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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.358 OF 2020

Aruna Mahadev Barwad

APPELLANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. Nandkumar B. Khandare, Advocate for the appellant
Mr. S. B. Jadhav, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd JULY, 2024

ORDER :

1. This appeal, filed under section 372 of the Criminal Procedure Code, takes exception to the judgment and order of acquittal passed by learned Additional Sessions Judge – 5, Latur in Sessions Case No. 98 of 2016, thereby acquitting respondents No.2 to 8, from offence punishable under section 306 read with 34 of the Indian Penal Code.

2. Respondents No.2 to 8 were charged for commission of offence punishable under section 306 read with 34 of the Indian Penal Code.

3. It is the prosecution case that appellant lodged FIR alleging that accused Nos.2 to 8, who are close relatives of her deceased

husband i.e. his father, brother, brother's children, sister and her husband, were not effecting partition of ancestral land admeasuring 14 Acre, which was in their exclusive possession and they were enjoying income from the said land. Since the accused persons were refusing to effect partition and giving share in the ancestral property to her husband Mahadev and as they used to quarrel with him, her husband suffered huge mental stress and, therefore, he committed suicide.

4. Learned Sessions Judge, after recording evidence and hearing the parties, has acquitted the accused persons. This acquittal is impugned in present appeal.

5. Heard learned advocate for appellant and learned APP for the State. Perused the impugned judgment and grounds raised in the appeal memo.

6. Learned Sessions Judge, after analyzing the evidence, has rightly come to a conclusion that there is 3 days' delay in lodging FIR. Ingredients of abetment, as contemplated by section 107 of the Indian Penal Code are not made out by the prosecution. By relying on ***Gangula Mohan Reddy V/s State of Andra Pradesh*** (2010) 1 SCC 750, wherein it is held that "*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 accused to instigate or aid in committing suicide, there can be no conviction. It was further held that to attract section 306 of IPC, there has to be a clear men rea to commit the offence” and further observing that the deceased could have filed civil suit for partition instead of committing suicide, the Trial Court has held that the act of accused in refusing partition of ancestral property can by no stretch of imagination be said to be an act of abetment or instigation to commit suicide.

7. Trial Court has assigned cogent reasons while acquitting the accused. Evidence is properly appreciated. No fault can be found with the impugned judgment and order of acquittal. Appeal being devoid of merits is dismissed.

**[NITIN B. SURYAWANSHI]
JUDGE**