

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.801 OF 2005

The State of Maharashtra,
Through P.I. of Police Station,
Talwada, Tq-Georai, Dist-Beed.

...APPELLANT
(Ori. Complainant)

VERSUS

- 1) Ibrahim s/o Alikhan Pathan,
Age-40 years, Occu:Labour,
R/o-Dhanora Rui, Tq-Georai,
Dist-Beed,
- 2) Sk. Papa s/o Gulab Shaikh,
Age-29 years, Occu:Labour,
R/o-Dhanora Rui, Tq-Georai,
Dist-Beed,
- 3) Sk. Gulab s/o Sk. Kareem,
Age-65 years, Occu:Labour,
R/o-Dhanora Rui, Tq-Georai,
Dist-Beed.

...RESPONDENTS
(Ori. Accused)

...

Mrs. V.N. Patil-Jadhav, A.P.P. for Appellant.
Mr. R.G. Hange Advocate for Respondent
Nos.1 to 3.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 3RD AUGUST, 2016

ORAL JUDGMENT :

1. This Appeal has been filed by the State under Section 378 (1)(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C." in brief) against acquittal of the Respondents - accused by Assistant Sessions Judge, Beed in Sessions Case No.145 of 2004 under Section 324 read with 34 of the Indian Penal Code, 1860 ("I.P.C." in brief), as can be seen from the prayer in the Appeal Memo.

2. The case of prosecution, in short, may be stated to be as under:-

. The Respondents - accused are resident of Dhanora Rui, Tq-Georai, Dist-Beed. One Ashok Khune was also resident of the same village. On 19th May 2004 at about 8.00 p.m. said Ashok (hereafter referred as "victim") had gone to the Pan shop of

accused No.1 - Ibrahim. He purchased a cigarette and offered Rs.10/- to accused No.1. There was exchange of words and accused No.1 abused the victim. One Madhukar Khune PW-11 intervened. The victim then went home. There was yet another incident on 20th May 2004 at about 10.00 a.m., wherein accused Nos.1 to 3 went to the house of the victim and quarreled with victim on account of incident occurred on earlier day. The victim was abused and beaten by cycle chain, sticks, hands and kicks. Complainant Sunita, wife of the victim had tried to save her husband but she was also beaten. The victim and complainant were admitted in the civil hospital, Beed. At that place, statement of the victim (Exhibit 27) came to be recorded on the basis of which N.C. No.139 of 2004 was registered at police station, Talwada. It appears that the complainant and victim then went to the place of her father at village Masapur-Pimpalgaon, after they were discharged from the hospital, on 21st May 2004. They met the parents

of the complainant. After a night halt there, they started to return on 22nd May 2004. While on the way, the victim asked wife to go ahead to the house. Subsequently, the victim reached home at about 8.00 p.m. He fell near the entrance of the house. He disclosed to his wife and others present there, that he had consumed poisonous substance. The reason given was that as the accused had beaten him, he had felt insulted and was unable to show his face in the village and so he consumed the poison. The victim was taken to the hospital but however he died. On the report of Kashinath (PW-2) the brother of victim, A.D. No.12 of 2004 came to be registered at the police station and was taken up for enquiry. Subsequently, the complainant PW-1 Sunita filed F.I.R. Exhibit 16 on 26th May 2004. The same was taken up for investigation. The police took necessary steps regarding the post-mortem. The statements of witnesses were recorded and after necessary investigation, the charge-sheet came to be filed.

3. The matter came up before VIIth Ad-hoc Assistant Sessions Judge, Beed. Charge was framed against the accused persons under Section 504, 324 and 306 read with 34 of I.P.C. 15 witnesses came to be examined. The Assistant Sessions Judge convicted accused No.1 under Section 504 of I.P.C. and all the accused Nos.1 to 3 under Section 323 read with 34 of I.P.C. All the accused persons came to be acquitted of offence punishable under Section 324 and 306 of I.P.C.

4. Against the conviction of the accused persons under Section 323 and 504 of I.P.C., the accused persons under Section 374(3) of Cr.P.C. preferred Criminal Appeal No.21 of 2005 before the Sessions Judge at Beed. The State, however, filed this Appeal against the acquittal of the accused under Section 324 read with 34 of I.P.C. to the High Court under Section 378(1)(3) of Cr.P.C. Although, the prayer in the Appeal memo was made

only as regards Section 324 of I.P.C., the admission orders of this Court dated 8th September 2006 show that the Appeal was entertained with regard to the acquittal under Sections 324 and 306 read with 34 of I.P.C.

5. I have heard the learned A.P.P. as well as the learned counsel for Respondents - accused as if this Appeal is against acquittal under Section 324 as well as 306 read with 34 of I.P.C.

6. The learned A.P.P. referred to the two incidents dated 19th May 2004 as well as 20th May 2004 and submitted that the accused persons had abused and beaten the victim using cycle chain and sticks and this offence was proved before the Assistant Sessions Judge but the Assistant Sessions Judge wrongly convicted the accused persons only under Section 323 of I.P.C. and not under Section 324 of I.P.C. It has been further argued by learned A.P.P. that the statement of the

victim recorded in the hospital on 20th May 2004 Exhibit 27 and the A.D. Report filed by PW-2 Kashinath vide Exhibit 18 and the F.I.R. Exhibit 16 filed by PW-1 Sunita show that because the victim was abused, beaten and insulted, he felt frustrated and committed suicide. According to the learned A.P.P., the Assistant Sessions Judge should have convicted the accused persons also under Section 324 of I.P.C.

7. Per contra, the learned counsel for the Respondents - accused has submitted that the Appeal deserves to be dismissed. According to him, the question of considering offence under Section 324 of I.P.C. now would not survive, as the Appeal with reference to that Section preferred by the accused has been disposed by the Sessions Court. As regards Section 306 of I.P.C., the learned counsel submitted that no offence under said Section was made out as abetment to commit suicide was not established.

8. The counsel for Respondents has filed copy of Judgment in Criminal Appeal No. 21 of 2005 passed by Sessions Judge, Beed on 27th June 2006. It can be seen from the impugned Judgment passed by the Assistant Sessions Judge that the charge was framed under Section 324 read with 34 of the I.P.C., but the Sessions Court convicted the accused persons for lesser offence under Section 323 of I.P.C. inter-alia for the reason that weapons of the offence had not been produced. Regarding that part of conviction, the Sessions Court dealt with the Appeal and while maintaining the conviction, it maintained the sentence of fine only. The counsel for the Respondents - accused states that the concerned fine amount has already been paid. Thus the punishment on that count has been suffered by the Respondents and it would not be appropriate now to re-consider the matter.

9. The learned A.P.P. has not shown anything

to treat this Appeal as revision against the Judgment of the Sessions Court. The Judgment of the Sessions Court dated 27th June 2006 has not been challenged by the State. In fact it would have been much more appropriate for the State to seek clubbing of both the matters when the State had filed this Appeal in the High Court and received notice in Criminal Appeal No.21 of 2005 which was filed by the accused before the Sessions Court. The learned A.P.P. is unable to show as to why steps were not taken at the concerned time for clubbing the matters when both these Appeals were admitted, one in the High Court and another in the Sessions Court. It would have been appropriate at that time to club the Appeal filed before the Sessions Court with this Appeal in the High Court. Thus, now I am not going into the details to examine whether offence under Section 324 of I.P.C. has been proved or not, as on that count the matter has attained finality in Appeal before the Sessions Court bearing Criminal Appeal No.21

of 2005, and against that Judgment of the Sessions Court no revision etc. has been filed in this Court.

10. Coming to Section 306 of I.P.C., the facts on record show that the incident of alleged abusing and threatening dated 19th May 2004 and alleged assault dated 20th May 2004 are stated to be the cause why the victim committed suicide. It can be seen from the evidence of various witnesses brought on record that those incidents were dated 19th May 2004 and 20th May 2004. Thereafter the victim along-with his wife complainant Sunita, had gone to the place of her parents and stayed there. They started to return on 22th May 2004. The evidence is that on the way, the victim asked his wife to go ahead home and he will come later. The evidence is that he then reached home and declared that he had consumed poison. Although, there is evidence that he attributed the reason for consuming poison, to the quarrel and beating which

occurred on 19th May 2004 and 20th May 2004, I do not find that the said acts of the accused could be treated as abetment to commit suicide by the victim. There was not only time gap but also that only because some quarrel takes place attracting Section 323 of I.P.C., it can not be said that the intention of the accused persons was that the victim should commit suicide. There is no material to establish *mens rea* of the accused to bring about such situation that Victim has no other option left than to commit suicide. There is no evidence of act of goading, encouraging, assisting victim to commit suicide. It cannot be said that abetment to commit suicide was established.

11. Thus, I do not find any substance in this Appeal. The Appeal stands dismissed. The Bail Bonds of the Appellants - accused are cancelled.

[A.I.S. CHEEMA, J.]