

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1246 OF 2018
IN
CRIMINAL APPEAL NO.943 OF 2018**

Suresh Baban Sanas and anr. ... **Applicants**
V/s.

The State of Maharashtra and anr. ... **Respondents**

WITH

**CRIMINAL APPLICATION NO.1245 OF 2018
IN
CRIMINAL APPEAL NO.942 OF 2018**

Sandip Shrikant Dhonde ... **Applicant**
V/s.

The State of Maharashtra and anr. ... **Respondents**

WITH

**CRIMINAL APPLICATION NO.1247 OF 2018
IN
CRIMINAL APPEAL NO.944 OF 2018**

Kumar Vasant Gole and ors. ... **Applicants**
V/s.

The State of Maharashtra and anr. ... **Respondents**

Mr.Harshad Bhadbhade a/w. Mr.Saurabh Butala for the applicants
in APPA/1246/2018.

Mr.Amogh Khadye i/b.Mr.Harshwardhan Salgaonkar for the

applicant in APPA/1245/2018.

Mr.Saurabh Butala i/b.Mr.Abhishek Sathe for the applicant in APPA/1247/2018.

Mr.S.V. Gavand, APP for the respondent/State in APPA/1246/18.

Ms.Anamika Malhotra, APP for the respondent/State in APPA/1245/2018.

Mr.P.H. Gaikwad-Patil for the respondent/State in APPA/1247/2018.

Mr.Ganesh Gole for respondent no.2/original complainant.

CORAM : A.M.BADAR J.

DATED : 21st AUGUST 2018.

P.C. :

1. These are applications for suspension of sentence and for releasing the applicants on bail during pendency of the appeals filed by the applicants/accused no.1 to 6. They all convicted of offences punishable under Sections 306, 323 of the Indian Penal Code as well as under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. For offence punishable under Section 306 of the Indian Penal Code, the applicants/accused are sentenced to suffer rigorous

imprisonment for five years apart from payment of fine of Rs.5000/- by each of them and in default to suffer six months rigorous imprisonment. For the offence punishable under Section 323 of the Indian Penal Code they all are sentenced to suffer rigorous imprisonment for one year by each of them. For offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the applicants / accused are sentenced to suffer rigorous imprisonment for one year apart from direction pay fine of Rs.3000/- each of them and to undergo rigorous imprisonment for three months by each of them in default on payment of fine.

2. Heard the learned Counsel appearing for the applicants/accused. He argued that the incident in question took place on 4th May, 2009 and according to the prosecution case, Saujanya Jadhav indulged in self effacement on 28th June, 2009 by consuming sleeping pills. There is delay in lodging First Information Report as though Saujanya died on 12th July, 2009, First Information Report came to be lodged on 14th July, 2009 by respondent no.2/first informant Mangal who happens to be

mother of the deceased. There is no nexus of this incident and commission of suicide by deceased Saujanya and therefore no offence punishable under Section 306 is made out by the prosecution. The learned Counsel argued that all applicants are already acquitted of offence punishable under Section 143 of the Indian Penal Code and therefore they cannot be vicariously liable for offence punishable under Section 306 of the Indian Penal Code. Section 34 of the Indian Penal Code was not invoked by the prosecution. The conviction is simpliciter for offence punishable under Section 306 and evidence on record does not show abetment by the applicant/accused. The learned Counsel further argued that the incident dated 4th May, 2009 has in fact resulted in registration of an offence against the prosecuting party. Some persons were injured in that incident. It is further argued that conviction under section 3(1)(x) of the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also not justified because the witnesses who have spoken about this aspect were inside the house and had not witnessed as to who had uttered or given casteist abuses. The learned Additional Public

Prosecutor opposed the applications by contending that apart from the first informant Mangal, prosecution has examined other eye witnesses to the incident including father and sisters of the deceased. They all have spoken about abetment.

3. I also heard the learned Counsel for respondent no.2 / first informant Mangal Jadhav. He argued that in the locality where the deceased used to reside, all other residents were belonging to higher caste. There was continuous harassment to the family of the deceased at the hands of the accused persons. The learned Counsel drew my attention to the incident dated 10th December, 2008 and argued that police had not taken cognizance of this incident and had only registered N.C. case. Another N.C. was then registered in respect of offence against accused persons. It is further argued that evidence on record also shows that two or three days prior to incident, one of the accused person had frightened the deceased by rushing on her person by motor cycle. The learned Counsel further argued that the first informant PW1 Mangal and her family members are residing in the same locality where accused persons reside, therefore, then they are not entitled for bail.

4. I have considered the rival submissions and also perused copies of depositions of prosecution witnesses so also impugned Judgment and order of conviction and resultant sentence.

5. The First Information Report came to be lodged on 14th July, 2009 by respondent no.2 Mangal Jadhav with Koparkhairane Police Station, Navi Mumbai. It has resulted in registration of Crime No.141 of 2009 for offence punishable under Sections 141, 143, 147, 149, 323, 324, 504, 509, 427, 452 of the Indian Penal Code. The FIR contains details of the incident took place on 4th May, 2009 . The first Informant had further stated in the FIR that on 28th June, 2009 at about 2.30 am she found her daughter Saujanya in indisposed condition and therefore had taken Saujanya to the hospital. The FIR contains recital that because of beating and mental harassment by accused persons Saujanya died.

6. The incident which according to the prosecution case triggered Saujanya to commit suicide started from 10th December, 2008. It is alleged by the prosecution that on 10th December, 2008, accused persons named applicant / accused no.1 Sandip

Dhonde and his friends uttered filthy words towards Snehal, sister of deceased Saujanya. Then on 4th May, 2009 at about 4.00 pm when respondent no.2 Mangal was going to her shop she saw some boys putting stones and sand in the water drum. She therefore scolded those children. While returning from shop at 9.30 pm on 4th May, 2009, respondent no.2 Mangal Jadhav saw acquitted accused No.8 Manisha Bhor near her house and then there was quarrel between accused no.8 Manisha Bhor and respondent no.2 Mangal Jadhav. As per version of Mangal Jadhav, Manisha Bhor called her aide and that is how the accused persons and mob of about 49 to 50 persons gathered there. Though as per version of PW1 Mangal the accused persons had beaten her as well as her daughters, husband and Nephew Ganesh, the police had registered FIR against her and her relatives. She deposed that when she had taken shelter of her house, accused persons gave casteist abuses for calling her out of the house. PW1 Mangal deposed on 28th June, 2009 she found Saujanya in uneasy condition and therefore taken her to the hospital where she succumbed to death on 12th July, 2009.

7. The impugned Judgment and order shows that all accused persons are acquitted offence punishable under Section 143, 147, 149 of the Indian Penal Code. Still the applicants/accused no.1 to 6 are convicted of offences punishable under Sections 306 and 323 of the Indian Penal Code apart from one under Section 3(1)(x) of the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

8. For making out offence of abetment to commit suicide, the prosecution is required to establish that accused persons had instigated, provoked, incited or encourage the deceased to commit suicide. The prosecution is required to prove *mens rea*. Without intention there cannot be abetment. Similarly, the prosecution is required to establish live link or nexus between instigation and commission of an act of suicide. Viewed from this angle, it is seen that the incident dated 10th December, 2008 was not concerning with deceased Saujanya. So far as the incident of 4th May, 2009 is concerned, evidence of Investigating officer shows that on the basis of report lodged by accused no.8 Manisha Bhor, offence came to be registered against prosecuting party. It is not seen

till date, the prosecuting party had lodged an FIR in respect of incident dated 4th May, 2009 against the applicants / accused persons.

9. Deceased Saujanya had consumed sleeping pills on 28th June, 2009. Evidence on record indicates that on 27th June, 2009, deceased Saujanya had failed to pass computer examination conducted by Micro Soft Company. In the words of PW1 Mangal, her daughter had committed suicide due to harassment caused by the accused. She had not deposed anything about the incident subsequent to 4th May, 2009.

10. All applicants/accused persons were on bail during pendency of the trial. There is nothing on record to demonstrate that while on bail and during pendency of the trial they had mis-used their liberty. Short sentence of imprisonment is imposed on the applicants and the appeals filed by the applicants/accused may not be heard within a period of five years. In this view of the matter, the following order;

:: ORDER ::

- (i) Applications are allowed.
- (ii) Substantive sentence imposed on the applicants/accused is suspended and they are directed to be released on bail on their executing P.R. Bond in the sum of Rs.15,000/- each and on furnishing surety in the like amount by each of them.
- (iii) As condition of this order, the applicants/accused should not contact the first informant/PW1 or any member from her family in any manner. They should not indulge in commission of any offence in future.
- (iv) Failure to abide by this condition, shall entail the prosecution to apply for cancellation of bail granted to the applicants/accused.
- (v) Applications are accordingly disposed of.

Vina
Arvind
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(A.M.BADAR J.)