

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 345 OF 2014

Navsheen Maqsood Lambe .. Applicant

Versus

The Senior Inspector of Police & Anr. .. Respondents

Mr. Rizwan Merchant a/w Swapnil L. Bagh i/b Rizwan
Merchant & Asso., Advocate for the applicant
Mr. V.B. Konde-Deshmukh, Advocate for the respondent

CORAM:-M.L. TAHALIYANI,J.
DATED : -09/01/2015

P.C.

Admit. Respondents waive service. By consent of
the parties taken up for final hearing.

2 Heard Mr. Rizwan Merchant, learned counsel for
the applicant and Mr. Konde-Deshmukh, learned Addl. PP. For
the respondent-State.

3 The applicant is a girl aged about 27 years and is
facing trial for the offence punishable u/s 306 of IPC. The

applicant was studying at Pune, during the period between 2007-2011. The deceased was also studying at Pune. He was staying at A/119 Panchratna Apartment, Bhairabhalana, Pune. During their stay at Pune, the deceased and the applicant both developed intimacy and they were quite close to each other. It is alleged that during the relationship between the deceased and the applicant, the applicant had also developed relations with one Sudhir Chavan, who was Senior Officer in the company where she was working. The deceased did not like it. It is further alleged that the said Sudhir Chavan had threatened the deceased that the deceased should leave Pune, or he would be killed. This happened in the month of April, 2012. The deceased went to his native place at Aurangabad, in the month of October, 2012 and committed suicide by hanging himself on 2nd of December, 2012. The matter was reported to the police and FIR u/s 306 was registered against the applicant and the said Sudhir Chavan on 9/12/2012. During the course of further

investigation suicide note left by the deceased was seized by the police. The statement of the witnesses were recorded and charge-sheet was submitted against both the accused.

4 It is submitted on behalf of the applicant that there is no material at all in the charge-sheet to indicate that the applicant had instigated the deceased in any manner to commit suicide. It is submitted that there is nothing in the charge-sheet to show that the conduct of the applicant was of such a nature that the deceased was left with no other option except to commit suicide. The learned counsel for the applicant has relied upon the judgment of the Supreme Court in **Gangula Mohan Reddy v. State of Andhra Pradesh, (2010) 1 SCC 750**. The relevant portion of the judgment can be reproduced as under:

“17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing

suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

5 The learned counsel for the applicant has also relied upon the judgment of the Supreme Court in **Sanju @ Sanjay Singh Sengar v. State of M.P., (2002) 5 SCC 371**. The relevant portion of the judgment of 2002 can be found at paras No. 6 and 14, which read as under:

“6 Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.”

14 A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased

was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of “abetment” are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.”

6 Inviting my attention to the above stated two judgments, it is submitted that there are no ingredients of Section 107 of IPC and, therefore, it cannot be said that the

suicide of deceased was abetted by the applicant.

7 The learned Addl. PP has drawn my attention to the contents of the FIR wherein it is stated by the complainant, brother of the deceased, that the deceased had told the complainant in the month of April, 2012 that he was threatened by the accused Sudhir Chavan that if the deceased did not leave Pune, he would be eliminated. In this regard it may be mentioned here that it could have been relevant u/s 32 of the Evidence Act, had the statement been made in close proximity with the date of the incident. The alleged statement was made by the deceased in the month of April, 2012 and the incident had occurred in the month of December, 2012. Therefore, in my opinion, it will not amount to dying declaration. Even if the statement made by the deceased is accepted to be true and correct that will not be sufficient to prove that the accused Sudhir Chavan had instigated the deceased to commit suicide or had acted in the manner which may drive the deceased to

commit suicide. Moreover, it is not alleged that the alleged threat was given by the accused Sudhir Chavan at the instance of the applicant. Therefore, it cannot be said that the applicant had any role to play in the alleged threat.

8 In view of what has been stated by me herein above, it is apparent that there is no case against the applicant either u/s 306 of IPC or Section 506 (1) of IPC. The proceedings pending against the applicant could have been terminated by the learned trial Judge by discharging the applicant. In this view thereof, I pass the following order:

The order passed by the learned trial Judge is set aside. The applicant is discharged of the offences punishable u/s 306 and 506 (1) of IPC. Her bail bonds, if any, shall stand cancelled.

(JUDGE)

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