

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 176 OF 2010

Bilal Ahmed Abdul Latif Shaikh ..Appellant
V/s.
The State of Maharashtra ..Respondent

**WITH
CRIMINAL APPEAL NO. 249 OF 2010**

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Sandeep Vishnu Shinde and Ors. ..Appellants
V/s.
The State of Maharashtra ..Respondent

Mr. S.G. Kudle for the Appellant in Appeal/176/2010.
Ms. Saili Dhuru for the Appellant in Appeal/249/2010.
Mr. A.R. Kapadnis, APP for the Respondent/State.

**CORAM : C.V. BHADANG, J.
RESERVED ON : 18 NOVEMBER 2021
PRONOUNCED ON : 1 APRIL 2022**

:JUDGMENT:

1. Both these Appeals arise out of the Judgment and Order dated 03.03.2010 passed by the learned Sessions Judge at Niphad in Sessions Case No. 116 of 2006. The Appellants (Accused Nos. 1,2,3 and 5) along with one Dattatray Hujband (accused No.4) were tried for the offence punishable under Section 306 read with Section 34 of IPC and Section 32 and 33 of the

Bombay Money Lenders Act, 1946 ('the said Act'). The learned Sessions Judge by the impugned Judgment has acquitted accused No.4 Dattatray Hujband. The Appellants have also been acquitted for the offence punishable under Section 306 read with Section 34 of IPC. The Appellant Sandeep Shinde (accused No.2) and Suresh Pacharane (accused No.5) have been convicted for the offence punishable under Section 32 of the said Act and they have been sentenced to suffer simple imprisonment for six months and to pay a fine of Rs. 3000/- each and in default to suffer simple imprisonment for one month. The Appellants have also been convicted under Section 33 of the said Act and have been sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.500/- each and in default to suffer simple imprisonment for one month. Appellant Suresh Pacharane (accused No.5) has since expired. Thus the present Appeals only survive insofar as the accused Nos. 1 to 3 are concerned.

2. The prosecution case may be briefly stated thus:

That, now deceased Shamrao Ayachit was serving as a Store Superintendent in Civil Defence Office at Nashik. He was suffering from some brain disorder. According to the prosecution Shyamrao Ayachit had borrowed various amounts from the Appellants. In particular an amount of Rs.45,000/- was borrowed from accused Bilal Shaikh (Accused No.1) and Rs.20,000/- from accused Sandeep Shinde (Accused No.2). The deceased had

repaid the said amount along with interest. However, the Appellants were harassing the deceased for payment of further interest on the basis of blank cheques and the stamps obtained. PW-1 Swati Ayachit, who is the widow of the deceased claimed that since few days before 08.02.2006, the deceased was found to be in stress. The deceased left the house on 08.02.2006 with his daughter. He dropped his daughter at the college and proceeded for his office, however did not return home. A complaint about the deceased having gone missing was lodged with the police on 09.02.2006. On 22.02.2006, PW-1 was informed that the deceased had committed suicide in Ajinkya Lodge At Pimpalgaon Bus Stand by consuming poison. The death was reported by PW-5 Sunil Akade whereupon an accidental death (AD No. 7 of 2006) was registered. PW-1 Swati Ayachit filed a complaint on 25.02.2006 on the basis of which offence at Crime No. 28/2006 was registered with Police Station Pimpalgaon, under Section 306 of IPC and Section 32 and 33 of the said Act. During the course of investigation, it was found that the deceased had checked-in in the said lodge claiming as T.N. Gavli and during the inquest and spot panchnama, it was revealed that it was the deadbody of Shyamrao Ayachit as identified by his relatives. During the course of investigation, empty bottle of poison was recovered from the spot and two suicide notes Exh.59 and Exh.60 were recovered which were sent for the examination by

handwriting expert and as per report of the handwriting expert, the chits were found to be in the handwriting of the deceased.

3. After completion of the investigation, a chargesheet came to be filed which was committed to the Court of Sessions.

4. The learned Sessions Judge framed charge against the Appellants under Section 306 of IPC and Section 32 and 33 of the said Act. The Appellants pleaded not guilty and claimed to be tried. The defence of the Appellants is one of total denial and false implication.

5. At the trial, the prosecution examined in all 11 witnesses including PW-1 Swati Ayachit and PW-3 Shivani Ayachit, who are respectively the widow and the daughter of the deceased. The Appellants did not lead any evidence in defence.

6. The learned Sessions Judge found that Shyam Ayachit had met with a suicidal death. However, the learned Sessions Judge did not accept that the Appellants had abetted the suicide by the deceased. However, the offence under the provisions of the said Act was found to be proved as aforesaid.

7. I have heard the learned counsel for the Appellants and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by the learned counsel for the Appellant Bilal Shaikh that the Appellant was working as a driver in the Civil Defence Office where the deceased was a Superior Officer being Store Superintendent. It is thus submitted that it is improbable that the deceased was harassed and was molested by the Appellant Bilal Shaikh. The ingredients of Section 33 are not made out or established by the prosecution. The learned counsel has referred to the evidence of the prosecution witnesses, in order to submit that it is highly improbable that the Appellant Bilal Shaikh was indulging into money lending and had lent Rs.45,000/- to the deceased. He has referred to the evidence of the Investigating Officer in order to submit that the Investigating Officer has failed to collect any evidence to establish the complicity of the Appellant in the said crime.

9. The learned counsel for the Applicants Sandeep Shinde and Suresh Pacharne has also submitted that there is no evidence to establish the offence under Section 32 of the said Act against the Appellant Sandeep Shinde, nor there is any evidence to establish the offence under Section 33 of the said Act. It is submitted that the prosecution is obliged to establish that there was a transaction of money lending and also that the Appellants/accused were indulging into the illegal business of money lending without licence, in the absence of which none of the offences can be said to be proved particularly, when the Appellants have been acquitted from the offence punishable under Section 306 of IPC.

10. The learned APP has submitted that there is evidence of PW-1 Swati Ayachit, PW-2 Dilip Patil, PW-3 Shivani Ayachit which is sufficient to hold that the deceased had obtained financial assistance from the Appellants and inspite of repayment of the loan, the deceased was being pestered for further repayment which led the deceased to commit suicide. The learned APP has referred to the evidence in which the suicide notes Exh. 59 and 60 were recovered. It is submitted that expert evidence has found that suicide notes were in the handwriting of the deceased and they clearly make out a case for offence punishable under Section 32 and 33 of the said Act.

11. I have considered the circumstances and the submissions made.

12. At the outset, it is necessary to note that the Appellants/accused have been acquitted of the offence punishable under Section 306 of IPC. The Appellant Sandeep Shinde has been found guilty under Section 32 of the said Act and all the Appellants have also been found to be guilty under Section 33 of the said Act.

13. Section 32 of the said Act pertains to entry of wrong sum in a bond, promisory note, an acknowledgment or any other writing. Section 32 prohibits any money lender from taking any promisory note, acknowledgment, bond or other writing which

does not state the actual amount of the loan, or which states such amount wrongly or wherein any instrument, blanks are left to be filled, after execution.

14. The learned Sessions Judge has dealt with this aspect in relation to accused Sandeep Shinde. In paragraph 35, the learned Sessions Judge has noticed the evidence of PW-7 Jagan Waghere in whose presence the Appellant Sandeep Shinde had produced a bond Exh. 69 which was seized in the presence of panchas under panchnama Exh. 85. PW-1 Swati Ayachit has identified the signature of the deceased on the said bond which mentions the amount of Rs.75,000/- taken by the deceased as a hand loan. The said bond is executed before the notary and therefore, the Sessions Judge has found the accused Sandeep Shinde guilty for the offence under Section 32 of the said Act. However, there is nothing on record to show that any such amount was wrongly mentioned or there were any blanks left out. Thus, in my considered view, the conviction of the Appellant Sandeep Shinde under Section 33 of the said Act, cannot be sustained and deserves to be set aside.

15. This takes me to the conviction of the Appellants (accused Nos. 1 to 3) under Section 33 of the said Act. Section 33 provides for penalty for molestation. It provides that whoever molests, or abets the molestation, of a debtor for the recovery of a debt due by him to a creditor shall on conviction, be punishable

with imprisonment of either description which may extend to three months or with fine which may extend to Rs.500 or with both.

16. The explanation appended to Section 33 is relevant for the purpose and it reads thus:

“Explanation – for the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing -

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned, or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters near a house or other place where such other person resides or works or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person, shall be deemed to molest such other person;

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.”

It can be seen that the explanation covers a wide range of acts calculated to annoy or intimidate the debtor.

17. Coming to the prosecution evidence there is enough evidence in the form of the deposition of PW-1 and PW-3 as also the suicide notes Exh. 59 and Exh. 60, which show that the

deceased was harassed for recovery of the loan/interest. The suicide note (Exh. 60) also notes that the Appellant Bilal Shaikh was the one who had harassed him most. In view of the evidence of widow and the daughter of the deceased as well as the suicide notes, the contention that Bilal Shaikh being a mere driver working in the office of the deceased could not have ill-treated him, cannot be accepted. A perusal of the suicide notes clearly shows that the deceased was 'molested' by the Appellants, within the meaning of explanation appended to Section 33. Thus, I do not find any reason to interfere with the conviction of the Appellants under Section 33 of the said Act.

18. Coming to the issue of sentence, Section 33 invites a maximum sentence of three months or with fine, which may extend to Rs.500/-. Admittedly, there are no previous similar offences against the Appellants brought by the prosecution on record. The incident is of the year 2006. The Appellant Bilal Shaikh was in custody from 27.02.2006 to 04.03.2006. While, the Appellant Sandeep Shinde and Appellant Suresh Pacharne were in custody for a day in January 2010. As noticed earlier, in the suicide note (Exh. 60), the deceased has mentioned that the Appellant Bilal Shaikh has harassed him most. It is necessary to note that the sentence of imprisonment is optional under Section 33 as the offence is punishable with imprisonment for three months or with fine. Thus, I find that the sentence awarded to the Appellants can be modified to the one already undergone.

19. In the result, the following order is passed:

ORDER

(I) Criminal Appeal No. 249 of 2010 is partly allowed.

(a) The conviction of the Appellant Sandeep Shinde under Section 32 of the Bombay Money Lenders Act, 1946, is hereby set aside. He is acquitted of the said offence.

(b) The conviction of the Appellants for the offence punishable under Section 33 of the Bombay Money Lenders Act, is hereby confirmed.

(c) The Appellants are sentenced to imprisonment already undergone and to pay fine of Rs.500/- and in default to suffer simple imprisonment for one month.

(d) Their bail bonds stand cancelled.

(II) Criminal Appeal No. 176 of 2010 is partly allowed to the extent of modification of sentence only.

(a) The conviction of the Appellant Bilal Shaikh for the offence punishable under Section 33 of the Bombay Money Lenders Act, is hereby confirmed.

(b) The Appellant Bilal Shaikh is sentenced to imprisonment for the period already undergone and to pay fine of Rs.500/- and in default to suffer simple imprisonment for one month.

(c) His bail bonds stand cancelled.

20. The criminal appeals are disposed of in the aforesaid terms.

(C.V. BHADANG, J.)