

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.320/2020

Sandip S/o Ramesh Gawande
 Aged about 26 yrs. Occ.
 Agriculturist, R/o Fataipur, Tq.-
 Khamgaon, Dist- Buldhana

.....APPELLANT

...V E R S U S...

- 1) State of Maharashtra,
 through Police Station Officer,
 Police Station, Khamgaon,
 Distt. Buldana

- 2) Baburao S/o Vithoba Dhurandar
 Aged about 44 yrs, Occ. Agriculturist,
 R/o Fataipur, Tq.- Khamgaon, Dist-
 Buldhana

...RESPONDENTS

 Shri A.M. Tirukh, Advocate for appellant.
 Shri H.R. Dhumale, A.PP for respondent No.1/State.
 Shri A.A. Dhavwas, Advocate for Respondent No.2.

CORAM:- VINAY JOSHI, J.
DATED :- 19/10/2020

ORAL JUDGMENT

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Admit. By consent of learned counsel appearing for the respective parties, appeal is taken up for final disposal.

3. The appellant is challenging the order of rejection of bail by Sessions Court vide order dated 11/08/2020. The police of Khamgaon Rural Police Station registered Crime No.220/2020 against appellant for commission of offence punishable under Section 306 of the Indian Penal Code and under Section 3 (2) (va) and 2(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Father of deceased girl has lodged a report on 23/07/2020 alleging that due to harassment meted out by the accused, his daughter has committed suicide on 19/07/2020. The police though invoked the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, however, it is submitted that offence under Section 306 of Indian Penal Code does not form part of the schedule provided under Section 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The said submission prima facie carries substance.

5. The main allegations against accused is about abetment to informant's daughter to commit suicide. It is stated that the accused was having acquaintance with deceased girl aged 18 years. At one time, the informant had also informed the father of

accused about the act of accused of harassing his daughter. Informant stated that by getting rid of harassment, he sent his daughter to the house of her grand-mother at village Ambikapur. Further, it is alleged that even then, accused persistently called the deceased on mobile as a result of such harassment, deceased committed suicide by way of hanging.

6. It is argued that absolutely there is no material to show that the accused has abetted deceased to commit suicide. According to appellant/accused, for the period of 2 months preceding to the incident, there was no direct contact in between the accused and the deceased. It is submission that C.D.R. collected by police would show that at the most, both were in talking terms which cannot be construed as an instigation. Moreover, it is submitted that the delay in lodgement of First Information Report supports the case of false implication.

7. On the other hand, learned A.P.P. strongly resisted this appeal by submitting that the accused by way of multiple mobiles consistently harassed the victim who ultimately met the maker. The copies of CDR are produced on record to show that -soon before suicidal death, there was continuous conversation in between the accused and the deceased. The learned counsel

appearing for informant also resisted for grant of protection. He would submit that there are direct allegations in First Information Report against accused. According to him, since by way of mobile communication, harassment was meted therefore, it requires scientific investigation. Both mobiles handsets possessed by accused needs to be recovered for which there is necessity of custodial interrogation.

8. The father of deceased girl aged 18 years has lodged the report. The learned A.P.P. read over the report from which it is evident that the accused and deceased were in talking terms. Once, the informant went to the house of accused and gave him a piece of advice in presence of his father. The informant stated that as there was harassment by the accused, in order to get rid of the situation, the deceased was sent to the house of her relative. According to him, thereafter also, there was persistent mobile conversation by which accused harassed the victim.

9. The learned counsel for the appellant submitted that in order to constitute an offence punishable under Section 306 of the Indian Penal Code, it is necessary to prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. Without a positive act on the part of accused,

the offence would not attract. To buttress said submission reliance is placed on the decision of this Court in case of **Binod S/o Ratan Sarkar and Ors. Vs. The State of Maharashtra and another - 2014 ALL MR (Cri) 1216**. In order to impress the requirement of proving intention of the accused to aid or instigate the act, the appellant has relied on the decision of Hon'ble Supreme Court in case of **Madan Mohan Singh Vs. State of Gujarat and another - (2010) 8 Supreme Court Cases 628**.

10. At this juncture, it is to be noted that, the Court is dealing on the limited aspects of entitlement of accused for pre-arrest protection. Having regard to said fact, besides limited inquiry, no detail probing is required to see about sustainability of the prosecution. Primarily, the investigation is in progress and the accused is on interim protection. The investigating officer has produced copies of C.D.R. which prima facie shows that during the month preceding to the suicide, there were frequent talks in between the accused and the deceased. True, there were mutual talks but, at present, there is no material to judge about the nature of said talk. The prosecution has given 4 mobile numbers on which allegedly accused has harassed the deceased. Though, two mobile numbers were of somebody else, however, rest of the two mobiles are of accused. Prima facie it is evident that soon before the

occurrence, accused was in constant touch with the deceased. In order to constitute an offence of abatement, there must be intentional act of the accused which would amount to aiding or facilitating the deceased to commit suicide. There are several areas in which the investigation is required. Both mobile handsets which were used by accused have to be seized. One may not know as to what sort of communications, messages, pictures were transmitting in between them. In such type of cases unless thorough investigation is made, the prosecution may not be in position to put up the case. In view of the matter, it is the case where there is necessity to have custodial interrogation. Therefore, appellant is not entitled for pre-arrest protection. In view of that appeal stands dismissed.

11. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

R.S. Sahare