

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO. 612 OF 2017

The State Of Maharashtra
Byculla Police Station, Mumbai

...Applicant

Vs.

1. Prabhakar Waman Kaute
Age 27 years, Occ. Service
R/o Bhaskar Talpade Chawl,
Shivaji Nagar, Aasangaon,
Tal. Shahapur, District Thane.

2. Dhananjay Nanaji Ramtekkar
Age - 37 years, Occ- Service,
R/o. - Room No. 303, Mahadev Apt.,
Near Neelam Apartment,
Laxmi Baug, Durga Mata Mandir Road,
Kalyan (East), Dist. Thane

3. Ajay Dharma Rathod
Age - 24 years, Occ - Service
R/o - Bhaskar Talpade Chawl,
Shivaji Nagar, Aasangaon,
Tal. Shahapur, District Thane

...Respondents/
accused

Mr. H. J. Dedhia - APP for the Applicant-State

Adv. Prasad Panchal a/w Adv. Neha Rane, Gaurav Qubale -
Advocate for the Respondent

Pooja Mali - PSI, Byculla Police Station

CORAM : S. M. MODAK, J.

DATE : 12th JANUARY 2024

JUDGMENT :-

1. Heard learned APP for the State and learned Advocate for

the Respondents-accused No. 3-Dhananjay and accused No. 4-Ajay. Respondent-Prabhakar expired and there is an affidavit filed on behalf of the prosecution.

2. Apart from these three accused, there is one more accused by name Suresh Dahale. They were prosecuted for commission of an offence under Section 306 read with 34 of the Indian Penal Code. All were discharged by the Court of Additional Sessions Judge, Greater Mumbai. Suresh Dahale was discharged vide Order dated 07/08/2017, whereas these Respondents were discharged on 31/08/2017.

3. In this revision, legality of the Order dated 31/08/2017 is challenged on behalf of the State. Whereas up till now the Order dated 07/08/2017 is not challenged. All the four accused were charge-sheeted for abetting the suicide of one Sunder A. Mhasane. The said Sunder was found dead in the intervening night of 15/10/2016 and 16/10/2016 in hanging condition. It was near railway track of railway yard, behind Byculla Railway hospital. Intimation was given to his son Pankaj-first informant. He went there and identified dead body of his father. Police found some articles with the deceased and they were handed to the son of the deceased. There was an envelope and it contained a message to contact, one Manohar and one Sachin Rane. It further mentions that only those persons could touch

his body and no one else.

4. In that envelope there was piece of paper, where it was mentioned that

“the deceased has served for 33 years and he was asked to work with the Contractor and that is why he got angry why he was sent to Contractor. Five persons are responsible for his death (It includes these Respondents) and that is why he committed suicide.”

On this basis, son has lodged the F.I.R. against five persons. Police investigated the offence recorded statements and filed charge-sheet.

Grounds for discharge

5. The Respondents made following contentions before the trial Court:-

- a) Even if the material collected during investigation are accepted without admitting, it does not fall within the meaning of ‘abetment’ under Section 107 of the Indian Penal Code.
- b) Other side of the story is that, the persons working under the deceased had complained about the partisan approach shown by the deceased. The complaint is annexed to the charge-sheet and in fact, the Higher Officer Ashok Kumar Kusherwal has found truth in it and had transferred the deceased after making an inquiry and his statement is

there.

6. It is true that at the time of framing of the charge, accused has the right to ask for discharge and the trial Court is expected to verify the materials in order to find out whether there is sufficient ground for proceeding further. It is true that standard of inquiry contemplated at the time of the framing of the charge and contemplated at the conclusion of the trial are different. At the time of the framing of the charge, the Court is expected to go through the materials and documents as they stand. The detailed scrutiny is not expected. Copy of the charge-sheet is made available to me.

Submissions

7. Learned APP submitted that reasoning given by the trial Court is not proper. The test applied by the trial Court cannot be applied at the time of the framing of the charge. The trial Court concluded that *"the alleged acts do not fall within the meaning of the 'abetment' and there is no co-relation between the alleged acts and act of the suicide"*.

8. Learned APP submitted that the act of the suicide is clear. It is also clear that handwriting on chit found in the envelope is of the deceased. He further submitted that there is no dispute in between the deceased and the Respondents working in same establishment and one place. So according to him, the

prosecution ought to have been given liberty to adduce evidence.

9. Learned Advocate for the Respondents submitted that trial Court has applied the proper test. According to him, mere suicide is not sufficient but the Respondents can be tried only if *prima-facie* connection is established. According to him, the materials collected by the prosecution in the form of the statements in fact do suggest about the partisan approach of the deceased and his acts of the misconduct. That is why he was transferred and the complaint against the deceased was not found untrue.

10. It is true that mere suicidal death is not sufficient but there has to be connection in between the allege acts and the outcome. The act of the suicide must be the direct result of the acts alleged against the accused persons. So what is allegation of the deceased. His grievance was he was transferred to the contractors and he has worked for 33 years. Due to his transfer, he got annoyed. So whether the Respondents can be held responsible for his transfer?

Charge-sheet papers

11. Considering these allegations, I have perused the papers submitted alongwith charge-sheet. On one hand, we have got the avernment:-

- a) in the complaint by the son, his supplementary statement,
- b) the statement of Rahul Sunder Mhasane, who is another son of the deceased,
- c) Priyanka Sunder Mhasane, who is daughter of the deceased and
- d) Meena Sunder Mhasane, the wife of the deceased.

I have perused them. They are on the same line. The following facts emerges :-

- a) On 15/10/2016 at about 6.00 a.m., the deceased has left the house for attending the job.
- b) He telephoned at 03.00 p.m. and informed that he will not come home because he is having excess work.
- c) He has not returned at night time.
- d) However the daughter of the deceased got call at about 3 to 3.30 hours in the intervening night of 15/10/2016 and 16/10/2016.
- e) It was informed that the dead body of Sunder was found.
- f) Further they have reiterated what are the contents of the suicidal note.

12. Whereas on the other hand, we have got statements of following persons:-

- a) Ashok Kumar Kushernal, who is Senior Section engineer, at Byculla Depo.
- b) There are statements of other employees including :
 - i) Arpankumar Brijpal Singh, (Asst. Divisional Engineer),

- ii) Uday Salvi,
- iii) Mangal Telam,
- iv) Yogesh Ahire,
- v) Anil Sanap and
- vi) Santankumar Kimray and others.

They are the gangmen working under the supervisor-deceased. The following facts emerge :-

- (i) charge of direct track maintenance was assigned to one Suresh Dahale-accused No. 1. He was supposed to look after the railway track from CST to Elphinstone bridge.
- (ii) There is one supervisor and 25 gangmen working under said Suresh.
- (iii) Witness Ashok Kumar Kusherval received the complaint on 01/07/2016. It was mentioned about some joint bolt found dismantled by certain gangmen.
- (iv) all the gangmen have complained against the deceased about consuming alcohol and quarreling them on flimsy grounds.
- (v) Those Complainants have complained that supervisor that is the deceased Sunder is not properly supervising and he has adopted the partisan approach. Their complaint was signed by various gangmen including these Respondents.
- (vi) During inquiry, the deceased told that complaint is false.
- (vii) However the Officer found that the deceased used to insult accused No. 1-Suresh.
- (viii) Witness Ashok has further noted that the deceased was transferred and he has handed over charge on

30/09/2016.

- (ix) The deceased was not given any job of the Supervisor as post was not vacant.
- (x) The deceased was assured by the witness-Ashok to give the working of the supervisor in December.
- (xi) The witness-Ashok had also stated that the deceased was transferred in order to avoid further dispute. Copy of that complaint is also annexed.

13. As said above, the detailed appreciation cannot be done at this stage. However fact remains that the deceased was transferred on 24/09/2016. The order copy is there. Whereas he committed suicide in between the intervening night on 15/10/2016 and 16/10/2016. Now making a complaint against the superior by his co-employees cannot be said to be an objectionable act. Everyone has got right to make the complaint to his superior about his superior and fellow worker. Ultimately, it will be the decision of the Superior whether to act upon this complaint or in any other mode.

14. In this case, officer Ashok kumar Kusherval has transferred the deceased to some other place. There was derailment of Udayan Express on 07/07/2016 and accused No. 1 Suresh was charge-sheeted by witness Arpankumar. There was a complaint made by gangmen that deceased was supervisor and he used to quarrel with gangmen working under

him and that is why deceased was transferred.

15. On this background, I do not find any illegality committed by the Sessions Judge while observing that there is absence of the nexus in between the acts alleged and the act of the Suicide. The abetment is either way of instigation or aiding or conspiracy. The prosecution does not say that all the accused conspired together to see that the deceased will be transferred. Filing a complaint jointly is not the act of conspiracy as contemplated by law. There are no materials shown to me that when the deceased and accused worked together, they have used abusive language to the deceased. These are no incidents on which we can gather about instigation or aiding or conspiracy. They are absent.

16. So the allegation by the first informant and his relatives and the contents of the suicidal note was not corroborated by the materials collected during investigation. On prima-facie reading of their statements, we find that except suicidal note, they were not having personal knowledge of harassment. Just because deceased held the Respondents responsible for his suicide, it will not fall within the meaning of 'abetment' unless it will fall within the purview of Section 107 of the Indian Penal Code. Even if the accused will be asked to face the trial, this Court feels that the offence is not likely to be made out. Hence no

illegality. Hence no interference.

17. Revision application is dismissed.

18. Let learned Advocate Shri Panchal to file Vakalatnama as assured on Monday.

[S. M. MODAK, J.]