

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.663 OF 2003

The State of Maharashtra	Appellant
V/s.	
1 Krishnath Janardhan Gaikwad, 39 yrs.,	
2 Haribhau Janardhan Gaikwad, 30 yrs.,	
3 Hanmant Janardhan Gaikwad, 47 yrs.,	
3 Janardhan Narayan Gaikwad, 70 yrs.,	
All R/o. Hol, Tal: Phaltan, Dist. Satara.	Respondents

Mr. J.P.Yagnik, APP for the Appellant-State.
Mr. R.R.Moray i/by Shri V.S.Talkute, Advocates for
Respondent Nos.1 to 4.

* * * * *

CORAM :- SANDEEP K. SHINDE, J.

DATE :- 18TH AUGUST, 2017.

ORAL JUDGMENT :-

This appeal under Section 378(1) of the Code of Criminal Procedure, 1973 is preferred by the State against the judgment and order passed by the learned VIIth Additional Sessions Judge, Satara in Sessions Case No.133 of 2001 whereby the respondents-accused, were acquitted of the offence punishable under Section 306 read with Section 34 of the IPC.

2 Chhaya Ramchandra Gaikwad, wife of deceased lodged complaint with the police on 10.4.2001 alleging that the respondents-accused intentionally instigated/aided and abetted her husband to commit suicide by causing recurring harassment. On her complaint, FIR was registered against the respondents-accused of which the respondent nos.1 to 3 are brothers and the respondent no.4 is father of the deceased. Respondent no.4, i.e, the father of the deceased died during the pendency of this appeal, thus, the appeal against him stands abated. It is the complainant's case that her husband had undivided share in land bearing block no.697. It is her case that her husband had dug bore-well in the land which was in his possession. There were quarrels and disputes between her husband and his brothers on account of use of bore-well water. It is her case that on 5.4.2001, her husband went to install electric motor on the well. However, his brothers and father restrained him from doing so. The complainant would say that on account of installing electric motor on the well, quarrel arose between the deceased and the accused no.1. Resultantly, the deceased could not install electric motor on the well. It is her case that her husband felt frustrated and in

the state of frustration, he consumed poison. He was removed to the hospital but he died on the next date, i.e., on 6.4.2001. The cause of death certified by medical officer was asphyxia due to organo-phosphorus poisoning. It is not in dispute that it was suicidal death. Soon after the incident, accidental death enquiry was held under Section 174 of the Cr.P.C.; whereunder panchanama of empty bottle of pesticide Rogar was seized and four days thereafter, i.e., on 10.4.2011, wife of the deceased lodged the complaint with Phaltan Police Station whereupon Crime No.80 of 2001 was registered under Section 306 read with Section 34 of the IPC. After completing the investigation, the case was committed to the Court of Sessions.

3 Prosecution in support of its case examined 8 witnesses. P.W.1-Chhaya (Complainant) is wife of the deceased. P.W.2-Kishor is son of the deceased. P.W.6-Dr. Madhuri Jagtap is medical officer and P.W.5-Somnath Adsul was an electrician, who was present on the spot where the deceased wanted to install the electric motor. The learned Trial Judge, after appreciating the evidence on record, acquitted respondent nos.1 to 4-accused vide judgment and order dated 11.2.2003 against which the present appeal is

preferred by the State.

4 Heard Mr. Yagnik, the learned APP for the State and Mr. Moray, the learned counsel for respondents. Perused the evidence. It is not in dispute that the deceased suffered suicidal death. The only question falls for consideration as to whether evidence on record proves beyond a reasonable doubt, “as to whether the respondents-accused herein are guilty of abetment of commission of suicide by their brother Ramchandra?”.

5 To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of the suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

6 That after going through the evidence on record, I am of the view that the trial Court has not committed any error in appreciating the evidence and has given cogent reasons for acquitting the respondents-accused. It is settled law that an order of acquittal is to be interfered only when there are “**compelling and substantial reasons**” for doing so; and if the order is clearly unreasonable, it is compelling reason for interference. In the case in hand, I do not find any compelling and substantial reason to interfere with the order of acquittal for more than one reason.

P.W.1-Chhaya, wife of the deceased in her evidence had stated that there were quarrels between her husband and respondent-accused no.1 on account of use of bore-well since before **couple of years of the incident** (*emphasis supplied*) and the rest of the respondents-accused were also quarreling with her husband on account of division of land. That as such, evidence of P.W.1-Chhaya did not establish determinative existence of live link or nexus between the propelling causative factor and commission of suicide. P.W.1-Chhaya narrated the incident dated 5.4.2001, saying that on the given date when her husband went to install electric

motor, accused no.1 offered the resistance and slapped her and rushed towards her husband brandishing the sickle. She deposed that Nana Anna Bhosale, Ashok Sudam Bhosale and Somnath Adsul pacified the quarrel. She further deposed that as her husband was unable to install the electric motor, he felt frustrated and in that state of mind, he committed suicide. As stated here-in-above, so far as the incident dated 5.4.2001 is concerned, no role was attributed to accused nos.2 to 4. That even otherwise, P.W.1-Chhaya did not disclose any such incident at the behest of the respondent nos.2 to 4 from which it can be inferred that they had either abetted or intentionally aided her husband to commit suicide. Merely because there were some disputes as regards the enjoyment of common property and that too such disputes were ongoing for last many years would certainly not fall within the expression of abetment as defined under Section 107 of IPC. Now the question is whether the alleged incident dated 5.4.2001 and the acts of the respondent-accused no.1 would amount to abetment within the meaning of Section 107 of IPC. It is admitted fact that there were disputes and differences between the deceased and his brothers either on account of enjoyment of family property or on account of use of well

water. These disputes and differences were on going for last many years. The incident of 5th April, 2001 has been pressed in service which according to the prosecution has triggered the situation and prompted the deceased to commit suicide. P.W.1-Chhaya in her evidence for the first time deposed before the Court that accused no.1 was present near the well and he rushed towards her husband brandishing the sickle. She further deposed in her evidence that one Nana Anna Bhosale and Ashok Sudam Bhosale were present at the spot besides P.W.5-Somnath Adsul. In the cross-examination, P.W.1-Chhaya could not explain as to why she did not tell police about the presence of Nana Bhosale and Ashok Bhosale on the spot and that the accused no.1 rushed towards her husband brandishing the sickle. In view of this fact, it can be safely inferred that P.W.1-Chhaya has improved her version before the Court and could not give any plausible explanation as to why she omitted to say these vital facts to the police when the complaint was lodged. In addition thereto, she did not tell police that her son was also present on the spot. Prosecution examined her son, Kishor Gaikwad as P.W.-2 and attempted to corroborate the evidence of P.W.1-Chhaya through him. More so, the complaint was lodged four days after the incident and

no explanation has been offered for lodging the complaint belatedly. Be that as it may, fact remains that evidence of prosecution is not cogent and reliable to hold that the accused no.1 intentionally abetted and/or aided the deceased to commit suicide. Quarrels and the differences between the deceased and the accused no.1 on the one hand and other family members on the other hand were ongoing for many years together and prosecution could not establish that alleged quarrels/differences between accused and the deceased prompted and/or instigated the deceased to commit suicide. There is nothing on record to hold that the respondents herein had intentionally and knowingly abetted the deceased to commit suicide. Evidence on record certainly does not warrant to hold that the respondents-accused were guilty of offence punishable under Section 306 of IPC. In view of the evidence on record, I do not see any reason to interfere with the judgment and order passed by the learned Sessions Judge whereby he has acquitted the respondents-accused herein of the offence punishable under Section 306 of IPC.

7 In the result, appeal fails and accordingly, is dismissed.

(SANDEEP K. SHINDE, J)