

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.690 OF 2023

Dr.Suhas Balkrushna Chavan & Ors. .. Appellants

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Rahul K. Dhaygude for the Appellants.

Ms.A.S.Pai, Public Prosecutor with Mr.Y.M.Nakhwa, A.P.P. for the State/Respondent.

Mr.Shailesh D. Chavan for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 13th SEPTEMBER, 2023

P.C:-

1. On 26/05/2023, a complaint is lodged with Koregaon Police Station in Satara District by Chandrakant Kisan Botalji, alleging that his son, Shashikant, aged 32 years, who was working in Koregaon Hospital as Manager, was harassed by Dr.Suhas Balkrushna Chavan, Dr.Ganesh Haribhav Hol and Gopal Shivaji Salunkhe and unable to bear the harassment, he committed suicide on 25/05/2023, by consuming pesticide.

The accusations of suicide are based upon the narration of his deceased son as well as two chits recovered from the house, holding the accused persons responsible for his suicide.

The subject C.R. has invoked the offences punishable under Sections 306, 323, 504, 506 read with Section 34 of the Indian Penal Code (for short, **“the IPC”**) and Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(v), 3(2) and 6 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, **“The Act of 1989”**).

2. The occurrence of events in the complaint are narrated from 01/09/2022 to 25/05/2023 and the provisions of the Act of 1989 are invoked, by alleging that the accused persons were aware that the deceased belong to scheduled caste and they intentionally abused him by uttering casteist remarks and, therefore, they are liable for punishment under the special enactment, which aim at preventing atrocities against the members of the scheduled caste.

3. Heard the learned counsel Mr.Rahul Dhaygude for the Appellants, Ms.Aruna Pai, learned Public Prosecutor for the State and the learned counsel Mr.Shailesh Chavan for the Respondent No.2.

Appellant Nos.1 and 2 are medical practitioners, who were running Koregaon Multispeciality Hospital, where the deceased was employed as Manager.

In the backdrop of the complaint lodged, it is the submission of Mr.Dhaygude that while working as the Manager in their hospital, they trusted the deceased blindly and he misused their trust, and misappropriated a sum of Rs.14,00,000/- by committing forgery, which he himself

admitted. With the involvement of one Mr.Rajesh Kamble, the son-in-law of the Informant, working as Police Head Constable, amount of Rs.6,10,000/- was paid via Phone-pay transaction and an assurance was given to the Appellants that the remaining amount would also be repaid. The deceased admitted his liability and Informant agreed to transfer the land belonging to the family situated in Gut No.495/2/A to the Appellants, with a specific understanding that the money would be refunded in three months. The said document bear the signature of Rajesh Kamble, who signed as witness and the agreement for sale was executed on 05/11/2022, during the lifetime of the deceased, who made no grievance about execution of the document.

As per the learned counsel for the Appellants, since they did not lodge any complaint, despite noticing the huge defalcation by him and, since, the deceased admitted and agreed to his liability, they deemed it appropriate to grant him some time. It is also submitted that the notarized agreement for sale was only to secure the amount and, hence, there was no question of any pressure being exerted upon the deceased, who was in fact allowed to get along by the Appellants, as they did not lodge any complaint for the said defalcation and with the intervention of Rajesh Kamble, the issue was sorted out.

Mr.Dhaygude has placed on record the photographs of Diwali celebration on 22/10/2022, where in presence of the staff, the deceased is seen performing the pooja. It is also the case of the Appellants that the deceased was admitted in the hospital from 12/08/2022 to 21/08/2022 for his ailment. Not only this, it is also the case of the Appellants that when the deceased

obtained loan, Appellant No.1 stood as guarantor for the said loan and, hence, the allegations that the deceased was pressurized by the Appellants is completely baseless.

My attention is invited to the medical papers of the deceased, which reflect that he had tested positive for HIV and, hence, it is the specific case of the Appellants that he had his own reasons to take his life and there is no instigation or incitement at the end of the Appellants, which would attract an offence under Section 306 of IPC.

4. The Appellants face a charge under Section 306 of IPC, which prescribe the punishment for abetment of commission of suicide.

Section 107 of IPC define “abetment” as instigation of the person to do a particular thing or engaging in a conspiracy with one or more other person, for doing of a thing and an act or illegal omission in pursuance thereof or when a person intentionally aid the doing of a thing, either by an act or omission.

In cases of alleged abetment of suicide, there must be a proof of direct or indirect acts of incitement for commission of suicide. Merely on the allegation of harassment without there being any positive act, proximate to the time of occurrence on part of the accused, which lead or compel the person to commit suicide, charge under Section 306 may not succeed. To prove the offence of abetment, as contemplated under Section 107, the state of mind to commit a particular act must be visible, to determine the culpability.

In order to prove this *mens rea*, there has to be something on record to establish or show that the Accused had guilty mind and in furtherance of that state of mind, he has abetted the suicide.

The essential ingredients of offence of Section 306 of IPC have been well settled to be; (1) the abetment; (2) the intention of accused to aid or instigate or abet the deceased to commit suicide.

It is also well settled position, which has emerged through various judicial precedents, that the act of the accused howsoever insulting or abusive it may be, by itself will not constitute abetment, unless there is evidence capable of suggesting that the accused intended, by such act to instigate the deceased to commit suicide.

5. It is in the light of the aforesaid position of law emerging from Section 306 of IPC, the accusations in the complaint will have to be tested.

Admittedly, the deceased was working with the Appellants for last four years. It is the specific allegations of the Appellants that the deceased indulged himself in misdeeds, causing loss to the hospital, but since, he admitted the liability and expressed willingness to refund the amount, no police complaint was lodged. The agreement for sale dated 05/11/2022 is, prima facie, indicative of the assurance to refund the amount, which is coupled with the letter of guarantee under the signature of the deceased issued in favour of Appellant Nos.1 and 2, where it is stated that he has

received a sum of Rs.14,00,000/- from the hospital, in addition to his salary for the last three years, and as he was in need of money, this amount is received by way of advance and he is liable to repay the said amount. The said document is signed by the deceased in presence of two witnesses. The payment of amount of Rs.6,10,000/- in favour of the Appellant is also a proof that the deceased and his family had agreed that the amount of Rs.14,00,000/- is to be refunded.

The accusations in the complaint are to be decided, where it is alleged that the son of the Informant was in a disturbed condition for last one year and had disclosed that he was being falsely implicated in misappropriation of Rs.14,00,000/-. The complaint alleged that from time to time, the accused persons were visiting their house and demanding the money and threatening that, if the amount is not refunded, they will file police case.

It is not understood that if such threat was given without any basis, why no complaint is filed ever and despite this, the deceased continued to work in the hospital of the Appellants.

A reference in the complaint is made to an incident, which had occurred in the month of September 2022, probably in the first week, when it is alleged that the Appellants visited the house of Informant and by abusing him in the name of caste, the amount of Rs.14,00,000/- was asked to be paid or else, he was threatened that he would be eliminated. Again on the next date, and this time the date is given as 02/09/2022, Shashikant is alleged to have returned home and informed that he was assaulted by Appellant No.1 and he is unable to

bear the torture and would do something with his life, but he was somehow pacified. Again on 05/11/2022, when the deceased referred to the threat by the accused persons, it was agreed that agreement for sale shall be executed and it was agreed that a land admeasuring 0.3326 R was shown to have been purchased for the sum of Rs.14,00,000/- by the agreement for sale, but actually no money was received.

If this was the case, then there was no reason as to why a sum of Rs.6,10,000/- was paid to the accused persons.

6. The accusation in the name of caste is stated to have been taken place in the month of April 2023, when it is alleged that the Informant had visited the hospital for delivering his tiffin and at that time, the Informant alongwith his son were abused in the name of caste for non return of money and, hence, his son was under tremendous pressure.

When the accusations in the complaint are perused, it cannot be just left to guess, that if the deceased was subjected to physical harassment and mental torture, why he continued to report to the hospital. The Attendance Register of the hospital is placed on record alongwith the application and the learned counsel for the Appellants had even produced the original Register for my inspection, where the attendance is maintained by the deceased being in-charge/Manager, but from the month of November, he has not reported and entries are taken in the Register in somebody else's handwriting. Prima facie, the veracity of the statement that the Informant and his son was abused in the name of caste in the month of April

2023, has to be looked with suspicion. Similarly, the incident which is alleged to have been occurred in September 2022, when the casteist abuses are alleged to have been hurled when the Appellant visited their house, clearly indicate that the incident occurred in the house and not within public view/gaze. Thus, the accusations levelled prima facie, fail to attract the offence under Section 3(1)(r) and 3(1)(s) of the Act of 1989.

7. As far as the accusation faced by the Appellants under Section 306 of IPC of abetting the suicide of the Informant's son are concerned, the circumstances placed before me by the Appellants cannot be completely disregarded. Appellant No.2 stood guarantor to the loan applied for by the deceased from Patsanstha and in the month of October, 2022, everything appeared to be normal as the photographs placed on record with the deceased performing pooja in the hospital depicts so. He was also treated in hospital for his ailment in the month of August, 2022.

The aforesaid circumstances coupled with the deceased having been reacted positive to HIV, dispel the prosecution case that he was harassed as alleged by the Informant.

Prima facie, it is evident that some money was borrowed by the deceased or as alleged, it was misappropriated and that is the specific reason that the deceased signed an undertaking that he shall repay the sum of Rs.14,00,000/- in the presence of the witnesses and even a sum of Rs.6,10,000/- is deposited to the account of the Appellants.

8. For the purpose of an act of a person amounting to instigation/incitement to commit suicide, there must be an intention to provoke, incite or encourage of doing the act. While considering, whether an offence under Section 306 of the IPC is attracted, the incident should be viewed from the perception of a prudent man and not from the perception of a hyper sensitive individual, as human sensitivity would vary from person to person and the reaction would be distinct.

In case of *Sanju @ Sanjay Singh Sengar Vs. State of M.P.*¹, use of abusive language and telling the deceased “to go and die” was held not sufficient to constitute an offence of abetment. Similarly, in *Ramesh Kumar Vs. State of Chhattisgarh*², where merely because there was a quarrel between the husband and wife on the date of incident, she told her to go wherever she wanted to go and when she poured kerosene on her person and set her on fire, while acquitting the Accused, Their Lordship specifically held as under :-

“A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires that the victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

Prima facie, the accusations levelled against the Appellants, two of whom are medical practitioners and running a hospital, in the backdrop of the facts and circumstances, when the act

1 AIR 2002 SC 1998

2 2001(9) SCC 618

attributed to them is not intended to facilitate the commission of suicide by the deceased nor can it be said that there was an instigation or conspiracy hatched for doing of the said act, the Appellants deserve protection from arrest.

9. Mrs.Pai, during the course of hearing, has invited my attention to the application preferred by the Appellants to the Investigating Officer, seeking permission to dispose off certain item like laptop, tea machine, as the hospital is now shut down. I do not think that this action on their part amounts to tampering with the evidence, as if the Investigating Officer do not deem it fit to grant the permission, he may decline the same.

10. Another reason which prompt me to prevent the arrest of the Appellants for the purpose of investigation is that the two Appellants are doctors by profession and third is associated with them and all are responsible citizens and the investigating agency can be rest assured that they will render their co-operation to the investigating officer, in completing the investigation. Prima facie, reading of the complaint, as it is, do not make out a case against the Appellant under the Act of 1989 and even for abetting the suicide. Hence, by the following order, they are protected.

: **ORDER** :

(a) Appeal is allowed.

(b) In the event of arrest in connection with C.R.No.225 of 2023 registered with Koregaon Police Station, Appellant No.1-Dr.Suhas Balkrushna Chavan, Appellant No.2-Dr.Ganesh Haribhav Hol and Appellant No.3-Gopal Shivaji Salunkhe shall be released on bail on furnishing P.R. Bond to the extent of Rs.50,000/- each, with one or more sureties in the like amount.

(c) The Appellants shall report to the concerned police station on every Saturday between 4.00 p.m. and 6.00 p.m. for a period of six weeks and, thereafter, as and when directed.

(d) The Appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)