

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

CRIMINAL APPEAL NO. 252 OF 2009

Shri Sunil s/o Baburao Torkad,
aged about 29 years, Occ. Agriculturist,
R/o Kondhali, Tah. Pusad,
District Yavatmal.

...APPELLANT

Versus

State of Maharashtra,
through P.S.O., Police Station Pusad (City),
Tah. Pusad, District Yavatmal.

...RESPONDENT

Shri A.M. Kukdey, Advocate for the appellant.
Shri N.R. Rode, A.P.P. for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JANUARY 28, 2021.

ORAL JUDGMENT :

Heard.

2. This appeal is directed against the judgment and order dated 04/03/2009 passed by the Additional Sessions Judge, Pusad in Sessions Trial No. 6/2008, whereby the appellant/accused is convicted for the offence punishable under Section 506 (1) of the Indian Penal Code, 1860 (for

short “IPC”), and sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.1,000/- (rupees one thousand), in default, to suffer further rigorous imprisonment for three months.

Further, the trial Court has acquitted the appellant/accused of the offence punishable under Section 306 of the IPC.

3. I have heard Shri Kukdey, learned counsel for the appellant/accused, and Shri Rode, learned A.P.P. for the respondent.

4. The prosecution case in short is that at the relevant time, the deceased Vitthal was residing with his maternal uncle at Pusad for perusing his D.Ed. It was the grievance of the accused that deceased was keeping intimacy with his sister. On the day of incident, the accused along with some of his friends approached the house of his maternal uncle and enquired whereabouts of the deceased as he wanted to teach him a

lesson. Coincidentally, at that time, the deceased had reached home from his college. Somehow, he was taken inside the house. The accused wanted to teach the deceased a lesson. On the request being made by the inmates of the house, the accused with his friends left the place by saying they would come some other day. After some time, the deceased left the house saying he would submit his leave application to his college. He returned home after consuming poison. On the same day, he died of poisoning. The criminal law was set into motion, and after investigation, the charge sheet came to be filed before the Court of Magistrate which in its turn committed the case to the Court of Sessions, Pusa. The Addl. Sessions Judge, Pusa framed charge against the accused for the offence punishable under Sections 306 and 506 of the IPC. The charge was read over and explained to the accused in his vernacular, to which he denied the charge and claimed to be tried. The plea of the accused was recorded.

5. In order to prove the guilt of the accused, the prosecution examined in all five witnesses, and also brought on

record the relevant documents. The learned trial Court examined the accused under Section 313 of the Code of Criminal Procedure, and recorded his statement. His defence is of total denial. He preferred not to examine any witness. The learned trial Court considered the evidence of the prosecution, and found that the prosecution has failed to prove the charge of abetment to suicide under Section 306 of the IPC against the accused, however, succeeded in proving the charge under Section 506 of the IPC and sentenced him accordingly. This judgment of conviction is challenged in this appeal.

6. Shri Kukdey, learned counsel appearing on behalf of the appellant/accused submits that the appellant has faced the ignominy of the trial for almost 15 years. Actually, it was a clear cut case for quashing of the FIR for the offence punishable under Sections 306 and 506 of the IPC as there was absolutely no material that the appellant, at any time, was directly or indirectly instigated the deceased to commit suicide. If there was no case for the offence under Section 306 of the IPC, the other offence, i.e., Section 506 of the IPC is a non-

cognizable, bailable and compoundable offence. The learned Counsel further submits that although the appellant has a good case on merits to be acquitted, he restricts his arguments to the part of the sentence imposed upon the appellant. The learned counsel submits that at the relevant time, the age of the appellant/accused was 25 years. The appellant/accused is facing rigmarole and ignominy of the trial for almost 15 years. He is now well settled in life and leading a peaceful life as a good citizen without any criminal record. The learned counsel submits that the sentence of three months awarded to him be converted to fine, as the appellant/accused is a person of civic society and has no concern with any criminal activity and no purpose would be served in sending him in jail.

7. Shri Rode, learned A.P.P. submits to pass an appropriate order considering the facts of the case.

8. I have considered the submissions on behalf of both the parties.

9. At the outset, the offence of abetment of suicide was not proved against the appellant, as the alleged act of the accused was not by itself suffice to constitute abetment of commission of suicide, as the accused was not intended by such acts the consequence of suicide. This Court in **Digambar Bhujang Kamble Vs. The State of Maharashtra & Ors.**, reported in **2012 SCC OnLine Bom 293** having similarly situated facts while hearing appeal against acquittal at the instance of the victim of the offence, discussed the law on abetment to suicide at length, and came to the conclusion that as the prosecution could not prove the offence punishable under Section 306 of the IPC, in any case, the offences under Sections 504 and 506 of the IPC were non-cognizable and police investigated into the matter only on the basis that the commission of an offence punishable under Section 306 of the IPC was alleged; but as the facts alleged did not disclose any offence punishable under Section 306 of the IPC, the registration of the crime and the investigation carried out pursuant to that, was itself not proper or legal.

10. Apart from the case referred above, there are catena of cases of this Court whereby while quashing the FIR for the offence punishable under Section 306 of the IPC, the FIR for other subsidiary offences like 504, 506 etc. are invariably been quashed, being non cognizable offences. (See *Subhash Ramgopal Bharuka Vs. State of Maharashtra*, reported in *2020 SCC OnLine Bom 2211*).

11. In the instant case, the appellant has not only faced the trial for the offence under Section 306 of the IPC, but also faced conviction for the offence punishable under Section 506(1) of the IPC. The sentence of imprisonment is not the mandatory sentence for this offence, and in appropriate cases, fine would serve the purpose. As the learned counsel restricted his arguments to the part of the sentence, without going into the merits of the case, and in order to assist the victim of the crime, this Court is of the opinion that the case of conversion of sentence of imprisonment into the sentence of fine is made out.

12. Considering the legal position discussed above and in the light of the submissions advanced by the learned counsel for the appellant, and considering the fact that the offence punishable under Section 506 of the IPC is non-cognizable, bailable and compoundable offence, and the considering the fact the appellant/accused has faced the rigmarole and ignominy of criminal proceedings for more than 15 years, in the opinion of this Court, the substantial justice would be done in converting the sentence of imprisonment into the sentence of fine. Hence the following order :

ORDER

- i. The Criminal Appeal is allowed in part.
- ii. The conviction of the appellant/accused under Section 506 of the IPC is upheld, however, sentence of imprisonment is modified into sentence of fine to the tune of Rs. 10,000/- (rupees ten thousand) in addition to Rs. 1,000/- (rupees one thousand) already paid.

iii. The appellant/accused to deposit fine of Rs.10,000/- (rupees ten thousand) with the Registry of this Court, within a period of eight weeks from today. In default of payment of fine, the appellant/accused shall undergo simple imprisonment for one month.

iv. After deposit of the aforesaid amount, the Registry of this Court, in turn, shall remit the same to the legal representatives of the deceased Vithhal towards compensation.

v. The bail bond of the appellant/accused is cancelled. Surety stands discharged.

vi. A copy of this order duly authenticated by the Personal Assistant of this Court be supplied to the counsel for the parties.

JUDGE

Sumit