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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.262 OF 1998

Kishor Shankar Bhoir	)	
aged about 42, years,	)	
residing at Flat No.31, Khush	)	
Vihar Co-operativce Housing	)	
Society Limited 210,	)	
F. Dr. Ambedkar Road,	)	...Appellant
Dadar (East), Mumbai 400014	)	(Original Accused)
V/s		

1] The State of Maharashtra	)
(At the instance of Dahisar	)
Police Station vide C.R. No.64	)
of 1988)	)

2] Smt. Lilabhai Vasant Bhagwat	)	
R/o. A/17, Daulat Bldg, Gawade	)	
Nagar, Dahisar (East), Mumbai	)	 Respondents.

Mr. J.G. Bhanushali for the Appellant.
 Mr. Amit Palkar, APP for the State.
 Mr. S.M. Oak for Respondent No.2.

CORAM: B. R. GAVAI, J.

DATE: 16th APRIL, 2019

ORAL JUDGMENT:

1] Appellant challenges the order of conviction and sentence as recorded by the learned Additional Sessions Judge, Mumbai in Sessions Case No.670 of 1988 on 23/12/1997, thereby convicting the Appellant for the offence punishable under Section 306 of the Indian

Penal Code and sentencing him to suffer rigorous imprisonment for one day till rising of the Court and further directing him to pay fine of Rs 70,000/- and, in default, to suffer rigorous imprisonment for two and half years. Out of the said amount of Rs 70,000/-, an amount of Rs 50,000/- has been directed to be paid to the mother of the deceased.

2] It appears from the record that, at the time of admission of this appeal i.e. on 23/2/1998, prayer was made on behalf of the Appellant for suspension of sentence of payment of fine of Rs 70,000/- and a statement was made that an amount of Rs 5000/- has already been deposited towards the fine. This Court, by the order passed on 23/2/1998, suspended the sentence of fine, subject to the condition that within three weeks from the date of the said order the Appellant deposits Rs 30,000/- towards fine in the Trial Court. The said amount has been deposited by the Appellant in the Trial Court on 5/3/1998 as could be seen from the record.

3] The prosecution case is that the deceased Vibhavari Bhagwat

had been admitted in the Hospital of one Dr. Lalwani at 11.00 P.M. on 12/07/1987. The history given was consumption of Baygon Spray. On receiving the information, the Station House Officer went to the Hospital and found the deceased Vibhavari to be in a serious condition. The deceased succumbed to the injuries and died on 15/07/1987. The accused led the police party on 20/07/1987 to the House where the deceased was residing. The keys of the house were with the accused and the accused opened the house and took police party inside. In the meanwhile, postmortem came to be conducted. In the postmortem report, the cause of death was inconclusive. It appears that, in the meantime, there was an allegation that the police machinery was not investigating the case properly and even local MLA led the morcha of citizens and as such, on 30/01/1988, an FIR came to be registered for the offence punishable under Section 306 of the Indian Penal Code.

4] It is the case of the prosecution that the deceased Vibhavari was living with her mother. She had two sisters. Her father was running a shop. On his death, she had arranged to sell the said shop. In the said transaction, the accused had helped her. It further appears that

it is the case of the prosecution that the deceased had divorced her husband and thereafter developed an intimate relationship with the present accused/Appellant. It is the prosecution case that the accused had assured the deceased to marry her. It appears from the prosecution case that, subsequently, there arose some dispute between the deceased and the accused/Appellant, as a result of which she consumed the said poisonous substance, which led to her death.

5] On the basis of investigation, a charge-sheet came to be filed in the Court of learned Metropolitan Magistrate, Borivli, Mumbai. Since the case was exclusively triable by the learned Sessions Judge, the same was committed to the learned Sessions Judge. The learned Trial Judge framed the charge for the offence punishable under section 306 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried.

6] The prosecution, in support of its case, has mainly examined the following witnesses viz P.W. 1 Leelabai Vasant Bhagwat, the mother of the deceased, P.W. 2 Pratibha Ramesh Shinde, the sister of the deceased, P.W.3 Brijnath Prasad, the Chemical Analyser and P.W. 4

Pulekshin Mithadhikari, the Investigating Officer.

7] At the conclusion of trial, the learned Trial Judge passed the order of conviction as stated aforesaid. Being aggrieved thereby, the present appeal.

8] Mr. Bhanushali, learned Counsel appearing on behalf of the Appellant, submitted that the view taken by the learned Trial Judge is based totally on conjectures and surmises and the order of conviction and sentence is not at all sustainable in law. He therefore submitted that the appeal deserves to be allowed and order of conviction and sentence is liable to be set aside.

9] Mr. Palkar, learned APP appearing on behalf of the State, has vehemently opposed the appeal. He submitted that the learned Trial Judge on the basis of the material placed on record, has rightly passed an order of conviction and sentence and as such, no interference is warranted in the appeal. Mr. Oak, learned Counsel appearing on behalf of Respondent No.2 i.e. mother of the deceased, has also supported the learned APP.

10] The law with regard to conviction in a case under section 306 of the IPC is very well crystallized by the Hon'ble Apex Court in catena of judgments. Division Bench of this Court, to which one of us (Gavai, J.) is a party, in the case of *Dilip Ramrao Shirasao & Ors vs. State of Maharashtra & Anr*¹, after referring to various judgments of the Hon'ble Apex Court, has observed thus:-

“20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under section 306 of the Indian Penal Code, it is necessary for the prosecution to at least *prima facie* establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to

1 2016(4)Bom.C.R.(Cri.) 197

commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

11] It could thus be seen that to constitute an offence punishable under section 306 of IPC, the prosecution must prove that the accused had done an act or omitted to do something due to which the deceased had no option but to commit suicide. As such, what is necessary is that the prosecution must first establish that accused had acted in such a manner due to which the deceased had no other alternative but to commit suicide.

12] It is further to be noted that in a criminal case what is necessary is that the prosecution has to prove the case beyond reasonable doubt. The order of conviction cannot be passed merely on the basis of conjectures and surmises. In the present case, the learned Trial Judge has passed an order of conviction on the basis of finding that the deceased and the appellant had an intimate relationship. The reasoning given by the learned Trial Judge is that the appellant was aware about sensitive nature of the deceased. It has been further

inferred by the learned Trial Judge that the appellant might have acted in such a manner which could have led the deceased to commit suicide. This Court is at pains to say that the approach adopted by the learned Trial Judge is totally contrary to the settled position of law. The learned Trial Judge has not even referred to a single act of the accused which can be said to be an abetment to commit suicide.

13] In that view of the matter, the order of conviction and sentence which is based on conjectures and surmises is not sustainable in law and liable to be set aside.

14] In the result, appeal is allowed. The order of conviction and sentence is set aside.

(B. R. GAVAI, J.)