

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

CRIMINAL REVISION APPLICATION NO. 148 OF 2004

Rajendra s/o. Ranba Adbalwar ..Applicant
Age. 23 years, Occ. Education,
R/o. Undri (P.D.), Tq. Mukhed,
Dist. Nanded.

Versus

The State of Maharashtra ..Non-applicant
Through P.S. Mukhed,
Tq. Mukhed, Dist. Nanded.

Mr.Sunil V. Warad, Advocate for the applicant.
Mr.K.S. Patil, A.P.P. for the non-applicant/State.

CORAM : Z.A. HAQ, J.
DATED : 15.12.2016

ORAL JUDGMENT :-

. Heard. The applicant/accused has filed this Criminal Revision Application challenging the judgment passed by the Sessions Court dismissing the appeal filed by the applicant and maintaining the judgment passed by the learned Ist Adhoc Assistant Sessions Judge convicting the applicant for the offence punishable under section 306 of the Indian Penal Code. According to the

prosecution, there was love affair between the applicant who was aged about 20 years and deceased Savitrabai who was aged about 15 years, at the time of the incident, that on 16th August, 2000 at about 09.00 a.m. the accused went to the house of the victim, outraged her modesty and asked her to withdraw the complaint which was made by the victim and her parents against the accused and the accused threatened the victim that he will kill the victim and her father, if the complaint was not withdrawn. According to the prosecution, because of the above act of the accused the victim consumed poison and committed suicide.

02. The accused came to be prosecuted and after the trial, the learned Ist Adhoc Assistant Sessions Judge found that the prosecution failed to prove the guilt of the accused for the offences punishable under sections 354 and 506 of the Indian Penal Code and acquitted from these offences, however, the learned Ist Adhoc Assistant Sessions Judge found that the guilt of the accused regarding offence punishable under section 306 of the Indian Penal Code was proved and convicted him to undergo rigorous imprisonment for three years and to pay fine of Rs.2000/- and in default of payment of fine to undergo further rigorous imprisonment for six months.

03. The accused had challenged the judgment passed by the Sessions Court in appeal, which is dismissed by the impugned judgment.

04. Undisputed facts are that the alleged incident is said to have taken place on 16.08.2000 because of which deceased Savitrabai consumed poison on the same day i.e. on 16.08.2000. According to the prosecution, Savitrabai was hospitalized on 16.08.2000 and she was discharged on 19.08.2000 and then she died on 21.08.2000. The F.I.R. was registered on 22.08.2000. The conviction of the accused is mainly relying on the statement of Savitrabai recorded on 18.08.2000, when she was under treatment in hospital.

05. In the judgment given in the case of **Binod s/o. Ratan Sarkar & Ors. Vs. The state of Maharashtra & Anr.,** reported in **2014 All MR (Cri.) 1216** the Division Bench of this Court, relying on the judgment given by the Hon'ble Supreme Court in the case of **Madan Mohan Singh Vs. State of Gujarat & Anr.,** reported in **2010 ALL MR (Cri.) 3245 (S.C.)** has laid down that to secure the conviction of the accused for offence punishable under section 306 of the Indian Penal Code, it is necessary for the prosecution to establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide.

06. The statement of Savitrabai recorded on 18.08.2000 does not contain the certification of the Doctor that Savitrabai was fully conscious and fit to give the statement. The prosecution has not examined the Doctor who attended and treated Savitrabai in hospital. Undisputedly, Savitrabai was discharged from the hospital on 19.08.2000 and she died on 21.08.2000. The subordinate Courts have concurrently found that the charges levelled against the applicant/accused regarding offence punishable under sections 354 and 506 of the Indian Penal Code have not been proved. The prosecution has not been able to establish that the applicant had intention to aid or instigate Savitrabai to commit suicide or he has abetted it.

07. Considering the above facts, the basic ingredients necessary to secure conviction of the accused under section 306 of the Indian Penal Code are lacking in the present case. Considering the proposition laid down in the judgment given in the case of **Binod s/o. Ratan Sarkar & Ors. Vs. The state of Maharashtra & Anr.,** reported in **2014 All MR (Cri.) 1216,** in my view the conviction of the applicant for the offence punishable under section 306 of the Indian Penal Code is not sustainable.

. Hence, the following order is passed :-

(i) The judgment passed by the Ist Adhoc Assistant Sessions Judge, Biloli, Dist. Nanded, in Sessions Case No.65 of 2001 on 3rd March, 2003, convicting the applicant for the offence punishable under section 306 of the Indian Penal Code is set aside.

(ii) The judgment passed by the learned Additional Sessions Judge, Kandhar in Criminal Appeal No.26 of 2003 on 23rd March, 2004 is set aside.

(iii) The applicant is acquitted of the offence punishable under section 306 of the Indian Penal Code. The amount of fine paid by the applicant be refunded. His bail bond shall stand discharged.

(iv) The Criminal Revision Application is allowed in the above terms.

[Z.A. HAQ,J.]