

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

CRIMINAL APPEAL NO. 30 OF 2009

1. Jagdishprasad Kedarnath Gupta,
Aged 64 years, Occupation-Business.
2. Raju Jawaharlal Gupta,
Aged 32 years, Occupation-Business.
3. Ram Jawaharlal Gupta,
Aged 28 yrs, Occupation-Private Service.
4. Rekha Jagdishprasad Gupta,
Aged 33 years,
Occupation-Business.
5. Sou. Archana Rajendra Gupta,
Aged 37 years,
Occupation-Business.

All R/o. Navi Shukrawari,
Behind Kashibai Temple,
P.S. Kotwali, Nagpur.

... Appellants

.. Versus ..

State of Maharashtra,
Through Police Station Officer,
Ganeshpeth Police Station,
Nagpur.

.. Respondent

.....

Shri Avinash V. Gupta, Senior Advocate assisted by Shri Akash Gupta and Shri A. Pandya, Advocates for the appellants,

Ms Shamshi Haider, APP for the respondent-State.

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CORAM : N.B. SURYAWANSHI, J.

DATED : 04.03.2021.

JUDGMENT

1. By this appeal, the appellants have challenged the judgment passed by the learned Additional Sessions Judge, Nagpur in Special Case No.426/2007 thereby convicting the appellants under Sections 323 and 306 r/w 34 of the Indian Penal Code by sentencing them to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- each u/s 323 r/w 34 of the Indian Penal Code and to suffer rigorous imprisonment for four years and to pay a fine of Rs.1,000/- each u/s 306 r/w 34 of the Indian Penal Code.

2. The prosecution case, in short, is that the deceased Nitu was about 27 years old. She was having love affair with original accused no.1-Shyam Gupta. Two years prior to her death, Shyam had given her assurance of marriage and physical relations were established between them. Deceased became pregnant and when Shyam came to know about it, he ran away. On or about 15.4.2007, Nitu came to know that accused Shyam had returned home, therefore, she went to his house along with

her sister Minu (PW-1), but he was not found at his house. Shyam's family members (original accused nos.2 to 4) knowing that deceased belonged to Scheduled Tribe gave her abuses in the name of caste and they said "Aaise Me Atmahatya Karna Chahiye". The deceased felt insulted and bad. She committed suicide by jumping into Shukruwari tank. The information regarding floating of dead body in the tank was given to the Ganeshpeth Police Station. Accordingly, entry was taken in the station diary and police proceeded to the spot. The dead body was taken out from the water. Minu, the sister of deceased, identified the dead body. An inquest panchanama was prepared in her presence.

PSI Bavankar (PW-9) then came to the Police Station and registered Marg (Exh.30) at about 4 pm. He conducted enquiry of Marg. He recorded the statements of the mother, brother, sister and the relatives of the deceased. They all disclosed to him that the deceased had a love affair with accused no.1 Shyam, since last two years and they had decided to perform marriage in Gayatri Temple. However, prior to incident, since last 3-5 months, accused Shyam was avoiding the deceased. His family members were opposing their marriage and

therefore the deceased committed suicide. PW-9 Bavankar, therefore, lodged FIR Exh.39 and conducted investigation. The chargesheet came to be filed against six accused persons.

3. The learned Trial Court framed the charge under Sections 417 and 376 of the Indian Penal Code against accused no.1, under sections 306, 323 and 506 r/w 34 of the Indian Penal Code against accused nos.1 to 6 and under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against accused nos.2 to 6. After recording the evidence, the learned Trial Court acquitted accused no.1 Shyam of all the offences. Accused nos.2 to 6 were also acquitted of offences under Atrocity Act and under Section 506 of the Indian Penal Code. The learned Trial Court, however, convicted original accused nos.2 to 6 for offences under Sections 306 and 323 r/w 34 of the Indian Penal Code. Hence, the present appeal.

4. Heard learned Senior Advocate for appellants and learned APP for State. The learned Senior Advocate for the appellants submitted that there is no evidence on record to show

that the appellants have abetted the suicide of the deceased. According to him, the ingredients of Section 107 of the Indian Penal Code are absent in the evidence of the prosecution. The prosecution has failed to prove *mens rea* on the part of the appellants. According to him, the prosecution has failed to prove the charge under Section 306 of the Indian Penal Code. He further submitted that, at no point of time, PW-1 sister and PW-2 mother of the deceased have filed any report against the appellants on the day of incident. Not even a missing report was filed. On the point of conviction of the appellants under Section 323 of the Indian Penal Code, according to him, the evidence of PW-1 and PW-2 is inconsistent with each other and there is no material on record to warrant conviction under Section 323 of the Indian Penal Code. He, therefore, submitted that the conviction of the appellants recorded by the learned Trial Court is unsustainable and the appellants are entitled for acquittal.

5. In support of his submission, the learned Senior Advocate has relied on the following decisions :

1. Sanju alias Sanjay Singh Sengar .vs. State of M.P. (2002) 5 SCC 371.

2. Swamy Prahaladdas .vs. State of M.P. and another, 1995 Supp (3) SCC 438.
3. M. Mohan .vs. State, (2011) 3 SCC 626.
4. S.S. Chheena .vs. Vijay Kumar Mahajan and another, (2010) 12 SCC 190.
5. Satish N. Ate .vs. State of Maharashtra, 1997 Cri.L.J. 935.
6. Girish S. Bole .vs. The State of Maharashtra, 2012 ALL MR Cri. 3863.
7. Digambar B. Kamble .vs. The State of Maharashtra and others, 2012 ALL MR (Cri) 2526.

6. Per contra, the learned APP supported the judgment and order of the Trial Court stating that it is because of the abuses and assault made by the appellants, the deceased was driven to commit suicide. She, therefore, supported the judgment of conviction and submitted that there is no merit in the appeal and the appeal is liable to be dismissed by maintaining the conviction.

7. Heard the learned Senior Advocate for the appellants and the learned APP for the respondent-State at length. Perused the record.

8. The prosecution has examined 14 witnesses to prove its case. PW-1 Mina has deposed that deceased was her elder sister and she was doing a private job in Pande Optical at Deonagar. There was a love affair between accused Shyam and Nitu, the deceased. They were to perform marriage and for that saree, chappal necklace etc. were purchased by accused Shyam and the same were kept in their house. The date of marriage was also fixed. However, one day prior to the date of marriage, Shyam disappeared. He disappeared for a period three months. On 12.4.2007, deceased Nitu saw Shyam in the shop of his father. Though she wanted to speak with Shyam, the appellants did not allow her to speak with him. Thereafter, on 15.4.2007 she along with Nitu went to the house of Shyam Gupta. The appellants were present there and they came out of the house, when Nitu told them that she wanted to talk with Shyam. Appellant nos.4 and 5 caught the hair of Nitu and snatched scarf from her person. Appellant no.1 abused them in the name of caste and also said that they may do anything they want. This incident occurred on Sunday at about 12.00 noon. Thereafter, she returned home with Nitu. She told Nitu that they would go and lodge a complaint to the Police Station. Nitu then changed

her clothes and went out. She also walked behind her. However, since she was not wearing chappals, she went back home to wear chappals. After wearing them, she returned back to go with Nitu, but could not find her. She searched every where but Nitu could not be found. She also searched her near Shukruwari Tank, but Nitu was not traceable. Then she went and lodged a report in the Police Station that her sister Nitu was missing. On the same day, they saw dead body of Nitu in Shukruwari Tank. Police had already reached the spot. Police Station Ganeshpeth was at a distance of five minutes walk from Shukruwari Tank. She gave statement to the police. Saree, chappal, necklace etc. given by the accused Shyam to Nitu were handed over to police. She also handed over a letter allegedly written by Nitu to the police. The said letter was of Sutika Gruha, Matru Sewa Sangh, as Nitu was pregnant from Shyam. She was 2-3 months pregnant in the year 2006. She further deposed that Shyam and Nitu had gone to Shrutika Gruha for aborting the child.

In the cross-examination, she stated that Ganeshpeth Police Station was situated at a distance of 300 to 400 ft. from her house. She further stated that Ganeshpeth Police Station

was situated in between Shukruwari Tank and her house. She stated that while searching for Nitu, she did not lodge a complaint. Various omissions were brought on record in her cross-examination. She admitted that Nitu was sensitive. She was not able to state whether Nitu understood on 15th that she would not be able to marry Shyam. She also admitted that Nitu was under stress regarding her marriage.

9. PW-2 Tarabai Fulsange is the mother of deceased and PW-1. She deposed that Nitu had a love affair with accused Shyam and Nitu had disclosed it to her. Shyam and Nitu were to perform marriage. In between, Nitu got pregnant from Shyam. Nitu and Shyam went to the hospital and got her aborted. Shyam used to say, he wanted to marry with Nitu till December-2006. On 15.4.2007 Nitu and PW-1 Mina went to the house of accused Shyam Gupta around 12.00 noon. They returned home at about 1.00 pm at noon. As Nitu was called by the family members of Shyam Gupta to have a talk for performance of marriage, she had gone to his house with Meena. After they returned home, Nitu told her that the family members of Shyam Gupta said to her "Sali Gondani, tere jaisi sau ladkiya ghuma

sakata hoon.” Thereafter, she went to the bathroom and at that time, Nitu ran out of the house. They tried to search for her. They saw her dead body in Shukrawari Tank at about 2 to 2.30 pm at noon. They lodged a report in the Police Station. She herself lodged report in the Police Station. Her daughter Nitu committed suicide because accused Shyam cheated Nitu. They deceived her because her family belonged to lower caste. Nitu and Shyam had purchased articles like saree, bangles and chappal for marriage. Those articles were kept in her house and those were seized by the police.

During cross-examination, she admitted that accused Shyam was 21 years old and Nitu was 27 years old. She admitted that she had given understanding to Nitu that her younger sisters were of marriageable age and if anything untoward happened, then they would be defamed. She also admitted that Nitu told her that she would not behave in such a way that they would be defamed. She also admitted that Nitu was silent and sensitive. She stated that she lodged a report on the day on which Nitu committed suicide. She admitted that people used to go for walk to the garden situated near

Shukrawari Tank and near Zhulelal Temple and that Zhulelal Temple was situated on the bank of Shukrawari Tank.

10. PW-5 Kailash Kulsunge is the brother of deceased and PW-1. He deposed that Nitu had a love affair with accused Shyam which was disclosed by Nitu in his presence to PW-1 Mina and PW-2 Tarabai. Nitu and Shyam were to get married. When Nitu and Mina went to the house of Shyam Gupta, Shyam Gupta and his family members insulted them and also Nitu was caught by her hair and was beaten. They threatened that they would kill them by pouring kerosene and setting them on fire. According to him, Nitu had also disclosed in his presence to her mother and sister that there were physical relations between her and Shyam and that family members of Shyam refused to perform marriage of Shyam with Nitu.

In the cross, he stated that police did not make any enquiry with him and did not record his statement.

11. PW-6 Smt. Vandana Sayam is the aunt of deceased Nitu. She turned hostile and did not support the prosecution. During her cross-examination by the learned APP, she admitted

that three to four months prior to the incident, Nitu had come to her house and told her that she had a love affair with Shyam Gupta and she would marry him.

In the cross-examination by the accused, she stated that she had not made any statement before anybody, which she had made before the Court on that day.

12. PW-3 Jaishri Khare and PW-4 Suresh Raut are the panch witnesses in respect of spot panchanama Exh.23 and seizure panchanama Exh.27 respectively. PW-7 Rahul Madavi and PW-8 Sandeep Choube are the panch witnesses to the seizure panchanama Exh.32 and 34, they have not supported the prosecution.

13. PW-10 Amna Begum, the neighbour of the accused, has not supported the case of the prosecution and was declared hostile. No material supporting the prosecution could be elicited in her cross-examination.

14. PW-9 Bavankar, was the Police Sub-Inspector, who lodged FIR Exh.39. He deposed that information was received at

2.35 pm that a dead body of a woman, aged about 27 to 28 years was found floating in Gandhisagar Tank on Jhulelal Mandir side. They immediately rushed to the spot of incident and the dead body was taken out. The spot panchanama Exh.36 was conducted. The dead body was identified by sister of deceased PW-1. He registered Marg No.30/2007 (Exh.38). On the next day, he went to the house of the deceased and recorded statement of PW-1. She disclosed that on the date of incident, she along with deceased had gone to the house of accused Shyam. At that time, the family members of Shyam abused and insulted her and gave her beating. Therefore, he registered FIR (Exh.39) under the orders of Police Inspector.

15. PW-14 Jivraj Gawade is the the Assistant Commissioner of Police. Investigation was handed over to him. He started his investigation on 27.4.2007. Then he conducted house search panchanama (Exh.58). At that time, he found shalu, clothes and ornaments, purchased for performing the marriage. He also found the card of Matru-sewa Sangh. He found a diary containing handwriting of deceased. The diary and the handwriting was forwarded to handwriting expert's report.

In the cross, he admitted that prior to registration of offence, Marg was registered at the instance of PW-1 Mina.

16. While assessing the evidence of the prosecution on record, it is to be seen whether the prosecution has proved that offence under Sections 306 and 323 of the Indian Penal Code is made out.

17. The law is well settled on the point of abetment. To prove the abetment, the prosecution has to prove ingredients of Section 107 of the Indian Penal Code. In **Sanju alias Sanjay Singh Sengar** (supra), the Hon'ble Apex Court has held thus :

“Even if one accepts the prosecution story that the appellant did tell the deceased “to go and die”, that itself does not constitute the ingredient of “instigation”. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion.”

18. On consideration of evidence on record, it is clear that

there was a love affair between deceased and accused Shyam. They wanted to perform marriage. However, it could not be materialised. Even if the prosecution case is accepted that the appellants were against the marriage and refused to perform marriage of Nitu and Shyam and for that purpose they scolded Nitu, their act does not fall within the definition of abetment, as contemplated u/s 107 of the Indian Penal Code. The only intention that can be attributed to the appellants would be that they did not want Shyam to marry Nitu. By no stretch of imagination, it can be held that their act instigated the deceased to commit suicide. It is not proved by the prosecution that appellants opposed the marriage between deceased and Shyam with an intention that deceased should commit suicide or they knew that she would commit suicide because of their opposition. The prosecution therefore failed to prove *mens rea* on the part of the appellants in abetting suicide of the deceased. PW-1 and PW-2 have admitted that Nitu was a sensitive girl. It is also the settled legal position that different people behave in different in same situation. In this view of the matter, it cannot be said that act of the appellants instigated the deceased to commit suicide. The prosecution has utterly failed to prove the ingredients of

Section 107 of the Indian Penal Code.

19. So far as the conviction of the appellants under Section 323 of IPC is concerned, the evidence of PW-1 and PW-2 is inconsistent on the said count. PW-1 states that the deceased was assaulted by catching her hair. However, immediately after coming from the house of the appellant, deceased Nitu disclosed the happenings to her mother. PW-2 has not stated that Nitu told her that she was assaulted by catching of her hair. The prosecution evidence does not prove that the accused caused simple hurt to the deceased.

20. PW-1 Minu, when identified the dead body of deceased Nitu, did not disclose about the incident. She has not immediately lodged any report in that behalf against the accused persons. Therefore, her version that abuses were given and the deceased was assaulted does not inspire confidence and the same cannot be believed.

21. It is, therefore, seen that there is absolutely no iota of evidence that the appellants abetted the suicide of the deceased to warrant their conviction u/s 306 of IPC. There is also no

reliable evidence to sustain the conviction under Section 323 of IPC. The learned Trial Court has erroneously proceeded to convict the appellants by ignoring the settled legal position that in order to prove abetment, cogent evidence is required that there was either intentional aid or instigation on the part of the accused persons to warrant conviction u/s 306 of IPC. The learned Trial Court has, therefore, committed an error in convicting the appellants. Hence, the impugned judgment is liable to be set aside. Hence, the following order :

ORDER

1. Criminal Appeal No.30/2009 is hereby **allowed**.
2. The impugned judgment and order of conviction passed by the learned Additional Sessions Judge, Nagpur in Special Case No.426/2007 convicting the appellants under Sections 306 and 323 r/w 34 of the Indian Penal Code is hereby quashed and set aside.
3. The appellants-accused are acquitted of all the charges.
4. The bail bonds of the appellants stand cancelled.

5. Fine amount, if any, deposited by the appellants be refunded to them.

6. The appellants shall furnish P.R. Bond in the sum of Rs.15,000/- each with one surety in the like amount before the learned Trial Court, in terms of Section 437-A of the Code of Criminal Procedure.

(N.B. Suryawanshi, J.)