

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.517 OF 2002

The State of Maharashtra,
Through Police Station Degloor,
Dist. Nanded at the instance,
of Shivraj s/o. Revanna Patil,
Age 35 years, occ. Agri.,
r/o. Rushegaon Mandal,
Madnur, Dist. Nizamabad (A.P.) ..Appellant

Versus

- 1] Ganesh s/o. Vithalrao Kale,
Age 32 years, occ. Agri.
And Business, r/o. Kesrali,
Tq. Biloli, Dist. Nanded
- 2] Sow. Rajabai w/o. Vithalrao
Kale, Age 55 years,
occ. household, r/o. Kesrali,
Tq. Biloli, Dist.Nanded ..Respondents

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Mrs.B.B.Gunjai, APP for appellant – State

Mr.Amol Gandhi, advocate i/b. Mr.P.V.Mandlik, Senior
counsel for the respondent

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CORAM : M.T. JOSHI, J.

DATE : APRIL 10, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the judgment and order dated 29th May, 2002 passed by learned Ist Ad-hoc Asstt. Sessions Judge, Biloli in Sessions Case No.10 of 2000 whereby, present respondents are acquitted of the offences punishable under Section 498-A, 306, 201 read with 34 of Indian Penal Code, present appeal is preferred by the State.

3] Respondent no.1 – Ganesh is the husband while, respondent no.2 – Sow. Rajabai is the mother-in-law of the deceased – Sumitra. Deceased – Sumitra as well as her daughter died on 8th December, 1999. The medical evidence would show that both of them have died due to poisoning. According to the prosecution case, on the day of the incident, present respondents were seen taking both the dead bodies by a jeep to some other place, therefore, suspicion arose and PW 3 – Prakash, a common relative of the parties, has informed about the said fact to the step-brother of the deceased. Therefore, PW 4 – Shankar, step-

brother of the deceased, went to Degloor Police Station and filed an application communicating that the dead bodies were taken away by the respondents and no funeral be performed. Therefore, an accidental death case was registered by PW 9 – Madhusudan Ankushe, API on 9th December, 1999. Inquest panchnama and panchnama regarding the clothes seized from the dead bodies, were recorded. Post-mortem examination of the bodies was carried by PW 8 – Dr. Ravindra Gutte which showed death due to poisoning.

4] Thereafter, on 11th December, 1999, PW 1 – Shivraj Patil, another step-brother of deceased – Sumitra, filed the complaint with the police station at Exhibit 20. In the said complaint, he reported that deceased – Sumitra was married to present respondent no.1 – Ganesh about ten years prior to her accidental death. They had an eight years daughter. Respondent no.1 – Ganesh had opened a beer bar at Khanapur phata and the respondents and the deceased

started residing in the house of one Dhage at Degloor on rental basis. Certain loan transactions were entered into by respondent no.1 and he was required to pay the loan amount, therefore, the respondents had made demand of Rs.2,50,000/- to deceased – Sumitra so that she would bring the said amount from her parents. The respondents used to say that since the deceased – Sumitra had no real brother, she should bring the amount from her own share in the ancestral property. Accordingly, on 23rd November, 1999, the complainant along with his maternal uncle – Hanumantrao went to the house of the respondents. Thereat, the respondents again made a demand of Rs.2,50,000/- and threatened that in case, the amount is not paid, they would not allow the deceased – Sumitra to cohabit. The complainant and Hanumantrao, however, gave understanding to the respondents and returned back. In the situation, death of deceased – Sumitra and her daughter has occurred, as detailed supra.

5] On the basis of the complaint filed by PW 1 – Shivraj, the Investigating Officer carried further investigation. He recorded statements of other witnesses. The post mortem notes were collected and charge sheet came to be filed.

6] Before the learned Sessions Judge, in all, eleven witnesses were examined which included police witness as well as the panch witness. The witnesses concerning the alleged ill-treatment to the deceased are PW 1 – Shivraj, PW 3 – Prakash, PW 4 – Shankarrao, who deposed about the demand of money and about accosting the respondents while they were taking the dead bodies in the jeep. PW 6 – Radhabai is the owner of the house where the respondents were living at Degloor. She was examined on this issue. She, however, turned hostile and did not support the prosecution case.

7] PW 1 – Shivraj, complainant, PW 3 – Prakash and PW 4 – Shankarrao deposed on the lines of the prosecution case. Learned Sessions Judge, however, disbelieved their version finding that there was delay in filing the FIR and there were contradictions between the application filed to the police by PW 4 – Shankarrao and the FIR filed lateron at Exhibit 20 by PW 1 – Shivraj.

8] Learned APP for the appellant – State submits that learned Sessions Judge has committed mistake in finding contradictions between the application filed at Exhibit 29 by PW 4 – Shankarrao and the FIR filed lateron at Exhibit 20 by PW 1 – Shivraj. She submits that as the respondents were taking away the dead bodies in the jeep, PW 4 – Shankarrao, step-brother of the deceased, has just informed about the same on 9th December, 1999 and the FIR came to be filed lateron on 11th December, 1999 at Degloor Police Station. If the facts of the case are looked into

from this angle, omission about the demand of money made by the respondents, in the application filed by PW 4 – Shankarrao, would not be an omission. The only intention at that time was to stop the dead bodies from taking them for funeral. She further submits that learned Sessions Judge has unnecessarily taken into consideration the trivial variances and therefore, the appeal may be allowed.

9] On the other hand, Mr.Gandhi, learned counsel for the respondents, submits that while the application at Exhibit 29 was filed by PW 4 – Shankarrao on 9th December, 1999, the FIR thereafter came to be filed on 11th December, 1999 by another step-brother of the deceased and that too, at Degloor Police Station when, admittedly, the incident has occurred within the jurisdiction of Police Station, Biloli. There is no explanation for belated filing of the FIR i.e. after two days from the date of alleged incident and that too, at another police station. He

further submits that the FIR would show that the demand of Rs.2,50,000/- was allegedly made by the respondents on 23rd November, 1999, but there is no recital as to whether, the respondents made the demand through the deceased and whether, the deceased had communicated the same to her parents. Further, during cross-examination, when, at three times, it was asked to PW 1 – Shivraj about the alleged demand of money made by the respondents on 23rd November, 1999, he deposed that he did not remember as to, where he was on that day and as to, what has happened on that day. Even, he further went to say that he cannot say as to why, the date 23rd November, 1999 was mentioned in the FIR.

. Mr.Gandhi submits that taking into consideration all these facts, learned Sessions Judge has rightly disbelieved the prosecution case and therefore, the appeal may be dismissed.

10] On the basis of this material, following points arise for my determination :-

i] Whether the prosecution has proved that during cohabitation of deceased – Sumitra with respondent no.1 for ten years, the respondents have subjected her to cruelty ?

ii] Whether the prosecution has proved that on 8th December, 1999, both the respondents have abetted commission of suicide by the deceased – Sumitra ?

iii] Whether the prosecution has proved that both the respondents in furtherance of their common intention, caused evidence of commission of offence, to disappear with the intention of screening the offender from legal punishment ?

. My findings to above points are in the negative and the appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

11] It should be noted that the death of deceased – Sumitra has occurred on 8th December, 1999. As per the version of PW 3 – Prakash, on 8th December, 1999, he was coming to Degloor from his village Narangal. At that time, at the octroi naka, there was traffic jam. He found that both the respondents were in a jeep and as they were his relatives, he went to them and saw that the dead bodies of deceased – Sumitra as well as her daughter were lying in the jeep. Upon questioning, the respondents told that both i.e. Sumitra and her daughter, had drunken poison and therefore, they were taking them for funeral. Immediately, thereafter, the jeep was taken away. Therefore, PW 3 – Prakash went to the village Rushegaon and intimated the incident to the parents

of deceased - Sumitra. This witness also deposed that about six months prior to the death of Sumitra, she had told him that an amount of Rs.2,50,000/- was being demanded by her husband. During cross-examination, this witness deposed that he cannot state the reason as to why, he did not intimate the matter to the police when he was taken to police station by PW 4 - Shankarrao. Further, it is to be noted that in the belatedly filed F.I.R. i.e. filed after two days of the incident no date, time or period regarding ill-treatment to the deceased - Sumitra as well as communication about the same to her relatives, was mentioned. A specific date is, however, mentioned of the meeting dated 23rd November, 1999. The complainant i.e. PW 1 - Shivraj, however, disown his statement regarding this specific date in his evidence before the Court.

12] PW 6 - Radhabai, the landlady of the deceased and respondents, denied that any ill-treatment or any

demand was there by the respondents to the deceased. The evidence on record clearly shows that the respondents were having sufficient landed property and in that view of the matter, the finding of the learned Sessions Judge that the deceased has accidentally consumed poison, appears to be reasonable.

13] In the circumstances, in my view, the learned Sessions Judge, has taken a reasonable and probable view of the matter and, therefore, in the present appeal against the order of acquittal, no interference is warranted.

14] In the result, the appeal is hereby dismissed. The bail bonds of the respondents shall stand canceled.

[M.T. JOSHI, J.]