

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2440 OF 2021

Sarla Ratnakar Dhumal
Age: 45 years, Occu.: Household,
R/o. E 108/4 Shivajinagar,
Garkheda Parisar,
Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
Through Pundliknagar Police Station
Dist. Aurangabad

2. Janardhan Dattoo Khirsagar
Age: 38 years, Occu.: Business,
R/o. Anandnagar, Galli No.3,
Garkheda Parisar, Aurangabad

... Respondents

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Mr. C. C. Deshpande h/f Mr. G. M. Sharma, Advocate for applicant.
Mr. B. V. Virdhe, APP for respondent No.1 – State.
Mr. S. C. Swami, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 7th September, 2022.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

1. Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2. The applicant has filed present application for quashing the FIR vide Crime No.427 of 2019 registered with Pundliknagar Police Station,

Dist. Aurangabad for the offence punishable under Section 305 of Indian Penal Code (for short “IPC”) as well as entire proceedings i.e. charge-sheet bearing No.131 of 2020 which is numbered as R.C.C. No.331 of 2021 and presented before the learned Judicial Magistrate First Class, Aurangabad.

3. Present respondent No.2 has filed the said FIR contending that he resides with his wife Bhimabai, daughter Shraddha and deceased Suraj. Suraj was aged 12, whereas Shraddha is aged 9. Suraj as well as Shraddha were taking education in Kalawati Chavan High School, Shivajinagar. The applicant/original accused has her shop adjacent to the house of the informant. Suraj had gone to the shop of applicant at about 10.45 a.m. on 17.10.2019. Thereafter, Suraj as well as Shraddha went to school around 11.00 a.m. The applicant was under the impression that when Suraj had come to the shop, he has stolen amount of Rs.50/- from the cash box of the shop and therefore, she went to the school around 11.15 a.m. Thereafter, the applicant shouted when she saw Suraj as well as Shraddha that Suraj should be caught as he has stolen Rs.50/-. Due to the fear of assault and defame, Suraj ran away from the school. He was chased by Shraddha as well as applicant, but they could not catch him. Applicant told the said incident to the informant on phone. Thereafter, informant went to her shop. At that

time, she gave details of the incident and then informant and his family members searched for Suraj, as he could not be traced. Thereafter, around 8.00 p.m. Pundlik Nagar Police Station gave telephone call to the informant stating that Suraj has committed suicide on the railway track and the informant should come to Ghati Hospital. Informant went to Ghati Hospital and saw the dead body of Suraj and then the informant says that the applicant has abetted the commission of suicide by Suraj. Now, the investigation has been complete and the charge-sheet has been filed.

4. Heard learned Advocate Mr. C. C. Deshpande holding for learned Advocate Mr. G. M. Sharma for the applicant, learned APP Mr. B. V. Virdhe for respondent No.1 – State and learned Advocate Mr. S. C. Swami for respondent No.2.

5. Learned Advocate appearing for the applicant submitted that even if we consider the contents of the FIR as well as the entire evidence that has been collected, it will not, in any way, fulfill the ingredients of offence under Section 305 of IPC. The statement of the daughter of the informant is important. It is recorded under Section 161 of the Code of Criminal Procedure (for short “Cr.P.C.”) as well as 164 of Cr.P.C. Both the statements would rather show that there was absolutely no dialogue

between the applicant and deceased Suraj. Then, how he could have presumed that applicant is making allegations of stealing her Rs.50/-, is a question. Rather, the sister says that when applicant had asked Suraj to bring certain amount from the cash box of her shop, he had brought it, but then thereafter, she had seen currency note of Rs.50/- in the hand of her brother. She asked him from where he has got the amount, at that time, he told her that it is a fake note. Even the statement of the mother of the deceased is on the same line. The CCTV footage at the school gate would show that the applicant had gone to the school, but she had not met deceased. The statement of Shraddha as well as her mother would disclose that Suraj had not even gone to the classroom on that day. He had left Shraddha to the gate of the school and he went. When Shraddha as well as applicant were searching Suraj, he could be spotted at the vegetable market and after he saw them, he started running. The sister says that he had ran towards railway track. All these facts do not prove that the applicant had, in any way, instigated or abetted the commission of the suicide by the minor. Since the ingredients of the offence are not made out, the FIR as well as entire proceeding deserves to be quashed and set aside.

6. The learned Advocate appearing for the applicant has relied on the decision in *Kanchan Sharma Vs. State of Uttar Pradesh and Another*,

[2021 SCC OnLine SC 737], wherein the Hon'ble Apex Court relying upon the earlier decisions had come to the conclusion that ingredients of offence punishable under Section 306 of IPC are not made out and then had dealt with the four steps to be undertaken for exercise of powers under Section 482 of the Code of Criminal Procedure as laid down in ***Rajiv Thapar Vs. Madan Lal Kapur, [(2013) 3 SCC 330]***.

7. Per contra, the learned APP as well as learned Advocate for respondent No.2 have strongly opposed the application. It is submitted that there is evidence against the applicant to the extent that she had asked the deceased to bring amount from her cash box in the shop and it appears that she got the impression that amount of Rs.50/- has been stolen by deceased. Raising of unnecessary allegations by a person may be taken otherwise by the person against whom such allegations is made. She had gone to the school of the deceased to ask as to what has been done with her amount of Rs.50/-. She could have waited till the arrival of the deceased to house. She had also chased the deceased along with Shraddha and, therefore, the minor boy would have taken it otherwise and due to fear, he has committed suicide. Definitely, the act on the part of the applicant amounts to abetment. When there is *prima facie* case, this cannot be taken as a fit case where the FIR as well as entire proceeding could be quashed and set aside.

8. Almost all the facts on record are narrated above and, therefore, they are not reproduced, but the fact that is required to be considered is as to what kind of evidence has been collected by the investigating agency since now the charge-sheet is also filed. The postmortem report shows that there were 22 external injuries on the dead body and corresponding internal injuries, which were mainly of nature of crushed injury and the opinion in respect of cause of death is “crush injury to head with multiple fractures.” Taking into consideration the postmortem report, two possibilities would arise, one is accidental death i.e. may be due to the dash of the railway since the dead body was found on the railway track and second is suicide. When the prosecution wants to prove that it is a suicide, then the prosecution should rule out the possibility of accidental death. The entire charge-sheet does not contain statement of any witness, who had seen Suraj jumping in front of the railway. Another fact to be noted is that there is also no evidence collected to show that which train had passed at that time. Statement of the driver of the railway has not been recorded and it appears from the charge-sheet that around 8.19 p.m. A.D. under Section 174 of the Code of Criminal Procedure was registered at Pundliknagar Police Station. It says that Police Head Constable – B. K. Mote of Pundliknagar Police Station was on mobile duty with other police officers and they were

informed by P.S.I. Sonawane that a boy in injured condition has been found on railway track. He was taken to Ghati Hospital, but was declared dead. Postmortem report does not say when the death would have occurred. Thus, it is to be noted that as per the statement of other witnesses, Suraj had ran away from the school around 11.00 to 11.15 a.m. and then his body was found around 8.00 p.m. Under such circumstance, the evidence that is collected is not ruling out the possibility of accidental death when nobody had seen the boy committing suicide. Merely because the dead body was found on the railway track, we cannot infer that he has committed suicide.

9. Even if for the sake of arguments we accept that the deceased had committed suicide, then also whether the evidence that has been collected would prove the ingredients of offence under Section 305 of IPC, has to be considered. It can be seen from the contents of the FIR that the informant has absolutely no idea as to what had happened and he depended on the information supplied to him by his daughter and others. Therefore, importance will have to be given to the statement of Shraddha under Section 161 Cr.PC. as well as 164 Cr.PC. She has stated that the school timings are from 12.30 p.m. to 5.30 p.m., however, there was exam on 17.10.2019 at about 11.00 a.m. and therefore, she had gone to school at 10.00 a.m. along with brother Suraj. Suraj was also

having exam on that day. Before they could reach school, the applicant had asked water in the house. Suraj had given water to the applicant and came to house. After he came to house, Shraddha noted currency note of Rs.50/- in his hand and then Shraddha asked from where he has fetched the amount. He told that it is a fake note. Then they went to school. Suraj left her at the gate of school and told that he wants to get his wrist watch repaired and then went. After Shraddha went to school, applicant went there and told Shraddha that Suraj has taken amount of Rs.50/- from the cash box of the shop and she told that he should be called. Shraddha went to the classroom of Suraj, but could not find him and therefore, she returned to applicant. Then applicant as well as Shraddha started searching and then found Suraj in vegetable market, applicant called loudly to Suraj, but he did not stop and started running and, thereafter, he could not be found. Applicant then gave a phone call and told somebody that if they found Suraj, then he should be caught. Applicant told that she has told it to one utensil vendor. Shraddha was then left by the applicant to school and she went in the classroom. She then says that thereafter everybody started searching for Suraj. Police told to her father that there is accident of Suraj on railway track. This statement of Shraddha is consistent under Section 161 of Cr.P.C. as well as 164 of Cr.P.C. It is clear enough to indicate that there was absolutely

no dialogue between the applicant and deceased Suraj, after the applicant felt that her amount has been stolen. No doubt, in her statement under Section 164 of Cr.P.C. Shraddha has told that when applicant and herself were searching Suraj in school and applicant shouted at Suraj, it was also told by applicant that since Suraj has stolen amount of Rs.50/-, he should be caught, but at that time Suraj was not in the school. When applicant and Suraj never met and there was no occasion for the applicant to express it to Suraj that he has stolen her amount, it will not amount to instigation/abetment in any manner, which can be said to be covered under Section 107 or 305 of IPC.

10. Taking into consideration this background, it is necessary to consider whether the provisions of Section 107 of IPC, which relate to abetment of an act or a thing are attracted. Even for invoking Section 305 or Section 306 of IPC, we will have to consider the provisions of Section 107 of the IPC, which runs as follows :-

“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 that 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.

Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

Thus, Section 107 of IPC, which defines abetment to mean that a person abets the doing of a thing, if he firstly, 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 that conspiracy, and in order to the doing of that that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

11. In the matter of ***Sanju @ Sanjay Singh Sengar Vs. State of M.P [2022 SCC (Cri.) 1141]***, when a quarrel had taken place between the appellant and deceased in which appellant was said to have told the deceased “to go and die” and the deceased found dead two days later, it has been held by the Hon’ble Apex Court, that the suicide was not proximate to the quarrel though the deceased was named in the suicide note. It was also observed that the suicide was not the direct result of the quarrel when the appellant used abusive language and told the deceased “to go and die”. Here, in this case, it appears that there was absolutely no dialogue between the applicant and deceased Suraj, after the applicant felt that her amount has been stolen. When applicant and Suraj never met and there was no occasion for the applicant to express it to Suraj that he has stolen her amount, it will not amount to instigation/ abetment in any manner.

12. In the matter of ***S.S. Cheena Vs. Vijay Kumar Mahajan and another, [2010 ALL MR (Cri.) 3298 (S.C.)]***, the Hon’ble Apex Court has held thus :-

“ The word “suicide” in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. “Sui” means “self” and “cide” means “killing”, thus implying an act of self-killing. In short, a person

committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself. 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 the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

13. It is held by the Hon’ble Apex Court, in the judgment in the case of ***M. Mohan Vs. State represented by Deputy Superintendent of Police, reported in (2011) 3 SCC 326***, that abetment involves mental process of instigating or intentionally aiding a person for doing a thing. It is held by the Hon’ble Apex Court in the said reported judgment, that there be a clear *mens rea* to commit an offence under Section 306 of the Penal Code which was involved in that case. In the instant case, we are concerned with Section 305 of the Penal Code as in the instant case, a boy aged 12 years had committed suicide. It is held in the case of ***M.***

Mohan (Supra) that abetment would require the commission of a direct or active act by the accused which would lead the deceased to commit suicide, seeing no other option and such act must be intended to put the victim into a position that he commits suicide.

14. If we consider the other evidence either in the form of statements of witnesses including the teachers, school authorities and the adjoining persons, yet it consistently shows that there was absolutely no dialogue between the applicant and deceased Suraj. Under such circumstance, it would be a futile exercise to ask the applicant to face the trial. The ratio laid down in ***Rajiv Thapar (Supra)*** as well as ***Kanchan Sharma (Supra)*** would be applicable here, so also the case falls within the parameters laid down in ***State of Haryana and others Vs. Ch. Bhajanlal and others, [AIR 1992 SC 604]*** and therefore, the application deserves to be allowed. Hence, the following order :-

ORDER

D) The application stands allowed in terms of prayer clause 'B', thereby quashing the First Information Report bearing Crime No.427 of 2019 dated 18.10.2019 registered with Pundliknagar Police Station, Dist. Aurangabad for the offence punishable under Section 305 of IPC as well as entire proceedings in R.C.C. No.331

of 2021 pending before the Court of learned Judicial Magistrate
First Class, Aurangabad.

II) Rule made absolute in above terms.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm