

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

CRIMINAL APPLICATION (APL) NO.78/2018

1. Mohan Fulsing Chavan,
Aged about 62 years,
Resident of Lakhi, Tahsil Pusad, District Yavatmal.
2. Pravin Mohan Chavan,
Aged about 31 years,
Resident of Lakhi, Tahsil Pusad, District Yavatmal.
3. Pawan Mohan Chavan,
Aged about 33 years,
Resident of Lakhi, Tahsil Pusad, District Yavatmal. ... Applicants

VERSUS

1. The Police Station Officer,
Police Station Pusad (Rural),
Tahsil Pusad, District Yavatmal.
2. Bandu Tukaram Jadhav,
Age 60 years, Resident of Lakhi, Tahsil Pusad,
District Yavatmal. ... Non-applicants

Mr. S.M. Vaishnav, Adv for appellants.
Mrs. M.A. Barabde, APP for State.
Mr. M.M. Sudame, Adv for non-applicant no.2.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE : 26-11-2021.

ORAL JUDGMENT : (Per : Pushpa V. Ganediwala, J.)

The challenge in this application is to the registration of
First Information Report No.0459 dated 21-11-2017 (for short, 'FIR')

against the applicants for the offence punishable under Sections 306, 323 read with Section 34 of the Indian Penal Code (for short, 'IPC').

2. It is the case of the prosecution that on 20-11-2017, at around 9 o'clock in the evening, the present applicants gave beating to the deceased and when the sister and mother of the deceased came to save him, the present applicants also gave them beating. Feeling humiliated and insulted for the act of beating, the deceased climbed over an electric pole in front of his house to commit suicide and he touched the live electric wire and CFL Bulb and due to electric shock he was thrown down and sustained injuries to his head. He died on the spot. The applicants were held responsible for the act of commission of suicide by the deceased and accordingly the offence under section 306 and 323 r/w 34 of IPC came to be registered against the applicants.

3. The learned Counsel Shri. S. M. Vaishnav, appearing on behalf of the applicants states that a bare perusal of the FIR, it is crystal clear that neither of the offences under Sections 306 and 323 of the IPC are constituted. There is no abetment of suicide to the deceased by the applicants. The abetment cannot be treated as a solitary instance but the same is a mental process which involves instigating a person to commit a particular thing. That in the said process, the person must be

having an intention that the person who is being abetted must commit suicide.

4. The learned APP filed affidavit in reply on behalf of the non-applicant no.1-State stating therein that during investigation it is revealed that as the present applicants assaulted the deceased, feeling humiliated, the deceased climbed over the electric pole and touched the live electric wire and due to current he fell down and injuries were occurred on the back side of his head and he died on the spot.

5. We have perused the record and considered the submissions made on behalf of both the sides.

6. At the outset, in order to examine the issue whether the allegations in the FIR, prima facie, are sufficient to make out a case for the offence of abetment of suicide, it would be advantageous to refer to Section 306 of the IPC which provides that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment. The ingredients of abetment are set out in Section 107 of the IPC which reads as under :

"107. Abetment of a thing.-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.

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7. In the case of Ramesh Kumar vs State of Chhattisgarh, reported in (2001) 9 SCC 618, three Judges Bench of the Hon'ble Apex Court interpreted the word 'instigation' in paragraph 20 which reads thus :-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

8. Keeping in mind the aforesaid ratio of the Hon'ble Apex

Court, now we propose to examine the case before us. Admittedly, the direct or positive act of instigation on the part of the applicant to commit suicide by the deceased is conspicuously absent in the FIR. The FIR only states that the present applicants assaulted the deceased in front of his house and feeling insulted and humiliated due to such assault, the deceased in an inebriated condition climbed over the electric pole in order to commit suicide and touched the live electric wire, due to which he fell down and received injuries to his head and died on the spot. These allegations are clearly do not make out the offence of abetment to commit suicide.

9. In our considered view, the offence punishable under Section 306 of the IPC has been wrongly invoked in the FIR. However, as the FIR clearly reveals about assault by the applicants to the deceased and therefore the offence punishable under Section 323 of the IPC has to be there in the FIR.

10. For the reasons stated above, in our considered opinion, the offence under Section 306 of the IPC in the impugned FIR needs to be quashed and set aside and the same is accordingly quashed and set aside. The application is therefore allowed in part and the FIR is quashed to the extent of offence under Section 306 of the IPC.

11. Rule is made absolute in the aforesaid terms.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

Deshmukh