

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 646 OF 1997

Vikas Ambadas Bhamre, aged about .. Appellant
29 years, occupation NIL residing at
Rathachakra Society A-2/3 Indira
Nagar Nashik District, Nashik

Versus

The State of Maharashtra .. Respondent

...

Mr.Hrishikesh Chavan, Appointed Advocate for the appellant.
Mr.S.R.Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 21st SEPTEMBER, 2023

P.C:-

1 The deceased, one Anita, resident of Dhule committed suicide by consuming poison on 8/4/1996. Before her death, she had scribed notes which were handed over by her in an envelope to one Shobha (PW 5), who was acquainted with her, and in turn, handed over them to her husband PW 6.

 The notes held her in-laws to be responsible for her act of taking her life and upon the complaint lodged by Santosh (PW 7), her brother, an offence was registered in Bhadrakali Police Station by invoking Section 498A, 306 r/w Section 34 of the IPC.

The present appellant Vikas, husband of the deceased was arraigned as accused no.1. Apart from this, her mother-in-law, father-in-law, her brother-in-law and his wife Manisha are also impleaded as accused, as the complainant accuse that his sister was subjected to mental harassment by them and as they instigated her to commit suicide. As far as her husband is concerned, it was alleged that he maintained relationship with her by promising marriage and he cheated upon her.

2 On completion of investigation, the charge is filed against the accused no.1 u/s.420, 498A, 306 r/w Section 34 of the IPC. All the accused persons were tried by the Addl. Sessions Judge, Nashik in Sessions Case No. 165/1996.

The prosecution, in order to establish the charge lead its evidence through 15 witnesses and through the documentary evidence, including the chits written by the deceased as well as various reports prepared during the course of investigation.

3 On appreciating the evidence placed before it, the learned trial Judge arrived at a conclusion that the deceased committed suicide either by refusal to marry by accused no.1 or by the act of the accused to re-marry and this amounted to abetment. As far as accused nos.2 to 5 are concerned, though a conclusion is derived though they compelled Vikas to leave the company of deceased Anita, they cannot be held responsible for her suicide as there is no evidence to show that they instigated Vikas to leave the company of deceased. Hence, conclusively,

only Vikas was held guilty of offence of abetement u/s.306 IPC, though he stand acquitted from the charges u/s.498A and 420 of IPC, whereas accused nos.2 to 5 came to be acquitted of all the charges levelled against them.

On finding the appellant guilty of committing offence u/s.306 IPC, he is sentenced to suffer RI for five years and to pay fine of Rs.2,000/- in default to undergo RI for six months.

4 It is this judgment of conviction and imposition of sentence which is assailed by Vikas, the accused no.1 in the present Appeal.

I have heard the learned Advocate Mr.Hrishikesh Chavan who was appointed to represent the appellant by order dated 22/8/2023 considering the fact that the Appeal was pending for considerable long period of time and since it was ready for final hearing.

I have also heard Mr.S.R. Agarkar, learned APP who represent the State.

5 The deceased was an Ayurvedic Doctor who obtained BAMS degree and was providing services in a dispensary at Dhulia. She continued to reside with her sisters and brother and was introduced to Vikas through her foster brother and an affectionate relationship blossomed between them. They decided to get married with the consent of her maternal aunt and as per

Vaidik traditions, the marriage was solemnized in August 1994, which was not attended by her brother. Her family did not oppose her marriage, but her in-laws did not find favour with the same. After the marriage, the deceased started cohabiting with Vikas in Nashik. Initially, they started residing in Rath Chakra Society and thereafter, her two younger sisters also joined her. At times, her brother also visited her residence in Nashik. The couple projected to the world at large as 'Husband and wife'.

The cohabitation of the deceased along with the appellant has surfaced on record through her brother PW 7 as well as through PW 6, who was the partner in the firm along with Vikas as well as his wife Shobha (PW 5), who used to visit the house of the couple.

6 During the alliance between the deceased and Vikas from August 1994, except the version of her brother PW 7, nothing has been brought on record by the prosecution to establish that there was some discord between the couple, till the day she committed suicide on 8/4/1996.

PW 7, in his complaint, lodged, on 12/4/1996, has stated that when he visited his sister, her husband had made a demand of Rs.50,000/- but he had convinced him that he would arrange the money. Prior to this, Anita, the deceased had withdrawn a sum of Rs.25,000/- each from the Fixed Deposit in the name of her two sisters and handed over the sum to her husband Vikas. In his complaint, he stated that his sister was

under tremendous mental pressure as her in-laws were abusing her on telephone and threatened her that they will get their son married and therefore, when he inquired with his sisters as to why the marriage is not performed, she replied by saying that she was already married to Vikas and there is no need for registration of marriage.

7 PW 7 while he deposed before the Court, spoke about the demand of Rs.50,000/- by her sister, in contradiction to the statement given to the police that it is the accused no.1 Vikas who demanded the amount and he assured that he would arrange for the same. In his deposition, he state that his sister demanded the same and he assured to arrange for the money. He also contradicted his statement given to the police by stating that Anita had withdrawn Rs.35,000/- from the post office which was a deposit in the name of his sisters.

For the first time, he deposed before the Court that when he inquired with his sister about the reason of her nervousness, she had told him that Vikas was ill-treating him by demanding amount from time to time and even her in-laws are ill-treating her, as they wanted him to re-marry. These have come on record as omissions.

PW 7, has admitted in cross-examination that he has no personal knowledge as to when his sister got married to the accused. The aspect of mental harassment at the instance of the accused is an omission as he deposed about it only for the first

time in the Court.

8 The chits written by the deceased in form of Articles 5, 6 and 7 were handed over by PW 6, Vikas to the police and in front of panchas, they were seized.

Vishwanath, PW 6 had deposed that on 16/3/1996, Anita was unwell as she had travelled from Dhule to Nashik and the younger sister of Anita had been to his house seeking help. He visited Anita and took her to the Hospital. At that time, accused was not present as he had informed him that he was going out of station for 8 to 10 days.

9 He has deposed that when he returned from Aurangabad on 9/4/1996, his wife informed that Anita had committed suicide and she had handed over some chits in a closed envelope. The envelope contained three chits and he handed over them to the police.

Shobha, PW 5 corroborate her husband on the said aspect that deceased Anita had handed over an envelope to her and she is the one who found Anita dead in her house, on opening the door of her house by the keys handed over to her.

10 Turning to the evidence in form of chits which are exhibited as Exhibit-44 (Article 5), Exhibit 45 (Article 6), Exhibit 46(Article 7) give a completely different version.

Exhibit 44 is a letter requesting the arrest of four accused persons i.e. her father-in-law, mother-in-law, brother-in-

law and his wife, in form of a Dying Declaration. In the said chit/note, the deceased admit that her husband never harassed her and rather, he loved her immensely. She accuse her in-laws of calling her husband to Mumbai (Dombivli) and forcing him into second marriage. When she came to know about solemnization of second marriage, she took a decision to commit suicide as she expressed that she was unable to lead her life without her husband.

Exhibit-44 contain a specific statement that her husband Vikas is innocent and he should not be subjected to any harassment or inconvenience.

11 In Exhibit-45, a similar version is to be found as she addressed a communication to her brother and his wife (वाहिनी) when she pose a question to him as to how the accused was avoiding to perform court marriage and consoled her that since the marriage was performed in a temple, why the marriage should be once again performed. She asked her brother to question the accused, whether he can say from his heart that, there was no marriage, as they had performed a Puja as husband and wife. Even in this letter, she request for punishing accused nos.2 to 5 and rather tell her brother that he shall not register a police case until the last rites to be performed by her husband in Nashik. She also request her brother that he should intimate her husband about her death and bring him from Dombivli. In another Exhibit, i.e. Exhibit-46, she seek apology and wish all the best for

her sisters.

Another letter/note is exhibited as Exhibit 48 and it is exhibited through her brother who has identified her handwriting in Exhibit-49, which are the poems written by his sister in her handwriting.

In Exhibit-48, deceased has expressed her feelings in respect of a man, without referring to his name and she curses the person who had given priority over physical relationship. She expressed her helplessness while she took a decision to end her life.

12 A handwriting expert is examined as PW 2 who has confirmed entries at Exhibit-43 to 48 as well as Exhibit-49 and 50 and it is confirmed to be in handwriting of the deceased, though in respect of some specimen, he was not able to express a definite opinion.

The Investigating Officer stepped into the witness box and supported the case of the prosecution by deposing about the evidence collected by him during the course of investigation.

13 From the entire material placed before the trial Judge though he deemed it appropriate to acquit accused nos. 2 to 5, though the deceased in the chits had specifically put the blame upon them and held them responsible for the misery of her life as they got her husband married to some other lady, despite he having solemnized the marriage with her. However, as far as the

present appellant is concerned, the court has acquitted him from offence punishable under 498A and 420 of the IPC but has held him responsible for commission of suicide by her by concluding that he had abetted the suicide.

14 Section 107 IPC which provides for abetment to an offence necessarily contemplate instigation by any person or engaging in conspiracy for doing of a thing or an incitement to commit an offence. Abetment necessarily means the action of instigating, encouraging or promoting a person into committing an offence. It also contemplates aiding the offender in committing a crime.

In case of *Sanju Vs. State of Madhya Pradesh, (2002) 5 SCC 371*, the Apex Court has defined the term 'abet' as meaning to aid, to assist, or to give aid, to command, to procure or to counsel, to countenance, to encourage or set another one to commit an act. Abetment by instigation would suggest encouraging or inciting a person to do or abstain from doing something. The instigation must however, be sufficient to actively encourage a person to commit an act. Abetment by aiding takes place when the abettor facilitates the crime or renders assistance in committing it. The intention to aid the offender is very important.

In short, to constitute abetment, intention or involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment.

In order to attract the offence of abetment, the act or omission that constitutes aiding or assistance must have been intentionally done, and it must be visible through a positive act or an illegal omission. The assistance offered must have been with an intent of aiding the commission of an offence. It is only when the aforesaid ingredients are made out an offence u/s.306 IPC is said to have been committed and a person can be held guilty of abetting an act of suicide.

15 In the present case, once the trial Judge has inferred that there is no material sufficient to sustain a conviction u/s.498A of IPC, as the prosecution had failed to prove any harassment to the deceased at the instance of the present appellant, without any material establishing abetment of her suicide, by any positive act committed on part of the appellant in form of any aid or assistance or incitement, the impugned judgment holding him guilty of abetting commission of suicide by the deceased, cannot be sustained. The prosecution has not brought on record any positive evidence to establish that the appellant had performed the second marriage with some other women and even if it is so, since various options were open to the deceased to tackle the situation, it cannot be assumed that this act of his amounted, to an instigation for her to commit suicide.

In the chits/notes written by her, she has absolved the appellant and has held her in-laws to be responsible for causing harassment to her and she has categorically scribed that her

husband should not be troubled for her ultimate act of suicide.

In the light of the above, the trial Judge has completely erred in holding the appellant/accused no.1 guilty of abetting the suicide by deceased, Anita in absence of any cogent and reliable evidence establishing the intention of the accused in abetting the suicide committed by his wife Anita. The finding rendered by the trial Judge being perverse, not based on reliable evidence establishing the ingredients of Section 306 r/w 107 IPC, the impugned judgment cannot be sustained. The judgment dated 22/8/1997 delivered by the Addl. Sessions Judge, Nashik in Sessions Case No. 165/1996 is hence set aside.

The appellant is acquitted of the charge u/s.306 IPC. Since he is on bail, his bail bonds stand cancelled.

16 Since Advocate Mr. Hrishikesh Chavan has been appointed by legal aid for the purpose of espousing the cause of the Appellant, I would like to record my appreciation for the strenuous efforts taken by him.

The legal services authority is directed to pay the legal remuneration to him within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)