



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 641 OF 2016

Sabiya Begum Akbar,
Age : Major, Occu. : Household,
R/o. : Patil Galli, Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

... Appellant.

Versus

1. The State of Maharashtra,
Through Police Station,
Officer, Police Station of Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
2. Azhar Akhtar Patel (Pathan)
Age : 51 years, Occu. : Agri.,
3. Anis w/o Azhar Patel (Pathan)
Age : 46 years, Occu. : Household,

Both residence of Patil Galli, Ahmedpur,
Dist. Latur.

... Respondents.

...

Mr. Fayaz K. Patel, Advocate for Appellant.
Mr. N. D. Batule, APP for Respondent – State.
Mr. H. I. Pathan, Advocate for Respondent Nos.2 and 3.

...

WITH

CRIMINAL APPLICATION NO. 4477 OF 2016

The State of Maharashtra,
Through Police Station Ahmedpur,
Dist. Latur.

... Applicant.
(Orig. Complainant)

Versus

1. Azhar Akhtar Patel [Pathan],
Age : 50 years, Occu. : Agri.,
2. Anis w/o. Azhar Patel [Pathan],
Age : 45 years, Occu. : Household,
Both R/o. Patil Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

... Respondents.
(Orig. Accused)

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29th JANUARY 2024

PRONOUNCED ON : 7th FEBRUARY 2024

JUDGMENT :

1. Matter was for admission. However, all parties made extensive submissions, and therefore, after obtaining their consent, main appeal itself was taken up for decision.

2. This is an appeal, wherein judgment and order of learned Additional Sessions Judge, Ahmedpur, thereby acquitting respondents - original accused from offence under section 306 read with section 34 of Indian Penal Code (IPC) is taken exception to.

PROSECUTION CASE

3. On charge-sheet filed by Ahmedpur police station, crime was registered for offence under section 306 read with section 34 of IPC, alleging that, informant resided with his brother under one roof with their respective families. There was said to be dispute between brothers on account of partition. Daughter of informant was abused and her uncle and aunt (accused persons) pressurized her to ask her father to get partition done. They abused her in filthy language and also raised quarrel with her by saying that, "she should go to the road and dance or die". Because

of such humiliation at their hands, it is the case of prosecution that, deceased Rafia set herself ablaze. While in hospital, she named her accused uncle and aunt, and therefore, her father lodged report.

Investigation was carried out and on its completion, both accused were charge-sheeted and finally tried by learned Additional Sessions Judge. However, on appreciation of available evidence, learned trial Judge acquitted the accused by its judgment and order dated 05.05.2016, which is assailed herein.

SUBMISSIONS

4. Learned counsel for appellant would submit that, respondents are solely responsible for suicidal death of Rafia. They were residing jointly with deceased and her father who was brother of accused no.1. Accused persons were insisting for partition. Civil proceedings were also pending. That, on 18.12.2013, around 4:00 p.m., both accused abused deceased Rafia in filthy language. They quarreled with her and asked her to insist her father to get partition done. He submitted that, only because of their such insulting and humiliating treatment, deceased went and ignited herself in the house. It is pointed out that, they had said her that she should go on the road and dance or die. She had named both of them in the dying declarations. They had abetted

the suicide and were solely responsible. There was no other reason for deceased to commit suicide. According to learned counsel, all necessary ingredients for abetment to suicide were available in the prosecution evidence, which comprised of testimonies of 10 witnesses. However, learned trial court has not appreciated the same in its correct perspective and has also not considered the legal position. Acquittal is on flimsy ground, like non seizure of kerosene can. That, unfortunately dying declarations are also kept aside from consideration and hence judgment so passed by learned trial Judge being illegal, cannot be allowed to be sustained.

5. Learned APP also supported the above submissions and arguments by pointing out that, respondents were solely responsible. That, eye witness account i.e of PW1 Sabiyabegam, PW2 Vasim Akbar and PW4 Mohasin Akbar have not been correctly appreciated. Deceased had named accused persons in dying declarations and had sought accusation against them, but learned trial court has acquitted both the accused and so according to him, the impugned judgment is liable to be interfered with.

6. In answer to above, learned counsel for respondents accused would submit that, prosecution has miserably failed to establish the charges. According to him, very charge is misplaced

as there is no evidence about any abetment or inducement. According to him, accused never intended deceased to end up her life. There was no *mens rea*. He pointed out that, prosecution evidence was patently lacking regarding any inducement or abetment to commit suicide. He pointed out that on the contrary prosecution's very evidence suggested occurrence to be accidental one while cooking. Deliberately different colour is given. That, even AD was registered. Very cousin of deceased, who shifted her to hospital had also reported accidental burns while cooking. He also doubted the mental and physical fitness of deceased to give two dying declarations. He submitted that, in fact, there was already a partition, and therefore, no reason for quarrel as alleged. In support of his submissions, he took this court through the cross of Investigating Officer. Lastly, he submitted that, appreciation by the learned trial Judge is in consonance with the evidence. There is no perversity or illegality and so he prays to dismiss the appeal for want of merits.

7. This court by virtue of powers under section 372 of Cr.P.C. is called upon to re-appreciate, re-examine and re-analyze the entire oral and documentary evidence in the court. On undertaking such exercise, it is revealed that, case of prosecution is rested on following 10 witnesses. Their status and role could be

categorized and summarized as under :

PW1 Sabiyabegam, mother of deceased; **PW2** Vasim Akbar, brother of deceased Rafia; **PW3** Ganesh, panch to scene of occurrence; **PW4** Mohasin akbar, another brother of deceased; **PW5** Narayan, police official, who recorded dying declaration; **PW6** Akhil also a panch to scene of occurrence, **PW7** Dr. Harshad Padmakar and **PW8** Dr. Dharmaraj Apparao, Medical Officer and Autopsy Surgeon, respectively; **PW9** Deelip Babarao, Naib Tahsildar, who recoded dying declaration and **PW10** PSI Pandit Kachave, Investigating Officer.

Apart from above oral evidence, prosecution has relied on documentary evidence, like FIR, spot panchanama and post mortem report etc.

8. Admittedly, here, there is charge under section 306 of IPC in order to bring home the charge for such offence, it is bounden duty of prosecution to demonstrate existence of essential ingredients of section 306 of IPC.

Section 306 of the IPC deals with abetment of suicide.

Ingredients of this section are as under :

“The accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted, or pushed or forced the deceased

by his deeds, words or willful omission or to conduct to make the deceased move forwards more quickly and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.”

9. Here, it is also desirable to briefly discuss the settled legal position as regards to offence under section 306 of IPC and its legal requirements.

By way of series of cases, scope and applicability of Section 306 has been time and again decided and reiterated by the Hon'ble Apex Court in the cases viz; ***Ramesh Kumar v. State of Chhatisgarh*** reported in (2001) 9 SCC 618; ***Sanju @ Sanjay Singh Sengar v. State of M.P.*** reported in (2002) 5 SCC 371; ***State of West Bengal v. Indrajit Kundu and others*** reported in (2019) 10 SCC 188 and very recently in the case of ***V.P.Singh etc. v. State of Punjab and others*** reported in 2022 SCC Online SC 1999.

In above series of cases, consistent view that has been echoed that, at first count it must be shown that accused persons intended that deceased should end up her life. With that object in mind, they should deliberately create circumstances, which are of such nature, that deceased is left with no other alternative but to end up her life, only then charge of abetment to commit suicide can be said to be successfully brought home. Inducement, incitement

and essential requirements to attract said charge. As to what amounts to abetment as per section 107 of IPC is also fairly settled.

10. Bearing above settled legal requirements in mind, evidence in hand is put to be re-analysis. It is noticed that, the case of prosecution is rested on oral evidence of mother and brothers as well as dying declarations. This court first undertakes the scrutiny of dying declaration and the same is at Exh.29. It seems to be recorded on 22.12.2013 regarding occurrence which allegedly took place on 18.12.2013. That means, dying declaration is recorded after almost five days. Be it so. Deceased gave a statement that, around 4:00 p.m on 18.12.2013, her paternal uncle and aunt said to her to ask her father to get partition done, abused her in filthy language and further said she should go on the road and dance or die. Therefore, she could not tolerate such statement and getting fed up poured kerosene and set herself on fire. Hearing shouts, her mother doused the fire. Her brother and neighbours shifted her to the hospital. She sought action against her uncle and aunt.

11. PW5 ASI Ranzunjare, who has recorded above dying declaration is examined at Exh.25 and he deposed about receiving wireless information, visiting the hospital, approaching doctor, seeking his endorsement, about fitness to give statement and

recorded her above dying declaration. He stated that, initially she was admitted by her brother to Ahmedpur Rural Hospital, but later on she was referred to Civil Hospital, Latur and while undergoing treatment her statement was recorded.

In cross he has admitted that, no attempt was made to record statement of deceased on 18.12.2013 and 19.12.2013. He admitted that, MLC shows admission of deceased at Ahmedpur Rural Hospital. He admitted that, at the time of his visit for referring dying declaration, along with patient relatives were present. Along with patient Anwar Patel was also present. He admitted that, both the hands of patients were totally burnt and bandage was applied. He answered that, it is not necessary to obtain endorsement about identification of thumb impression. Rest is all denial.

12. Second dying declaration is at Exh.52 seems to be recorded by PW9 Deelip Mulaje, Naib Tahsildar on 22.12.2013 which is in question answer form. While answering question, how incident occurred, statement is given that, accused her uncle and aunt always said to her to ask her father to get house for partition and troubled her. Therefore, on 18.12.2013 at 6.30 p.m, getting fed up of the trouble, she ignited herself.

13. Therefore, here, on minute scrutiny of above discussed both dying declarations, it is apparent that, alleged occurrence is of 18.12.2013 between 4:00 to 4:30 p.m. It is also emerging that incident had taken place in the house of deceased and deceased was taken to Ahmedpur Rural hospital, but no efforts apparently seems to have been taken to get her dying declaration recorded promptly at such Rural hospital, Ahmedpur itself. Rather after five days PW5 ASI Runzunjare and PW9 Deelip Mulaje seem to have taken steps to record the dying declarations. In Exh.29 occurrence is reported to have taken place around 4:00 to 4:30 p.m., whereas Exh.52 occurred is shown to have taken place at around 6:30 p.m. consequently, there is variance as to exactly and what time occurrence took place. Answers given by PW5 ASI Ranzunjare in cross clearly shows that Exh.29 was scribed in presence of relatives of the patient. Such material shows that voluntariness of declaration comes under shadow of doubt. Even there is no identification beneath the thumb and that too is admitted by PW5 ASI Runzunjare. He further admitted that, both hands were burnt and bandages were applied. Under such circumstances, question that arises is how in such condition thumb impression can be obtained. Therefore, apart from delayed recording of dying declaration, that too in presence of relatives, above discussed

aspects contributes to the credibility and veracity of the dying declarations.

14. Now, let us go through the oral evidence adduced on behalf of prosecution i.e. mother (PW1 Sabiyabegum), her testimony is that, on 18.12.2013, both accused hold her daughter to ask her father for partition of house and further asked her to go on road and dance or die. Because of it, her daughter got mentally hurt, she bolted door of the house from inside, poured kerosene on her person and set her ablaze. She and her sons doused the fire and took her to the hospital initially at Ahmedpur and subsequently at Latur. While undergoing treatment, she succumbed on 23.12.2013. She holds both accused responsible for the death of her daughter.

15. Though witness is subjected to extensive cross, it would be desirable to deal and discussed only material cross. She has answered that, her family has one house at Patil Galli and all four brothers have share and one room is allotted to each of them. **She admitted regarding pending litigation in civil court amongst all brothers. She further admitted that, during lifetime of her father-in-law, he had made partition of agricultural land in 2001 and each brother allotted four acre land.** She admitted that, three brothers agreed before the court that two acres agriculture land is given to

Khurshidabegum as a Hiba, but her husband protested against the said declaration and that there was grudge in their mind against the accused. He further admitted that, her daughter was admitted on 18.12.2013 till 23.10.2013, but none of them had lodged any complaint against the accused. Rest is all denial.

16. **PW2** Wasim Patel, brother of deceased deposed about his sister setting herself on fire and he receiving phone call from his mother to that extent and she being shifted to Ahmedpur hospital and later on Civil Hospital, Latur. This shows that, he has reached after the occurrence and whatever information he has is hearsay.

PW3 Ganesh, spot panch has not supported prosecution.

PW4 Mohasin also a brother of deceased deposed that, while he was on work on 18.12.2023, he received phone call and he was returned home. They brought her sister to Ahmedpur for medical treatment and thereafter to Civil Hospital, Latur. He stated that, while in hospital his sister gave dying declaration, naming accused asking her to demand partition from her father and also said to her to go on the road and dance or die. Initially, he stated that. Accused said the above statement in his presence, but later

on volunteered and answered that it was not said in his presence.
Rest is all denial.

PW5 ASI Ranzunjare, who recorded dying declaration and his evidence is already discussed in aforesaid para.

PW6 Akhil Ahmed, panch to spot panchanam (Exh.36).
However, apparently, spot seems to have been drawn on 26.12.2013 almost after nine days of the occurrence. However, in cross, he has admitted that, information was received that deceased suffered burns while cooking.

PW7 Dr. Harshad Sonwane is the doctor who issued certificate of fitness.

PW8 Dr. Dharmaraj is the autopsy doctor, who conducted post mortem and opined about cause of death is septicemia due to burns.

PW9 Deelip Mulaje, Naib Tahsilder, who recorded dying declaration at Exh.52.

PW10 PSI Pandit Kachave is the Investigating Office.

17. Defence has adduced evidence of other paternal uncle of deceased i.e DW1 Anwar. He seems to be brother of father of deceased as well as brother of accused herein. His evidence is

categorical in chief that, four brother had separated from each other and resided separately and partition of family is already done and each individual is having separate property. According to him, he was present at the time of such incident. Deceased suffered burns due to explosion of fire of a kerosene stove while she was cooking and that she was taken to Rural Hospital, Ahmedpur and later on to Latur and he also claims to have accompanied her. He deposed that, she was unable to talk. He also stated that incident took place in the kitchen where articles were scattered and flour was made ready for preparing chapati.

Though above witness is cross examined by learned APP, nothing adverse has been brought to doubt his version.

SUMMATION

18. Therefore, on taking total survey of above discussed evidence and on reanalysis, it is emerging that, though deceased suffered burns and though she gave dying declarations, it is apparently a case of immolation. Though prosecution tried to set up a case that accused persons, who are her uncle and aunt, abetted the suicide by ill-treating her, there is no positive or legally acceptable evidence that they harassed her to such extent that she was forced to end up her life. Solitary instance of 18.12.2013 has come in the entire evidence of prosecution. There is nothing to

indicate abetment to commit suicide. Even otherwise, mere asking deceased to ask her father to get partition done, by no stretch of imagination can be said to be inducement or abetment to commit suicide. Further, here, PW1 Sabiyabegam mother and DW1 Anwar uncle categorically speak about partition already being done and some litigation being pending. Therefore, here, there is nothing to hold accused responsible for alleged episode of burns. There is equal evidence about deceased suffering accidental burns while cooking coming on record from none other than uncle, who is brother of accused as well as father of deceased.

As none of the essential ingredients for attracting charge under section 306 of IPC are available, it can be safely said that prosecution has miserably failed to establish the charges.

19. Though vide Criminal Application No.4477 of 2016, applicant State had prayed for grant of leave to file appeal, after hearing full-fledged appeal and having discussed entire evidence, there is no merit in the application so as to grant leave.

20. After hearing learned counsel for appellant and learned APP as well as learned counsel for respondent nos.2 and 3 and on going through the judgment, no convincing ground is made

out to interfere in the judgment passed by learned trial Judge, which is upon proper appreciation, supported by reasons and law on dying declaration as well as offence being clearly discussed. Finding no merits in the appeal, I proceed to pass following order :-

ORDER

- (i) Criminal Appeal stands dismissed.
- (ii) Criminal Application No.4477 of 2016 filed by applicant State stands rejected.

(ABHAY S. WAGHWASE, J.)