

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.621 OF 2000

Shri. Rajaram Bhimrao Mane,
Age : 26 years, Occ.: Agriculture
R/o : Koge, Taluka Karveer,
District Kolhapur. Appellant

Vs.

- 1 The State of Maharashtra
- 2 Mr. Sambhaji Patil,
R/o : Phulewadi, Taluka Karveer,
District Kolhapur Respondents

Ms. Madhavi Tavanandi, Advocate for the Appellant.
Ms. Anamika Malhotra, APP for the State.

Coram : SARANG V. KOTWAL, J.
Date : 17th March, 2018

JUDGMENT :

1 By this appeal, the appellant has challenged the judgment and order dated 30th August 2000 passed by the learned Additional Sessions Judge, Kolhapur whereby the appellant was convicted for commission of offence punishable under Section 306 of Indian Penal Code and was sentenced to suffer rigorous imprisonment for 6 years and to pay a fine of Rs.7,000/- and in default to suffer simple imprisonment for 1 year. An amount of Rs.4,000/- from the fine

amount was directed to be paid to PW-1, the first informant – Sambhaji Patil or father-in-law of the deceased by way of compensation.

2 Taking into account background of the case and the circumstances, the name of the victim is not mentioned in this judgment. Suffice it to say that the victim was the wife of PW-1, who was the first informant. The appellant was charged for abetting suicide committed by the victim on 22nd November 1999.

3 According to the prosecution case, the victim got married with the first informant, Sambhaji Patil on 18th June, 1999. The victim was a resident of Phulewadi and PW-1 Sambhaji Patil was residing at village Koge, Taluka Karveer, District Kolhapur. Sambhaji's sister Shobha Varekar was residing at Lakshirth Vasahat at Kolhapur after her marriage. Lakshirth Vasahat was near Phulewadi, which was parental house of the victim.

4 It is the case of the prosecution that after marriage when the victim started cohabiting with PW-1 in his house, once PW-1's sister Shobha Varekar (PW-4) had visited their house. Shobha suspected that the victim was in advanced stage of pregnancy and therefore at her instance, the victim was taken for medical check-up.

At that time, the Medical Officer informed them that she was already in the 22nd week of her pregnancy. Since the marriage had not taken place before that, the PW-1 felt cheated and the victim was left at her parental house. It is the prosecution case that some documents relating to divorce between the parties were executed before a Notary in the presence of Shobha–PW4. It is further the case of prosecution that due to intervention of the elderly villagers, the husband of PW-1 decided to forgive the victim and brought her back to his house to live as husband and wife.

5 As per the prosecution case, the present appellant was called to the house of PW-1 to fix antenna of a newly purchased TV set. It is alleged that the appellant developed intimacy with the victim and on one occasion, the father of PW-1 had even seen the accused behaving indecently with the victim in their house when no one else was there. It is further the prosecution case that when the PW-1 questioned her about the same, the victim informed him that the accused was misbehaving with her by giving her threats that he would commit murder of PW-1. It is further the prosecution case that on 15th November 1999, non-cognizable case was lodged with the Police Station by the victim herself against the accused and within a few days i.e on 22nd November 1999, her dead-body was found floating in the river. Initially, PW-1 lodged an accidental death report regarding her death and subsequently he gave his F.I.R.

blaming the present appellant for the death of the victim. As per the prosecution case, by his behaviour and threats, the appellant abetted commission of suicide by the victim. After lodging of F.I.R., the appellant was arrested, investigation was carried out. The charge-sheet was filed and the case was committed to the Court of Sessions.

6 During trial, the prosecution examined PW-1 Sambhaji Patil, the first informant, who was the husband of the victim. PW-3 Shivaji Patil was the father of PW-1, PW-4 Shobha was the sister of the PW-1, PW-2- Gajanan Potdar had recorded Non-Cognizable Case No.791 of 1999 under Sections 323, 504, 506 of Indian Penal Code against the appellant at the instance of victim on 15th November 1999. This witness had also registered A.D.R. No. 171 of 1999 under Section 174 Code of Criminal Procedure in respect of death of the victim. PW-2 was attached to Karveer Police Station, at that time. PW-5, Bhausahab Gavali was assistant to the PSO. On 15th November 1999 he had come to village for searching for the accused after non-cognizable case was registered against him at the instance of the victim. PW-6, API, Appasaheb Waghmare was the Investigating Officer. Besides these witnesses, the prosecution produced the post-mortem notes, which are marked at Exhibit '16'. Significantly the post-mortem notes do not show any injuries on the dead-body of the victim and more importantly, there is no mention of any pregnancy. Column 21 of post-mortem notes shows that uterus was of normal size and on cut section was found empty.

7 After recording the evidence, the learned trial Judge recorded the statement of the appellant under Section 313 Cr.PC. It is the case of the appellant that the victim's husband and his other family members were ill-treating her and were defaming her on the alleged pregnancy and therefore she had committed suicide and to save their own skin, the present appellant was made scapegoat and was falsely implicated.

8 After recording the evidence as well as the statement of the appellant and after hearing both sides, the learned Judge recorded his finding that the appellant had committed the offence under Section 306 of Indian Penal Code and was pleased to convict and sentence the appellant as mentioned earlier.

9 As far as the evidence led by the prosecution is concerned, three witnesses from the family of victim's husband are examined. PW-1 is the first informant and was the victim's husband. PW-3 Shivaji Patil was father-in-law and PW-4 Shobha Varekar was sister-in-law of the victim as mentioned earlier. According to PW-1, after their marriage on 18th June, 1999, when his sister had visited their house, she suspected that the victim could be pregnant. Therefore, the victim was taken to Dr. Bedekar for medical check-up. Dr. Bedekar opined that the victim was pregnant. After considering the date of marriage, PW-1 suspected that the victim was pregnant

even before the marriage and therefore he left her to her parental house and even executed documents showing divorce between the parties. The evidence shows that such documents were executed before a Notary. Validity of such divorce, of course, was not the subject matter of the trial. However, through the mediation of elders, PW-1 decided to forgive her and brought her back to their matrimonial house. It is further the case of PW-1 that the appellant came to their house to fix the antenna and thereafter developed intimacy with the victim. According to him, the appellant used to come to their house in PW1's absence. When PW-1 questioned the victim about the same, she told him that the appellant was misbehaving with her by threatening her of causing harm to PW-1. It is further his case that PW-1, PW-4 Shobha and the victim went to Karveer Police Station and victim lodged a report. According to him, Police went to his village to arrest the accused, however to avoid his arrest, the accused ran away from the village and within 3-4 days the victim committed suicide. Her dead body was recovered from river Kumbhi. In his cross-examination, PW-1 has admitted that his mother used to be in the house. He further admitted that the victim had left the house with two sarees and an amount of Rs.1,000/-. The prosecution has produced a report dated 21st November 1999 whereby PW-1 had informed the Police that the victim was missing from 20th November 1999. The said report is at Exhibit '19'. In his report he has mentioned that while leaving the house, the victim had

taken Rs.1,000/- and had taken all her sarees with her and she was missing from 7.00 pm onwards on 20th November 1999. Thereafter the dead-body was found and PW-1 lodged his F.I.R. vide C.R. No.282 of 1999 at Karveer Police Station under Section 306 of Indian Penal Code.

10 PW-4, Shobha Varekar has supported the case of PW-1 on all material aspects. In addition, she has deposed that when on the second occasion the victim was brought to the matrimonial house, people in the village started saying that the appellant had illicit relations with the victim. According to this witness, PW-4 the victim had told her that the appellant used to visit their house and was misbehaving with her. This disclosure allegedly made by the victim to this witness was not mentioned in the police statement and she was confronted with this omission. PW-4 stated that she had disclosed this fact in her statement before Police but she could not assign any reason as to why it was not so mentioned. The investigating officer also surprisingly reiterated that PW-4 had stated about this disclosure but even he could not explain as to why such fact was not mentioned in the statement before police. This answer by the Investigating officer is rather surprising as he himself had recorded the statement of PW-4 during investigation. It was for him to explain why such important disclosure was not part of her statement, though PW-4 had narrated the same. The fact remains

that such disclosure by the victim to this witness was not mentioned in her police statement. PW-4 further stated that she herself, the victim, PW-1 and PW-3 went to Karveer Police Station when the victim had lodged her N.C. In this connection, the contents of the said N.C. case registered with Karveer police station has to be looked into. The said N.C. is at Exhibit '22'. It was lodged on 15th November 1999 at the instance of the victim. It was specifically mentioned in the said complaint that on the previous day of lodging of the N.C., the appellant had assaulted the father-in-law of the victim because the father-in-law had questioned the appellant regarding his inappropriate behaviour towards the victim.

11 In the context of the aforesaid mentioned N.C., if the evidence of PW-3 Shivaji Patil is considered, it can be seen that PW-3 has not referred to any such incident at all. In fact he has not stated that they had gone to lodge N.C. case on 15th November 1999. Therefore, not only the incident mentioned in the N.C. case is doubtful but as to whether the victim voluntarily lodged this N.C. is also highly doubtful.

12 PW-3, Shivaji Patil has narrated the same story as narrated by PW 1 and 4. In addition, he has referred to one incident when he had returned from his field; he had seen the appellant behaving indecently with the victim. On seeing this witness, the

appellant had fled from the house. While narrating the said incident, PW-3 has not elaborated about the reaction of the victim. In any case, he has not stated that the victim was an unwilling participant in the incident or that she had any objection to the behaviour of the appellant. From the narration of these facts, it appears that the victim had no objection to the appellant's visit to their house

13 Taking into consideration the evidence led by the prosecution, the question arises firstly as to whether the victim had committed suicide and secondly as to whether the appellant had abetted such commission of suicide.

14 From the evidence and particularly the post-mortem notes, it appears that there were no injuries on the person of the victim. Her dead body was found floating in the river. The prosecution has not ruled out the possibility of accident. On the other hand, the first report lodged by PW-1 shows that the victim had left the house with Rs.1,000/- and all her sarees. This fact again does not support theory of commission of suicide. Because, it is rather difficult to believe that the person who wanted to commit suicide, would carry with her cash amount and all her sarees. Significantly the cash amount and the sarees were never traced.

15 The evidence of PW-1, 3 and 4 in fact shows that they themselves suspected character of the victim. Though PW-1 and 4 had stated that the Doctor had opined that the victim was in advanced stage of pregnancy, the post-mortem notes do not suggest that there was any pregnancy. The prosecution has not led any evidence to show that if there was birth of any child or if there was abortion. The prosecution has not examined any Doctor to prove that she was pregnant. Thus, it appears that the victim was unnecessarily blamed by PW-1, 3 and 4 for her pregnancy by doubting her character. The witnesses have admitted that there was village gossip in respect of this, which had disturbed the victim. In that event that could be one of the reasons for commission of suicide. The accused can show that the other theory was probable on the basis of the evidence led by the prosecution. In this case, it is probable that the victim was herself disturbed because of the village gossip.

16 The core question remains that even assuming that the victim had committed suicide, can it be said that the appellant had abetted commission of her suicide. In this context, it is necessary to refer to the Section 306 of Indian Penal Code. Section 306 reads thus :

306. Abetment of suicide.-- If any person commits suicide, whoever abets the commission of such

suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The word abetment is defined under Section 107 of Indian Penal Code.

“**107.**--Abetment of a thing.-- A person abets the doing of a thing, who -

First-- Instigates any person to do that thing; or

Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation.1 --A person, who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

17 From the evidence on record, it cannot be said that the appellant had instigated the victim to commit suicide. Similarly, it cannot be said that he had intentionally aided the commission of suicide. At the highest, it can be said that the prosecution witnesses suspected that the appellant was having illicit relationship with the deceased. But that by itself does not lead to the conclusion that the

appellant had abetted in any manner in commission of the suicide by the victim assuming that the victim had committed suicide. As mentioned earlier, I find that the N.C. case registered by the victim does not appear to be true and there are indications that it was lodged at the behest of her husband and other family members. In any case, having taken step of lodging N.C., it does not stand to reason that within a few days without any intervening circumstances or act on the part of the appellant, the victim chose to commit suicide. Thus, considering the overall circumstances and the evidence led by the prosecution, I am of the opinion that the prosecution has failed to prove the case against the appellant. The learned trial Judge has not given cogent reasoning for accepting the evidence of the prosecution witnesses and he has not even discussed as to how the act of the appellant amounts to abetment of commission of suicide. Therefore, in my opinion, the impugned judgment requires interference by this Court.

18 As a result of the above discussion, the appeal is allowed and the appellant is acquitted of the charges, which he was facing.

19 The bail bonds of the appellant shall stand discharged.

(SARANG V. KOTWAL, J.)