

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 340 OF 2022

KAMALBAI W/O RAMESH PATIL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellant : Mr. Naseem R. Shaikh

APP for Respondent No.1/State : Mr. Y. G. Gujrati

Advocate for Respondent No.2 & 3 : Mr. Madake Datta A.

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CORAM : KISHORE C. SANT, J.

DATE : 11th JANUARY 2023.

Per Court :

1. This appeal is filed by the appellant/informant, who lost her son in an incident, where he committed a suicide.

2. The appellant has lodged the FIR with the Pachora Police Station, Dist. Jalgaon. The allegation in the FIR is that her deceased son namely Dinesh, committed suicide by consuming poison on 23.01.2018 as he was insulted and humiliated by the present respondent no. 2 and 3. It

is alleged that prior to the date of incident i.e. on 22.01.2018 at about 06:00 pm., the respondent no.2 & 3, who happened to be mother and son insulted the deceased by vituperating him. On that count, the deceased did not take food in that evening. On 23.01.2018 at about 08:00 to 08:30 a.m., the appellant and her husband went to the accused to pacify them. However even at that time, they did not listen to the appellant and abused the appellant and her son by using abusive words again. Thereafter, deceased went away by taking motorcycle in a rage of anger to his field. From there deceased called the husband of the informant and told that he has consumed powder in the field. The informant and her husband immediately rushed to the field and taken the deceased son to Pachora Hospital, but he was declared as dead. Before committing suicide, the deceased had recorded a video in his mobile that he is committing suicide because of the accused persons. It appeared in the video that he wanted to live but it is the accused persons, who did not allow him to live. On this basis, FIR came to be lodged. The police carried the investigation, charge-sheet came to be filed and the present respondent no.2 and 3 were prosecuted.

3. In the trial, it is proved that the deceased committed suicide by consuming poison. However, the learned Sessions Judge, acquitted both the accused persons holding that the accused have not committed any offence punishable under Section 294, 306, 506 read with 34 of the Indian Penal Code. It is against this order, the present appeal is filed.

4. The learned Advocate for the appellant pointed out from the evidence that it is only because of the insult and vituperation by the accused persons, the deceased committed suicide. He submits that there is relation between the alleged incident of abusing and insulting the deceased and suicide. He submits that it is not only that on a single occasion, the deceased was insulted but twice, this had happened, which made the deceased to take decision to finish his life. Thus the accused persons are liable for conviction. The learned Advocate in support of his submission, relied upon the judgment reported in AIR OnLine 2019 SC 713 in the case of **Ude Singh and Ors. Vs. State of Haryana**.

5. The learned Advocate for respondent no.2 and 3 submits that to

prove an offence under Section 306 of IPC, the prosecution has to necessarily prove that there was an aid assistance and investigation at the hands of the accused persons. In this case, the prosecution could not establish that there was any intention in the minds of accused persons that the deceased would commit suicide. Merely having quarrel or giving abuses does not amount to abetment to commit suicide. He submits that the learned trial Judge has rightly acquitted the accused persons holding that the deceased was hyper sensitive person and therefore he has committed suicide. He placed his reliance on a judgment reported in (2019) 3 SCC 315 in the case of **M. Arjunan Vs. State represented by its Inspector of Police.**

6. The learned APP supports the case of the appellant. He submits that though the State has not filed an appeal, but still this is a case, wherein the prosecution has proved its case. He further submits that there is sufficient evidence to come to conclusion that it is this accused persons, who have abetted the offence. He also submits like appellant that there is a close proximity between the incident of insult and abusing and that of the suicide.

7. On going through the judgment and the evidence, it is seen that certainly the prosecution has proved that the death is a suicidal and the deceased had consumed the poison. The only question that needs to be considered in this appeal as to whether the learned trial Judge has taken a view, which is totally improbable and further whether the Court has recorded any perverse findings making the case of acquittal totally improbable. For that purpose, it also needs to be considered as to whether the act of the accused persons taken as it is, can be said to be an act of abetment. The learned trial Judge while dealing with this aspects has recorded that in this case it appears that the deceased was hyper sensitive and therefore he may have committed suicide. The Court has considered even the video recording, whereby the deceased had recorded a video of his own in his mobile saying that he is committing suicide because of the accused persons and though he wanted to live the life, he has taken decision to finish his life because of the accused persons, who do not wanted him to live. The question would be whether really the alleged act of the accused amount to abetment to commit suicide.

8. To see whether really there is an abetment, we need to see Section 107 of the IPC, which is reproduced below.

"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. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

. By looking at this section, it is clear that to prove offence under Section 306, the prosecution has to necessarily show that there was aid, assistance or instigation by the person. In this case before coming to conclusion, it is also helpful to refer to few judgments which are discussed in coming paragraphs.

9. The judgment relied by the learned Advocate for the appellant in

the case of Ude Singh (supra), the Hon'ble Apex Court in paragraph no.21 of the said judgment has held that if the accused continuously addressed or called the girl as his wife, the utterance was not merely of teasing but of demeaning and destroying the self-esteem of the young girl whose engagement had broken and whose uncle was mocking her to join him in matrimony. The Hon'ble Court held that it was the act of humiliation of highest order for the girl, who had personally suffered the set-back of broken engagement. It is in view of those facts that the Court held that when all the accused persons were making the deceased girl to suffer humiliation by addressing her as younger brother's wife, it amounted abetment. There was constant harassment by the accused persons, which was proved by the prosecution in that case. In that case, the girl was mocked on several occasions, which destroyed the self-respect and therefore the Hon'ble Apex Court confirmed the conviction.

10. Looking to the judgment relied upon by the respondents in the case of M. Arjunan (supra), the Hon'ble Apex Court in paragraph no.6 of the said judgment has held that demanding back the money that was

borrowed would not amount to abetment to commit suicide. It would be further necessary to see the other judgments specifically on the point of abetment to commit suicide.

11. It is held in the case of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in AIR 2010 SC 327, that to make an offence punishable under Section 306 of IPC, it is necessary to prove that there was instigation at the hands of accused. 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.

12. In the case of **M. Mohan Vs. State represented by the Deputy Superintendent of Police**, reported in 2011 (3) Mh.L.J. (Cri.) 127, this Court has held that there has to be a clear *mens rea* to commit offence of abetment a suicide. Further in the case of **Netai Dutta Vs. State of West Bengal** reported in 2005 AIR SC 1775, the Hon'ble Apex Court has held that all the ingredients are necessary to make out an offence under Section 306 of the IPC.

13. Considering the facts of this case and considering the allegations at the most, it is seen that the deceased committed a suicide by consuming poison. Though it is case of the prosecution that the deceased consumed poison because of the act of respondents/accused, that by itself cannot be said to be sufficient to make out the case under Section 306 of the IPC. The learned trial Judge has rightly held that the prosecution has failed to prove the abetment or the part of respondents and has rightly acquitted the accused persons.

14. Thus, considering all the judgments and considering the facts of the case, this Court finds that no case is made out calling for the interference at the hands of this Court. The appeal therefore, deserves to be dismissed and is disposed off accordingly.

[KISHORE C. SANT, J.]

Najeeb.