

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 130 OF 2018

The State of Maharashtra,
Through Police Station Vaijapur,
District Aurangabad.

... Applicant

Versus

Ramesh s/o Prakash Gorade,
Age 19 years, Occu. Education,
R/o Karanjgaon, Taluka Vaijapur,
District Aurangabad.

... Respondent
[Orig. Accused]

.....

Mr. S. J. Salgare, APP for the applicant-State

.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 06.07.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. Feeling aggrieved by the judgment and order of acquittal passed by learned Additional Sessions Judge, Vaijapur in Special Case (POCSO) No. 21 of 2015 dated 15.03.2018, by which the present respondent stood acquitted from charges under Sections 305, 306 and 354-D r/w 34 of the Indian Penal Code [IPC] and Sections 11(4) and 12 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act], the State has preferred instant application thereby seeking leave to prefer appeal against the said judgment and take action under Section 390 of the Code of Criminal Procedure [Cr.P.C.].

2. Learned APP for the State would point out that respondent herein was chargesheeted for commission of offence punishable under Sections 354-D, 305 and 306 of IPC and Sections 11 and 12 of the POCSO Act. It is pointed that victim was a minor. Accused used to follow her and sexually harass her. Getting fed up of the same, victim girl, a minor, committed suicide. That, prosecution had established that the girl was minor. There was ample evidence about continuous harassment which was of such nature that life of deceased was made miserable and she was left with no other alternative but to consume poison and end up her life. That, prosecution had adduced evidence of in all eight witnesses, including doctor. There was no other reason for deceased to commit suicide. Investigation revealed that respondent herein was solely responsible for consumption of poison by the victim. That, in spite of availability of overwhelming evidence, it is submitted that, the same has not been taken into account by learned trial Judge and even law required for attracting the charges has not been taken into consideration, resulting into acquittal. It is lastly submitted that prosecution has a very strong case in the trial court. There is failure to appreciate the evidence in its correct perspective and therefore, State intends to challenge the unwarranted acquittal and hence, he prays for leave to prefer appeal.

3. We have heard learned APP at length.

4. Here, it seems that present respondent was made to face trial for commission of offence punishable under Sections 354-D, 305 and 306 of IPC and Sections 11 and 12 of the POCSO Act.

5. The precise case of prosecution, as is emerging from the papers before us is that, victim was studying in 10th standard. It seems that prosecution came with a case that present respondent initially befriended classmate of the victim and thereafter he started following her whenever she went to school and returned home. That, on 27.08.2015, getting fed up of the alleged act of accused, victim consumed poison. Paternal uncle of the victim has set law into motion and crime was registered against the present respondent at Vaijapur Police Station. In support of its accusation of abetment to commit suicide and commission of other offences under IPC, prosecution had pressed into service evidence of in all eight witnesses. Their status is as follows:

PW1 – Dr. Manoj Patekar, who conducted postmortem.

PW2 – Informant, paternal uncle of victim.

PW3 – father of victim.

PW4 – mother of victim.

PW5 – Headmaster of the school where victim studied.

PW6 – Bhagwan Marathe, acquaintance of informant.

PW7 – Raghunath Rothe, pancha to memorandum of disclosure and seizure.

PW8 – PSI Neknur, the Investigating Officer.

6. On going through the oral evidence of PW1 Dr. Patekar, it is emerging that the doctor has, on autopsy, opined death due to poisoning. It seems that in trial court also there is no serious dispute about mode and manner of death. Therefore, when death is shown to be due to consumption of poison, it is to be primarily seen whether prosecution has discharged its burden of further establishing that accused respondent had abetted the suicide. To ascertain this aspect, we need to visit testimonies of informant and parents.

7. The informant uncle's [PW2] evidence shows that deceased was studying in 10th standard. It is his testimony that on 27.08.2015, all family members had been to attend 10th day ritual, whereas deceased had been to school. Informant seems to have received phone call from brother of deceased that victim had consumed some medicine and therefore, she was taken to hospital. The informant claims that while being shifted, inquiry was made with victim and she allegedly named Ganesh and present respondent Ramesh for harassing her whenever

she went to school and hence, she has taken such decision. He further stated that they were restraining her on the way, following and chasing her.

His cross-examination shows that since 15 days prior to the incident, there was change in the behaviour of victim, but it was presumed by family members that she was ill. All suggestions put by prosecution in cross-examination about unsatisfactory academic results and educational performance were to be result for consumption of poison had been turned down by this witness.

8. PW3 father also spoke about his daughter studying in 10th standard. His evidence shows that he learnt from his son Yogesh that his daughter had consumed poison. He also stated that while being taken to hospital, his brother inquired victim and she allegedly told that since 8 to 10 days, Ramesh and Ganesh were harassing her and getting fed up of such treatment, she consumed poison. In cross, he has admitted that when they all left for the last day ritual of a death of someone, at that time victim was alright. He denied that victim consumed poison immediately after he left the house. Rather, he further answered that after coming back to home, they were present in the house along with victim about three to five minutes. He

admitted that poison was brought in the house by him but he volunteered that it was for spraying on cotton crop. He further admitted that victim knew the place where it was kept. He was unable to give names of the friends of victim. He admitted that prior to the suicide, victim was happy and made no complaint against anybody, but he volunteered that she was nervous for four to five days prior to the incident. He admitted that he did not inquire after 27.08.2015 either to friends or teachers of the victim whether accused was harassing her or not.

9. PW4 mother at exhibit 50 also stated about they being out of house and had been to village Dahegaon and about receiving phone call from their son about victim consuming poison. She also stated that while being taken to the hospital, when her brother-in-law asked victim as to why she did so, victim allegedly answered that Ganesh and Ramesh were troubling her while she was going to school and hence she consumed poison. In cross-examination, she also admitted that after 27.08.2015, neither she nor her husband nor the informant brother-in-law inquired with the persons residing alongside the road going to school about any harassment to victim by accused. In cross-examination, she is unable to state when victim consumed poison.

10. PW5 was examined to establish age of the victim. However, there is no dispute that she was a minor.

11. PW6 Bhagwan Marathe stated that he learnt from informant about informant's niece consuming poison and he was requested to accompany informant and therefore he went. He stated that the girl was taken in a jeep of informant. He stated that while proceeding to the hospital, informant asked the girl as to why she has done the said act, upon which the girl told two names, i.e. Ganesh and Ramesh, saying that they were troubling her by chasing her on the way. In cross-examination, he admitted that when victim was taken to the hospital, her condition was critical and was sleeping on the laps of her parents. He also admitted about doctor informing that her condition was critical.

12. PW7 Raghunath Rothe is the pancha witness to memorandum of disclosure and recovery.

13. PW8 PSI Shrinivas Bhikane, Investigating Officer, in his examination-in-chief spoke about all steps taken by him while conducting and concluding investigation. In cross-examination, he has admitted that he did not get any eye witness on the point of trouble

being given to victim in spite of inquiry. He admitted that he did not inquire whether victim was in a position to talk at all while being taken to the hospital, nor he made inquiry with the doctor at Ghati hospital to that extent. He admitted that he did not inquire as to how and from where victim procured the poison and is unable to state whether parents were negligent in storing it. He candidly answered that informant and all the witnesses are hearsay witnesses. He denied that he made no inquiries with the classmates or teachers or the people residing along the side of the road which was adopted by deceased to go to school. He admitted that investigation did not reveal as to what were the inappropriate words, things spoken by accused and at no point of time victim or her parents had lodged any report against accused. To a question as to whether there was sexual harassment to victim, the Investigating Officer has answered that it is merely mentioned that accused was following victim and was talking inappropriate things.

14. After analyzing the above substantive evidence of parents, it is clear that allegations levelled in the trial are pertaining to Sections 354-D, 305 and 306 of IPC. Unfortunately, there is weak evidence about following victim. Even there is no iota of evidence to show that there was abetment at the instance of present respondent. What was

the nature of harassment or what were the utterances has not been stated by any of the witnesses. When such instances took place has also not come on record. In our opinion, it was essential for prosecution to at least show that immediately prior to the alleged consumption, that day accused had followed, chased, stalked, or harassed deceased, so as to accept the case of prosecution about accused creating such circumstances which compelled the victim child to commit suicide by consuming poison. It is also not brought on record whether that day she went to school and returned back or being harassed by accused.

15. In the light of charge, it has to be first proved that death was suicidal and it was as a result of abetment. As to what is meant by abetment, is also fairly settled. It has to be shown that there was instigation, intentionally aiding by way of any act or omission to do a particular thing. Similarly, for attracting Section 306 IPC, it has to be shown that there was inducement, incitement with clear *mens rea* to commit the offence by actively participating in such act with precise intention that deceased would end up life. A positive act has to be attributable to the person before charging him for abetment. These essential requirements are clearly spelt out in various pronouncements like ***Ramesh Kumar v. State of Chhatisgarh***; (2001)

9 SCC 618, *Sanju @ Sanjay Singh Sengar v. State of M.P.*; 2002 Cr.L.J. 2796, *S.S. Chheena v. Vijay Kumar Mahajan*; (2010) 12 SCC 190, *Gurcharan Singh v. State of Punjab*; AIR 2017 SC 74 and *Mahendra Singh v. State of M.P.*; 1995 Suppl (3) SCC 731. Above pronouncements are very categorical that for constituting abetment, intention and active involvement of accused in aiding or instigating commission of suicide is imperative. *Mens rea* coupled with indictable act or positive act has to be attributable and in absence of the same, guilt cannot be fasten for commission of offence under Section 306 of IPC.

16. Here, in support of charge under Section 354-D, there is little or virtually no evidence. Particulars and details of the instances have not come on record. Abetment is not proved.

17. Therefore, apparently, when there is no material on the point of abetting commission of suicide, and required ingredients for attracting Section 107 of IPC being patently missing, no fault can be found whatsoever in the judgment of the trial court giving clean chit to the accused on account of failure of prosecution to bring home the charges. In the light of available evidence on record, we too are convinced that there is no merit in this case so as to permit State to

take up further steps of preferring appeal as apparently, it would be a futile exercise to do so. Hence, the application for leave to appeal by State is hereby rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

vre