



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 CRIMINAL APPEAL NO. 1156 OF 2023

NAGESH RUSTUMRAO SOLANKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Shivaji Namdevrao Dudhate a/w. Mr. Vijay B. Jogdand Patil,
Advocate for Appellant.

Mr. S. J. Salgare, APP for Respondent-State.

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CORAM : NITIN B. SURYAWANSHI,
MANJUSHA DESHPANDE, JJ

DATE : 22nd APRIL, 2025

PC:-

1. This is an Appeal against acquittal filed by the informant challenging the acquittal of Accused Nos.2 to 4, by learned Additional Sessions Judge, Jalna in Sessions Case No.27 of 2021. Trial Court has convicted Accused No.1 but has acquitted Accused Nos.2 to 4.

2. Heard learned Advocate appearing for the Appellant and learned APP for the State. Perused the record.

3. Learned Advocate for the Appellant strenuously argued that there is evidence of instigation on the part of Accused Nos.2 to 4 to Accused No.1, which has led to the murder of deceased who was his wife; namely, Jyoti and daughter Rhutuja. He submits that Trial Court

has not made application of the evidence on record in proper perspective and has acquitted Accused Nos.2 to 4.

4. Learned APP on the other hand supported the impugned judgment and order of acquittal.

5. On perusal of evidence on record and the impugned judgment and order of acquittal, we find that there is hardly any evidence against Accused Nos.2 to 4 that they have instigated Accused No.1 to commit murder of his wife-Jyoti and daughter-Rhutuja. The only evidence available on record of instigation is that in a fit of anger, Accused No.1 said that Jyoti should be killed. It is well settled that mens rea is an essential ingredient of abatement, in *Sanju @ Sanjay Singh Sengar Vs. State of M.P., AIR 2002 SC 1998*, it is held that a words uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Relying on this judgment, Trial Court has rightly appreciated the evidence and recorded a finding that “in order to hold a person guilty of abetting, it must be established that he had intentionally done something with a view do a thing. As concluded above such required intention on the part of Accused Nos.2 to 4 cannot be accepted. Thus, I conclude that there was no abatement by Accused Nos.2 to 4 to Accused No.1. Hence, Accused Nos.2 to 4 should be acquitted”.

6. We agree with the observations made by Trial Court while acquitting Accused Nos.2 to 4. There is no illegality or perversity in the order of impugned judgment and order of acquitting, no case is made out by the Appellant to grant relief to file appeal against acquittal. The appeal is devoid of merits and is dismissed.

(MANJUSHA DESHPANDE, J.)

(NITIN B. SURYAWANSHI, J.)

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