quarrels between Balasaheb Jagtap-the deceased and the respondents (hereinafter referred to as, "the accused"). A case has been registered at the instance of the deceased against the accused persons in the year 2006 in the Court of Judicial Magistrate, First Class at Indapur. That, thereafter, again on 22/10/2009 there had been an incident of fight between the deceased and the accused and cross-cases in respect of the incident came to be registered by the police.

On 18/11/2009, Balasaheb Jagtap, a resident of Indapur left his house after informing his family members that he was going to Gulpoli, Barshi to meet his sister. On 19/11/2009, Sagar (the appellant in Criminal Appeal No.159 of 2014) received a telephone call from Balasaheb informing Sagar that Balasaheb was apprehending danger to his life from the accused person.

Balasaheb was found dead in Room No.8 of Shivneri Lodge at Barshi. Apparently, Balasaheb was residing in the said room in the name of R.B.Patil, however, the body was revealed to be that of Balasaheb. On 21/11/2009, Sagar lodged a report with the police alleging commission of an offence punishable under Section 306 of the Indian Penal Code read with Section 34 of the IPC by the accused persons, claiming that his father Balasaheb was fed up of continuous assault and torture by accused persons; and that Balasaheb had, therefore, committed suicide; and that, as such, the accused persons abetted the commission of suicide by Balasaheb.

6. In support of the case of the prosecution, a suicide note was produced before the trial Court. The trial Court doubted the genuineness of the suicide note. It seems that the handwriting on the suicide note was initially got compared with the handwriting in a small diary, but no opinion on the identity of the author of the said handwriting could be given by the handwriting expert. It also appears that later, some loose sheets were produced by Sagar

claiming the same to be containing specimen writing of the Balasaheb and the writings on these chits was compared with the writing on the suicide note. The learned Judge appears to have doubted whether the loose chits indeed contained specimen writing of the deceased.

7. The reasonings of the learned Judge cannot be said to be suffering from any infirmities or error.

8. However, that is not the crucial aspect of the matter. The question is, *'assuming that the deceased had taken the extreme step of putting an end to the life on account of his frequent quarrels with the accused and the trouble caused to him by them, whether, by that reason, the accused can be said to have abetted commission of suicide by the deceased.'*

9. The learned Judge carefully considered this aspect and examined the legal concept of 'abetment' in the light of cases decided by different High Courts and Supreme Court of India. The learned Judge came to the conclusion that the prosecution had not succeeded in establishing the fact of requisite *mens rea* on the part of the accused persons.

10. The learned Judge categorically observed that the incident of free fighting between two groups cannot be said to

have created such a situation as to amount to having instigated the deceased to commit suicide.

11. The view of the matter as taken by the learned trial Judge appears to be proper and legal.

12. Even otherwise, the principles on which an order of acquittal can be interfered with in an appeal are well settled. It is well settled that when two views of the matter are possible and the trial Court has taken one of them leading to the acquittal, then, the view taken by the trial Court is not liable to be interfered with.

13. There is no merit in the appeals.

14. The appeals are dismissed.

(ABHAY M. THIPSAY J.)