

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.961 OF 2016

IN CRIMINAL APPEAL NO.527 OF 2016

1) VISHAL POPATRAO PORJE)
2) UMESH VISHNU SHINDE)
3) HANUMANT KAILAS GIRI)
4) IQBAL IBRAHIM SHAIKH)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Aniket Nikam, Advocate for the Applicants.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 7th SEPTEMBER 2016.

P.C. :

1 This application is filed for suspension of substantive sentence imposed upon applicants and for their release on bail. Learned counsel for applicants had contended that, admittedly, applicants were friends of deceased, who on 25th September 2014 committed suicide by hanging in his house. By referring to the evidence on record, it is pointed out that there is nothing to establish

that immediately prior to deceased Sachin committing suicide, he was in any manner, harassed or was instigated by the applicants to commit suicide. Learned counsel for applicants has further contended that though contents of alleged suicide note are accepted as it is, it does not contemplate ingredients of Section 107 of IPC, as from the suicide note it cannot be said that applicants abetted commission of suicide in any manner.

2 Learned APP, on the other hand, had opposed the application for grant of bail on the ground that the suicide note as well as evidence of complainant – wife of deceased, establish involvement of applicants, to have instigated deceased to commit suicide. Learned APP further pointed out that from the CDR on record, it is established that immediately prior to deceased committing suicide, applicants were continuously in contact with him on phone.

3 In the background of submissions advanced as aforesaid, I have perused the impugned judgment and the evidence of witnesses on record. All the applicants are convicted for the offence punishable under Sections 306, 504 and 506 read with Section 34 of the IPC and are sentenced to suffer rigorous for 7 years and to pay a fine of

Rs.5,000/-, in default, to suffer simple imprisonment for 6 months, on both counts, that is under Sections 306 and 506 read with Section 34 of IPC. All the applicants are further sentenced to suffer rigorous imprisonment for 2 years under Section 504 read with Section 34 of IPC and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for 2 months. All the sentences are directed to run concurrently.

4 It appears to be the case of prosecution that about 5 years prior to incident, deceased Sachin was working with “Yoga farm” and for 5 to 6 months prior to incident, was in mental stress and on inquiry by his wife, had informed that in the farm where deceased was working at the time of incident, applicant Vishal used to work earlier, however, as he had committed some misappropriation, he was removed and in his place, deceased was working, and as such, applicant Vishal had developed jealousy against the deceased. In the background of above fact, it is further case of prosecution that applicant Vishal along with applicants Iqbal, Hanumant and Umesh used to defame and harass him, and thus, on 25th September 2014, at around 3.15 p.m., deceased committed suicide by hanging in his house and had left a suicide note.

5 In the background of above, evidence of PW1 Manisha – informant the wife of deceased, reveals that, about 5 to 6 months prior to incident, applicants had teased and taunted the deceased, who had informed her that applicant Vishal had committed some misappropriation in the office and thus was terminated and for this reason, all the applicants were providing harassment and are stated to be harassing the deceased, and used to defame him. Thus, from the evidence of complainant, this is the only reason put forth for the alleged harassment caused by applicants to deceased. However, it is to be noted that, such harassment as is stated to be provided by applicants is about 5 to 6 months prior to the incident, which is by way of teasing and taunting deceased. This is how, according to complainant, deceased was defamed by applicants.

6 In her cross-examination, complainant admits that deceased Sachin was sensitive in nature and was unable to tolerate such insult and has admitted that all the applicants and Sachin were on friendly terms and infact, used to help each other whenever required by providing monetary help.

7 Complainant on the day of incident has admittedly spoke with deceased on phone, and was informed that everything was okay. Though from her evidence, no time of such conversation has come on record, from the impugned judgment it appears that said talks took place on that day at around 11 a.m.

8 Evidence of PW2 Manoj – brother of deceased, is similar, as he had admitted that deceased and applicants were friends. Infact, he also admits that applicants Hanumant and Iqbal are his friends too, and all family members of the family of deceased as well as of applicants were on visiting terms with each other on family functions. He has further admitted that prior to the incident, there was no quarrel between deceased Sachin and the applicants, as according to him, all the applicants are independently doing their own work and respective businesses, and there were no disputes of any kind nor any type of exchange of words took place between deceased and applicants on any account.

9 Similarly, evidence of PW4 – Tulshiram Palzare, Investigating Officer, who had also investigated Accidental Death (A.D.) registered after the commission of suicide by deceased Sachin, has

admitted that during the course of investigation in present crime, he has verified documents of A.D. and found that there were no allegations against either of the applicants. Considering the evidence as aforesaid, thus, from neither of these witnesses' evidence, it could be established that deceased at any point of time was subjected to harassment or in any manner was instigated or abetted by the applicants to commit suicide.

10 With reference to suicide note, which is admittedly found to be recovered from the bed of deceased after the incident, though learned APP had made an attempt to point out that its contents establish involvement of applicants, on reading contents thereof, there appears no substance in submissions made as aforesaid, as in the alleged suicide note inspite of being a long note, there is nothing implicating applicants instigating deceased to commit suicide. By now, law on this issue is well established. Reference can be usefully made to the case of **Randhir Singh v. State of Punjab (2004) 13 SCC 129** as follows in paragraphs 12 and 13 of its judgment :

“12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy

also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

11 Thus, in view of settled legal position as aforesaid, it can be summarized that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

12 Thus to establish the case attracting provisions of Section 306 IPC, there has to be suicide and commission of such suicide should have a direct bearing with the person who is stated to have abetted commission of same by doing active role or by an act of instigation or by doing some other act to facilitate commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

13 In the case in hand, as mentioned aforesaid, there is nothing to establish that applicants immediately prior to the incident, in any manner instigated deceased, to commit suicide. On the contrary, it has come in the evidence of wife of deceased that 5 to 6 months prior to the incident, applicants had teased or had taunted the deceased. In that view of the matter, application is liable to be allowed, as even otherwise, applicants were on bail pending trial, and it is no case of prosecution that any of the applicants had misused liberty granted to them. Hence following order:

- i) Applicants shall be released on bail on their executing P.R.Bond in the sum of Rs.20,000/- each, with one surety each, in like amount.
- ii) Applicants shall mark their presence with Upanagar Police Station, District Nashik, once in six months, pending appeal.
- iii) Applicants shall produce proof of their respective residences to Investigating Officer and are further directed to intimate change of address in future, if any, to the concerned police station.

(P. N. DESHMUKH, J.)