
(2011) 08 BOM CK 0047

In the Bombay High Court

Case No : Criminal Revision Application No. 265 of 2011 with Cri. Application No. 621 of 2021

Seema Ajay Bhoosreddy (Dr.)

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (2011) 08 BOM CK 0047

Hon'ble Judges : Gavai B.R., J

Bench : Single Bench

Advocate : A.P. Mundargi with H. Mundargi in Apl. No. 265 of 2011, H.E. Palwe in Apl. No. 621 of 2011 and Y.M. Nakhwa, app, for State, for the Appellant;

Judgement

Gavai B.R., J.—Leave to amend prayer clause of Criminal Application No. 621/2011. Amendment to be carried out forthwith. Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

2. By way of present revision application and criminal application, the applicants have approached this Court being aggrieved by the common order passed by learned Assistant Sessions Judge, Nasik dated 12th May 2011. Both applicants are accused in Sessions Case No. 46/2007. The applicant in Revision No. 265/2011 is accused No. 2 whereas applicant in Criminal Application No. is accused No. 1 They are facing trial for the offence punishable u/s 306 read with section 34 of the Indian Penal Code (I.P.C.). The applicants had filed application for discharge before the Sessions Judge. However, the learned Sessions Judge vide order dated 12th May 2011 has rejected the said application.

3. The applicant Dr. Mrs. Seema Ajay Bhoosreddy is working as professor in MGV Dental College and Hospital, Nashik. She is teaching the subject of oral surgery. The other applicant Dr. Nitin Hemchandra Dani is a Professor and Head of Department of Peridontology in the same Dental College. The deceased Sneha Dandale was a student studying in last year of BDS course. The deceased

committed suicide on 10th December 2005 and on the basis of the complaint of Shri Anil Ratnakar Dandade, the father of the deceased alleging therein that the present applicants and other doctors had targeted the deceased and asked her to complete the difficult course within a short time and had threatened her, she committed suicide, an F.I.R. came to be registered. After filing of the charge-sheet, the case was committed to the Sessions Court. Since, according to the applicants, from the material placed in the charge-sheet, the ingredients to constitute offence punishable u/s 306 were not made out, they filed application for discharge. The same was rejected. Hence the present applications.

4. Shri Mundargi, learned Senior Counsel appearing for the applicant in Criminal Revision Application No. submits that taking allegations in the various statements recorded by the prosecution on its face value, it cannot be said that the prosecution is in a position to point out any act which would amount to instigation, aid or abetment by the applicant to the deceased Sneha to commit suicide. He submits that the material placed on record by the prosecution is not of such a nature which even at, prima facie stage, would establish a mens rea, which is one of ingredients to constitute offence u/s 306 of I.P.C. Learned Counsel relies on the judgment of the Apex Court in the case of Madan Mohan Singh Vs. State of Gujarat and Another, and in the case of (S.S. Chheena Vs. Vijay Kumar Mahajan)², 2010 A.1.1. M.P. (Cri.) 3298 S.C.

5. Shri Palwe, learned Counsel appearing for the applicant in Criminal Application No. 621 / 2011 has adopted the submissions made by Shri Mundargi.

6. Shri Nakhwa, learned A.P.P. appearing for the State vehemently opposed both applications. He submits that the prosecution has collected sufficient material to establish the complicity of the present applicants in the offence punishable u/s 306 and, therefore, submitted that no inference is warranted with the impugned order.

7. In support of the prosecution case, the prosecution has recorded various statements including those of the students and other teachers.

8. One Kumari Vedavati Suhas Gadre was the roommate of the deceased Sneha. In her statement she has stated that on 9th December 2005, at around 9.00 a.m., applicant Dr. Bhoosreddy and her assistant Kedar Apate were taking oral examinations. She has stated that Dr. Bhoosreddy was taking oral examination of Sneha and Madhvi Gandhile, After about 5 to 10 minutes Sneha came out after giving examination. At that time it was noticed that she was nervous. She has further stated that Sneha started writing by sitting in her place. She has further stated that after sometime she was called for interview and, therefore, she went to Bhoosreddy madam. She has further stated that Bhoosreddy madam took Sneha's paper and examined it and, thereafter, in an annoyed voice said "what is written" and handed over the said paper to Gauri Madam and Mule Sir. She has further stated that at about 12.30 to 12.35 p.m. she went to her room where she noticed that Sneha was writing the course while crying. She states that though

she insisted her to come for lunch, Sneha refused to come. On being asked as to whether she should get anything to eat, Sheha refused. She has further stated that at around 1.30 to 1.45 p.m. She along with Sneha, Rahul, Jigna went to Dr. Dani for submitting assignment. However, since they did not give it prior to 12.30, he asked them to get it next day prior to 8.30 a.m. She has stated that thereafter both of them came to hostel and were studying in the room till around 6.00 p.m. She then insisted Sneha to come for tea, however, she refused. She further states that, therefore, she on her own brought tea for Sneha and compelled her to take tea. She stated that at that time Sneha appeared to be under great tension. She has further stated that noticing this, she informed this to one Abhishek Barmeda, who had brotherly relations with Sneha, on his mobile. She has further stated that Abhishek asked her to get Sneha when she would get down to get the tiffin from the mess. She has further stated that thereafter Abhishek telephoned Sneha on her mobile. From the talk she could gather that though Abhishek was insisting Sneha to meet him, she was reluctant, however, at the instance of Abhishek she went outside. She has stated that thereafter she went out to get tiffin from the mess. When she returned back, Sheha was yet to come back. Sneha returned back at about 8.35 p.m. and appeared to be normal. Thereafter, Sneha also had her dinner. She has stated that after that Sneha told her and one more friend Megha Satpute that Bhoosreddy madam asked her to write 12 questions on 5-5 times. That she took her examination under anger and asked the questions in a very loud voice. She has stated that Sneha then told that she will not come to the department tomorrow. Vedavati has further stated that after Sneha went to slip, she noticed that Sneha had written a note on the full scape paper; wherein it was written "Pappa, I am sorry. I have failed" etc. She has further stated that since Sneha was in the habit of writing poem, articles, etc. she did not give much importance to it, however, by way of abundant precaution she informed the same to Abhishek and Abhishek informed her not to disturb Sneha and be with her. She then took custody of the said chit as per the instruction of Abhishek. She has further stated that at about 2.30 p.m. Sneha got up but she told her to sleep and that she would wake her up at 5.00 o'clock.

Vedavati has further stated that Sneha got up at around 5.00 a.m. At around 6.00 to 6.15 she took her bath and returned to the room and woke her up for taking bath. When she asked Sneha to accompany her for submitting assignment, she said that her assignment was not complete and let whatever happen and will see on Monday. She has stated that since Sneha refused to come, she alone went to submit assignment to Dr. Dam She has further stated that at around quarter to nine a.m. Jigna came to her and told her that Sneha is not opening the room. She informed this to Rector madam Salunkhe. All of them went to the room of Sneha. Since the door was not being opened, people from the Maintenance Department were called. She has stated that since she was afraid, Khedkar madam took her to the Microbiology Department. Thereafter she came to know that Sneha had committed suicide by hanging.

9. The statement of one Kumari Ulka Lokesh Phule was also recorded. She is said to be accompanying the deceased Sneha on 9th December 2005 when the oral interview was taken by Dr. Bhoosreddy. She has stated that at that time she heard Madam (i.e. the applicant Dr. Bhoosreddy) shouting at Sneha that if she was not knowing the answer then she should not have written anything which was incorrect. She has further stated that Dr. Bhoosreddy then handed over the said paper to Dr. Gauri. Sneha, at that time, was crying. In so far as applicant Dr. Dani is concerned, she has stated that she went to Dr. Dani at about 12.30 along with other student, however, since the assignments were not submitted prior to 12.30 Dr. Dani gave them punishment to repeat the same assignment once again.

10. Another relevant statement would be that of Abhishek Dwarakadas Barmeda who is said to have brotherly relations with deceased Sneha. He has stated about Vedavati telephoning him regarding Sneha's nervousness and thereafter he telephoning Sneha to meet him outside the hostel. He has stated that when he met Sneha, she informed him that in the Oral Surgery Department, at the time of oral examination, Dr. Bhoosreddy madam was very much annoyed. That she insulted her in front of everybody. That she asked her to write the answers of the test papers five times and chapter on fracture, ten times and, therefore, she was under tension. So far as other applicant-Dr. Dani is concerned, he has stated that Sneha had informed him that when she went to Dr. Dani at about 1.30 p.m. to submit assignment she was told by Dr. Dani that she was called prior to 12.30 and, therefore, gave her a punishment to repeat the assignment. He has stated that during all this period Sneha was crying. He then consoled her and calmed her. He also told her to write whatever is possible and, if anything remain, let it be and that she should not worry. He has further stated that Sneha told him that she would not go to the Oral Surgery Department. That if she goes there Dr. Bhoosreddy madam will again insult her. He has stated that Sneha had told him that she wanted to go home and then he assured her to accompany her upto railway station and, thereafter, she became normal. He has further stated that at about 8.35 p.m. Sneha went to her room and he went to his hostel. He has further stated about his receiving a call at about 1.30 p.m. from Vedavati regarding a note written by the deceased. He has stated that on the date of incident he received a sms on his mobile at around 7.45 a.m. from Sneha "brother pardon me". That it was stated in the said message, "I could not write as told by you. I am still writing. Take care. We will meet". He has stated that he then sent a message to Sneha that timetable is not more important and that she should take her care and she should not frighten.

11. The prosecution has also recorded statement of Dr. Gauri Panse, who was working in the unit of Dr. Bhoosreddy. She has stated that on 9th December 2005, Dr. Bhoosreddy was taking oral examination of the students. She has further stated that Dr. Bhoosreddy called her and showed the paper of Sneha on the subject of Oral Surgery and said her to read Sneha's paper and tell her as to what she should do. She has further stated that at that time Dr. Kishor Mule told Sneha that if she had any difficulty she can go to Panse Madam and take her

guidance. She has further stated that Sneha was crying and, therefore, she came to know that Sneha had not given correct answer at the time of oral examination and, therefore, Dr. Bhoosreddy madam got annoyed and asked her to write the answers of the test papers for five times.

12. Dr. Kishor K. Mule, who was working as Lecturer in the Department of Oral Surgery of the said medical college, has stated that on 9th December 2005 since oral examinations were being conducted he was present along with other staff members. Dr. Bhoosreddy came sometime after oral examination was started. He has stated that while Dr. Bhoosreddy madam was taking oral examination of Sneha, she called him and told him to see paper of Sneha on the subject S.A.Q. of first session and told that Sneha does not know anything and asked him to give "C" grade to her and gave that paper to him. He has stated that he noticed that on various places the answers were marked as wrong. He has further stated that he asked Sneha about that. She said that answer of the question on Indications on Isake tummy was on 4 to 5 issues. Out of that regarding issue of ceramic crown, Sneha told that it was correct and, therefore, she was asked to get the book. The book, which was brought by her was written by Shri Malik. He found that the answer given by Sneha to the said issue was correct as per the said book. Then he gave that paper to Gauri and recorded "C" grade on the records of oral surgery. He has further stated that when he was taking examination of other students, Dr. Gauri came to him and told him that Madam has asked her to give guidance to Sneha. However, Sneha did not come to her and told her difficulties. He has stated that, therefore, he called Sneha and told her that it was her last year, that there were six months left for final examination and, therefore, she should take his guidance and will get complete assistance in her studies. That Dr. Gauri Panse would also guide her. He has stated that at that time Sneha appeared to be frightened.

13. It is also relevant to refer to the suicide note of the deceased. The relevant part thereof reads thus:

I am SORRY Pappa, I failed! I think I do not deserve whatever love & affection I got from everybody neither am I capable to take anymore.

I am guilty. I do not blame anybody for my WORST PERFORMANCE.

SORRY MAMI

I know you are taking all these steps for our benefit & betterment but I am not in a position to face the world anymore. I am ashamed of myself.

I am going from this world & would like to request everybody specially all my FRIENDS to please do not lose hart because of me & I want that everybody of you work hard excel and show the authority that "WE" are not useless & that we are not cows & bulls as that they keep on torchering us.

I am SORRY GAURI because of me you had to face them & was just I am also sorry for the embarrassment you had to undergo. Now you are set free. SORRY

again.

I love you ALL MY FRIENDS & please forgive me for my this ACT.

I am sorry Veda, Luv you take care! Sorry Abhishek, you are the BEST BHAII of the universe. Take care

Rani,

You please take care of 11 yourself. I love you the most in this whole world. I know the world is very cruel but I also know that you are my strong sister. My last wish is that you succeed in all walks of life & show everyone that you are my best sister.

Promise me that you will not break up & do your best. My love & blessings will always be with you. I will always be with you FOREVER.

LOTS OK LOVE DIDI

Love you Nikhil, Take Care.

I request please do not harass anybody for my death. I myself is responsible.

I am taking this step "coz I do not want to live anymore.

I DO NOT BLAME OR HOLD RESPONSIBLE ANYBODY FOR MY CONSEQUENCE. I HAVE LOST AND TOTALLY GIVEN UP.

Oh GOD please take me with you! Everybody will think that I am made and that I do not have any guts. But that's not true. I am doing this "coz I tried my level best, I want to do better but destiny always plays a bad game with me.

I wanted to live but I think I do not deserve to live.

14. It can, thus, be seen that the allegations as against applicant-Dr. Bhoosreddy as could be gathered from the statements of the students as well as the teachers, are to the following effect. At the time of conducting oral examination of Sneha, she got annoyed because of the wrong answers given by Sneha and she scolded her in front of everybody. It can further be seen that further allegation is that she had asked Sneha to write the answers of the test paper five times and the chapter of fracture ten times. In so far as Dr. Dani is concerned, the only allegation is made that since the assignment was not submitted prior to 12.30 p.m., by way of punishment, he had asked her to repeat the same assignment.

15. In the case of Madan Mohan Singh (cited supra), the petitioner was working as a DET in Bharat Sanchar Nigam Ltd. The deceased i.e. Deepakbhai Krishnalal Joshi has committed suicide. On the basis of complaint filed by his wife, an FIR came to be registered. The petitioner had applied for discharge. The trial Court rejected it. The Gujarat High Court upheld the order of the trial Judge. Being aggrieved thereby the petitioner has approached the Apex Court. The

prosecution heavily relied on the suicide note of the deceased wherein it was stated that the petitioner was responsible for his death. The Apex Court negating the contention on behalf of prosecution observed thus:

10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less u/s 306 IPC. We could not find anything in the FIR or in the so called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused even intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.

12. In order to bring out an offence u/s 306 IPC specific abetment as contemplated by section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence u/s 306 IPC. We are of the clear opinion that there is no question of there being any material for offence u/s 306 IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution u/s 306 IPC, much more material is required. The courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in (Netaji Dutt Vs. State of W.B) 3. 2005 AIR S.C. 1775, this Court had quashed the proceedings initiated against the accused.

14. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.(emphasis supplied)

16. In case of S. S. Cheerio, there was a dispute between one Saurav Mahajan, who was a final year student of Law Department and Harminder Singh, a fellow student of the same class with regard to the theft of a mobile phone. This came to the notice of M.D. Singh, the then Head of the Law Department who asked both the students to submit their versions of the incident in writing. The deceased and Harminder gave their versions and, thereafter, M.D. Singh forwarded their versions to the University authorities for taking necessary action. An inquiry was conducted on 13th October 2003 by the Security Officer of the University Shri S.S. Chheena. During the course of inquiry, on 17th October 2003, Saurav Mahajan committed suicide by jumping in front of the train. A suicide note was seized from the pocket of the deceased. On the complaint of father of the deceased, an offence u/s 306 of I.P.C. was registered against Harminder Singh. During the course of trial, S.S. Cheena was also impleaded as accused. Being aggrieved by the framing of charge, S.S. Cheena approached the High Court. The High Court refused to interfere. Being aggrieved thereby, said S.S. Cheena approached the Supreme Court. The Apex Court observed thus:

27. This Court in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other, Each person has his own idea of selfesteem and self respect .Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. 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 u/s 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.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day today life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge u/s 306 IPC against the appellant is palpably erroneous and unsustainable, It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge u/s 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside." (emphasis supplied)

17. It can, thus, be clearly seen that for proceeding further with the trial against the accused for an offence punishable u/s 306, it is necessary for the prosecution to at least, prima facie; establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable u/s 306. As held by the Apex Court, an abatement involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. Unless there is clear mens rea to commit the offence or an active act or direct act which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused u/s 306 cannot be permitted.

18. From the perusal of the suicide note itself it would be seen that the deceased had herself stated that the applicants were taking all the steps for their (students) benefit and betterment, but she was not in a position to face the world any more and she was ashamed of herself. From the statement what can be gathered is that applicant-Dr. Bhoosreddy was annoyed because deceased Sneha had not given correct answers and that she had insulted her and had asked her to write the answers five times and a chapter on fracture for ten times as punishment. However, from the statement of Dr. Gauri Panse and Dr. Mule, it can be seen that they had stated that the petitioner Dr. Bhoosreddy had asked Dr. Gauri Panse to help the deceased and another two students in their studies, however, deceased never came to them. It can, thus, clearly be seen that leave apart there being any act which can be said to have been done with an intention that the deceased should commit suicide, on the contrary, the material shows that intention on the part of Dr. Bhoosreddy was to help the students including deceased Sneha to overcome their difficulties and excel in their studies. In so far as Dr. Dani is concerned, there is absolutely no material which can be said to be of such a nature that it will even amount to insulting the deceased. He had punished all the students who had gone to him along with deceased to submit their assignment at 1.30 p.m. for not submitting the same within time and had given equal punishment to all the students. Insofar as Dr. Bhoosreddy, absolutely nothing is there to connect him with offence punishable u/s 306

19. As could be seen from the suicide note itself, it can be seen that the deceased was hypersensitive to ordinary petulance, discord and difference which happen in our day-today life. She appears to have lost her confidence. From the part of the note addressed to her mother it appears that she felt that she had only spent the moneys provided by her father and failed in her duties towards her parents. She has specifically stated that nobody is responsible for her death and that she is only responsible and that she is taking this step because she did not want to live any more. In the suicide note she has stated that she was doing this though she had tried her level best. She wanted to do best but destiny always was bad with her. From the suicide note, it would be clear that she had lost her confidence and was apprehensive that she would not be in a position to complete her course successfully. She appears to be a hypersensitive person unable to face the ground realities of life. As already discussed, there is no material which can even be said to be prima facie sufficient to establish that the applicants had done any act which can be said to be with an intention to aid or instigate or abet the deceased to commit suicide. In that view of the matter, to compel the applicants to face the criminal trial would be nothing else but a travesty of justice. In the result, rule in Criminal Revision Application No. 265/20011 is made absolute in terms of prayer Clauses (c) and (d) whereas rule in Criminal Application No. 621/2011 is made absolute in terms of prayer clause (a).