

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

CRIMINAL APPEAL NO. 604 OF 2019

Vitthal Rambhau Chaudhari,
Aged about 58 years, Occ.
Agriculturist, R/o. Pardi Takmor,
Tq. and District Washim.

.... APPELLANT.

// **VERSUS** //

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Washim (Rural),
Tq. And Dist. Washim.
2. Madan Shyamrao Chaudhari,
Aged about 33 years, Occ.
Service, R/o Pardi Takmore,
Tq. And Dist. Washim.
3. Balaji Vitthal Gaikwad,
Aged about 33 years,
Occ. Agriculturist
R/o Pardi Takmore,
Tq. And Dist. Washim.

.... RESPONDENTS.

Ms Parita N. Lakhani, Advocate for Appellant.
Shri S.D. Sirpurkar, A.P.P. for Respondent/State.
Shri R.D. Khapre, Advocate for Respondent Nos.2 & 3.

CORAM : ANIL S. KILOR, J.
DATED : 23 MARCH, 2022.

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. In this appeal filed under Section 372 of the Code of Criminal Procedure, a challenge is raised to the judgment and order passed by the learned Additional Sessions Judge, Washim in Sessions Trial No.27/2016 dated 23/05/2019 acquitting the accused Nos.1 and 2/ respondent Nos.2 and 3 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

4. It is the case of the prosecution in brief that on 10/03/2015, one Sandip Vitthal Chaudhari committed suicide by jumping into the well. One Shankar Rambhau Chaudhari-PW-1, who is the uncle of the deceased lodged a report about accidental death and hence, Marg No.10/2015 was registered under Section 174 of the Criminal Procedure Code.

5. While doing inquest panchanama, a suicide note was found in a plastic pouch in the pocket of trouser of the deceased Sandip. In the suicide note, accused Nos.1 and 2 were blamed for the suicide. It was stated in the suicide note that the deceased was being harassed by the accused.

6. Thereupon, on 13/05/2015, the report was lodged by Vitthal Rambhau Chaudhari, blaming accused Nos.1 and 2 for suicide of deceased Sandip.

7. Accordingly, Crime No.40/2015 came to be registered for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

8. After the investigation, the Investigating Officer filed the charge-sheet on 01/01/2016. The learned Additional Sessions Judge, Washim framed the charge under Section 306 read with Section 34 of the Indian Penal Code vide Exhibit-10 against the accused persons. Both the accused pleaded not guilty vide Exhs.11 & 12 and claimed to be tried. The prosecution has examined in all 12 witnesses to prove its case. The defence of the accused under Section 313 of the Criminal Procedure Code was of total denial and they contended that the false case has been lodged

against them. The defence did not examine any witness or not examined themselves in support of their case.

9. The learned trial Court after marshaling and on scrutiny of the evidence, acquitted both the accused for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code vide impugned judgment and order dated 23/05/2019. The correctness and legality of the same has been questioned in this appeal.

10. Learned Counsel for the appellant Ms Lakhani submits that while acquitting the respondent Nos.2 and 3, the learned Sessions Judge had given perverse findings, which are not based on the evidence. It is therefore, submits that acquittal of the respondent Nos.2 and 3 is erroneous.

11. It is further submitted that the suicide note recovered from the pocket of the trouser of the deceased, wherein he has blamed the accused persons for suicide, is sufficient to establish the guilt against the accused Nos.1 and 2 beyond doubt. It is submitted that the learned trial Court has ignored the said suicide note while acquitting the respondent Nos.2 and 3.

12. Ms Lakhani, learned Counsel for the appellant further submits that the prosecution has examined 12 witnesses to bring home the guilt against the accused. It is submitted that in spite of the sufficient evidence brought on record to establish the offence against the accused, the accused were acquitted by ignoring material evidence available on record. The learned Counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Chitresh Kumar Chopra Vs. State (NCT of Delhi)*¹, *Amalendu Pal Vs. State of West Bengal*² and *Ude Singh Vs. State of Haryana and others*³.

13. Shri R.D. Khapre, learned Counsel for the respondent Nos.2 and 3 supports the impugned judgment and order dated 23/05/2019, acquitting the respondent Nos.2 and 3 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

14. It is submitted that the learned trial Court, after scrutinizing the evidence in detail and after recording the reasons, has held that the prosecution failed to prove the charge of abetment of suicide against both the accused beyond reasonable doubt. The learned Counsel for the

¹ (2009) 16 SCC 605,

² (2010) 1 SCC 707,

³ (2019) 17 SCC 301.

respondent Nos.2 and 3 has placed reliance upon the judgment of Division Bench of this Court in the case of *Dilip s/o Ramrao Shirasao and others Vs. State of Maharashtra and others* reported in **2016 ALL MR (Cri.) 4328**.

15. Shri S.D. Sirpurkar, learned Additional Public Prosecutor states that the State has not filed appeal in this case.

16. To consider the rival contentions of the parties, I have perused the record and proceedings and also the judgment and order passed by the learned Additional Sessions Judge, Washim.

17. At this juncture, it is necessary to refer to Section 306 of the IPC, abetment of suicide, which reads thus:

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

18. Similarly, it is necessary to consider Section 107 of the IPC, abetment of a thing which reads thus:

“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.”

19. The Hon’ble Supreme Court of India in the case of *Amalendu Pal (supra)* as held thus:

“10. The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab as follows in paras 12 and 13: (SCC p. 134)

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13."

11. Further in Kishori Lal v. State of M.P. this Court gave a clear exposition of Section 107 IPC when it observed as follows in para 6: (SCC p.799)

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2)

engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

20. In the case of *Chitresh Kumar Chopra* (*supra*), the Hon'ble Supreme Court of India has observed thus:

"13. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or

persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

15. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered by this Court in Ramesh Kumar Vs. State of Chhattisgarh.

16. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edn.).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter."

21. In the case of *Ude Singh (supra)*, the Hon'ble Supreme Court of India has held thus:

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive

and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-

confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.”

22. Thus, from the above observations of the Hon’ble Supreme Court of India, it is clear that whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC. 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. The question of *mens rea* on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or

annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

23. In the present matter, it is alleged that the deceased was being harassed at the hands of the accused persons. In the teeth of above referred law, it is necessary to find out, whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to his life. For this purpose, it is necessary to look into the evidence of the prosecution.

24. PW-1-Shankar Choudhary, uncle of the deceased and complainant had deposed in their depositions that deceased Sandip used to work at Jagdish Jadhav's medical store. There was another store of the brother of accused No.1-Madan. The business of that shop was not very good. Hence the accused-Madan and Balaji threatened the deceased Sandip to close down the shop, otherwise they will kill him.

25. PW- 1 further deposed that accused No.2-Balaji did not give amount of Bhisu fund of Rs.40,000/- to the deceased and after 10 to 15 days of draw of Bhisu, Sandip committed suicide. He further deposed that his body was found in the well. He further deposed that a plastic pouch was found in the pocket of trouser of the deceased Sandip. In that pouch, a letter was found in which it was written, "I am committing suicide due to the harassment of accused".

26. PW-12 the wife of the deceased deposed on similar line of PW-1 and stated that there were threats and harassment from both the accused. Undisputedly, both the witnesses PW-1 and PW-12 are not the direct witnesses to the harassment allegedly meted out to the deceased by the accused. Both have deposed that the deceased Sandip used to tell them about threats and harassment from both the accused.

27. Moving to the suicide note, Exhibit 45, it was compared with the contents written in the document seized from PW-1-Shankar, by the State Examiner of documents, CID Nagpur and similarity indicating towards their common authorship, was found. In suicide note at Exhibit 45, it was written by deceased Sandip that he was committing suicide since both the accused had been harassing him for past few months.

28. Undisputedly, there are no details in the suicide note about harassment and furthermore, no evidence has been brought by the prosecution on record in that regard.

29. In the cases of alleged abetment of suicide, there must be proof of direct or indirect act or incitement to the commission of suicide. Merely, on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which held for compel the person to commit suicide, for conviction under Section 306 is not sustainable.

30. In the said backdrop, even if, the oral evidence of witnesses is accepted in totality, nothing has been brought on record that the accused had by their acts or continued course of conduct, created such circumstances that the deceased Sandip was left with no option except to commit suicide.

31. Moreover, nothing has been brought on record to show that the accused were instigating the deceased or intentionally aiding the deceased in committing the suicide.

32. Moving further, the Hon'ble Supreme Court of India in the

case of *Ajit Savant Majagvai Vs. State of Karnataka* reported in (1997) 7

SCC 110 has observed thus:

“16. This Court has thus explicitly and clearly laid down the principle which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under :-

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and finding in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the findings of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reason for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in

the Court especially in the witness- box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”

It is thus, clear that unless there is a perversity in recording the findings by the learned trial Court or there is an error committed by the trial Court in understanding the provisions of law or in case of erroneous findings only, the Court can reverse the acquittal. In the present case as no perversity has been pointed out, I am of the opinion that no interference is warranted in this case.

33. In view of the settled legal position noted above and the findings recorded, I am convinced that the trial Court was correct in law in coming to the conclusion that the prosecution has failed to prove the charge of abetment of suicide against both accused beyond reasonable doubt.

Accordingly the appeal is **dismissed**.

JUDGE

R.S.Sahare

Signed By: RANJANA SAMEER
SAHARE

Signing Date: 11.04.2022 15:10