



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 490 OF 2020

Swapnil Sheshrao Patil,
Age-30 years, Occu- Private Service,
R/o. Alwadi, Taluka Chalisgaon,
District Jalgaon.

...APPELLANT

VERSUS

1. The State of Maharashtra
through In-charge of Police Station,
Mehunbare Police Station,
Taluka & District Jalgaon.

...RESPONDENTS

2. Madhukar Ganjidhar Patil
Age : 38 years, Occu. Nil,
R/o : Alwadi, Taluka Chalisgaon,
District Jalgaon.

3. Sarla Madhukar Patil
Age : 33 years, Occu: Nil,
R/o: Alwadi, Taluka Chalisgaon,
District Jalgaon.

4. Bholu @ Shivaji Nana Patil
Age : 33 years, Occu: Nil,
R/o: Ganeshpur, Taluka Chalisgaon,
District Jalgaon.

5. Pramod Pandurang Patil
Age : 27 years, Occu: Nil,
R/o: Alwadi, Taluka Chalisgaon,
District Jalgaon.

6. Sahebrao Pandurang Patil
Age : 34 years, Occu. Nil,
R/o: Alwadi, Taluka Chalisgaon,
District Jalgaon.

7. Kishor Pandurang Patil
Age : 31 years, Occu. Nil,
R/o: Alwadi, Taluka Chalisgaon,
District Jalgaon.
8. Sushilabai Pandurang Patil
Age : 59 years, Occu. Nil,
R/o: Alwadi, Taluka Chalisgaon,
District Jalgaon.

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Mr. R. B. Ramtek, Advocate for the Appellant.

Mr. S. M. Ganachari, APP for the respondent No.1-State.

Mr. Nilesh S. Ghanekar, Advocate for respondent Nos.2 to 8.

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 14.02.2024

JUDGMENT :

1. Heard. By consent, taken up for final hearing at admission stage.

2. Acquittal from the offence under Section 306 read with Section 34 of the Indian Penal Code has prompted the original complainant to question the judgment and order passed by the learned Additional Sessions Judge, Jalgaon dated 03-12-2019 in Sessions Case No. 14/2017.

3. Facts giving rise to the appeal are as under:-

4. Mehunbare police station chargesheeted in all 8 accused persons on the premise that they used to threaten, consistently harassed and even beat deceased Sheshrao i.e. father of complainant. They used to deliberately throw grass in his field and even stole pomegranates. Only because of such harassment, according to prosecution, Sheshrao hanged himself on 02.05.2016 and so, son PW1 Swapnil set law into motion. After chargesheet, accused were tried and on appreciating evidence, they stood acquitted by judgment and order dated 03.12.2019.

Feeling aggrieved by the above order of acquittal, original complainant has taken an exception to the said judgment by filing independent appeal.

5. Learned counsel for the appellant would point out that prosecution had adduced evidence of all family members who were party to the harassment to deceased Sheshrao. That, in fact on 30-04-2016 informant-son had received phone call from the deceased himself and he had conveyed something on telephone.

Immediately thereafter news of suicidal hanging was received. Therefore, son-informant rushed back to the native and there he was informed by his grandfather that there was harassment to the deceased. That, on 30-04-2016 deceased was even beaten by accused Nos. 1 to 4 whereas accused Nos. 5 to 8 used to throw grass on the boundary of field of deceased and raised quarrels. They further stole pomegranates and caused damage to deceased and due to such harassment, deceased ended up his life.

6. Learned advocate for the complainant would point out that in support of above case, prosecution had adduced as many as six witnesses. That, moreover suicide note was found in possession of deceased wherein he had categorically named each of the accused persons. They being solely responsible for abetting suicide, ought to have been held guilty.

7. According to the learned counsel for the complainant, trial court has not appreciated available evidence in correct

perspective and also not appreciated settled legal position on the point of suicide. He pointed out that acquittal is on the ground that suicide note is not legible. According to him, there was no other reason for deceased Sheshrao to commit suicide. Therefore, as there is improper appreciation of evidence, learned counsel for the complainant prays to set aside the impugned judgment and order of acquittal by allowing the appeal.

8. Similarly, learned APP for the State would point out that deceased had hanged himself to a tree. Immediately prior to the suicide, there were instances of beating and harassment. Even learned APP emphasized that suicide note was found in the pocket of deceased. Therefore, there was incriminating evidence. However, according to him, such evidence has not been appreciated by the learned trial court and unfortunately accused persons are acquitted from grave offence. He also thereby questions legality, maintainability and sustainability of the judgment.

9. In answer to above, learned counsel for the accused would point out that at first count, there is no trustworthy evidence in support of any of the allegations of beating, harassment or alleged instances of stealing pomegranates and throwing grass. He further pointed out that deceased might have committed suicide for his own domestic problems. Accused persons had no way any concern with the same. That they are falsely implicated in the case because of enmity. According to him, suicide note was not accepted by the learned trial judge for the simple reason that it was not established by the prosecution that it was authored by none other than deceased and hence the same has not been considered. Lastly he submits that all the necessary ingredients for attracting offence under Section 306 of IPC are missing. No error whatsoever has been committed in refusing the case of the prosecution.

10. In the light of all above submissions, this court has taken survey of record as well as judgment under challenge.

11. On doing so it transpires that in support of its case, prosecution had adduced evidence six witnesses i.e. PW1 Swapnil (son of deceased), PW2 Sanjay (pancha to inquest panchanama), PW3 Baburao (brother of deceased), PW4 Sanket (another son of deceased) as well as PW5 Shirsath & PW6 Satav, the Investigating Officers.

12. On carefully sifting the evidence of complainant PW1 Swapnil, it is emerging that at the relevant time he was at Pune and therefore, apparently he does not seem to have any first hand information and he is also not party to any of the alleged occurrence. He himself spoke about receiving information from his grandfather Daga Patil. However, said grandfather does not seem to have been examined. Similarly, another son of deceased i.e. PW-4 Sanket as well as his own brother appear to have received message, while he was at Gujrat, that father was ill. Therefore, even second son was not party to any of the incident. Resultantly, both the sons of deceased have deposed on the strength of information allegedly passed over to them.

13. It is also further emerging that very of brother of deceased PW-3 Baburao has surprisingly not supported the prosecution.

14. One chit seems to have been laid hands at the time of inquest panchanama by investigating machinery from the person and possession of deceased and the same is marked at Exhibit 188. Handwriting expert's report Exhibit 42 is negative. The said chit is also not completely legible. Therefore, even suicide note does not come to the rescue of prosecution.

15. Here, charge is for abetment of suicide. Law on this is fairly settled. For attracting offence under Section **306 of IPC**, it is obligatory on the part of prosecution to prove the **essential ingredients** which are as follows:

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

16. The *sine qua non* for above charge is abetment to commit suicide. As to what amounts to abetment is provided in the statute itself.

“306. Abetment of suicide- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“107. Abetment of a thing- A person abets the doing of a thing, who-

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of said conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

17. Keeping above legal position in mind, when evidence of prosecution is absolutely silent about which role was played by which of the accused and when there is no material indicating alleged harassment, beating and stealing, case of prosecution that the same prompted deceased to end up his life cannot be straightway accepted. Such trifling incidences, of which there is no

concrete evidence, cannot be said to be amounting to abetment to commit suicide. As very essentials for attracting Section 306 of IPC are patently missing, guilt cannot be recorded for the same.

18. Perused the judgment under challenge. This court is convinced that available material has been put to scrutiny and legal requirements are borne in mind while appreciating the prosecution evidence. The view taken is the most possible that could emerge even on re-appreciation at the hands of this court. No case being made out, I proceed to pass the following order;

ORDER

Criminal appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]