

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

CRIMINAL APPLICATION NO.2029 OF 2017

Nayan s/o Dilip Mukherjee,
Age 48 yrs., Occ: Medical Profession,
R/o. "Ketika", Kuripada,
Tq. & Dist. Puruliya (West Bengal)

VERSUS

...RESPONDENTS

1. The State of Maharashtra,
Through PSO, Naseerabad Police Station,
Jalgaon, Dist. Jalgaon.
2. Priyanka Jayprakash Kabra,
Age 20 years,
R/o. Santoshwadi, Modikhana,
Jalna, Dist. Jalna.
3. Priya Diliprao Pawar,
Age 18 yrs.,
R/o. Sane Guruji Nagar,
Ward No.2, Wardha,
Dist. Wardha.
4. Snehal Ramesh Mahajan,
Age 20 yrs.,
R/o. Society, 102, Sector 1-E,
Kulwali, Navi Mumbai.

...RESPONDENTS

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Mr. R.F.Totla, Adv., h/f Shri B.N.Kate, Adv., for the applicant.
Shri R.B.Bagul, APP for respondent State.
Shri R.R.Chandak, Adv., for respondent nos. 2 to 4.

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WITH

CRIMINAL APPLICATION NO.3004 OF 2017

The State of Maharashtra, Through
PSO Nashirabad Police Station,
Jalgaon, Dist. Jalgaon.

**...APPLICANT
(ORI.COMPLAINANT)**

versus

1. Priyanka Jayprakash Kabra,
Age 20 years, R/o. Santoshwadi,
Modikhana, Jalna, Dist. Jalna.
2. Priya Diliprao Pawar,
Age 18 years, R/o. Sane Guruji Nagar,
Ward No.2, Wardha, Dist. Wardha.
3. Snehal Ramesh Mahajan,
Age 20 years, R/o. Society, A-102,
Sector 1-E, Kulwali, Navi Mumbai.

**...RESPONDENTS
(Ori.accused)**

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Shri R.B.Bagul, AGP., for applicant.
Shri R.R.Chandak, Advocate, for respondents.

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CORAM: P.R. BORA, J.

Dt. of reserving the order: 16/11/2017

Dt. of pronouncing the order: 20/11/2017

PER COURT:

1. Both the aforesaid applications are filed seeking
leave to prefer appeal against the judgment and order passed

by the learned Additional Sessions Judge, Jalgaon, in Sessions case No.183/2014 decided on 18th of February, 2017. Application No.2029/2017 is filed by the father of the deceased whereas Application No.3004/2017 is filed by the State.

2. Respondent Nos. 2 to 4 in Criminal Application No.2029/2017, who are respondent nos. 1 to 3 in another Criminal Application (hereinafter referred to as the accused), were prosecuted in the aforesaid Sessions case for the offenses punishable under Section 306 read with Section 34 of IPC and under Section 4 of the Maharashtra Prevention of Ragging Act, 1999 (hereinafter referred as 'the Ragging Act').

3. Deceased Priyanka Nayan Mukherjee was studying in Dr.Ulhas Patil Medical College, Jalgaon. She was pursuing M.B.B.S. Course. She was residing in the girls hostel. The accused were her room mates in the said hostel. It was the case of the prosecution that the accused used to harass deceased Priyanka by teasing her on account of her fatness, for her inability to speak in Marathi, and used to prevent her from using her mobile phone, and used to pour water on her bed. It was the further case of the prosecution that because of such harassment by the accused, deceased Priyanka was mentally

disturbed to a great extent and being fed up with the torturing by the accused, deceased Priyanka ultimately ended her life by committing suicide. It was, therefore, alleged that by their conduct the accused abated the commission of suicide by deceased Priyanka. It was also the case of the prosecution that the acts of the accused against the deceased amounted to ragging of deceased Priyanka. As such, the accused were prosecuted for the offenses punishable under Section 306 read with Section 34 of IPC as well as under Section 4 of the Ragging Act.

4. In order to prove the guilt of the accused, the prosecution had examined as many as nine witnesses. The prosecution had further heavily relied upon the chits in the handwriting of deceased Priyanka. The accused had denied the charges levelled against them. It was the defense of the accused that they did not cause any harassment to deceased Priyanka as alleged against them. According to the accused, there were different reasons for commission of suicide by deceased Priyanka; like her over-sensitiveness, her admission to M.B.B.S. course without her wish, and engagement of her boyfriend, namely, Bumba with some another girl.

5. Learned Additional Sessions Judge, after having assessed the oral and documentary evidence brought on record before her, acquitted the accused of both the charges levelled against them. Aggrieved thereby, present two applications have been filed seeking leave to appeal against the said judgment; as noted above, one by the father of the deceased and another by the State.

6. Shri R.F.Totala, learned Counsel appearing for the applicant in Criminal Application No.2029/2017, criticized the impugned judgment on various grounds. Learned Counsel, taking me through the evidence of the prosecution witnesses, submitted that the view taken by the trial Court is palpably wrong. Learned Counsel submitted that the learned Additional Sessions Judge has erred in appreciating the facts as well as the relevant legal provisions. Learned Counsel further submitted that the chits left behind by deceased Sarika have been proved to be in her handwriting and if the contents of the said chits are read, there remains no doubt that the accused abated the commission of suicide by deceased Priyanka by giving her mental tortures. Relying on the judgment of the Honourable Apex Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra (AIR 1984 SC 1622), learned Counsel

submitted that the chits so left behind by deceased Priyanka have to be held as her statement relating to her death and hence would clearly fall within the four corners of Section 32 of the Evidence Act. Learned Counsel submitted that the contents revealing from the said chits undoubtedly establish the mental harassment caused to deceased Priyanka by the accused which ultimately resulted in commission of suicide by her.

7. Learned Counsel further submitted that since the learned Sessions Judge has failed in appreciating the evidence as well as the law in proper perspective, it has resulted in recording the finding of acquittal. Learned Counsel further submitted that the learned trial Judge has also failed in appreciating that the Anti Ragging Committee of the college has held the accused guilty for ragging deceased Priyanka and has ousted the accused from the hostel and has also imposed fine of Rs.1,00,000/- (Rs. one lakh) upon each of them. Learned Counsel further submitted that the learned Judge has also not appreciated that though the accused preferred an appeal to the University against the decision of the Ragging Committee of the College, the said appeal has also been dismissed by the University. Learned Counsel submitted that the learned

Additional Sessions Judge has grossly erred in acquitting the accused from the offense under Section 4 of the Ragging Act.

8. For the aforesaid reasons, the learned Counsel prayed for granting leave to appeal so that all the grounds of objections can be substantively raised and argued in the said appeal.

9. Shri R.B.Bagul, learned A.P.P. appearing for the State, adopted the argument advanced by learned Counsel Shri R.F.Totla.

10. Shri R.R.Chandak, learned Counsel appearing for the accused in both these applications resisted the submissions made on behalf of the applicants. Learned Counsel supported the impugned judgment and order. Learned Counsel submitted that the prosecution has failed in bringing on record any evidence to prove that the accused caused any harassment to deceased as alleged and that by their such conduct abated the commission of the suicide by deceased Priyanka. Learned Counsel submitted that, on the contrary, the accused have brought on record several circumstances which indicate that there may be some other reasons for commission of suicide by

deceased Priyanka but not the harassment by the accused persons as alleged by the prosecution. Learned Counsel submitted that it has come on record that deceased Priyanka was admitted to the M.B.B.S. Course against her wish and because of the pressure from her parents. Learned Counsel submitted that it has also come on record that deceased Priyanka was under depression and was required to consult a Psychiatrist. Learned Counsel submitted that it has also come on record that deceased Priyanka was in love with one Bumba and since he got engaged with some another girl, she was totally upset. Learned Counsel submitted that said Bumba was engaged on 23rd May and Priyanka committed suicide on 25th of May and possibility of commission of suicide by Priyanka for the said reason cannot be ruled out.

11. After having considered the submissions made by the learned Counsel appearing for the parties and on perusal of the impugned judgment and the evidence on record apparently I do not find any infirmity in the finding of acquittal recorded by the learned Additional Sessions Judge in so far as the offense under Section 306 read with Section 34 of IPC is concerned. The allegations as are made in the FIR, which are reiterated by PW 1 in his testimony before the Court, as well as the

allegations as are revealing through the chits in the handwriting of deceased Priyanka, even if accepted to be true, may not constitute the offense under Section 306 read with Section 34 of IPC. The trial Court has rightly held that from the evidence on record, it is difficult to reach to any such conclusion that by committing the alleged acts, the accused, in any sense, were intending that deceased Priyanka shall commit suicide. The view taken by the trial Court is reasonable and proper. The reasons as are assigned by the trial Court for acquittal of the accused from the offense under Section 306 read with Section 34 of IPC are valid and consistent.

12. However, in view of the evidence on record, it appears to me that, in so far as the acquittal of the accused from the offense under Section 4 of the Ragging Act is concerned, the finding recorded by the trial Court needs to be re-scrutinized. The learned trial Court has discarded the evidence of PW 1 Dr. Nayan on the ground that he did not make any complaint to the Anti Ragging Committee and he did not even try to convince the accused on the point. It, prima facie, appears that the evidence of PW 1 Nayan could not have been rejected on the aforesaid ground and must have been considered on its own merits. Secondly, the contents of the

chits which are proved to be in the handwriting of deceased Priyanka, though may not attract the offense under Section 306 read with Section 34 of IPC, prima facie it appears that the said evidence could not have been discarded, in so far as the offense under Section 4 of the Ragging Act is concerned. The said evidence and the finding recorded by the learned trial Court in that regard also needs to be re-scrutinized. The learned Sessions Judge has declined to act on the said evidence by observing that during her lifetime deceased did not make any complaint to the Anti Ragging Committee. The finding recorded by the learned Sessions Judge cannot be supported. The allegations as are revealing through the chits cannot be rejected merely on the ground that deceased in her lifetime did not make any complaint to the Ragging Committee. It, prima facie, appears that the learned Sessions Judge, without properly appreciating the said evidence, has rejected the same.

13. For the reasons stated above, I am inclined to partly allow both these applications. Hence, the following order:

ORDER

1. Both the Criminal Applications (Nos.2029/2017 and 3004/2017) are partly allowed.

2. The applicants are granted leave to file appeal against the order of acquittal of the accused for the offense punishable under Section 4 of the Maharashtra Prohibition of Ragging Act, 1999, as recorded in Sessions Case No.183/2014. The Appeals be registered accordingly.

(P.R.BORA)
JUDGE

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AGP/2029-3004-17crapl