

(2016) 08 BOM CK 0042
In the Bombay High Court
Case No : Criminal Appeal No.836 of 2015

Vikrant @ Vikki s/o Kashinath Khandare	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 306, 452

Citation : (2017) 1 AIRBomRCri 902 : (2016) ALLMRCri 4604 : (2016) 4 BomCR(Cri) 86 : (2016) 6 MhLJCrI 657

Hon'ble Judges : A.I.S. Cheema, J.

Bench : Single Bench

Advocate : Shri. S.K. Chavan, Advocate, for the Appellant Nos. 1 and 2; Shri. S.S. Pawar, Advocate, for the Appellant Nos. 3 to 6; Shri. R.V. Dasalkar, A.P.P, for the Respondent/State

Final Decision : Partly Allowed

Judgement

A.I.S. Cheema, J.—The appellant Nos. 1 to 6 (original accused Nos. 1 to 6, hereinafter referred accordingly) have filed this appeal against their conviction and sentences passed by Additional Sessions Judge, Parbhani in Sessions Trial No.74/2012 on 27.10.2015. The appellants have been convicted under Sections 452, 354, 294, 504, 506, 323, 306 and 143, all read with Section 149 of the Indian Penal Code, 1860 (I.P.C. in brief). Different sentences of different terms of imprisonment have been awarded.

2. The case of prosecution in short may be stated to be as follows :

(a) On 18.4.2012, offence came to be registered at Police Station, Purna, District Parbhani vide Crime No.52/2012 on the complaint of Ahemadbee Syed Imam (P.W.1). She reported that, she along with her family was residing at Sidharth Nagar, Purna, District Parbhani. The F.I.R. gives details about family members who were residing with her including Rizwana, her married daughter, but who was staying with her since last 8 years, having three children. It was reported that, on 18.4.2012, there was a dispute between Rizwana (hereinafter referred

as victim) with accused No.4 Ramabai, accused No.3 Latabai and Sangita @ Samina, the daughter of Latabai's aunt from Mumbai, at about 2.30 p.m. These people, it was reported, are always under intoxication of liquor and do business in liquor. Because of that, they had trouble. To complain regarding this, victim had gone to Nagarsevak Deorao Khandare. Victim returned at about 4.00 p.m. At that time, accused No.3 Latabai and Vikki (accused No.1), the son of Latabai, accused No.4 Ramabai Devre, accused No.6 Baby, elder sister-in-law of accused No.4 Ramabai, accused No.2 Mahendra, the son of Ramabai and accused No.5 Sangita @ Samina, the daughter of Latabai's aunt from Mumbai, came and told victim that by her going and telling Deorao Khandare nothing will happen to them. They asked as to why she had gone and told that person. So saying, these people entered into the house of complainant and they caught hold of her daughter victim Rizwana. Accused No.3 Latabai held victim by her hair and accused No.5 Sangita tore blouse of victim and all these accused brought out the victim from the house and beat her by kicks and blows. On the street, the sari of the victim was pushed up and her modesty was outraged. The victim was calling out to save her. The complainant, her daughter Shahanabi, and her husband P.W.2 Syed Imam went to intervene, but in front of them the accused beat the victim. The victim managed to get herself released from the grip of the accused persons and ran inside the house. She ran inside and closed the house from inside.

(b) The complainant claimed that, they called out to the victim, but she did not respond. The accused persons kept waiting outside the house and were giving filthy abuses and threatening to kill. As there was no response from victim from inside the house, Maqsood Khan, the nephew of complainant climbed up and pushed aside the tin sheet on the house and peeped inside when he saw that the victim had hanged herself from the wooden log of the house. He got afraid and thus, her nephew Hafizkhan (P.W.4) and one Syed Latif went there. They pushed the tin of roof aside and entered the room and opened the latch of the house, which had been closed from inside.

(c) The complaint claimed that, all of them then went inside and saw that the victim was hanging and she was dead. Thus, the F.I.R. was filed claiming that, because of the incident mentioned above, as the victim was beaten and her sari was pushed upwards and her modesty had been outraged, because of such trouble of the accused, the victim had gone inside the house and hanged herself and committed suicide. The F.I.R. blamed the accused persons for the incident and claimed that they had abetted the suicide.

(d) On registration of the crime, the same was investigated by P.W.5 Sk. Abdul Gaffar, who was P.S.I. at the Police Station. He went to the spot and did panchanama Exh.28. The sari by which the victim committed suicide was seized. Inquest panchanama (Exh.29) was done. Post mortem of the victim was got done vide panchanama Exh.30. The doctor reported that, victim died due to asphyxia due to hanging. Statements of witnesses were recorded. The clothes

from the body of the victim were also seized. After investigation, charge sheet came to be filed.

3. Before the trial Court, charge was framed for the Sections referred above and the prosecution brought on record evidence of 5 witnesses. The accused persons pleaded not guilty. Their defence is of denial. According to them, the victim was mentally disturbed and that she had been beaten by P.W.2 Syed Imam as she had quarreled earlier with accused No.5 Sangita and because of that, she committed suicide.

4. The trial Court considered oral and documentary evidence brought on record by the prosecution and after considering the evidence, convicted the accused persons for Sections mentioned above and various sentences for the different Sections were passed.

5. I have heard Advocate Shri. S.C. Chavan for the appellant Nos.1 and 2 as well as appoint Advocate Shri. S.S. Pawar for appellant Nos.3 to 6 and learned A.P.P. Shri. R.V. Dasalkar for the State. It has been argued by the learned counsel for appellant Nos.1 and 2 that, the defence brought on record by the prosecution shows that the accused persons had grudge as to why victim complained to Deorao Khandare. According to him, the evidence does not show that the accused had any intention that the victim should commit suicide. It is argued that, although this Deorao Khandare was taken as panch in the inquest panchanama and although his statement was recorded, the prosecution did not examine him. It is stated that, the evidence of P.W.1 read with F.I.R. shows that, she made improvements in her evidence. The evidence on record disclosed that the parties did not have any earlier quarrel. The learned counsel tried to argue that P.W.3 Jubedabee was wife of brother of the complainant. Referring to the evidence of other witnesses, it is stated that, the evidence on record suffers from contradictions and omissions. The prosecution did not examine independent neighbours whose houses can be seen to be near the spot in the panchanama Exh.28. It is stated that, as per the post mortem, the tongue was inside. According to the counsel, if it was case of hanging, the tongue should have been outside.

6. The learned counsel for appellants - accused Nos.3 to 6 also supported the arguments of the learned counsel for appellant Nos.1 and 2. It was stated that, in the F.I.R. specific threat was not recorded. The contradictions and omissions should have been considered to discard the evidence of the witnesses. The parties were living peacefully before the incident. The evidence showed that, although the incident went on for some time, nobody went to call police at that time. The victim suddenly killed herself and the accused did not abet the act.

7. Against this, the learned A.P.P. submitted that, the judgment of the trial Court is properly reasoned and is required to be maintained. According to the A.P.P., all the accused persons had entered into the house of the complainant and dragged the victim outside. In the process, the blouse of the victim was torn and there

was also act of trying to push the sari of the victim upwards and her modesty was outraged. The post mortem showed that, the victim had ante mortem injuries, which goes to show that the incident, as stated by the witnesses, did occur and the evidence that the accused persons committed criminal house-trespass and abused, threatened and dragged out the victim and outraged her modesty and caused hurt to her, was established. According to the learned A.P.P., the conviction needs to be maintained.

8. In reply, both the learned counsel for the appellants submitted that, if the conviction is maintained, lenient view may be taken looking to the fact that the incident occurred on the spur of moment.

9. I have gone through the evidence. There is evidence of P.W.1 complainant Ahemadibee, P.W.2 Syed Imam (her husband), P.W.3 Jubedabee Rajjakkhan (residing in the neighbourhood) and there is evidence of P.W.4 Hafizkhan Rajjakkhan, who had climbed the roof and seen the victim hanging. If the evidence of these witnesses is perused, all of them deposed about the presence of these six accused on the spot at the time of incident. The evidence of P.W.1 Ahemadibee shows that, on the day of incident, her daughter victim Rizwana had gone to leader Deorao Khandare and when she came back, the incident took place. Her F.I.R. Exh.30 is that, the accused Nos.3 to 5 were in the business of liquor and used to be under intoxication and because of their trouble, the victim had gone to complain to Deorao Khandare. The evidence of P.W.2 Syed Imam also shows that, the victim had gone to complain to Deorao Khandare and when she came back, the accused persons picked up quarrel with her. Similar is the evidence of P.W.3 Jubedabee, who deposed that the accused persons are living in the neighbourhood and they used to sell liquor unauthorisedly. She deposed that, the victim Rizwana had gone to Khandare complaining regarding selling of liquor as there was nuisance in the lane regarding liquor. Her evidence also shows that, when the victim returned home, the accused went and beat her.

10. The cross-examination of P.W.2 Syed Imam shows that, on the day of incident, earlier at about 11.00 a.m. there was quarrel between accused No.5 Sangita and the victim. In the F.I.R. Exh.35, the complainant had reported that, at about 2.30 p.m. there was a dispute which arose between accused Nos.3 to 5 with the victim and because of the trouble of business of liquor of the accused, victim had gone to complain to Deorao Khandare. In the evidence, no doubt the complainant P.W.1 did not depose about that part of the incident. In the cross-examination, she was put question in this regard, but did not understand the question. The Court does not appear to have tried to explain the question to the witness nor the cross-examination pursued the same. What appears from record is that, the witnesses had trouble from the accused due to unauthorised sale of liquor in the vicinity and the victim appears to have gone and complained about this to some leader Deorao Khandare and this infuriated the accused persons. The prosecution proved this to be the cause of incident. Said Mr. Khandare is not examined. But it is not material. Point is that, on that day, earlier there was

some dispute between victim and accused Nos.3 to 5 and when victim went and came back, accused were agitated as their information was that she had gone and complained to Mr. Khandare.

11. Regarding the actual incident, P.W.1 complainant Ahemadibee deposed that the victim had gone to Deorao Khandare and had just come home when the accused persons reached there. In her evidence, she referred to the accused Nos.1 to 6 and then deposed that all these persons came and entered in her house and asked the victim what she had told to the said leader. P.W.2 Syed Imam has also deposed that, the accused persons came and asked the victim if she had gone to lodge complaint to Deorao Khandare. His evidence is that, the accused were saying that what can she do and what can Deorao Khandare do. P.W.2 Syed Imam has also deposed that the accused persons had entered their house. P.W.3 Jubedabee has also corroborated P.Ws.1 and 2 as well as P.W.4 Hafizkhan. The evidence of these witnesses shows that the accused persons entered the house of complainant so as to pick up quarrel with the victim. The evidence of these witnesses goes to establish house-trespass on the part of accused persons to commit offence punishable with imprisonment.

12. The evidence of complainant is that, when the accused persons had entered her house and started questioning the victim, accused No.3 Latabai caught the victim by hair, accused No.5 caught the victim from her blouse and accused No.4 Ramabai caught-hold of the sari of the victim and they pulled out to victim from her house on to the road. According to P.W.1, the accused were saying that the victim should be made naked and to put chilly. In the F.I.R. Exh.35, complainant had reported that, accused No.3 Latabai had held the victim by hair and accused No.5 had held her from her blouse and pulled and tore the blouse and that all the accused persons had taken the victim outside the house and beaten her by kicks and blows. P.W.2 Syed Imam, father of victim corroborated his wife deposing that accused No.3 held the victim by hair and accused No.5 tore the blouse of victim and accused No.4 was saying to push up the sari of victim and that they will put chilly. (See Marathi version of the evidence.)

13. P.W.3 Jubedabee deposed that, when the victim came back, the accused persons beat her on account of she complaining to Khandare. Her evidence is that, she and one Zakira tried to intervene in the quarrel, but they were told not to come in the quarrel and that the accused threatened to kill them and so they kept themselves on one side. However, P.W.3 has also deposed that, in the course of incident, accused No.3 Latabai caught the hair of victim and accused No.5 Sangita tore her blouse and accused No.4 Ramabai and accused No.6 Baby had caught hold of the victim by her legs and brought her outside the house by pulling. P.W.3 has also deposed that, the accused were saying that chilly should be put in the anus of the victim. P.W.3 Jubedabee has referred to specific abuses given by the accused. P.W.3 Jubedabee has deposed that, when they were outside the house, at that time, accused No.1 Vikki and accused No.2 Mahendra told them that they should not come in between the quarrel otherwise they will

be killed. As far as regards the evidence of P.W.4 Hafizkhan, he has deposed that, on day of incident there was quarrel between the accused and the victim and that the accused pulled out Rizwana from the house. His evidence is that, out of the accused, one caught hold of the hair of victim, one caught hold of her blouse and one pushed sari of victim upwards saying that they will put chilly. (In English version, the words used are that, one removed sari of victim on upper side, however, this is not correctly recorded as the Marathi version shows that, what was deposed was that one accused pushed sari upwards.) Thus, P.W.4 Hafizkhan did not specifically name the concerned persons with the specific acts he has deposed about. However, the evidence of P.Ws.1 to 4 read together, makes it clear that all these six accused entered the house and while accused Nos.3 to 5 actively caught hold of the victim and dragged her outside the house, accused No.6 Baby also assisted. Accused Nos.1 and 2 also appear to have committed criminal trespass and the evidence of these witnesses shows that they had threatened the neighbouring people not to intervene.

14. The evidence of P.Ws.1 to 4 shows that, the victim was assaulted inside the house and forcibly dragged outside and she was also beaten at the time of incident. The inquest panchanama Exh.29 in para 4 recorded that there were abrasions to the chest as well as to the hand of the victim. In the post mortem report Exh.30 also the doctor recorded ante mortem abrasions on the person of the victim. Thus, the oral evidence of the witnesses gets corroboration from the inquest panchanama as well as post mortem report showing that the victim had suffered abrasions in the incident.

15. The evidence of P.W.1 has been criticised by the counsel for accused, claiming that, in her F.I.R. she had not stated that accused No.4 Ramabai had held the sari of the victim and stated that they will make her naked and put chilly. Even if this was to be said so, still there is evidence of P.W.2 Syed Imam, who has also deposed that, accused No.4 Ramabai was saying that the sari of the victim should be pushed up and to put chilly. P.W.2 Syed Imam was cross-examined, but there are no contradictions and omissions proved in his evidence so as to disbelieve him on this count. P.W.3 Jubedabee has also deposed that, accused No.4 Ramabai had caught the victim from her legs and the victim was forcibly brought outside the house by pulling and it was being said that, chilly should be put in her anus. In the evidence of P.W.3 Jubedabee, in cross-examination read with the evidence of investigating officer P.W.5 Shaikh Abdul Gaffar, the only omissions claimed were that, P.W.3 had not stated in her statement that, "During the period of two hours Vikrant and Mahendra restrained from entering into the house to the informant and witnesses, and threatened to kill them." The other omission tried to be shown was that, she had not stated that, "Rizwana was inside the house and accused abetted her suicide." The reason why I am saying that these portions in inverted commas are tried to be shown as omission is that, P.W.3 was not asked about these portions in this manner. What was asked in the cross-examination of P.W.3 was not put to the investigating officer in that manner. Thus, these acts of the accused persons of

forcibly dragging out the victim and in the process tearing her blouse and in the quarrel trying to push up her sari are proved in the evidence of these witnesses. Reading the evidence of P.Ws.1 to 4 along with the F.I.R., the witnesses cannot be said to be shattered regarding the crux of the incident that these accused persons committed house-trespass in the house of the complainant and abused, threatened and dragged the victim outside the house and in the process, beat her and also caused outrage of her modesty. The trial Court has discussed all this evidence and recorded reasons why the same should be accepted. Going through the judgment of the trial Court, I find myself concurring with the trial Judge in this regard.

16. In the cross-examination of P.Ws.1 and 2, it has been tried to show that the victim was a person who was mentally disturbed and it was tried to claim that, because of such mental condition, the husband of the victim had left her. However, the suggestions were denied by the witnesses and there is no material to show that the victim was mentally disturbed person.

The argument that P.W.3 was related to complainant has no basis as no such suggestion was put to the witness.

17. Coming to the evidence of the victim committing suicide, the evidence of P.Ws.1 to 4 shows that, when such incident as mentioned above was taking place, the victim managed to free herself and ran inside the house and bolted it from inside. The evidence is that, the accused persons continued to remain there and were saying that they will see as to how the victim will come out of the house. Thus, although the victim had run away inside the house, the accused persons continued to be there and were giving threats, as per the witnesses. The evidence further shows that, as the victim was not responding from inside, P.W.4 Hafizkhan climbed on the house, and pushing aside the tin sheet, noticed the victim to be hanging. He claimed that, he brought down the dead body on the ground. In the evidence of P.W.1, she had claimed that, the incident went on for about two hours. P.W.3 deposed that, it went on for about half an hour and P.W.4 deposed that, it went on for about 30 - 35 minutes. The time sense of P.W.1, an illiterate lady cannot be much relevant. Point is that, for some time quarrel was going on and when the victim went inside, the accused continued to be there and were giving threats, and after some time when there was no movement from inside, P.W.4 Hafizkhan appears to have climbed the house and noticed that the victim had hung herself. It appears that, the victim was taken to the hospital and when it was found that she was dead, inquest panchanama Exh.29 was done and post mortem was also got done. Post mortem showed that, she died of asphyxia due to hanging. The evidence that the victim did in fact die due to hanging is not in dispute if the evidence in the trial Court is perused. At the time of appeal, however, the learned counsel for the appellants tried to argue that there was no evidence that the tongue of the victim was outside. The argument is that, if death is by hanging, the tongue should be outside. In Modi's "Medical Jurisprudence and Toxicology", Twenty-third Edition, Chapter 18 dealing with

death due to asphyxia under the heading "Other signs", the author has recorded with reference to hanging that, "In such matters the tongue is drawn in, or caught between the teeth, or protruded and bitten. In the present post mortem report, in para 13, it is recorded that, the tongue was inside oral cavity, partially caught between teeth. There is no substance in the argument that in case of hanging necessarily the tongue should be protruding outside.

18. It has been argued by the learned counsel for appellant Nos.1 and 2, relying on the case of *State of Haryana v. Chandvir & others*, reported in (1996) 8 SCC 678 to submit that, liability of each accused is required to be considered independently. Reliance was also placed on the case of *Haramant Laxmappa Kukkadi v. State of Karnataka* reported in 1994 AIR (SC) 1546 to submit that merely by going in a body of unlawful assembly would not be decisive factor regarding common object. I have gone through the concerned judgments. They are based on their own facts. In the present matter, the appellant Nos.1 and 2 had committed criminal trespass in the house of the complainant with the other accused who were ladies and further actively participated in the incident by threatening others so that they do not intervene. They gave the women accused protective umbrella to execute the common object ensuring that there is no intervention. The common object is clearly established that they also wanted the victim to be threatened, abused, dragged and beaten, and in the process, participated in outraging of the modesty of a woman (the victim). There is no substance in the arguments of counsel for accused Nos.1 and 2 on this count.

19. Looking to the clear evidence available that the victim ran inside and committed suicide, the question before me is whether it could be said that the prosecution proved abetment to commit suicide.

20. In this regard, the learned counsel for the appellant referred to the case of *M. Mohan v. State Represented by the Deputy Superintendent of Police*, reported in AIR 2011 SC 1238 to submit that, for abetment to commit suicide, there has to be a clear mens rea to commit the offence of abetting the victim to commit suicide. Reliance was also placed on the judgment in the matter of *Gangula Mohan Reddy v. State of A.P.* reported in AIR 2010 SC 327 and it has been argued that, for abetment, instigating or intentional aiding the person to commit the act of suicide has to be established. Paras 18, 20 and 21 of the judgment need to be reproduced.

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

.....

20. 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.

21. 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 this act must have been intended to push the deceased into such a position that he committed suicide."

21. Keeping the above observations of the Hon"ble Supreme Court in view, it would be now necessary to see whether in the present matter abetment to commit suicide could be said to be established. In the present matter, no doubt there is evidence that the victim was assaulted and dragged outside the house and there was attempt to push up her sari and there was outrage of modesty. However, question is whether by such act it could be said that the acts amounted to abetment to commit suicide. No doubt there is also evidence that when the victim ran inside and closed the door, the accused persons continued to be there giving threat. But then, the evidence of P.Ws.2 and 3 shows that, before the present incident there was no quarrel between the parties and their relations were not strained. The cross-examination of P.W.2 Syed Imam shows that the relations between them and accused were cordial prior to the incident and they never quarreled. P.W.3 Jubedabee stated that the relations between her, P.W.2 Syed Imam and the accused were cordial and that it was true that before the incident there was no quarrel between the complainant and the accused. Thus, although there is evidence that these prosecution witnesses had trouble due to the liquor business of the accused persons and the victim had even complained to one Deorao Khandare, before the incident there were no strained relations as such. Thus, merely because the incident of house-trespass, assault and outraging modesty took place, that by itself cannot be calculated as abetment to commit suicide. There is no material to show that the intention of the accused persons was that the victim should commit suicide. There is no material to show that they instigated her to commit suicide or assisted or helped her. It was also not a situation where circumstances were so created that the victim had no other option than to commit suicide. It appears that, the victim was over sensitive and at the spur of moment reacted in a manner which may not have been expected by anybody. The evidence shows that, even after the victim went inside, for some time the accused were there outside, and the family could not enter. It shows that, the victim had not, even while rushing inside the house, indicated anything that she will commit such act. Had that been so, the family would have made a hue and cry and reacted faster.

22. I have gone through the judgment of the trial Court for holding abetment to commit suicide. The trial Court picked up the meaning of the word "instigation" from Oxford Dictionary to mean that, it amounts to encourage someone to do something bad. This act, the trial Court appears to have read with the incident of assault which took place. The trial Court lost sight of the fact that what the law required is to goad, urge forward, provoke, incite or encourage to do "an act", which would be act in the nature of committing suicide. Illegal act which by itself

cannot be stated to be instigation to commit suicide as such, cannot be said to be included. For such reasons, I am unable to agree with the trial Court that offence under section 306 of the Indian Penal Code was established.

23. The trial Court convicted the accused under Section 452 of the Indian Penal Code, which relates to house-trespass after "preparation" for hurt, assault or wrongful restraint. In the present matter, although the accused persons entered the house so as to assault the victim and hurt the victim, there is no material to show that they had made some preparation for causing of such hurt. It is not that they carried any instruments or articles to execute the act of assault, to tie the victim, etc. Thus, according to me, Section 452 was wrongly applied and the correct Section is Section 451, which relates to house-trespass in order to commit an offence punishable with imprisonment, punishment for which may extend to two years and fine in the present set of facts.

24. Trial Court imposed sentence of rigorous imprisonment for 3 years under Section 354; rigorous imprisonment for 1 month under Section 294, rigorous imprisonment for 1 year under Section 504, rigorous imprisonment for 1 year under Section 506; rigorous imprisonment for 6 months under Section 323; rigorous imprisonment for 3 months under Section 143, all read with Section 149 against each of the accused persons. For these Sections, in addition there was direction for payment of fine of Rs. 500/- each and in default to suffer simple imprisonment for 1 month under each of the head against all accused. This needs to be maintained. For reasons already recorded, sentence under Section 306 read with Section 149 of the Indian Penal Code, 1860 would required to be set aside.

25. I thus pass the following order :

ORDER

(A) For above reasons, the appeal is partly allowed. In the impugned judgment of the trial Court, the conviction under Section 452 read with Section 149 of the Indian Penal Code, 1860 is converted into conviction and sentence under Section 451 read with Section 149 of the Indian Penal Code, 1860 and the accused are sentenced to suffer rigorous imprisonment for two years each and to pay fine of Rs. 500/- (Rupees five hundred) each, and in default of payment of fine, the defaulting accused shall further suffer simple imprisonment for one month.

(B) In the impugned judgment, the conviction and sentence imposed under Section 306 read with Section 149 of the Indian Penal Code is quashed and set aside.

(C) Rest of the judgment of conviction and sentence as passed by the trial Court is maintained.

(D) Appellant No.3 Latabai Kashinath Khandare shall surrender to her Bail Bonds. Trial Court to ensure execution of sentence.