

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

CRIMINAL APPEAL NO. 243 OF 2003

1. Ginyandeo s/o Shrirang Phad,
Age 53 years, Occu. Agri.,
R/o Koyal, Taluka Majalgaon,
District Beed
2. Babu s/o Ginyandeo Phad,
Age 33 years, Occu. and
R/o as above
3. Sumitrabai w/o Ginyandeo Phad,
Age 48 years, Occu. Household,
R/o Koyal, Taluka Majalgaon,
District Beed

..The Appellants

Versus

1. The State of Maharashtra,
2. Sakharam Kondiba Mundhe,
Age 35 years, Occu. Agri.,
R/o Koyal, Taluka Dharur,
District Beed

..The Respondents

Mr P.B. Rakhunde with Mr A.P. Munde and S.A. Munde Advocates for appellants

Mrs P.V. Diggikar, A.P.P. for respondent no.2

Respondent No.1

**CORAM : A.M. DHAVAL, J.
DATE : 25th July 2017**

ORAL JUDGMENT

1. This is an appeal by three accused from Sessions Case No.8/2000 in the Sessions Court at Beed, who were convicted and sentenced as follows :

Section 306 r.w. Sec.34 of the I.P.C.	Three years rigorous imprisonment and to pay fine of Rs.3,000/-, in default to suffer rigorous imprisonment Section 34 for six months.
Section 506 r.w. Sec.34 of the I.P.C.	Six months rigorous imprisonment and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month.

2. It was directed that substantive sentences shall run concurrently and if the fine is paid, compensation of Rs.5,000/- should be paid to P.W.1-Sakharam out of fine amount. The impugned judgment was delivered by the IV Additional Sessions Judge, Beed in Sessions Case No.8 of 2000 on 6th March 2003.

3. The prosecution case may be stated as follows :

4. On 28th April 1999, P.W.1-Sakharam lodged F.I.R. Exh.45 at Shirsala Police Station, Taluka Dharur, District Beed. As per F.I.R., he was having six sisters including accused No.3 - Sumitra. Deceased Rahibai was his wife. He was having twelve acres agricultural land. Accused No.1- Giyandeo is husband of his sister P.W.3-Sumitra, while accused No.2 Babu is son of accused Nos.1 and 3. It is alleged in the F.I.R. that accused Nos.1 and 2 were asking him and his wife to effect partition of his agricultural land and to allot separate share of his sister - accused No.3-Sumitra. On that count, they were abusing and assaulting him. When they were trying to proceed to the Police Station, they were obstructed. On 26th April 1999, at 11.00 a.m., accused Nos.1 and 2 came in front of their house and started abusing him and his wife. Both of them again made demand for partition and separate possession of share of accused No.3 - Sumitra and started assaulting them. Due to fear, his wife Rahibai went inside the house, latched the door. The accused started pelting stones on the door. Hence, at about 12.00 noon, Rahibai consumed poisonous insecticide and became unconscious. She was shifted to Civil Hospital at Ambejogai, but on 28th April 1999, at 2.25 p.m. she died. Initially, F.I.R. was filed only against accused Nos.1 and 2, but supplementary statement shows allegations against accused No.3 as well. On the

basis of this F.I.R., the crime was registered at C.R. No.45/1999 under Sections 306 read with Sec.34 and 506 read with Sec.34 of the Indian Penal Code at Shirsala Police Station and the same was investigated into by P.W.5 A.P.I. Citikar. During investigation, spot panchnama was drawn and a tin containing poisonous insecticide was seized from the spot. The marks of pelted stones on the door were noted. Some stones were found near the door. The Investigating Officer recorded statements of material witnesses. The body was subjected to post mortem and the viscera and tin of poisonous insecticide were sent for chemical analysis. After completion of investigation, the charge-sheet was submitted in the Court of Magistrate. In due course, the case was committed to the Court of Sessions at Beed. The charge was framed against all the accused at Exh.31, for offences punishable under Sections 306 read with Sec.34, 504 read with Sec.34, 506 read with Sec.34 and 341 read with Sec.34 of the Indian Penal Code. The accused pleaded not guilty. The defence of the accused is of total denial. The learned Additional Sessions Judge found the evidence sufficient to hold the accused Nos.1 to 3 guilty under Sections 306 read with Sec.34 and 506 read with Sec.34 of the Indian Penal Code. He then convicted and sentenced them as referred above.

5. Learned Advocate Mr P.B. Rakhunde for the appellants made following submissions :

(I) The acts alleged against the appellants do not amount to abetment to commit suicide;

(II) There are discrepancies in the evidence of witnesses and there is no medical evidence or any complaint lodged about the previous

incidents of assault and abusing. The allegations are vague and the witnesses are not trustworthy;

(III) The suicide itself is not proved. The chemical analysis report shows no poison detected in the viscera.

6. Learned A.P.P. Mrs Diggikar supported the judgment of the trial Court. She relied on oral dying declaration of deceased Rahibai made before P.W.1-Sakharam and the evidence about assault, abusing and stone pelting by the accused. Besides, there was seizure of insecticide tin from the spot. She submitted that the accused were demanding partition and separate share of land of accused No.3 – Sumitra, who is sister of P.W.1-Sakharam. Therefore, there was motive for them to commit the crime. The acts of the accused if taken together amount to abetment to commit suicide by Rahibai. Hence, the conviction and sentence need no interference.

7. The points for determination and with my findings thereon are as follows :

- | | | |
|-------|---|---------------|
| (I) | Whether Rahibai committed suicide ? | .. Not proved |
| (II) | Whether accused Nos.1 and 2 in furtherance of their common intention abetted Rahibai for committing suicide ? | .. Not proved |
| (III) | Whether accused Nos.1 to 3 in furtherance of their common intention intimidated Rahibai and her husband ? | .. Not proved |

(IV) Whether any interference is necessary in the conviction and sentence ?

..In the affirmative

(V) What order ?

..The accused are acquitted of all the offences

REASONS

8. The prosecution has examined following witnesses :

1	P.W.1-Sakharam	Husband of deceased Rahibai. He has proved F.I.R. Ex.45
2	P.W.2-Satyabhama	Step mother of deceased Rahibai
3	P.W.3-Pandurang	Panch witness to spot-cum-seizure panchnama Exh.52
4	P.W.4-Raghunath	Father of deceased Rahibai
5	P.W.5-A.S.I. Citikar	(Investigating Officer)

9. The following documents were produced and are marked as Exhibits.

- (a) F.I.R. dated 28th April 1999 Exh.45
- (b) Post mortem notes Exh.47
- (c) Chemical Analyser's report dated 14th October 1999 Exhs.48, 49
- (d) Spot Panchnama Exh.52 where tin of poisonous insecticide was seized.
- (e) Inquest panchnama Exh.54

Point No.1 :

10. As per oral evidence on record, on 26th April 1999, deceased Rahibai, in the wake of attack by accused Nos.1 and 2 got herself

confined in the house and consumed poisonous insecticide. The post mortem Exh.47 shows that there are no surface wounds or internal wounds. Her lungs as well as spleen and kidney were found congested. Stomach contained 200 cc of drowsy fluid having abnormal smell. The viscera was preserved and the opinion was 'suspected poisoning' subject to report of viscera. The reports of Chemical Analysts are at Exhs.48 and 49. Though report Exh.49 shows that the tin found on the spot was containing a poisonous insecticide "Organophosphorus insecticide Dimethoate", the viscera testing did not reveal any poison. There is oral evidence to show that on 26th April 1999, after consumption of poison, Rahibai was immediately shifted to Civil Hospital, Ambejogai. The doctors might have washed her stomach and might have removed the poison, but the prosecution has not examined the Medical Officer, who has treated her. She died on 28th April 1999 at 2.25 p.m. The absence of medical evidence during the period of her treatment is a major lacuna in the prosecution case. When the chemical analysis report does not show any poison in the viscera, the only inference can be drawn that death of Rahibai by commission of suicide has not been proved. Hence, I answer point No.1 as not proved.

Points No.2 and 3:

11. The above evidence of absence of poisonous substance in the viscera creates considerable doubt about the prosecution story narrated by the witnesses who stated that Rahibai had committed suicide by poisoning. It was utmost necessary to examine the Medical Officer but the absence of medical evidence does not help the Court to find out the veracity of the witnesses.

12. Deceased Rahibai was wife of P.W.1 – Sakharam. It is not a case of death of a bride. Accused No.3 – Sumitra is wife of accused No.1 and accused No.2 is their son. They were residing separately. P.W.1 – Sakharam deposed that the accused were demanding partition and separate possession of share of P.W.3-Sumitra from him and Rahibai. It is obvious that Rahibai had no role to play in the partition claimed. Evidence of P.W.1 Sakharam shows that accused Nos.1 to 3 since two months prior to Deewali festival were coming to his house and were assaulting him and his wife so that they should effect partition. They were alleging that Rahibai was instigating P.W.1-Sakharam not to effect partition. It is alleged that accused Nos.1 to 3 assaulted her by pelting stones and slapping and when P.W.1 – Sakharam and Rahibai were proceeding to Police Station to report the matter, they were obstructed. There was continuous assault and such obstructions for two months before the incident. On the date of incident, all the three accused came there and started pelting stones on the house of P.W.1-Sakharam. They had entered his house and slapped him and his wife and due to fear, P.W.1-Sakharam fled away while Rahibai confined herself in the house, bolted the door and consumed poison. After sometime, P.W.1-Sakharam came to house from backside. At that time, Rahibai told him that the accused had assaulted her and him and, therefore, she had consumed poison. She was shifted to Civil Hospital at Ambejogai but during treatment, after two days, she succumbed to poisoning. He has proved F.I.R. Exh.45. P.W.2 Satyabhama is step mother of Rahibai and wife of P.W.4 Raghunath. She had also stated that accused Nos.1 to 3 were asking her son-in-law to effect partition and used to quarrel and

assault her daughter and son-in-law. Rahibai had visited four hours before the incident and at that time, she and her husband had told her about the assaults and demands of partition. So, she accompanied Rahibai to her house. She stated that the accused pelted stones on the house of her son-in-law. Her son-in-law ran away from backside of the house. Rahibai latched the door. After some time she came out of the house in search of her son-in-law, at that time Rahibai bolted the door and consumed the poison. P.W.4 Raghunath was not present at the time of incident. He is just the supporting witness. P.W.3 – Pandurang is spot panch. He has deposed about drawing of panchnama. He is residing in the same edifice in which P.W.1 Sakharam was residing. Police found one tin containing poisonous insecticide on the spot. It was a tin of one litre in which there was liquid of 100 ml. as per chemical analysis report.

13. The material witnesses P.W.1 – Sakharam, P.W.2 – Satyabhama and P.W.4 – Raghunath were cross-examined. Their evidence shows following facts :

14. The allegations regarding assault, abusing, demand of partition are vague. There are no specific instances with date time or place or who had assaulted whom, what was the nature of assault. Alleged assault was only by hand and there was no weapon. There was no complaint lodged about the previous assault. There is no medical evidence to support the allegation of assault by accused Nos.1 to 3 as against P.W.1-Sakharam and deceased Rahibai. P.W.1-Sakharam stated that at the time of funeral of Rahibai, he did not discuss with his father-in-law or with other sisters about the incident and about

lodging of F.I.R. P.W.2-Satyabhama, step mother of Rahibai has admitted that Rahibai was the only daughter of her father and was the legal heir in case of his death. The accused and Rahibai had demanded partition in the property of P.W.4 - Raghunath. At that time P.W.2-Satyabhama, P.W.4-Raghunath had declined to effect partition. On the contrary, they sold their four acres of land at Rajewadi. Subsequently, she stated that the land was sold after death of Rahibai. Their admissions disclose another reason for Rahibai to commit suicide. Panch Pandurang though supported the prosecution, he also supported the accused in cross-examination by stating that the panchnama was already written. He signed the panchnama and left the spot. Evidence of P.W.4-Raghunath is not very material. P.W.2 is a chance witness. The post mortem report shows no injury on body of Rahibai. P.W.1 - Sakharam has also not gone to any doctor for treatment. Their vague evidence cannot be believed.

15. Even if the allegations against accused Nos.1 to 3 regarding assault, abusing and pelting stones are accepted at its face value, still these acts will not amount to instigation, aiding or entering into conspiracy, which would amount to abetment, as defined under Section 107 of the Indian Penal Code. Though such acts may be offences under other Sections, those will not amount to abetment, as contemplated under Section 306 of the Indian Penal Code.

16. Most material fact is that the viscera report shows that there was no poison and there is no medical evidence. In the light of these facts, the conviction of the accused under Section 306 read with Section 34 of the Indian Penal Code is not sustainable. Once the

witnesses are not believed on the major aspects, they cannot be believed for minor offence under Section 506 read with Sec.34 of the Indian Penal Code. The learned Judge of the trial Court has not properly appreciated the evidence in the light of above facts. Hence, I answer point Nos.2 and 3 as not proved and pass the following order:

ORDER

1. The appeal is allowed.
2. The conviction under Section 306 read with Sec.34 and Section 506 read with Sec.34 of the Indian Penal Code against accused Nos.1 to 3 (appellants) and the sentence passed thereunder by the IV Additional Sessions Judge, Beed in Sessions Case No.8 of 2000 by judgment dated 6th March 2003 are set aside. The order regarding award of compensation is also set aside.
3. The appellants are acquitted of all the charges. Their bail bonds stand cancelled. The appellants shall furnish fresh bail bonds of Rs.5,000/- each with one surety in the like amount under Section 437-A of the Indian Penal Code.

(A.M. DHAVAL, J.)