

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

61 CRIMINAL APPEAL NO.543 OF 2021

TANAJI RAMCHANDRA RAMANE
VERSUS
EKNATH DHANSING RAMNE AND OTHERS

...
Advocate for Appellants : Mr. B. L. Sagar Killarikar
APP for Respondents: Mr. P M Kulkarni
Advocate for Respondents : Mr. R R Chandak

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CORAM : KISHORE C. SANT, J.
Dated: February 06, 2023

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PER COURT :-

1. Heard learned counsel for the parties extensively.
2. This is an appeal against acquittal challenging the judgment and order passed by the learned Assistant Sessions Judge, Aurangabad dated 18.2.2020 in Sessions Case No.83 of 2014.
3. The appellant is the informant, on the basis of whose information crime was registered against respondent nos.1 and 2 for the offences punishable under sections 306, 323, 504 r/w section 34 of the IPC. The allegations in the FIR was that, son of the informant namely deceased Ravindra committed suicide in the agricultural land. It is further case that deceased

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committed suicide because of the long standing dispute between them and his cousin since 1992. On that count, accused used to give abuses. They had also beaten the deceased. On that count deceased become nervous and he committed suicide on 12.11.2010.

4. On the basis of the information, crime was registered. Investigation was carried out and charge-sheet came to be filed. In the charge-sheet, various witnesses were cited as prosecution witnesses. However, during the trial only two witnesses were examined. One informant and other one Panch. Most of the documents were admitted by the accused and there was no question of examining the witnesses on those documents. After trial, learned Judge found that there is no material to show abetment at the hands of these accused persons. The learned Sessions Judge, therefore, acquitted the accused persons.

5. The learned advocate for the appellant submitted before this court that the prosecution did not bother to examine the witnesses, whose statements under section 161 of the Cr.P.C. were recorded by the police and those were part of the charge-

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sheet. Even, the I.O. is not examined when in fact an application was made for issuing witness summons to the I.O. and other witnesses. However, by observing that I.O. was out of country, no summons was issued. In the judgment, the Court has observed that there is no corroboration to the evidence of the informant. It is submitted that when the material witnesses were not examined, there was no question of any corroboration. It was, therefore, necessary to issue witness summons to the witnesses by exercising powers under section 311 of the Criminal Procedure Code. Since the Court below has failed to do the same, there is failure of justice. Learned counsel further submits that this is a fit case to remand the matter by directing the Trial Court to issue witness summons to the persons, who were cited by the prosecution as witnesses including the I.O.

6. Learned advocate for the respondent, on the other hand, submits that, in fact, the prosecution tried it's level best to summon the witnesses, however, the witnesses did not remain present inspite of issuance of warrant. Learned counsel further submits that, even if statements under section 161 of the Cr.P.C. are seen, those do not make out any case that there was
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abetment to commit suicide. From the FIR, he submits that, even the FIR does not make out any case of abetment. He pointed out the applications Exhibit 46 and 47 and the orders passed thereupon showing that, in fact, warrants were also issued to the witnesses, however, witnesses did not remain present to depose before the Court. He submits that, without prejudice to submissions, even prima facie, no case is made out to come to the conclusion that there was abetment to commit suicide at the hands of these respondents. Learned advocate relies upon the Judgment reported in **2010 (1) Supreme Court Cases 750 Gangula Mohan Readdy Vs. State of Andhra Pradesh** and the judgment of this Court Bench at Nagpur in Criminal Application No.332 of 2016 (Dilip Ramrao Shirasao and others Vs. State of Maharashtra and anr dated 5.8.2016. In the judgment in the case of **Gangula** (supra), in paragraph no.17 it is observed thus :-

“17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under [section 306](#) IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to

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push the deceased into such a position that he committed suicide.”

7. On the basis of the same, this Court in Criminal Application No.332 of 2016 has also observed in paragraph no.20, which reads thus :-

“20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under [Section 306](#) of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under [Section 306](#) of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under [Section 306](#) of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

8. Learned counsel submits that, considering the ratio laid down by the Hon’ble Apex Court in the judgment, it is clear that there is no case of abetment made out even by reading the statements as it is. He thus, submits that, even remanding of matter will be of no use in such facts and circumstances.

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9. Considering all above facts, no purpose would be served even by remanding the matter for trial. From looking at the judgment impugned in the appeal, it is seen that the Trial Court has rightly considered all aspects involved in the matter and has rightly recorded a finding that the prosecution could not prove the offence against accused beyond reasonable doubt and the accused are entitled to be acquitted. In view of this following order is passed.

ORDER

Criminal Appeal is hereby dismissed.

(KISHORE C. SANT, J.)

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