

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 288 OF 2002

Sow. Jankabai W/o Gulabsing Bedwal

Age : 35 Yrs., Occ. : Labour,

R/o : Dhoregaon, Tq. : Gangapur,

Dist. : Aurangabad.

..... APPLICANT/

[ORIGINAL COMPLAINANT]

V E R S U S

1. Bhimsing S/o Ramlal Bedwal

Age : 42 Yrs., Occ. Business,

R/o : Karnapura, Aurangabad.

2. Suresh S/o Eknath Danve

Age : 30 Yrs., Occ. : Business,

R/o : Karnapura, Aurangabad.

3. Ramkaurbai W/o Ramlal Bedwal

Age : 70 Yrs., Occ. Household,

R/o : Karnapura, Aurangabad.

4. Shamkaurbai W/o Dharamsing Bedwal

Age : 32 Yrs., Occ. Household,

R/o : Karnapura, Aurangabad.

5. The State of Maharashtra

..... RESPONDENTS

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Mr. K.N.Lokhande, Advocate for the Applicant.

Mr. V.G.Mete, Advocate for R – 1, 3 & 4.

Mr. Manish Nawandar, Advocate for R – 2.

Mr. V.P.Kadam, A.P.P. for R – 5 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 5th FEBRUARY, 2015

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JUDGMENT :

1. Exception is taken to the Judgment and Order of acquittal dated 25/07/2002 passed by the learned 1st Adhoc Additional Sessions Judge, Aurangabad in Sessions Case No. 268/1998, whereby the learned trial Court recorded finding that the prosecution has failed to prove the guilt of the present respondent Nos. 1 to 4 and thereby he acquitted them for the offences punishable u/s 302 read with 34 of the Indian Penal Code.

2. The State chose not to prefer Appeal against the said acquittal. It is the applicant, who was the first informant and the widow of deceased Gulabsing, challenged the said acquittal.

3. Heard Mr. K.N.Lokhande, the learned counsel for the applicant, Mr. V.G.Mete, the learned counsel for respondent Nos. 1, 3 and 4, Mr. Manish Nawandar, the learned counsel for respondent No. 2 and Mr. V.P.Kadam, the learned A.P.P. for respondent No. 5 – State in extenso. With their able assistance, I have gone through the record and proceedings.

4. First informant Jankabai lodged First Information Report [hereinafter referred as ' F.I.R.' for brevity] [Exh. 25] with police station Gangapur, Taluka Gangapur, District Aurangabad on 23/07/1997. According to the report, Jankabai used to reside with her family, which consists of her husband - deceased Gulabsing, her daughters Savita, Anita, Kavita and son Shankar at village Dhoregaon, Taluka Gangapur, District Aurangabad. Deceased Gulabsing was having 3 real brothers viz. Popat, Vijay and Premsing. Accused No. 1 Bhimsing is real brother of Dharamsing and they are the step brothers of deceased Gulabsing. Accused No. 1 Bhimsing and Dharamsing used to reside at Aurangabad. The dispute was going on in between deceased Gulabsing and accused No. 1 Bhimsing. The prosecution case

further states that on 23/07/1997, first informant Jankabai along with her elder daughter had been to their agricultural field, whereas other remaining 3 children went to the school. At about 2.30 to 3.00 p.m., Savita, daughter of the first informant Jankabai came to the field and informed the first informant that in her house the quarrel is going on in between Gulabsing and accused No. 1 Bhimsing and in that quarrel, accused No. 1 Bhimsing has given slaps to Gulabsing. It was further narrated by Savita that accused No. 1 Bhimsing was also accompanied by one more person. On getting such information, first informant Jankabai immediately rushed to her house and noticed her husband Gulabsing in an unconscious condition on the ground due to some poisonous substance like 'Thimet'. She tried to give him water for causing him to vomit. However, he did not respond. Doctor was called there. Dr. Chaus examined Gulabsing and declared him dead.

5. The investigation was carried and charge sheet was filed in the Court of law. During trial, charge was framed against accused Nos. 1 to 4. Accused No. 3 Ramkaurbai is mother of accused No. 1 Bhimsing, whereas

accused No. 4 Shamkaurbai is wife of Dharamsing, brother of accused No. 1 Bhimsing and accused No. 2 is Suresh Danwe, who, according to the prosecution, was unknown person accompanying accused Bhimsing at the time of his quarrel with Gulabsing.

6. There is no eye witness account in the present prosecution case. The prosecution proceeds on the footing that the deceased Gulabsing was lastly seen in the company of accused No. 1 Bhimsing and one unknown person, whose identity later-on was established as accused No. 2 Suresh Danwe by Savita [P.W. 2]. The prosecution case further rests on the recovery of poisonous substance 'Thimet' from the house of accused Nos. 3 and 4.

7. From the prosecution case, it is clear that the death of Gulabsing was unnatural. The Postmortem report [Exh. 20] shows that the opinion was reserved by the Doctor and Viscera was sent to the Chemical Analyser for examination. Chemical Analyser's report is available on record and it is at Exh. 31. It shows results of analysis as under :

“Results of detection of organophosphorus insecticide “Phorate” - (Thimet) in exhibit Nos. (1) and (2) are positive ”.

Thus, it is crystal clear that the death of Gulabsing was due to poison.

8. The question which is posed is, as to whether the present respondent Nos. 1 to 4 are responsible for administering the said poison to deceased Gulabsing as claimed by the present applicant.

9. As observed above, there is no eye witness in the present case. P.W. 2 is Savita. She is daughter of Gulabsing. Even her evidence would reveal that she has not seen the actual act on the part of the accused persons of administering poison to her father. This witness was examined during trial to establish the fact that accused Nos. 1 and 2 were lastly seen in the company of deceased Gulabsing and accused No. 1 Bhimsing gave slaps to Gulabsing.

10. Admittedly, Savita [P.W. 2] is a school going girl. As per her evidence, at about 2.00 – 2.30 p.m., accused No. 1 Bhimsing and accused No. 2 Suresh Dawne came to her

house on motorcycle and they started abusing her father Gulabsing and accused Bhimsing gave 2 slaps on the face of Gulabsing and, therefore, Gulabsing asked her to call her mother from the field. Accused Nos. 3 and 4 were sitting on cot out side the house.

The timing of the school of Savita was between 9.00 a.m. to 4.00 p.m. with an interval at 10.30 a.m. and it commences from 11.00 a.m. and the second interval was at 12.00 noon. Savita did not claim in her evidence that she was absent from school on the said day. Therefore, normally, she would have been present in the school till 4.00 p.m. There is nothing in her evidence to show that there was any reason for her to leave the school and returned to the house at 2.30 p.m. When her school was till 4.00 p.m. and recess were over at 12.00 noon, there was no reason for this girl to remain present in her house, especially when she had not stated any excuse for her absence from the school. In that view of the matter, it is really hard to believe about her presence in her house.

11. During the course of the investigation, identification parade was held in the Tahsildar's office for

fixing the identity of unknown person. It is claimed in the prosecution case that P.W. 2 Savita has identified accused No. 2 in the said identification parade.

Though the parade was held by the Executive Magistrate, Gangapur in presence of panchas, neither the Executive Magistrate nor the panchas were examined by the prosecution. The report is exhibited as proved in the evidence of Madhukar Aute [P.W. 6], the Investigating Officer. In absence of examination of either panchas, in whose presence the identification parade was conducted or the Executive Magistrate who conducted the said identification parade, it can not be said that the contents of the said panchanama are duly proved. Therefore, the said document, though exhibited as Exh. 37, can not be used against accused No. 2.

12. The Postmortem report [Exh. 20] is completely silent about any appearance of external injuries on the body of deceased. Even there are no bruises on the dead body. The learned trial Court, according to me, has rightly appreciated this aspect. If by force, poison is being administered to a fully developed male, then naturally,

resistance is expected from the said man, resulting into some kind of injuries. Further, there are no injuries on the person of accused.

Further, the Spot Panchanama does not show the existence of any of the poisonous substance. The poisonous substance [Thimet] is in the nature of granules. If such substance is being forcefully administered, then there was every possibility of noticing some granules on the floor. The Spot Panchanama is totally silent about the same.

13. The another incriminating circumstance, according to the learned counsel for the applicant, is noticing 'Thimet' in the house of accused Nos. 3 and 4. The house search panchanama is at Exh. 23. It shows that the house is common and on the southern side of the said house, deceased Gulabsing used to reside along with his family, whereas on the northern side accused Nos. 3 and 4 used to reside. From the prosecution case, it is clear that accused No. 1 was not residing in the said house. The poison is in fact is an insecticide. The availability of the same in the house of an agriculturist is common, that they are agriculturists is not a disputed fact.

14. Since accused Nos. 3 and 4 were residing in the part of the house, wherein the deceased Gulabsing was residing, therefore, their presence in their house at the time of alleged incident of quarrel in the court-yard, as stated by Savita, can not be an incriminating circumstance against them.

15. The learned trial Court has also rightly found that the prosecution has utterly failed to bring home the guilt of the accused persons beyond reasonable doubt.

16. The scope of the Revision is limited. The learned counsel for the applicant was unable to point out any perversity in the impugned Judgment. Further, the view taken by the learned trial Court is a possible view.

17. In that view of the matter, the present Revision Application fails and it is dismissed.

[V.M.DESHPANDE, J.]
