

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 454 OF 2003**

The State of Maharashtra

..Appellant

v/s.

1. Vynkat Laxman Kale (deceased)

2. Mansing Kundalik Desai.

3. Machindra Dnyanu Kadam

..Respondents

(Org. accused nos.1 to 3)

Mr. P.S.Gaikwad, APP for the State.

Mr. Rahul Kate, for the Respondent nos.2 and 3.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JUNE 08, 2018.**

ORAL JUDGMENT.

1. By the present appeal the State has challenged the judgment dated 3rd August, 2002 in Sessions Case No. 214 of 2000 (Old Sessions Case No. 166 of 1999) whereby the Adhoc Addl. District & Sessions Judge, Karad, Satara has acquitted the aforesaid respondents of offences under Section 306, 506 r/w. 34 of the Indian Penal Code.

2. The case of the prosecution in brief is that on 3rd July, 1999, the deceased Vijay Ramchandra Khilare had withdrawn cash of Rs.1500/- from Satara District Central Co-operative Bank, Marul-

Haveli Branch. District Satara. It is alleged that the respondents (hereinafter referred to as the accused), who were working as Branch Manager and Cashier at the said Bank, suspected that they had paid an excess amount of Rs.5000/- to said Vijay Khilare. On the same day they went to his field and later to his house and inquired whether he had received excess amount. The accused are alleged to have told Vijay Khilare to return the excess amount and threatened to lodge a police case. Said Vijay set himself ablaze due to humiliation, intimidation and fear of being implicated in a police case. He was taken to Krishna Hospital. Being a medico legal case, PW12-Dr. Parag Mahadik, the Medical Officer on duty informed the police. Accordingly, PHC Shri Gangurde visited the hospital. He secured presence of the Special Executive Magistrate, who recorded the statement of Vijay Khilare. Said Vijay expired on 4th July, 1999. His body was sent to the Cottage Hospital, Karad, for post-mortem. The post-mortem was conducted and it was opined that the death was due to shock as a consequence of 95% deep burn injuries.

3. On 6th July, 1999, PW2-Mangal Khilare, widow of the deceased lodged the first information report (Exh.17) against the accused persons. Pursuant to the said report, PW10-Balasaheb Mulik

registered the Crime against the accused persons for offences under Section 306, 506 r/w. 34 of the Indian Penal Code. He conducted the spot panchanama at Exh.28, and recorded statements of some of the witnesses. Further investigation was conducted by PW11-API Chandrakant Sangale. He recorded the statements of the other witnesses, collected PM report and after completion of investigation filed a chargesheet against the accused.

4. The accused pleaded not guilty to the charge and they claimed to be tried. The prosecution, in support of its case, examined 12 witnesses. The statements of the accused were recorded under Section 313 of Cr.P.C. The defence of the accused was of total denial. After considering the evidence on record, the learned Addl. Sessions Judge held that the prosecution had failed to establish the guilt of the accused and hence acquitted them of the offences under Section 306, 506 r/w. 34 of IPC. Being aggrieved by the acquittal, the State has preferred this appeal.

5. Heard Shri Gaekwad, learned APP for the State and Shri Kate, learned Counsel for the respondent nos.2 and 3. I have perused the records and considered the submissions advanced by the learned

Counsels for the respective parties.

6. This being an appeal against acquittal, it will be necessary to bear in mind the principles laid down by the Apex Court in ***Aruvelu & Anr. vs. State represented by the Public Prosecutor, (2009) 10 SCC 206***, which reads thus :-

“39. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused...

40. *This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009(11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."*

41. *Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*

7. In the instant case, the accusation against the accused are that they had abetted commission of suicide by Vijay Khilare. In order to bring home the guilt of the accused, the prosecution was required to prove the essential ingredients of 'abetment', which as defined under Section 107 IPC reads thus.

“107. Abetment. – 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 willful misrepresentation, or by willful 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. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

8. Thus the essential ingredients of 'abetment' are :-

- (i) instigating a person to commit an offence ; or
- (ii) engaging in conspiracy to commit it ; or
- (iii) intentionally aiding a person to commit it.

In the instant case, the evidence on record indicates that on 3rd July, 1999 Vijay Khilare, the husband of PW2 Mangal has set himself ablaze. He had expired as a result of burn injuries. The death of said Vijay Khilare was undisputedly suicidal. The case of the prosecution is that the accused had abetted commission of suicide by Vijay Khilare. In this regard, it would be advantageous to refer to the decision of the Apex Court in *M. Mohan vs. State (2011) 3 SCC 626* wherein the Apex Court after taking note of various earlier decisions has held that

“44. Abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to

instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are alrear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

Keeping in mind these principles, the question that falls for determination is whether the prosecution has established that the accused had directly or indirectly instigated, incited, aided, provoked or in any manner facilitated commission of suicide by Vijay Khilare.

9. It is not in dispute that the accused nos.2 and 3 were bank officials. The evidence on record indicates that on 3rd July, 1999 the deceased Vijay Khilare had visited the bank and withdrawn cash of Rs.1500/- from his saving account. PW9-Ramchandra had also withdrawn Rs.20,500/- on the same date. It appears that on the said date the cashier had paid an excess amount of Rs.5000/- to one of the customers and in the course of inquiry, they had visited the house of PW9-Ramchandra and the deceased and enquired with them whether they had received excess amount of Rs.5000/-. PW9 has deposed that he had told the accused that he had not received

any amount and that thereafter they had left his house.

10. PW2- Mangal, the widow of the deceased, has deposed that on 3rd July, 1999 at about 2.30 p.m. Vijay went to the field and returned home at about 5.30 p.m. Her husband told her that bank officers had come to the field and had accused him of having received excess amount from the cashier. Meanwhile, the accused no.3 Machindra and one villager by name Yuvraj Kadam (PW3) came to their house. The accused no.3 told her husband to return the excess amount of Rs.5000/-, failing which, he threatened to lodge a police complaint against him. Her husband was frightened and was crying and repeatedly told them that he had not received any excess amount. She claims that the accused were not convinced and insisted that the deceased should return the excess amount. The accused thereafter left her house.

11. PW2 has deposed that some time later, when she went near the water tank which is adjacent to her house, she saw her husband in flames. One Shivaji extinguished the flames. When she questioned her husband, he told that the bank officials had leveled false charges against him and had also threatened him.

12. It is pertinent to note that no such statement was made in the FIR at Exh.17. This material omission, which was brought on record, casts a doubt on her statement that her husband had in fact told her that the accused had threatened him. Furthermore, the testimony of PW6-Shivaji indicates that on the relevant date he had seen Vijay Khilare pouring kerosene and setting himself ablaze . He has deposed that he had poured water over his body and had tried to extinguish the flames. He claims that Vijay Khilare had told him that he had set himself ablaze as the bank officers had accused him of accepting excess money. The testimony of this witness does not indicate that the accused had threatened him. This witness has not corroborated the testimony of PW2-Mangal.

13. PW3-Yuvraj, who had accompanied the accused no.3 to the house of the deceased, has not supported the case of the prosecution. His testimony does not indicate that the accused had insisted that Vijay had received excess amount and that they had told him to return the excess amount and/or to face prosecution. His testimony only reveals that the accused no.3 had questioned the deceased whether he had received excess amount and when the

deceased had denied having received the amount, they had left his house. This witness was cross examined by the prosecution. He has denied that the accused had told the deceased to return the amount and /or to face police action. He has further denied having stated so in his statement under Section 161 of Cr.P.C.

14. PW5-Smt. Anusaya is the mother of the deceased. This witness also claims that the bank officials had come to the field and inquired with the deceased whether he had received any excess amount from the cashier. She claims that after the bank officers had left the field, her son returned home. Some time later accused no.3 and PW3 came to their house and the accused no.3 once again questioned Vijay whether he had received a bundle of Rs.5000/-. She has deposed that the accused no.3 was not convinced that Vijay had not received any excess amount. She has deposed that thereafter the accused no.3 left the house, and some time later she saw her son Vijay pouring kerosene and setting himself ablaze. She stated that her son had told her that he was unable to tolerate the charge leveled against him by the bank officers. The testimony of this witness also does not indicate that the bank officials had threatened Vijay Khilare.

15. PW7-Raju Karande is the brother-in-law of the deceased Vijay. He has deposed that he had visited the house of Vijay upon being informed that said Vijay had set himself ablaze. He has deposed that Vijay had told him that the bank officials had gone to his field and questioned him whether he had received an excess amount of Rs.5000/- and later the accused no.3 had come to his house. He had told him to return the excess amount, or else to face court proceedings. He has deposed that Vijay had told him that he had attempted suicide as the accused had leveled false charges against him.

16. At this stage, it would also be advantageous to refer to the evidence of PW4-Anil who had recorded dying declaration of Vijay, (Exh.21). PW4-Anil, a Special Executive Magistrate, has deposed that on 4th July, 1999, in view of the request letter received from Karad City Police, he had visited Krishna Hospital, Karad, to record the dying declaration of Vijay Khilare. He has stated that Vijay was in ICU Ward. He had inquired with the Medical Officer whether the patient was in a fit condition to give statement, and after obtaining the requisite endorsement of the doctor, he recorded the dying declaration at Exh.21. In his statement at Exh.21 the deceased had

stated that the bank officers had questioned him if he had received excess amount. He has stated that he had not received any excess amount and that he felt bad about the incident. He had further stated that he had set himself ablaze because of poverty.

17. The evidence adduced by the prosecution clearly indicates that the deceased had withdrawn cash of Rs.1500/- from his saving account. It appears that the cashier had paid excess amount of Rs.5000/- to one of the customers and when this fact had come to their notice, the bank officials had visited the customers including the deceased and PW9 who had withdrawn cash from the bank on the said date, and inquired with them whether they had received excess amount. There is no cogent and conclusive evidence to prove that the accused had threatened the deceased or that they had directly or indirectly instigated or incited him to commit suicide, or that they had committed any such act so as to facilitate commission of suicide. The only evidence on record is that the accused had visited the house of the deceased and had questioned him whether he had received any excess amount. Such an act cannot be construed as an act of abetment within the meaning of Section 107 of IPC. In the absence of evidence of abetment, mere commission of suicide by a person of

hyper-sensitive nature either due to humiliation or due to poverty would not constitute an offence punishable under Section 306 of IPC.

18. Considering the above facts and circumstances, in my considered view there is no merit in the appeal. The appeal is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

Prasanna
Pradeep
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