
(2011) 01 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 243 of 1999

Siddarth Kamble	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

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

Citation : (2011) 2 Crimes 150

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Jagtap, holding for V.D. Patnoorkar, for the Appellant; V.G. Shelke, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This appeal is filed challenging the judgment and order of the Joint District and Additional Sessions Judge, Nanded in Sessions Case No. 191/1994 dated 21st May, 1999.

2. The prosecution story in brief is as under : The deceased Panchasheela was residing along with her parents in village Ashta, in Kinwat taluka of Nanded district. Nivratti (P.W.2) complainant is the brother of deceased Panchasheela. It is the case of the prosecution that, when Panchasheela was taking education at Kinwat four accused use to pay visit to her room and tease her. They use to write letters to her, however, said letters were destroyed by the deceased fifteen days prior to date of incident. It is further case of the prosecution that, Panchasheela received one letter, alleged to have been written by one of the accused in which Panchasheela was given threats that, if at all she marries to any other person, than the writer of the said letter, her married life would be rendered miserable and difficult, because she has committed treachery by refusing to marry the writer. The said letter had been retained by accused No. 4/Manoj till Panchasheela's death and subsequently delivered to Nivratti brother of the Panchasheela. It is further case of the prosecution that, contents of the said

letter caused adverse impact and, therefore, she committed suicide by jumping into the well in the field of her father at Ashta on 02nd December, 1992, at about 12.00 mid night.

3. PSI Gaikwad/P.W. 4 investigated into A.D. No.10/1992. He visited the spot of incident. The spot panchanama was drawn and other necessary steps were taken. P.W. 4 carried further investigation as per procedure.

4. During the course of investigation of said A.D. No. 10/1992, one inland letter was produced to PSI Gaikwad/P.W.4 on 27.02.1993. That letter was received by deceased Panchasheela about 15 days prior to the incident. According to the prosecution said inland letter contained the threats. Said letter was seized as per panchanama Exh. 73. The Investigating Officer sent that letter to the hand writing expert with the specimen hand writing of the four accused for comparison and examination by the hand writing expert. It is the case of the prosecution that, the Panchasheela committed suicide since said letter caused severe impact on her mind and led her to commit suicide.

5. After completing investigation the I. O. filed the charge sheet U/Sec. 306 r/w Sec. 34 of the Indian Penal Code. The charge was framed against the four accused. They were given opportunity to put forth their case.

6. During the course of trial it was noticed that though the specimen hand writing of the accused was collected by PSI Gaikwad and was sent to the hand writing expert. There was no report and opinion of the hand writing expert. Therefore, the I. O. was summoned to the Court. Thereafter, the prosecution did produce on record report of hand writing expert Shri. Biradar/P.W. 5. The P.W. 5 opined that disputed hand writing in the said inland letter is of Sidharth i. e. appellant herein.

7. The Trial Court framed points for its determination and after full fledged trial convicted the appellant herein for the offence punishable U/Sec. 306 of Indian Penal Code and sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs. 2,000/in default to suffer further R. I. for six months. However, other three accused persons came to be acquitted from all the charges. The appellant herein was in the custody from 02nd March, 1993 to 19th March, 1993 and said period is given set off to the appellant/accused.

8. In this case the material evidence collected by the prosecution is opinion of the hand writing expert at Exhibit 121.

9. The learned counsel appearing for the appellant submitted that, the evidence of the prosecution witness suffers from omission, material contradictions and exaggerations and, therefore, same is not trustworthy. The counsel invited my attention to the contents of A. D. report and also complainant and also to the evidence of the prosecution witnesses and submitted that, when A.D. was registered P.W. 2/brother of the deceased has not stated anything against any of the accused. On the contrary his case was that, Panchasheela now deceased was

of hot tempered and she committed suicide. He has no any suspicion about anybody. The counsel further submitted that, the alleged recovery of the letter from the accused No. 4/Manoj after the death of Panchasheela and relying on said evidence conviction of the appellant cannot be sustained. It is further submitted that, P.W. 2 submitted inland letter which is recovered from accused/Manoj after two and half months after the date of incident. It is further submitted that in his complaint P.W. 2 has never stated that the appellant herein was teasing and visiting to the room of the Panchasheela, when she was prosecuting her studies at Kinwat and at the relevant time staying in the hostel. The sum and substance of the argument of the counsel for the appellant is that, merely relying on the letter which was recovered from the Manoj/accused No. 4, conviction in case of appellant should not have been there. It is not the case of the prosecution that, the said letter is recovered from the house of the deceased or from her parents. The counsel for the appellant further submitted that, entire prosecution story is vague. The evidence of the prosecution witnesses suffers from material discrepancies and prosecution has not dealt with the case with fair approach. Therefore, the counsel for the appellant would submit that, this appeal may be allowed.

10. On the other hand, learned Additional Public Prosecutor appearing for the state submitted that, the Sessions Court has given cogent reasons while convicting the appellant. Therefore, this Court may not interfere with the impugned judgment and order and appeal deserves to be dismissed.

11. I have given due consideration to the rival submissions. I have carefully perused the impugned judgment, entire material placed on record by the appellant and also original record and proceedings received from the Trial Court. The entire prosecution story revolves around the letter at Exh. 130. It is also the prosecution case that said letter is recovered from Manoj/accused No. 4 after the date of incident. The careful perusal of the impugned judgment, letter Exhibit 130, it clearly emerges that, the conviction of the appellant is mainly based upon Exhibit 130. The Trial Court in para 13 has commented upon the Exhibit 130, and the contents of the letter and recorded the conclusion that writer of the said letter did not like Panchasheela's marriage being performed with any other person than him because he was having love with Panchasheela. Instead of this Panchasheela was going to be married with some other person. The letter further contains that, Panchasheela had promised in written to marry him, but the writer got annoyed because she did not keep that word. The inland letter does contain the threats by the writer to Panchasheela that, he would never allow her to lead happy married life, but would always create the trouble and put thorns in her way. If the letter at Exhibit 130 is read as a whole it does appear that the writer had the firm determination to give trouble to Panchasheela in case she marries with a person other than the writer.

(Emphasis supplied)

Therefore, it appears from the perusal of the impugned judgment that, the Trial

Court after perusal of the said letter reached to the conclusion that, it is the firm determination of the writer to give trouble to Panchasheela in case she marries with a person other than the writer. It is not in dispute that, said letter was written by the writer of the said letter on 14.07.1992 and as per the prosecution case the Panchasheela, now deceased committed suicide in the night intervening between 02nd and 03rd December, 1992. It is also not in dispute that at the relevant time, when Panchasheela committed suicide, she was staying in her parents house. She was not at Kinwat and it has come in the evidence of P.W. 2/ complainant that six months prior to the date of incident she is at her parents home at village Ashta, Tq. Kinwat. The prosecution case is that, Panchasheela was studying at Kinwat and stayed in some hostel along with one other girl in her room. It is further case of the prosecution that, the appellant herein was studying in 11th class and the Panchasheela was studying in 12th class. The appellant and other three accused namely Rajesh, Vinod and Manoj use to trouble and tease Panchsheela. They use to go to the hostel to tease her. However, at the cost of repetition, it has to be mentioned that, from six months prior to the date of incident Panchasheela was continuously staying with the parents at village Ashta and not at Kinwat.

12. The impugned judgment observes that, the specimen writing of each of the accused was sent to the hand writing expert and hand writing expert P.W. 5 opined that, the writing in the letter at Exhibit 130 is by the appellant/Sidharth. On perusal of entire evidence, it appears that, this is the main basis to convict the appellant/accused. However, if the evidence of the prosecution witnesses is perused in its entirety and more particularly the evidence of P.W. 2/Nivratti the brother of the deceased Panchasheela, he has on more than one occasion has stated in his examination in chief and also in the cross examination that, other accused i. e. accused No. 2 Rajesh and accused No. 3/Manoj used to write letters to the Panchasheela and there was some knowledge to the mother of the Panchasheela and complainant about writing such letters. However, so far as writing letters by the appellant/accused prior to the date of incident is not stated by P.W. 2 in his entire evidence. He has stated that he has heard from some other person from his village that, the appellant has eloped love with Panchasheela, but he did not enquire this fact from Panchasheela.

Upon perusal of the entire evidence of P.W. 2, who is the star witness for the prosecution, it appears that, he has given greater roll to the Rajesh/accused No. 2 and he has stated that he use to write letter and also use to give threats to the Panchasheela deceased and also once he came to the agricultural field of the complainant, since deceased Panchasheela was available there in the agricultural field at the relevant time. However, the accused No. 2/Rajesh is acquitted by the Sessions Court along with two other accused who were tried along with the appellant.

13. Since the conviction is awarded to the appellant U/Sec. 306 for abetment to commit suicide, it would be relevant to refer to important sections. Section 107

of the Indian Penal Code reads thus :

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 persons 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.

Section 306 of the Indian Penal Code reads thus :

306. Abetment of suicide. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

14. In case of suicide how the evidence is required to be appreciated has been stated by the Hon''ble Supreme Court in number of judgments. In State of West Bengal Vs. Orilal Jaiswal and another, , the Hon''ble Supreme Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. Further the Hon''ble Supreme Court in case of 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 Suicidality pattern is different from the other. Each person has his own idea of self esteem 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.

15. The Hon''ble Supreme Court in case of Amalendu Pal @ Jhantu Vs. State of West Bengal, , after considering various earlier judgments in para 15 observed that,

15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence u/s 306 IPC, the Court must scrupulously examine

the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

16. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted u/s 306 IPC.

16. The Hon"ble Supreme Court in the case of *Randhir Singh v. State of Punjab* (2004) 13 SCC 129 has reiterated the legal position as regards Section 306 IPC which is long settled in para 12 and 13. Para 12 and 13 reads thus :

12. Abetment involves a mental process of instigation a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence u/ s 306 IPC.

13. In *State of W.B. v. Orilal Jaiswal* this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive or ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belongs and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

17. Upon perusal of the judgments of the Hon"ble Supreme Court cited supra, it is required to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts to the commission of suicide. Merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Sec. 306 of I. P.

Code is not sustainable. Therefore, what is required is that, unless there is any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide conviction U/Sec. 306 is not sustainable.

18. In this background it would be appropriate to scan the evidence of the prosecution witnesses. According to the prosecution story as stated earlier Panchasheela committed suicide in the intervening night between 02nd and 03rd December, 1992. On the next date i. e. on 03rd December, 1992 P.W.2/Nivratti brother of the deceased Panchasheela went to the police station and stated in his report that on 02nd December, 1992 during night time at about 12.00 a.m. Panchasheela (now deceased) told her sister Trisheela that I am going out to answer the nature's call. She did not return back. My father got up at about 5.00 a.m. in the morning saw that the door of the house from the Western side is open. Then father awakened my mother, sister and started asking whether Panchasheela has gone. Complainant along with father and other persons from the village went to near by fields and other places and ultimately they found that Panchasheela's dead body in the well which is situated in their own agricultural land. They saw that Panchasheela's sandle and one white cloth is lying near by that well. Thereafter, they called other persons from the village and narrated the incident.

P.W. 2 Nivratti further stated that, my sister went to answer the call of nature and perhaps died by falling in the well. My sister was hot tempered and she was not use to tolerate any irrelevant talk. I do not know how she has fallen in the well and I have no suspicion or doubt about anybody.

19. Therefore, the report of the Nivratti which was recorded on 03.12.1992 at police station does show that, the brother of the deceased Panchasheela did not express slightest doubt or suspicion about any of the accused persons. He has categorically stated in his statement that, sister of the P.W. 2 was hot tempered and she was not accustomed to tolerate irrelevant talk.

20. It further appears that on the basis of the statement of the Nivratti, A.D. was registered. It further appears that on 29th February, 1993, one Mr. Anil Narayanrao Gaikwad, PSI, Police Station Mahur has lodged the complaint with police station stating therein that after recording the statement of Nivratti on 03.12.1992, this officer made enquiry with the relatives of the deceased and upon enquiry he found that, fifteen days prior to the date of the incident Panchasheela did received one anonymous letter in which it was written that I will see that how you can perform the marriage, you have treached me. You have finished me and I will see that your life is spoiled and upon reading such letter Panchasheela might have committed suicide, because of impact of said letter and thereafter, he sought permission to add Section 306. He further states that it revealed from the enquiry with the relatives of the deceased about the incident and relatives told them that they have doubt about Sidharth Narayan Kamble, Rajesh Sitaram Khare, Vinod Krishnaji Khare and Manoj Pundalik Muneshwar

resident of Ashta that, they might have written letter to the deceased Panchasheela. Therefore, the complaint was lodged against these four accused stating therein that by entering into conspiracy and by threatening the accused have abetted the commission of suicide and, therefore, they are liable to be tried and convicted for the offence punishable U/Sec. 306, 507 r/w Sec. 34 of the Indian Penal Code.

21. As stated earlier, it is admitted position that, the said letter at Exhibit 130 was in the possession of accused No. 4/Manoj. According to the P.W. 2 it was handed over to him by Manoj. Therefore, it follows that on the date of incident or prior to that said letter was in the custody of Manoj. The prosecution has not brought anything on record to show that said letter was in the possession of either deceased or her family members. There is only assertion of the prosecution witnesses that such letter was received by the deceased 15 days prior to the date of incident. However, there is no evidence placed on record to suggest that said letter was actually in the possession of the deceased and she had read it 15 days prior to date of incident. On the contrary, it is the case of the prosecution that, letter at Exhibit 130 was handed over/recovered from accused No. 4/Manoj after the date of incident. It has also come in the evidence that accused No. 4/Manoj is close relative of the family of the deceased.

22. Now it would be appropriate to refer to the evidence of P.W. 2 before the Additional Sessions Judge, Nanded. His evidence is at Exhibit 52. His statement is recorded before the Court during the trial in the year 1997. P.W. 2 Nivratti in his examination in chief has stated that, deceased Panchasheela his sister was unmarried. At the time of incident she was of 19 years old. She committed suicide. She had received some letters. The letters were anonymous. In those letters Panchasheela was given threats that her marriage will not be allowed to be performed. We got only one letter out of them. It was with one Manoj/accused No. 4. After the death of Panchasheela, Manoj/accused No. 4 on the next day morning came to me and delivered that letter to me. When I was writing report regarding her death, Manoj remanded us of the said letter and produced it before me. I delivered that letter to PSI during enquiry of the alleged report to the police that Panchasheela committed suicide in our field, because she was unable to bear allegations of threats in the letter. At this stage, it would be appropriate to comment about the aforesaid evidence of P.W. 2 in the examination in chief. It is clear that, the complainant according to his version has received letter from Manoj/accused No. 4 on 03rd December, 1992. Prior to that said letter was not in possession of either Panchasheela or complainant or any other family member of the complainant. Therefore, the Panchasheela, now deceased had no occasion to read said letter or contents of such letter. The prosecution has utterly failed to bring anything on record to prove that the said letter was received by Panchasheela and by reading said letter she had impact on her mind and ultimately committed suicide. Secondly, if said letter was received by the Nivratti on 03rd December, 1992, why there is no mention in his report to the police station on 03rd December, 1992 about the said letter. On the contrary

in his statement on 03rd December, 1992, Nivratti stated that as Panchasheela was hot tempered girl and she was not use to tolerate irrelevant talk and she committed suicide. He has further stated that, he has no any doubt or suspicion about anybody. He has not referred single word about the letter or about any of the accused. Therefore, conviction based upon such evidence which is contrary to first statement of the Nivratti on 03rd December, 1992 cannot form basis for the conviction of the appellant/accused.

23. P.W. 2 Nivratti in his examination in chief has further stated that, his mother told him that Panchasheela was talking about the letter. Mother told me that Panchasheela was asking for the letter, but she was not giving the letter. She was not getting letter from Manoj. She was telling the mother to go to Manoj to bring the letter since four days. This statement of the P.W. 2/Nivratti appears to be blatant lie, since nothing has been mentioned by him in his statement before the police on 03rd December, 1992 about what is told by his mother and by him to the mother. On the contrary this witness further stated in his examination in chief that, mother told him that at the relevant time Panchasheela was in angry mood and, therefore, she might have jumped in the well. He has further admitted that he did lodge report with the police station Mahur. He also identified his signature and its contents. Therefore, the earliest opportunity to tell the truth was on 03rd December, 1992 and rightly the P.W. 2 had stated to the police officer that the Panchasheela was hot tempered girl and he had no suspicion or doubt about anybody. There is no mention about said letter in his report on 03rd December, 1992 to the police officer.

P.W. 2/Nivratti has further stated in his evidence that Rajesh/accused No. 2 and Vinod/accused No. 3 use to write the letters and drop them into post. They are addressed to Panchasheela. Panchasheela use to get those letters from postman. My mother told me that Panchasheela was talking about the letter. Mother told me that Panchasheela was asking for the letters but she was not given letter by Manoj. The aforesaid contention of the P.W. 2 has been reiterated by him at many places in his deposition and also in the cross examination. In his entire deposition he has no where stated that, the appellant Sidharth use to write letter to the Panchasheela (now deceased) and she used to receive such letters. So far accused No. 1 Sidharth is concerned, general allegations are made in the complaint that Panchasheela told him that Vinod/accused No. 3 and Sidharth accused No. 1 use to go to her room and tease her. It is further stated by this witness that, Rajesh also use to visit to her room and he use to tease her and Panchasheela herself disclosed these things to him. These are the general allegations made against all the accused. At this juncture it is relevant to mention that, P.W. 2 has stated in his evidence that, since the Panchasheela failed in the examination of 12th class, we stopped her education and brought her to our house. This witness has admitted that, six months prior to the date of incident, Panchasheela was brought to the village and since then she was staying in their house. Therefore, whatever has happened during the time when she was prosecuting the studies was six months prior to the date of incident. Therefore,

the general allegations of the P.W. 2 that the appellant along with other accused use to tease the Panchasheela even if assumed to be correct, said cannot be said to be in immediate proximity or soon before the date of incident and, therefore, as a result of said teasing the Panchasheela committed suicide.

P.W. 2 has also stated in his evidence that, he saw Rajesh accused No. 2 having entered in their field, when Panchasheela was plucking the cotton crop. He gave some whistles for Panchasheela. At that time he was in the field. Seeing him Rajesh went back to his field. It has also come in the evidence of this witness that in the field Rajesh threatened Panchasheela by showing knife. P.W. 2 has further stated that, Panchasheela committed suicide because of the letters written by Rajesh/accused No. 2. Some defamatory chits were pasted on the door or our house. Rajesh/accused No. 2 had come to our house to sing a Bhajan. According to me, defamatory chits were pasted by though, I did not see him doing so.

(Emphasis supplied)

Therefore, it follows from the version of this witness P.W/2 that Rajesh was responsible for the commission of suicide by the Panchasheela. Therefore, the evidence of the prosecution that the letter allegedly written in the month of July, 1992 was in the hand writing of the appellant and, therefore, he is responsible or he has abetted commission of suicide or he had intention to force the Panchasheela to commit suicide has no force. The evidence of

P.W. 2 totally negativates the story of the prosecution that the appellant herein was responsible for the suicide of the Panchasheela and said has been abated by the appellant. It is pertinent to note that, except appellant herein all the other accused including Rajesh are acquitted by the Sessions Court. P.W. 2/has admitted in his cross examination that, he had not shown letter to the police on 03rd December, 1992. He does not remember the date when he showed the letter to the police. He further contends that about 8 to 15 days after incident of Panchasheela's death, he showed the letter to the police. He further contends that my mother knows about that letter, however he has no personal knowledge about the said letter. This witness specifically states that, it is a fact that Panchasheela was hot tempered. She could not bear false city .We stopped her college education about one year before she died. Though, she failed Panchasheela had a desire to take education

(Emphasis supplied)

Therefore, it has clearly appeared in the evidence of P.W. 2 that, the deceased was hot tempered and her education was stopped one year prior to the date of incident. It is also relevant to mention that one female partner was in the room of Panchasheela and she lived with her in the hostel. However, the another partner was not examined by the prosecution on the point of teasing by the accused to Panchasheela. This witness P.W. 2 has further admitted in the cross examination that, Sidharth/accused No. 1 was in 11th class and Panchasheela

was in 12th class. They have never in the same class. At this juncture it is relevant to mention that on plain reading of the said letter it does appear that writer of the said letter is classmate of the deceased Panchasheela. However, the evidence of P.W. 2 as stated hereinabove clearly shows that the appellant/accused was not classmate of the deceased Panchasheela. This witness has further stated in the cross examination that, Manoj/accused No. 4 is his mother's sisters son. This witness further refers to his statement recorded by the police in February 1993. He has also reiterated his version in his examination in chief that Rajesh and Vinod used to write letters to Panchasheela and she has received those letters and some of them were burnt by her. That, only one went in the hands of Manoj which he refused to give that to Panchasheela. Rajesh and Vinod were residing at Kinwat. Therefore, P.W. 2 has never stated that the appellant/accused Sidharth use to write letters to the Panchasheela. The appellant/accused is only convicted on the basis of said letter holding that the hand writing in the said letter is of the appellant/accused as stated by the hand writing expert/P.W. 5. Since the other three accused persons are acquitted and more particularly accused No. 2/Rajesh against whom the P.W. 2 has unequivocally stated in his deposition that, he use to write letters to Panchasheela and also he has threatened to Panchashella, has been acquitted.

24. The prosecution has examined Sangita as P.W. 3. Her evidence is at Exhibit 57. She has stated in her examination in chief that, deceased Panchasheela was the sister of her father. Panchasheela died about five years back. She committed suicide by drowning in the well. She committed suicide because some boys troubled her. Those boys are four in number. On careful perusal of the examination in chief of the said witness nothing specific has been attributed against the appellant/accused herein. She has stated that accused Manoj was having such letter, but he did not give to anybody. Panchasheela was asking said letter to Manoj, but Manoj did not hand over said letter to Panchasheela. Manoj gave that letter to her mother on next day of Panchasheela's death. In her cross examination she has reiterated that the letter was handed over by Manoj to her mother on next day after Panchasheela's death.

25. The prosecution examined P.W. 4 Anil Gaikwad as witness. His evidence is at Exhibit 71. In his deposition he has stated that, during the period from August 1991 to August 1993 he was attached to Mahur police station as PSI. On 03.12.1992 one Nivratti came to him and stated that, his sister Panchasheela committed suicide by drowning. Upon his report A.D. No. 10/1992 U/Sec. 174 of Cr. P. C. was registered. He investigated said A. D. Visited the spot of incident at village Ashta and further investigated into the matter. Inquest panchanama was prepared. Dead body was forwarded for postmortem examination. He recorded statements of the witnesses. He recorded statement of Nivratti on 27th February, 1993 in which he stated that, there is suspicion against four persons saying that they are responsible for suicide of his sister Panchasheela. Therefore, he filed complaint. He registered complaint as Cr. No. 15/1993 U/Sec. 306 of I. P. Code against the four persons namely Sidharth Kamble, Vinod Khare, Rajesh Khare

and Manoj Muneshwar on 28th February, 1993. The accused were arrested on 01st March, 1993. Their hand writing specimen were obtained and were sent to hand writing expert and also inland letter was sent to the hand writing expert for his opinion. He further stated that, as the hand writing expert's report was not received, nor the inland letter and specimen hand writing of the accused from the office of Government Hand Writing Expert was received. Therefore, he went to Aurangabad on 28.07.1997 and on 29.09.1997 he collected the documents. This witness has admitted in his cross examination that till the date of recording his evidence before the Court he did not produce any acknowledgement issued from the Government Hand Writing Expert. He has specifically stated that, in the statement of Nivratti recorded by him, he did not state before him that accused No. 4 had brought and gave inland letter to him. He further stated that, Nivratti did not tell that, at the time when he was writing report on 03.12.1992, Manoj delivered inland letter to him and he produced it before the police. Sangita in her statement before him did not state that, accused persons were showing knife to Panchasheela or that they were insisting Panchasheela to allow them to do and were following her at the time of easing or that four accused were threatening Panchasheela, that they would not allow her marriage to be performed, or that accused had written letter to Panchasheela. She also did not tell before him in her statement that either Manoj delivered one letter to the mother of Panchasheela or that Panchasheela was demanding that letter from Manoj or that he was refusing or that Manoj delivered that letter to her mother on next day after Panchasheela's death.

26. Therefore, upon perusal of the evidence of this witness who was the Investigating Officer in the investigation it is clear that what is stated by the Sangita before Court was not stated by her before him during the course of investigation. Therefore, the evidence of Sangita before the Court becomes untrustworthy or rather improvement. As stated earlier, P.W. 2 has filed the report on 03.12.1992 in which he has specifically stated that, Panchasheela was hot tempered girl. She has committed suicide and P.W. 2 has no any suspicion or doubt about anybody. P.W. 2 has stated that Manoj has delivered letter at Exh. 130 him on 03rd December, 1992. However, P.W. 4 has stated in his evidence that, when statement of Nivratti was recorded by him he did not tell said fact to the P.W. 4. The P.W. 4 has further stated that, P.W. 3 Sangita has also not stated before him that, the letter was delivered by Manoj to P.W. 2 on 03rd December, 1992.

27. Perusal of the letter itself shows that said letter is written on 14.07.1992. The incident in question had taken place on 02nd December, 1992. Admittedly, the Panchasheela was not staying at Kinwat for prosecuting her studies from more than six months prior to date of incident. P.W. 2/Nivratti in his deposition before the Court repeatedly stated that accused No. 2 and accused No. 3 use to write letters to Panchasheela, however, in his statement nowhere he has stated that, present appellant Sidharth who was accused No. 1 has written any letter to Panchasheela and to that effect Panchasheela told him that accused Sidharth has

written letter to him. Admittedly, the letter at Exh. 130 was received from accused No. 4/Manoj by P.W. 2/Nivratti after the date of incident. Admittedly, there is nothing stated about the said letter by Nivratti in his report to the police on 03rd December, 1992. On careful perusal of the said inland letter at Exh. 130, the name of the present appellant is not appearing anywhere. The name is written as "Premkumar". Therefore, upon careful perusal of the entire evidence brought on record by the prosecution, there are material contradictions, improvements and omissions in the evidence of the witnesses and material variance in the version of P.W. 2, P.W. 3 and P.W. 4, therefore, to sustain conviction of the appellant on such shaky evidence is impossible. As stated earlier, the said letter is written by one Premkumar and there is no name of the appellant on the said inland letter at Exh. 130. The Trial Court has reached to the conclusion that, the letter at Exh. 130 has been written by accused No. 1/ Sidharth, as this letter has caused an impact on the mind of Panchasheela, she had taken a drastic decision to put an end to her life. Sidharth has provided her with the instigation caused by the letter at Exh. 130 and hence he is liable for abetment to commit suicide by her and, therefore, he is guilty of the offence U/ Sec. 306 of the I. P. Code. With respect to the findings recorded by the Trial Court, it is to be observed that, said finding of the Trial Court are far from settled legal position by catena of decisions of the Hon"ble Supreme Court. Even if, it is assumed that, letter at Exh. 130 was written by the appellant to the Panchasheela, (now deceased), upon perusal of entire evidence brought on record by the prosecution it cannot be said that, Panchasheela had occasion to read this letter. In fact, it is the consistent version of all the prosecution witnesses including P.W. 2 that, the said letter at Exh. 130 was in possession of accused No. 4/Manoj and same was delivered after the date of incident. Nothing has been brought on record by the prosecution to suggest that, the said letter at Exh. 130 was read by the Panchasheela and due to contents of that letter she committed suicide. As per the prosecution story said letter was written on 14.07.1992, Panchasheela committed suicide on 02nd December, 1992. As stated earlier, Hon"ble Supreme Court in case of Amalendu Pal @ Jhantu Vs. State of West Bengal, in para 15 held that, it is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

(Emphasis supplied)

The prosecution has not brought anything on record about what has happened from 14th July, 1992 till 02nd December, 1992. There is no any evidence muchless specific evidence brought on record by the prosecution against the appellant that he was teasing or instigating the Panchasheela or he has played roll in abetment of the suicide of the Panchasheela. It has come on record that prior to six month of the date of incident, Panchasheela was brought from Kinwat

to her parental home.

The another important aspect of the matter is that, it has come in the evidence of P.W. 2/Nivratti brother of Panchasheela that Panchasheela was hot tempered girl. In this respect it is to be observed that, that is one of the fact which should have been taken seriously into consideration by the Trial Court. In my opinion, the Trial Court has not given any thought, muchless serious thought to these factors. The Hon''ble Apex Court, time and again reminded that, such facts are required to be taken into consideration while entertaining cases relating to offences which falls U/Sec. 306 of I. P. Code.

28. Therefore, if the prosecution evidence is taken into consideration in its entirety, the said evidence is not only short to sustain the conviction, but it appears that, prosecution has not approached the case with truthful version. At the cost of repetition, it is to be stated that, Nivratti/P.W. 2 in his report on the second day of incident has specifically stated that Panchasheela was hot tempered girl and she has committed suicide. He has no suspicion or doubt about anybody. There is no mention about letter at Exh. 130 in the said report. Therefore, taking into consideration the exposition of Hon''ble Apex Court in various cases which are cited herein above and taking into consideration the entire evidence brought on record by the prosecution, the provisions of Section 107 of the I. P. Code and also Sec. 306 of the Indian penal Code, I am of the opinion that, the prosecution has utterly failed to establish the case against the appellant/accused. Therefore, the Trial Court was not correct in convicting the accused/appellant for the offence U/Sec. 306 of the Indian Penal Code. It cannot be said that by the said letter which was allegedly written, by the accused/appellant he had intention or had abetted for the commission of offence. In my opinion, there is no any direct aid or abetment by the appellant/accused, even according to the prosecution. Therefore, taking over all view of the matter, in my opinion, the impugned judgment and order deserves to be set aside. Therefore, the impugned judgment and order dated 21st May, 1999 passed by the Joint District and Sessions Judge, Nanded in Sessions Case No. 191/1994 thereby convicting the appellant for offence punishable u/s 306 of I. P. C. and sentencing him to undergo R. I. for three months and to pay a fine of Rs. 2000/, in default, to suffer further R. I. for six months, is quashed and set aside. The appellant is acquitted of the charges leveled against him. His bail bonds shall stand cancelled. Record and Proceedings be sent back to the concerned Court.