

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

**CRIMINAL APPEAL NO. 132 OF 2002**

Shaikh Shabbir s/o Shaikh Osman,  
Age : 40 years, Occu.: Agricultural,  
R/o.: Sonkheda, Tq. Khultabad,  
District : Aurangabad

**APPELLANT**

**VERSUS**

The State of Maharashtra

**RESPONDENT**

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Mr. Satej S. Jadhav, Advocate for the Appellant  
Smt.R.P. Gaur, A.G.P. for respondent/State

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**CORAM : SANGITRAO S. PATIL, J.**

**DATE : 14<sup>th</sup> JULY, 2017**

**JUDGMENT :**

Heard the learned counsel for the appellant  
and the learned A.P.P.

2. The appellant (original accused No.1) has  
challenged his conviction and sentence for the offence  
punishable under Section 306 of the Indian Penal Code  
("IPC", for short), recorded in Sessions Case No. 142  
of 2000 on 15th March, 2002 by the learned II  
Additional Adhoc Sessions Judge, Aurangabad.

3. The deceased Gausyabi was the wife of accused No.2 namely Sk. Ahmed. Their marriage had taken place prior to about 5 to 6 years of the date of the incident. The appellant is the brother of accused No. 2. Accused Nos. 3 to 5 are the inlaws of the deceased Gausyabi. The deceased Gausyabi was the sister of the informant namely Sk. Afzal (PW2).

4. It is the case of the prosecution that the appellant and accused Nos.2 to 5 were illtreating the deceased Gausyabi by suspecting her character. Accused No.2, the husband of Gausyabi, used to beat her on the say of the other accused persons. Such torture was being meted out to the deceased Gausyabi since before two years of the incident. Ultimately, being fed up with that torture, she committed suicide by consuming poison on 16<sup>th</sup> August, 1999. Sk. Afzal (PW2) lodged FIR against the accused persons in Police Station, Khultabad on the same day. Crime No.I-116 of 1999 came to be registered against them for the offence punishable under Section 306 read with Section 34 of the IPC. The investigation followed. The statements of the witnesses were recorded. After completion of the investigation, accused Nos.1 to 5 came to be chargesheeted for the above mentioned

offence.

5. After evaluating the evidence on record, the learned Trial Judge did not find accused Nos.2 to 5 guilty of the above mentioned offence. He, therefore, acquitted them. However, he found sufficient evidence to hold the appellant guilty for the said offence. He, therefore, convicted him for that offence and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs. 5000/-, in default to suffer rigorous imprisonment for one year. This conviction and sentence has been challenged by the appellant in the present appeal.

6. To connect the appellant with the alleged offence, the prosecution relied on the evidence of the informant, Sk. Afzal (PW2) (Exh-13), Sk. Ahmed (PW3) (Exh-15), the another brother of the deceased Gausyabi, and Kamrubi (PW4) (Exh-16), the mother of the deceased Gausyabi. It has come in their evidence that two years after the marriage, the appellant had given a false message that the deceased Gausyabi had plunged into a well. All of these witnesses went to the matrimonial home of the deceased Gausyabi and found her alive. On being asked by them as to why he had given false message

in respect of the deceased Gausyabi, the appellant threatened them. Thereafter, the deceased Gausyabi was taken away by these witnesses with them to their house.

7. It may be noted that no report was lodged against the appellant for illtreating the deceased Gausyabi and giving false message about her plunging into a well. The evidence of these witnesses in respect of that incident is very vague and general. The evidence of these witnesses about the events those took place at that time also is not consistent. Sk. Afzal (PW2) states that when he asked about that message to the appellant, the appellant was inside the sugarcane crop. He threatened that he would not allow this witness to go beyond the boundary of the field. Thereafter, he took Gausyabi with him to Takali. He does not state that at that time, Sk. Ahmed (PW3) and Kamrubi (PW4) were with him. However, Sk. Ahmed (PW3) states that he enquired with accused No. 1 (appellant) as to why false message was given by him in respect of the deceased Gausyabi. At that time, the appellant started beating him. His other family members and himself then went back to their house. After about 4 to 8 days, the appellant again threatened the deceased Gausyabi, whereon she came to

her maternal home. The informant and Kamrubi (PW4) do not state that Sk. Ahmed (PW3) was beaten by the appellant at that time. This witness does not state that the deceased Gausyabi was taken by him to his house at that time. Kamrubi (PW4) has a totally different story to tell. She states that after going to the house of the deceased Gausyabi after receiving the false message, the appellant rushed towards her with a stick to beat her. She states that the appellant was having evil eye on the deceased Gausyabi. Nothing of that sort has been stated by Sk. Afzal (PW2) and Sk. Ahmed (PW3). With this inconsistent evidence of these three witnesses, a strong doubt is created whether they actually received false message from the appellant and visited the house of the deceased Gausyabi after receiving that message.

8. Sk. Afzal (PW2) states that after staying for 4 to 8 days, the deceased Gausyabi went to her husband's house saying that she had no quarrel with her husband, but after about 5 to 6 days, she again came back to his house. This fact is not stated either by Sk. Ahmed (PW3) or Kamrubi (PW4). Sk. Afzal (PW2) and Kamrubi (PW4) state that the appellant had quarrelled with the deceased Gausyabi and therefore, she had come to their

house. At that time, she informed that the appellant had threatened to kill her. Sk. Afzal (PW2) states that on the same day, he sent the deceased Gausyabi to her husband's house with Sk. Ahmed (PW3) and on the same day, he also went there with his maternal uncle namely Ishaq. At that time, he questioned the appellant as to why he was harassing Gausyabi, whereon the appellant told that he would finish the deceased Gausyabi within eight days. Sk. Ahmed (PW3) also states in the same lines. However, the Investigating Officer, who recorded the statement of this witness, states that the said facts were not stated by this witness before him. Thus, these are a material omissions in the evidence of Sk. Afzal (PW2). Sk. Ahmed (PW3) also has not stated about his visit to the matrimonial house of the deceased Gausyabi to reach her and about the threat extended by the appellant to finish her within eight days. Consequently, the evidence of these witnesses on the point of extending threat to finish Gausyabi, cannot be believed.

9. It has come in the evidence of the above mentioned three witnesses, who are close relations of the deceased Gausyabi, that they received a message from

one Sk. Salim that Gausyabi had consumed poison and she was admitted in Ghati Hospital. When they went to see her, they found that she was no more.

10. Dr. Jagpal Yeotikar (PW7) (Exh-21), who conducted post-mortem of the body of the deceased Gausyabi, deposes that he did not find any external injuries on the body of the deceased Gansyabi. He found that all the internal organs were congested and stomach contained a thick paste like grayish white smelling of poisonous substance. He opined that the death of Gausyabi was due to cardio-respiratory arrest secondary to poisoning. He preserved viscera. That was sent to Chemical Analyst for analysis and report. However, no Chemical Analyst's report is produced on record. In the absence of Chemical Analyst's report, it cannot be said with certainty that Gausyabi died of any particular poisonous substance.

11. As seen from the evidence of Sk. Afzal (PW2), the deceased Gausyabi had begotton two sons from accused No. 2, who were aged about five years and three years at the time of the incident. Gausyabi had gone to her husband's house on the say that she had no quarrel with her husband. There is material omission in the evidence

of Kamrubi (PW4) about the alleged immoral/evil eye of the appellant against the deceased Gausyabi. It has come in the evidence of Sk. Ahmed (PW3) that after two years of the marriage of the deceased Gausyabi with accused No. 2, the appellant and accused No. 2 started residing separate from each other. These circumstances make it difficult for one to accept that the appellant would illtreat the deceased Gausyabi on any count. Accused No. 2 would not have allowed the appellant to raise any finger against the deceased Gausyabi, more particularly when he was residing with the deceased Gausyabi separate from the appellant and the deceased Gausyabi had no dispute with him. Thus, the very motive behind the alleged offence of abetting the deceased Gausyabi to commit suicide is absent in this case.

12. The evidence of the above named three close relations of the deceased Gausyabi about the alleged illtreatment meted out by the appellants to the deceased Gausyabi is not consistent, natural and believable. There was no reason for the appellant to harass the deceased Gausyabi. The learned Trial Judge attached undue importance to the version of Kamrubi (PW4) that the appellant had an evil eye on the deceased Gausyabi

though the said fact was stated by her for the first time before the Court and it was not supported by the other two witnesses, namely Sk. Afzal (PW2) and Sk. Ahmed (PW3). The learned Trial Judge seems to have swayed away by the sentiments, observing that Kamrubi (PW4) was deposing before the Court with excitement. The finding of the learned Trial Judge holding the appellant guilty is more based on surmises and conjectures than the evidence on record. The learned Trial Judge has not appreciated the evidence correctly and properly and wrongly hold the appellant guilty for abetting the deceased Gausyabi to commit suicide.

13. In the above circumstances, the impugned judgment convicting the appellant for the offence punishable under Section 306 of the IPC cannot be upheld. It is liable to be quashed and set aside. The sentence passed against the appellant will have to be set aside. In the result, I pass the following order:-

**O R D E R**

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment of conviction and order of sentence passed against the appellant for

the offence punishable under Section 306 of the Indian Penal code is quashed and set aside.

- (iii) The appellant is acquitted of the offence punishable under Section 306 of the Indian Penal Code.
- (iv) The amount of Rs. 5000/-, deposited by the appellant towards fine, be refunded to him.
- (v) The bail bonds of the appellant stand cancelled. He is set at liberty.
- (vi) The appeal is disposed of accordingly.

**[SANGITRAO S. PATIL]**  
**JUDGE**

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