

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2687 OF 2021

Gaurav s/o Sopan Narkhede .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Aabad Ponda, Senior Counsel with Advocate Sanket S. Kulkarni for the applicant.

Mr. S.H. Yadav, APP for the State.

Mr.Kavyal P. Shah for respondent no.2.

CORAM: BHARATI DANGRE, J.

DATED : 1st SEPTEMBER, 2021

P.C:-

1 C.R.No. 666 of 2020 registered with Bhosari police station, Pune depict a woeful and a dismal picture, when on 6th September 2020, a young girl, aged 17 years jumped from the balcony of a flat located on 4th floor of a high rise building, succumbed to injuries sustained on account of the said fall on 17th October 2020 in a private hospital. The body of the girl was handed over to her relatives and the last rites were performed.

2 After 96 days of the incident, a complaint came to be lodged with Bhosari police station by the mother of the girl

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against the present applicant, attributing to him that he has abetted a commission of suicide by her daughter on the fateful day.

The informant recount that her daughter was pursuing her education in 12th Std and in the month of April 2018, after her Board examination, she had visited the applicant, the cousin brother of her husband, at Aurangabad.

Before 7 to 8 months, her daughter informed her that the applicant texted her messages of Good Night, etc, late in the night, upon which she confronted him and responded by saying that he was just messaging.

3 An hapless incident dated 6th September 2020 is narrated by the mother, when she along with her other daughter was present in the house at 11.30 p.m. She received a message from friend of her daughter on WhatsApp inquiring who was the Applicant and she clarified the relationship. In turn, she received a message that whether she is aware that he is forwarding dirty messages to her daughter. The informant, thereupon, entered the bedroom of her daughter and pointedly asked her about the messages forwarded by the applicant, upon which the girl handed over her mobile to the mother and asked herself to have a look. On not finding the messages and on persisting that she should reply, she went into the mobile gallery and opened a folder in the

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caption “S.S” and told her to have look at it and she barged out of the room. On inspecting, screen shots were found in the mobile phone and immediately, by keeping mobile on the bed, the Informant followed her daughter, who by that time, jumped from the gallery of other bedroom. On realizing the severity of the shocking incident, the informant became unconscious and she was informed that her daughter was taken to the hospital. The informant recollect that in the hospital, her daughter was little conscious and on being inquired as to why did she take the extreme step, she murmured that because of “Gaurav uncle”. She did not utter anything further and was administered treatment in the hospital.

4 The informant state that while admitting her daughter in the hospital, it was informed that she had fallen out of the gallery while taking out the towel. On 7th September 2020, when she was arranging things in the house, on dressing table of her daughter, she found a scrap of paper with a hand written note on which her daughter had scribed for her. On reading this, she confronted the applicant, who denied to have done any wrong and expressed that he would visit her but the informant refused to accept him at her house. She informed about the said note to her husband and preserved the same. Thereafter, the family became busy in treating their daughter who breathed her last on 17th October 2020. The entire family was in grief and they visited

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their native place. The applicant, being in their close relation and since he was a powerful person, the family mused whether complaint should be lodged against him, but ultimately was convinced that they should proceed against the applicant, and therefore, by remaining present at the police station, the complaint was lodged and the chit/note written by the deceased was handed over to the police.

This resulted in registration of the subject C.R, invoking Sections 306, 354A, 354-B of the IPC and Section 4 and 8 of the POCSO Act.

5 The chit came to be seized during investigation along with the mobile of the deceased. The chit was written on a page in the notebook where the deceased had scribed as under :-

“Mummy, I have not told you about one person, Gaurav Uncle in our house. For no reason, he often come close to me and attempted to touch my private parts. I concealed the same from you, but that was my mistake. I kept mum because I thought if I disclose it to you, it would result into quibble. However, he messaged me. Before one week, he was talking to me about bad things. The screen shots of the said message are stored in my mobile in the folder ‘SS’. On receipt of the message, I have blocked him, but yesterday night, he texted me. I was unable to understand what should I do and how should I disclose it. After you come to know about this, please do not quarrel and let the things continue to remain as they are. You and Papa

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should not fight. Bye.... Take care Because even if I blocked him on the mobile, I will have to face him some day. I carry no feelings for him in my mind, still he said so and further Kaki narrating it to aunt and no matter how much I tolerate, I will be blamed”

6 The mobile phone with a Jio Sim card is also seized by panchnama dated 11th December 2020 and ‘SS’ folder in the mobile phone is found to contain 9 screen shot images. The first is the screen shot of Instagram Page where the name of the applicant is mentioned, second image is again a screen shot of Instagram Page where the photographs of the deceased is on the top and below it, the applicant had typed a message “You are looking very hot”. The third message is on Whatsapp by the applicant “Bolaychch aahe ektyat tujhasobat”. (want to talk to you in Private). Fourth message is from the deceased ‘nahi, tumhi maje kaka ahe in place of my dad” (No, You are my uncle and like my Dad). This is responded by the applicant “U Chat clear kar” (clear chat). In the last screen shot, the applicant has deleted the message. The text message in the phone also reveal that from the applicant, a message is received on 5th September 2020 as ‘Good Night” and below that, the deceased has typed “Mala nahi bolaycha tyanchya sobat, kalat nahi ka tumhala” (I do not want to talk to you, why don’t you understand)

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7 The version of Informant is that the deceased had visited the applicant in April 2018 and at that time, her sister-in-law had disclosed to her that the applicant's wife had told her that the deceased was constantly chatting with someone and exchanging messages but when the informant inquired, she did not respond. However, after that, as per the chits scribed by the deceased, he attempted to manipulate her, but she did not disclose it either to her mother nor to anyone and the reason is apparent that the applicant is her Uncle.

During investigation, the prosecution has recorded statements of the friend of the deceased who corroborate the informant on the aspect that he had apprised her about the dirty messages being forwarded by the applicant to the deceased. The said witness is a close friend of the deceased and she had spoken to him about the applicant and his ill-intentions when he attempted to touch her private part when she visited his place in vacation. He narrated that the deceased had told her that she did not inform it to her mother because that would have ensued quarrels in the house. The deceased disclosed to him that he was messaging her and she was very scared. Since she did not divulge it to her mother, he forwarded a message to her mother since she was disturbed by the dirty messages from the applicant.

Statement of the sister of deceased is also compiled in the charge-sheet, which is in sync with the statement of informant. Apart from the informant who told that in the

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hospital, the deceased had uttered that she had taken the said step on account of the applicant, statement of two witnesses who are close relatives of the family are also compiled in the charge-sheet.

8 In the wake of the material compiled in the charge-sheet, learned Senior Counsel Mr.Ponda has advanced his submissions and according to him, the foremost question is whether the deceased had committed suicide or she accidentally fell from the balcony of her house as per the version by her family members while she was admitted in the hospital.

Describing the step taken by the young girl to be very unfortunate, the learned senior counsel would argue that for the said step, how was he responsible. Though not, admitting but assuming for a moment that he has committed an error in texting to the girl and that he had crossed his limits, for which at the most, he can be said to have committed a moral blunder, but the submission is, if this was attributed to him, why the girl or her family did not go to the police. The extreme step taken by the deceased was not the only solution left to her as there were other ways how the issue could have been sorted out, is his submission. According to him, as far as the allegation under POCSO are concerned, they are too stale to be taken cognizance of, and even *prima facie* if they are taken at its face value, what is alleged is only an attempt to touch her private parts, with no such act actually being indulged into.

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By inviting my attention to a catena of decisions elaborating the position of law, as far as Section 306 of the IPC is concerned, and in particular latest decision of the Apex Court in case of Arbab Goswami Vs. State of Maharashtra and ors, 2021(2) SCC 427, the learned senior counsel would submit that he had no intention or knowledge that the girl will commit suicide and merely because it is alleged that there was some harassment or anguish on her part, in absence of any positive act attributed to him, he cannot be held guilty of abetment to commit suicide. He would submit that the act of the deceased will have to be decided by applying the parameters of a prudent person, but not of an over sensitive one, who has taken the extreme step for which he cannot be held responsible.

In any case, the submission of the learned counsel is since the investigation is now complete and the charge-sheet is filed, his incarceration is unwarranted and he is ready to abide by any conditions imposed while securing his release.

9 Learned APP has vehemently opposed the said application and he would focus on the gravity of the accusations and submit that the applicant is charged with a serious offence under the IPC which is punishable with Imprisonment which may extend to 10 years and also offence punishable under the POCSO Act, 2012.

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10 The legal position which could be discerned from the authoritative pronouncements being not in doubt, I have perused the material compiled in the charge-sheet. The deceased is a young girl in her adolescence and impressionable age, and here is the case of this girl who is hesitant to disclose about the ill-intentions of the applicant, who is her own uncle. This factor distinguishes the present case since it revolve around an intimate relationship with her own uncle, which posed a barrier for the victim girl to report of the said incident to anyone in the family, but she chose to disclose it to her close friend. The chit which is scribed by the deceased referred to a message and screen shots of which is found in the mobile phone. From the screen shots, it is evident that on 5th September 2020, a message is forwarded by the applicant which is responded by the deceased by typing that she was not interested in talking to him. The unhappy tone was set in the night of 5th September 2020 and in the note which is scribed, the deceased has opened her mind to her mother where she talk about his ill-deeds and also offered explanation as to why she concealed it from her mother. She categorically state that though she blocked him in the night, he had text the message.

 Though Mr.Ponda has vehemently argued that from this note, it cannot be discerned that the girl is going to commit suicide, I am unable to agree with the said submission. It is evident that this note is scribed by the girl after the message was received by her on 5th September 2020 and after she responded to

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the message. In the said chit/note, she expressed her helplessness about his manifest intentions and she has also written that before one week, he indulged in dirty talks. The said note is concluded by bidding adieu. She also expressed her helplessness since she is apprehensive that even if she has blocked him, she will again have to face him and will have to take the blame though, she had no feeling in her mind.

11 The note is scribed by the deceased few hours before she took the extreme step and is an expression of despair and her anguish; it reflect her desperation and pain.

She is a girl in formative years and her writing give an impression that she feel trapped. It is possible that any other girl in similar circumstances would have responded to the situation in a different way, but as stated above, the applicant was her own uncle and considering the close association of the family with him, there was an absolute inhibition on her part to blame him and embroil him in accusation. The screen shots from the mobile make it apparent that the applicant was harassing the deceased and inspite of her strong protest, was seeking something from her, leaving her in a despondent state.

12 The accepted legal position being to the effect that the word 'instigation' is to goad, urge, forward, provoke, incite or encourage to do an act. However, to satisfy the requirement of

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instigation, though it is necessary that the actual words must be used to that effect, but what constitutes instigation must necessarily and specifically be suggestive of the consequences. The position of law which emerges from the authoritative pronouncements is that a reasonable certainty to incite, the consequences must be capable of being spelt out. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who was abetted. True it is, that abetment as contemplated under Section 107 of the IPC, may be by instigation, conspiracy or intentional aid and the words uttered in feet of anger or omission without any intention being attributed cannot be termed as instigation.

However, instigation has to be gathered from the circumstances of a particular case and a straight jacket formula can be laid down, to find out as to whether in a particular case, there was instigation which forced the person to commit suicide. In a particular case, it is possible that there may not be direct evidence in regard to instigation which may bear a direct nexus to suicide. In such circumstances, inference will have to be drawn from the surrounding circumstances and it will have to be ascertained whether circumstances had been such which in fact had created a situation that a person felt totally frustrated and committed suicide.

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13 The present case is of a young teenage girl, who felt cornered by the conduct and demeanor of her own uncle, which was unexpected since she held him on a high pedestal as her own father and was unable to vent her anguish on account of the close proximity of the family with that of the applicant. She suffered the consequences mutely for a year or so. From the note, it is apparent that her harassment continued and the message of Good Night do not appear to be a solitary and innocuous one, out of isolation, but since the learned APP has made a statement that the mobile phone was empty barring the screen shots saved in one folder, the possibility cannot be ruled out that the deceased suffered such harassment through various calls and text messages. The mobile phone has been forwarded for analysis and when its report is obtained, the picture would become clear since it is possible to retrieve the entire data including chats from it.

14 Sexual violence know no boundaries. It occurs in every country, across all parts of society.

A child may be subjected to sexual abuse or exploitation at home too. The widespread use of digital technology can also put children at risk. At times, the abuse occurs at the hands of someone a child knows and trusts. Any form of sexual violence result in severe physical, psychological harm. Unfortunately, we have not been able to create an atmosphere in the Society where Parents, teachers and adults in

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company of the child can identify signs of abuse and make sure children receive care and protection.

For the deceased, who was not an adult, but a child, her adolescent years were shaped by horrowing experience that left her with irreversible and irreparable memories. The fear of stigma, not being believed and being blamed, found her in precarious situation, left her isolated and insecure and which persuaded her to end her life.

15 In the nature of accusation, the applicant who is a matured, married man, do not deserve his liberty. Another reason to deny his release is his close proximity with the family of the deceased and there is every likelihood that on his release, the applicant may pressurize the prosecution witnesses and tamper with the case of the prosecution.

16 For the aforesaid reasons, Application is rejected.

SMT. BHARATI DANGRE, J

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