

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 CRIMINAL APPEAL NO.571 OF 2021

Minakshi w/o Dnyaneshwar Gaike,
Age 48 yrs., Occ. Household,
R/o F/2, Mascot City, Police Colony,
Padegaon, Aurangabad.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Inspector,
Police Station Chhavni, Aurangabad,
Tq. & Dist. Aurangabad.
- 2 Ishwar Eknath Salve,
Age 30 yrs., Occ. Labour,
- 3 Dwarkabai Eknath Salve,
Age 50 yrs., Occ. Housewife,

Respondent Nos.2 and 3 are
r/o House No.69, Saptashruni Nagar,
Padegaon, Aurangabad.

... Respondents

...

Mrs. Rashmi S. Kulkarni, Advocate h/f Mr. Y.H. Jadhav, Advocate for
appellant

Mrs. P.V. Digikar, APP for respondent No.1

...

WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.2 OF 2022

The State of Maharashtra,
Through Police Inspector,
Police Station Chhavni, Aurangabad,
Tq. & Dist. Aurangabad.

... **Appellant**

... **Versus** ...

- 1 Ishwar Eknath Salve,
Age 30 yrs., Occ. Labour,
R/o House No.69, Saptashruni Nagar,
Padegaon, Aurangabad.
- 2 Dwarkabai Eknath Salve,
Age 50 yrs., Occ. Housewife,
R/o House No.69, Saptashruni Nagar,
Padegaon, Aurangabad.

... **Respondents**

...

Mrs. P.V. Digikar, APP for appellant

Mrs. Rashmi S. Kulkarni, Advocate h/f Mr. Y.H. Jadhav, Advocate for
respondent No.3

...

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

DATE : 17nd JANUARY, 2023

PER COURT : (PER : SMT. VIBHA KANKANWADI, J.)

- 1 Both these proceedings take exception to challenge the acquittal

of the respondents by learned Special Judge (POCSO Act), Aurangabad on 27.07.2021 from the offences punishable under Section, 305, 354-D, 504, 506 read with Section 34 of the Indian Penal Code, 1860 in Special Case Child Protection No.32/2016.

2 Unfortunately a young girl aged 15 ½ studying in 10th standard has committed suicide by hanging and it is alleged that it is because of the acts of the accused No.1 supported by accused No.2. The abetment thereof has caused the incident.

3 The appellant in Criminal Appeal No.571 of 2021 is the original informant – mother of the deceased. She had lodged report with police on 17.11.2015 informing that deceased had come back to her house from the maternal uncle's place on 15.11.2015. On that day in the evening when she was proceeding from the galli, she was threatened and teased by accused No.1. He had threatened her that she should marry him, otherwise her entire family would be ruined. She got frightened, came home and narrated entire incident to mother and went her study room. Thereafter, her mother had seen accused No.2, who is the mother of accused No.1, going from the galli and at that time, the informant had tried to say that the accused No.2 should give understanding to accused No.1, however, she did not listen. After a while, both the accused persons and one more lady went to the house of

informant and started threatening that they should not say anything to the accused No.2 and father or they should not even lodge a report, otherwise the entire family would be ruined. It is then stated that even prior to the said date of incident, accused No.1 was giving mental harassment to the deceased. He used to follow her till her school. He was tried to give understanding, however, there was no change in his behaviour. Deceased was under mental harassment. She had gone to her maternal uncle's place for celebrating Diwali and even told the uncle about the harassment by accused No.1. The uncle had assured her that he would come on the next date and would take some legal action. But in the evening the incident had taken place and because of the same, which amounted to abetment, she committed suicide on 16.11.2015.

4 After the report was given, it was investigated, charge sheet was filed before the Special Judge under POCSO Act. The charge was framed against both the accused and evidence has been led by the prosecution. In all seven witnesses have been examined. After hearing both sides the learned Special Judge held that the offences are not proved and, therefore, acquitted both the accused persons. The original informant as well as State being aggrieved by the said acquittal are before this Court.

5 Heard learned Advocate Mrs. Rashmi S. Kulkarni holding for

learned Advocate Mr. Y.H. Jadhav for the appellant/informant and learned APP Mrs. P.V. Diggikar for respondent No.1, for the purpose of admission, in Criminal Appeal No.571 of 2021; so also learned APP Mrs. P.V. Diggikar for the appellant and learned Advocate Mrs. Rashmi S. Kulkarni holding for learned Advocate Mr. Y.H. Jadhav for respondent No.3 in A.L.S. No.2/2022.

6 With the help of learned Advocate for the appellant – original informant and learned APP we have gone through the evidence that was before the learned Trial Judge. Important point to be noted is that the fact about commission of suicide by minor deceased is not seriously challenged by the accused persons. The minority of the deceased has been proved by examining PW 4 Pushpawati Jadhav, the Headmistress of the school, where the girl was taking education. Copy of the birth certificate which is with the school record was produced, and it can be certainly said that the fact that the deceased was minor has been proved.

7 The informant has been examined as PW 1. Her husband i.e. father of the deceased has been examined as PW 5. The panchnama of the spot is proved through PW 2 Sudam Bhanuse and PW 7 Investigating Officer. PW 3 Mahesh is the panch in presence of whom the mobile handset was seized, which was produced by accused No.1. The first and the foremost fact that is required to be considered is that the parents of the deceased are

alleging that even prior to the date of incident the accused No.1 was harassing their daughter, but they have not given the details as to when the said harassment was going on, what action they had taken. Giving understanding only to the accused in such matters may not be always a sufficient action. If the harassment was consistent enough, then, why they had not gone to Police Station, is a question. The father of the deceased is a Teacher and, therefore, it was not expected that he would ask his daughter to suffer the harassment in silence. Now, except their bare words there is nothing. Even as regards the date of incident it is to be noted that both of them have stated that deceased had come from her maternal uncle's place on the same day i.e. 15.11.2015 and had gone in the galli. For what purpose she had gone, who was accompanying her and where the incident regarding teasing her or threatening her had taken place, all is vague. Thereafter also the mother had stated that when the daughter came in frightened condition and narrated the incident to her, she thereafter went to her study room. The parents have stated that after the deceased narrated them the incident, the father went to give understanding to accused No.1. It is then stated that accused No.1 raised quarrel with father and told him that accused No.1 would marry the victim. According to him, he had gone there around 8.15 to 8.30 p.m. and then returned home. This fact is not corroborated by the mother. They both have then stated that even when the accused No.1 did not

listen to what the mother was saying, accused Nos.1 and 2 came to the house of informant, quarreled with them around 9.00 to 9.15 p.m., still they had not lodged any report with the police. It appears that the father has made some improvement stating that the victim had heard their conversation, and then the father says that he as well as his wife had consoled the victim, but then she was still under tension. But thereafter she went to her study room. It appears that the parents went to sleep thereafter and had not thought about the mental status of the deceased would be so serious or requires any further attention. It is not their say that one of them was checking with the deceased throughout the night but then they both have stated that on 16.11.2015 deceased came down around 7.00 to 8.00 p.m., became fresh and again went to her room for studying. The elder sister of deceased was ill and, therefore, father had taken her to hospital around 10.00 a.m. They returned around 12.30 to 1.00 p.m. At that time, the father asked mother, as to whether the deceased had come down for taking food, at that time, mother replied that she has not come. All of them went to the first floor, knocked the door, but there was no response and, therefore, ultimately when they peeped from the window, they found that she has committed suicide. Police were informed and then police had broken the door of the said room.

even after 8.00 p.m. they had not seen as to what exactly the deceased was doing. The approximate time of death has not come on record. Secondly, in her cross-examination, the mother has stated that deceased was not using mobile phone. Therefore, there was no contact between the accused persons and deceased whole night and till it was discovered around 12.30 to 1.00 p.m. on the next day. The question, therefore, would be then how accused persons, especially accused No.1 would have abetted the commission of the suicide by the deceased. We would like to emphasize that there is difference between fear and abetment. If the suicide is committed out of fear then the ingredients of Section 305 of the Indian Penal Code will not be attracted. On the point of abetment we would like to rely on the decision in **M. Arjunan vs. State**, [(2019) 3 SCC 315], wherein a two-Judge Bench of this Court, speaking through R. Banumathi, J., elucidated the essential ingredients of the offence under Section 306 IPC in the following observations :

“7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/ abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

8.1 Further, in **S. S. Chheena Vs. Vijay Kumar Mahajan, (2010) 12 SCC 190**, a two-Judge Bench of this Court, speaking through Dalveer Bhandari, J., observed :

“25. 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

8.2 Further, in **Rajesh Vs. State of Haryana, [(2020) 15 SCC 359]**, wherein a two-Judge Bench of this Court speaking through L. Nageswara Rao, J., held as follows :-

“9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an

active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

The prosecution evidence, therefore, does not fulfill all these criteria. The insistence and alleged harassment by the accused No.1 appears to have not been attended properly by her parents. When it is the case concerning a minor, then, definitely it requires proper attention at the appropriate stage by the parents. The minors are sensitive and vulnerable to certain facts. Parents are the best persons, who know the behaviour and mind of their children and, therefore, it becomes duty on the part of the parents to give appropriate protection, when the child is in need of it. We do not want to blame the parents in this case, however, whatever evidence has come on record is short of the active role which is required to prove abetment, as contemplated under Section 305 of the Indian Penal Code. The learned Trial Judge has rightly observed that the testimony of the mother, father and maternal uncle is silent on the part of the active role of the accused persons as regards the crucial timing. Unfortunately a young girl has lost her life, but we do not find any illegality or error committed by the

learned Trial Judge in acquitting the accused persons. There is no merit in the appeal and the application. Those deserve to be rejected. Accordingly, appeal as well as application are rejected.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)

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