

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

CRIMINAL APPLICATION NO. 2321 OF 2016

The State of Maharashtra,
Through Sub-Divisional Police Officer,
Sub Division, Ambajogai, Taluka Ambajogai,
District : Beed.

... Applicant

VERSUS

1. Baliram Mahadeo Jogdand,
Age : 43 years, R/o. Tilak Nagar,
Yashwantrao Chavan Chowk,
Morewadi, Tq. Ambajogai,
Dist. Beed.
 2. Shivraj Vishwanath Menkudale,
Age : 50 years, Occupation : Service Headmaster,
Zilla Parishad Secondary School,
Radi, R/o. Radi, Tq. Ambajogai,
District : Beed.
 3. Sau. Asmita Bhagwanrao Kumthekar,
Age : 35 years, R/o. Tilak Nagar,
Yashwantrao Chavan Chowk,
Morewadi, Tq. Ambajogai,
Dist. Beed.
 4. Sau. Surekha Narayanrao Deshpande,
Age : 46 years, R/o. Dindayal Colony,
Ambajogai, Tq. Ambajogai,
District : Beed.
- ... Respondents

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Mr V. M. Kagne, APP for the applicant/State
Mr S. A. Ambad, Advocate for respondents No. 1 and 3
Mr P. K. Joshi, Advocate for respondent No.2
Mr U. S. Bhosale, Advocate for respondent No. 4
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**CORAM : A. M. DHAVAL, J.
DATE : 22ND SEPTEMBER, 2017.**

ORDER:

1. By this application u/s 378(1)(3) of the Code of Criminal Procedure, the applicant/State seeks leave to file appeal against the Judgment & Order dt. 28.11.2015 passed by Id. Additional Sessions Judge & Special Judge, Ambajogai, Dist. Beed in Special Case (Under S.C. & S.T. Act) No. 03 of 2010, thereby acquitting the respondents of the offences punishable u/s. 306, 506 r/w 34 of the Indian Penal Code.

2. Heard Shri. V. M. Kagne, learned APP for the applicant/State, Shri. S. A. Ambad, learned Advocate for respondents No. 1 and 3 and Shri. Prabhakar K. Joshi, learned Advocate for respondent No.2.

3. Deceased - Rajabhau Bansode was Teacher in Zilla Parishad Primary School at Radi. Accused No.1–Baliram Jogdand is a Teacher in Zilla Parishad Secondary School at Girwali. Accused No. 2 - Shivraj Vishwanath Menkudale is Headmaster in Zilla Parishad Secondary School at Radi whereas; accused No. 3 – Sau. Asmita Kumthekar, who is the wife of accused No. 1, is serving as Teacher in Zilla Parishad Secondary School at Girwali and accused No. 4 – Smt. Surekha Deshpande is the Headmistress of Zilla Parishad Primary School at Radi.

4. Admittedly, on 07.08.2009, Rajabhau was brought to the hospital with a history of consumption of poison and in spite of treatment, he died on 10.08.2009.

5. According to the prosecution, deceased Rajabhau committed suicide in view of mental torture to him by all the respondents in the following form:

(i) On 01.08.2009, when there was celebration of Lokmanya Tilak Punyatithi and Annabhau Sathe Jayanti, all the teachers were felicitated except deceased-Rajabhau by accused no. 4—Smt. Deshpande, who was Head of the Cultural Department. The deceased felt that, it was humiliation on account of casteism and he felt insulted. He has accordingly written a letter (at Exh. 49).

(ii) On 03.08.2009, accused No. 2— Shivraj Menkudale, Headmaster, belonging to general community went to the house of deceased-Rajabhau, who belonged to Cobbler (Scheduled Caste) community and in presence of his wife PW1-Saroj and son PW2 Pankaj,

addressed him as “Chambhardya” and called him not to make applications if he wanted to continue in the service as he has to maintain his children. He also tore the application written by the deceased.

- (iii) There is also general evidence that, since two months prior to the incident dt. 07.08.2009, deceased-Rajabhau was under depression and he used to tell his wife that all the applicants were mentally harassing him. Accused No. 1–Baliram serving at Girwali wanted to secure his transfer to Radi. Accused No. 3, who is wife of accused No. 1 and serving at Radi and accused Nos. 2 and 4, all were supporting accused no. 1. The resolution passed regarding transfer of accused No. 1 was not approved and it was suspected that it was on account of opposition by the deceased-Rajabhau. Therefore, they were harassing him and accused Nos.3 and 4 had threatened him to implicate him in a case of outraging of modesty.
- (iv) On 07.08.2009, accused No. 1 – Baliram Jogdand had intimidated deceased Rajabhau. Rajabhau had left

behind a chit that he was committing suicide due to threat by accused No. 1. Deceased Rajabhau had intimated this fact to his brother-in-law PW9-Ramchandra Lokhande, who in-turn communicated the same to his sister Saroj (PW1) through one Pawar.

6. Learned APP has argued that, there was persistent harassment to the deceased-Rajabhau in the name of his caste. Accused Nos. 2 & 4 belong to general category. All the accused in furtherance of their common intention created a situation of great pressure which the deceased Rajabhau could not bear it and had no other option but to commit suicide. He argued that, there is sufficient material to prove the facts alleged and deceased - Rajabhau had left behind chits at Exh. 48, 49 and 50. Handwriting Expert-Mr Goley-PW13 has opined that, the chits at Exhs. 48 to 50 are written in the handwriting of the deceased. Hence, the appeal should be admitted. He also submitted that, though trial Judge held that, suicide itself was not proved, PW11-Dr Sunita has led evidence that the deceased met with death due to unknown poisoning due to respiratory arrest. No poison was detected in the viscera as the deceased had taken treatment for cure of poisoning.

7. Per contra, Mr P. K. Joshi, learned Advocate for respondent No.2 and Mr S. A. Ambad, learned Advocate for respondents No. 1 and 3 submitted that, the facts alleged are not duly proved. Even if those are held to be proved, those are insufficient to attract the ingredients of abetment to commit suicide as defined u/s 107 of Indian Penal Code. The alleged incidents were not serious enough to drive a person of ordinary mental strength to commit suicide. They have argued that, accused No. 1 is a Secondary School teacher whereas; deceased Rajabhau was a primary teacher. Accused No. 1 could not have been brought in place of deceased-Rajabhau. There are contradictions regarding the place from where the alleged chits were found. They further argued that, accused Nos. 1 and 3 themselves are belonging to backward category and they could not have been prosecuted for the offence under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act.

8. Learned advocate appearing on behalf of the respective respondents have taken me through the relevant part of evidence of the material witnesses. After carefully considering the evidence on record and arguments advanced, I find that there are general allegations about the torture without any specification about time, date, place, manner or person involved in torture. As far as the incident dt. 01.08.2009 is concerned, it is alleged that, deceased was

not felicitated. This cannot be a case of atrocity or abetment to commit suicide. The second incident is dt. 03.08.2009, when accused No. 2 had gone to the house of the deceased and had told him not to make any application. It is alleged that, he was also abused as “Chambhardya” at that time and he was threatened not to make complaints. Even if this fact is accepted at its face value it is not sufficient to drive a person to commit suicide. The third incident is intimidation by accused No. 1 to the deceased, which was the immediate cause for commission of suicide. It is alleged that, the deceased had left behind a suicide note at Exh. 48 to that effect.

9. The law regarding abetment to commit suicide by indirect mode has been well settled by the Hon'ble Apex Court in the following cases.

- (i) In **Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618**, it is held that, where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred.
- (ii) In **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605**, it is held that, a

reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

- (iii) In the judgment delivered by the Division Bench of this Court at Nagpur Bench in **Criminal Application (APL) No. 332 of 2016** (Dilip S/o Ramrao Shirasao & Ors. Vs State of Maharashtra & Anr) on 05 August, 2016, it is held that mere appearance of any person's name in the suicide note without any specific allegations against such person, will not be sufficient to attract the ingredients of Section 107 of IPC.

10. Immediately after the incident dt. 07.08.2009, wife of the deceased Saroj PW1 has filed FIR in which there is reference to factum of suicide attempt by consumption of poison and making a phone call by the deceased to PW9-Lokhande that he was consuming poison as he was threatened to be killed by husband of accused No. 3 (Baliram-accused No.1). She also stated that, she found one chit (Exh. 48) in his shirt pocket when he was under treatment in hospital.

11. She stated that, her husband had told her that accused No.1-Baliram and accused No. 4–Smt. Deshpande had told him not to oppose the resolution for transfer of accused No. 1 to Radi and such mental harassment was going on for 8 days.

12. It is rightly submitted that, deceased Rajabhau was a Primary School Teacher whereas; accused No. 1 was a Secondary School Teacher serving at Girwali. Accused No. 1 could not have been brought in place of Rajabhau at Radi. Even if it is assumed that it was possible, still mere transfer of a person who is working in a transferable job, does not amount to serious mental ill-treatment to leave him with no option but to commit suicide. The learned advocate for respective parties submitted that both villages i.e. Radi and Girwali are situated near Ambajogai where deceased was residing along with his family. The distance is around 20-40 kms away. There was no much inconvenience even in case of transfer.

13. Accused No. 4 – Smt. Deshpande had absolutely no motive to harass the deceased-Rajabhau. Merely because the deceased was neglected at the time of felicitation of teachers as alleged cannot be a ground to prosecute her for atrocities or for abetment to commit suicide. PW1 & 3 had no personal knowledge of this incident. No

other teacher from the school who had attended the said program is examined to show that the active role was played by accused No. 4.

14. The FIR at Exh. 44, which is lodged on the very day of attempt, is silent about any allegations against accused No.2 – Headmaster. With regard to the incident dt. 03.08.2009, the allegations are made after 20 days by way of supplementary statement. The deceased was serving in the school for two years before the incident. The record shows that, the deceased was not a person who was taking the things lying down. He was in a habit of making complaints even when there was a small incident hurting him. There is no record to show that, deceased had made any complaint against the Headmaster to the Education Officer or Dy. Director of Education or to the authorities concerned from Zilla Parishad either on the ground of casteism or for subjecting him cruelty.

15. Learned advocate for the respective parties further submitted that, no can or container containing poison was found on the spot. The Chemical Analyzer's report of viscera is nil as the deceased had undergone treatment for cure of poisoning. If stomach is washed by way of treatment, no poison would be found in the viscera. However, the prosecution ought to have examined the

Medical Officer, who had treated the deceased. He could have deposed about the history given by the deceased, the consciousness or the otherwise of the deceased at the time of admission or any reason given by the deceased for consumption of poison but there is no proper investigation in this case.

16. Though PW9 stated that he received telephonic calls from the deceased after consumption of poison, no call detail records are collected. PW9 who is brother of PW1-Saroj has not immediately communicated it to her about this major event. The evidence shows that, PW9 stated that he communicated the said information to Mr Pawar, but Mr Pawar is also not examined. PW10 Rajesaheb stated that, he received information from Todkar Sir but Mr Todkar is also not examined. The deceased had gone to school for teaching some 20 students, but none of the students is examined.

17. The allegations made in the supplementary statement after a period of 20 days creates doubt about the credibility of the evidence and the allegations made in the FIR. The deceased was not having any harassment or ill-treatment in respect of his caste for a period of almost two years. The incident allegedly began in view of attempt of accused No. 1 to get himself transferred from Girwali to Radi in place of the deceased, which as discussed above appears to be not possible.

The deceased has not made any application to the Education Officer or Dy. Director of Education against any of the accused. Even if the allegations are taken at their face value and read in entirety, those do not show any serious attempt to drive the deceased to commit suicide.

18. I also find that the charge framed by the learned trial Judge is defective. There is no charge u/s 506 of IPC. No major defects in the appreciation of evidence by the learned trial Judge are shown. Considering all the facts & circumstances of the case, the view taken by the learned trial Judge appears to be reasonable and probable and, therefore, this is not a fit case for granting leave to appeal.

19. The application deserves to be rejected and is accordingly rejected.

[A. M. DHAVALE]
JUDGE