

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.391/2015

Ramrao Kisan Rathod, aged 45 years, Occ. Ex-Serviceman, R/o Yojna Colony No.2, Washim, Tq. Dist. WashimAPPELLANT

...V E R S U S...

State of Maharashtra through Police Station Officer, P. S. Washim City, Tq. Dist. Washim. ...RESPONDENT

Mr. S. D. Chande, Advocate for appellant.

Mr. V. A. Thakare, A.P.P. for respondent.

CORAM:- V. M. DESHPANDE, J.

DATED :- 04.01.2020.

ORAL JUDGMENT

1. Present appeal is directed against the judgment and order of conviction passed by learned Additional Sessions Judge, Washim dated 03.09.2015 in Sessions Trial No.130/2013. By the said judgment and order of conviction, appellant stands convicted for an offence punishable under Section 305 of the Indian Penal Code (IPC) and is directed to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for six months. 2. Heard Mr. Chande, learned counsel for appellant and Mr.Thakare, learned A.P.P. for respondent-State. With assistance of both the learned counsel, I have gone through the record and proceedings. Both the learned counsel submitted their cases vehemently and prayed for their respective reliefs. 3. Rameshwar Chavhan (PW9), while he was discharging his duties as Police Sub Inspector (PSI) at Police Station, Washim, sent one Police Constable Umesh Bibekar to Civil Hospital, Washim to protect a dead body. On 25.10.2012, Rameshwar Chavan carried inquest panchanama (Exh.36) in presence of pancha witness Subhash Chavan (PW3). During the course of preparing inquest panchanama, one chit was found in the left side pocket of the shirt of the deceased. The same was seized under seizure panchanama (Exh.-37). The chit (Exh.-28) is available on record. The chit was containing recitals that the deceased committed suicide being fed up by harassment and ill treatment at the hands of the appellant. PSI Chavan (PW9) also prepared spot panchanama (Exh.-59). While preparing spot panchanama, two notebooks were seized from the drawing room of the house of the deceased. Pooja (PW2), sister of the deceased, informed that those notebooks are of the deceased. 4. In the meanwhile, Sandip Pawar

(PW1), maternal uncle of the deceased, lodged a written complaint (Exh.26). On the basis of the written complaint, Varsha Mate (PW7), registered the crime against the appellant vide Crime No.220/2012 for the offence punishable under Section 306 of the IPC. 5. After registration of crime, investigation was taken up by Rameshwar Chavan (PW9). He conducted usual investigation and also sent the suicide note along with the note book to the handwriting expert. After completion of investigation, charge was framed for the offence punishable under Section 306 of the IPC. Appellant denied the charge and claimed for his trial. In order to prove its charge, prosecution examined in all ten witnesses and also relied on various documents especially suicide note (Exh.-28). During the course of trial, charge was altered and the appellant was charged for the offence punishable under Section 305 of the IPC, looking to the fact that the deceased was only 16 years of age at the time of commission of suicide. 6. Dr. Swati Giri (PW6), at the relevant time, was working as Government Medical Officer. On 25.10.2012, she conducted autopsy on the dead body of Pavan Rathod. No external injuries were found on the dead body. However, she noticed internal injuries i.e. fracture of posterior horns of thyroid cartilage. She also found marks situated above the level of thyroid cartilage between larynx and chin. The probable cause of death is the result of asphyxia due to hanging. She proved post mortem report (Exh.-47). In view of the medical evidence, it is clear that Pavan met unnatural death due to step which he took to hang himself. 7. The question that this Court is required to answer is whether appellant is responsible and/or has abetted commission of suicide of deceased Pavan, as claimed by the prosecution. 8. In order to prove its charge of abetment, prosecution has examined Sandip Pawar (PW1), Pooja Rathod (PW2), Renuka Pawar (PW8) and also relied on suicide note (Exh.-28). 5 apeal391.15.odt Sandip (PW1) is maternal uncle of deceased whereas Pooja (PW2) is real sister of deceased. Renuka (PW8) is maternal grandmother of deceased. All these three witnesses have turned hostile. However, to reach to the truth, their evidence is required to be seen. 9. Sandip (PW1) who has lodged his written report (Exh.- 26) on the basis of which printed FIR (Exh.-27) was prepared by PSI Varsha Mate (PW7). In addition to these three closely related witnesses of the deceased, the prosecution has also examined Hemant Dongare (PW4), friend of the deceased and his mother Asha Dongare (PW5). They have fully supported the prosecution case. As per the report, marriage of the appellant took place with Kavita in the year 1991 and from their wedlock, the couple was having two daughters and one son. Son was deceased Pavan whereas two daughters were Pooja (PW2) and Arti. According to the report, appellant was habituated to liquor and was a drunkard. According to the FIR, under the influence of liquor, he used to take up quarrels with his wife Kavita and also used to maltreat his three progeny. According to the report, the appellant's behaviour was narrated by the deceased. 6 apeal391.15.odt 10. Sandip (PW1) has turned hostile and did state before the Court as to why said narration is mentioned in the FIR. In my view, the said aspect is rightly considered by the learned trial Court by observing that the report (Exh.26) was a written report. Therefore, he cannot claim ignorance. Obviously, it appears that to save skin of the appellant, he has turned hostile. Even though the witnesses have turned hostile, the Courts are not barred from evaluating their respective evidence to reach to the conclusion as to whether the person charged has committed the offence or not. Appreciation of the evidence of hostile witness has to be done by Court with same standard when the Courts evaluate the evidence of the prosecution witnesses who support the prosecution case with a caveat that while appreciating the evidence of such hostile witnesses, the Courts must put itself to the strict guard and should not sway away with the evidence, as adduced by such witnesses who do not support the prosecution. 11. Evidence of Vinodkumar (PW10),

was Assistant State Examiner of Documents of CID, clearly shows that the handwriting in suicide note (Exh.-28) is identical to the handwriting in the 7 apeal391.15.odt notebook which were of deceased Pavan. From opinion (Exh.88) of Vinodkumar (PW10) and cross-examination of this handwriting expert, it is crystal clear that his evidence is not at all challenged during the course of trial by the defence. 12. Evidence of Hemant (PW4) would show that deceased was his friend. His evidence would show that appellant and his wife used to quarrel inter se. The appellant used to be under the influence of liquor. As per his evidence, on the date of incident i.e. on 24.10.2012, it was the day of Dashera. He and deceased went for fetching Mango leaves and Marigold flowers. Thereafter, the deceased went to attend his tuition. His evidence would further show that at 02.00 p.m., he received a phone call from the deceased requesting him to go to movie hall to view the movie called "Student of the Year" and thereafter they, on the motorcycle of the deceased, went to the cinema hall. His evidence would show that thereafter the deceased purchased new jerkin and at 6.30 p.m. they returned to home and they were chit-chatting in front of his house for about 15 minutes. Later on, both of them went to their respective places. As per the evidence of Hemant 8 apeal391.15.odt (PW4), after 15 minutes, he got the information that the deceased has committed suicide. 13. Asha (PW5) mother of Hemant also deposed from the witness box that appellant was a drunkard though she claims in her evidence that there used to be frequent quarrels between appellant and deceased. On the said aspect, evidence of Hemant is conspicuously silent. Had there used to be quarrels between the appellant and the deceased, it would not have missed from the notice of Hemant, being a close friend of the deceased. From the evidence of Asha, it is clear that her son Hemant was elder than deceased as at the relevant time, Hemant was studying in 12th standard whereas the deceased was studying in 9th standard. What is important to note from the evidence of Asha is that she was knowing that the deceased used to always remain depressed apart from the fact that she has never seen personally the appellant beating Pawan. 14. It is noteworthy to mention here that the evidence of Hemant (PW4) shows the following recitals: "After entering the Court, I have gone through my statement." 9 apeal391.15.odt From the aforesaid evidence it is clear that Hemant had read the previous statements which is impermissible in view of the law laid down by this Court in Suresh s/o Purushottam Ashtankar .vs. The State of Maharashtra and anr.; reported in 2015 ALL MR (Cri) 4243. 15. In the backdrop of the evidence of Ashabai (PW5), now let us scrutinize evidence of Pooja (PW2) as the witness was thoroughly cross-examined by the learned A.P.P. for the State who was incharge of the brief. From the evidence, it is clear that on 24.10.2012 i.e. on the date of incident itself, deceased withdrew Rs.12,000/- from the account of appellant from Automated Teller Machine (ATM) for household expenses and out of that Rs.11,000/- was given by him to Pooja (PW2) for household expenses and Rs.1,000/- was kept by deceased himself. This evidence of Pooja, in my view, has a ring of truth inasmuch as the evidence of Hemant (PW4) on the day of incident in the noon hours, the deceased made a phone call to Hemant and asked him to accompany for watching a movie in the cinema hall and thereafter he purchased a new jerkin. That shows that deceased was having sufficient money with him apart from the fact that this 10 apeal391.15.odt duo went to cinema hall and purchased clothes on the motorcycle of deceased that shows that deceased was having his motorcycle and therefore, in my view, it does not lie in the mouth of the prosecution that the deceased was subjected to denial of the basic amenities in his day to day life. Even evidence of Renuka (PW8), maternal grandmother is very clear. In the cross-examination by the learned A.P.P., it is brought on record that his daughter i.e. mother of the deceased and wife of the appellant was a psychic patient. Therefore, deceased used to be under great

mental stress. It is an admitted position on record that Kavita, wife of the appellant, was mentally disturbed since long and has nothing to do with drinking habit of the appellant. If that be so, if his mother is having mental disturbances, her child Pavan, would also be under mental stress and, in my view, this is the most natural phenomenon. 16. The law on abetment to commit suicide is well crystallized by numerous decisions of the Hon'ble Apex Court as well as this Court. Section 107 of the IPC defines abetment of a thing, which reads thus: 11 apeal391.15.odt "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 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." 17. The only difference between Sections 305 and 306 of the Indian Penal Code is that Section 305 is a punishing section for abetting an insane or a child whereas Section 306 of the IPC is a punishing section for the accused who abetted any other person to commit suicide. However, in my view, the parameters for deciding the fact under Section 305 and Section 306 of the IPC are identical. 18. In *Father Peter Paul Antony Vs. State of Maharashtra*, reported in 2014 ALL MR (Cri) 3429, in paragraph nos. 20 and 21, this Court observed thus: "20. In the light of above facts and settled legal position, it is noted that even if a person would commit suicide because of certain acts of the accused, 12 apeal391.15.odt the accused cannot be said to have committed abetment of suicide by the deceased unless the accused would intend, while causing such acts to the victim, that he/she should commit suicide. As such, it is necessary for the prosecution to establish that by his acts, the applicant/accused could reasonably foresee that because of his conduct, the victim was almost certain or at least, quite likely to commit suicide. Unless this is established, a person cannot be charged of having abetted commission of suicide, even if, suicide has been committed as a result of some of the acts committed by the accused. In the case of Sanju (supra), it is seen that even in the case where the accused had uttered words such as "go and die" in abusive and humiliating language which, allegedly, led to committing of suicide, it was held that it would not amount to instigation and consequently, there would be no offence of abetment of suicide. 21. In the application on hand, there is absolutely no evidence to establish that on the day of incident or immediately prior to the deceased committing suicide, applicant has instigated or abetted deceased to commit the same. In that view of the matter, applicant cannot be attributed the requisite mens rea so as to hold him guilty as abettor. This appears to be fundamental defect in the case of prosecution and it does not spell out any offence punishable under Section 305 of Indian Penal Code. 19. Thus, I am of the view that the deceased was not denied any basic amenities to his life by the appellant. Further, 13 apeal391.15.odt though it is the case of the prosecution that the deceased used to prosecute his studies, there is nothing brought on record to show that at any point of time, the deceased was declared unsuccessful in any of his academic year. In the light of evidence of Hemant (PW4) and Pooja (PW2), it is clear that there was no objection for the deceased even to withdraw huge amounts from the account of appellant by using ATM though the deceased, who was only in the 9th standard. Not only that, this evidence would show that the deceased was also permitted to retain an amount of Rs.1,000/- and looking to his age, in my view, it is a very huge amount. The admitted position also speaks that the mother of the deceased was a psychic patient having nothing to do with drinking of the appellant. Therefore, he used to be always under depressed condition. Different persons may react differently to the same situation. Therefore, merely because the deceased by writing a note mentioning about the

drinking habit of his father and committed suicide, in my view, it cannot be treated as an abetment, especially when the prosecution evidence falls short to show that there used to be ill treatment at the hands of the appellant under the influence of liquor to the deceased so as to drive the deceased to take the extreme step of his life. 14 apeal391.15.odt In my view, the learned Judge of the Court below has swayed away with the fact that the deceased boy was required to commit suicide for an admitted position that the appellant was a drunkard. Merely drinking can never be an abetment for a person to commit suicide. 20. On reappraisal of the entire prosecution case, I am of the opinion that the appellant is required to be acquitted of the charge for which he has faced the trial. Consequently, I pass the following order.

ORDER

(i) The appeal is allowed.

(ii) Judgment and order dated 30.09.2015 passed by Additional Sessions Judge, Washim in Sessions Trial No.130/2013, is quashed and set aside.

(iii) Appellant-Ramrao Kisan Rathod is acquitted of the offence punishable under Section 305 of the Indian Penal Code.

(iv) The appellant is on bail. His bail bonds stand cancelled.

JUDGE