

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.642 OF 1992

The State of Maharashtra] **... Appellant/**
Versus] **(Orig.Complainant)**

- | | | |
|---------------------------------------|---|----------------------|
| 1. Ananda Shiva Sutar, |] | ... Abated on |
| Age : 32 yrs. |] | 19/09/2014 |
| 2. Babaso Shivapa Mhetar, |] | ... Abated on |
| Age : 25 yrs. |] | 25/08/2014 |
| 3. Shivanand @ Nandkumar, |] | |
| Vishwanath Swami, |] | |
| Age : 27 yrs. |] | |
| 4. Laxman Dattatraya Giribuva, |] | |
| Age : 25 yrs. |] | |
| 5. Udaysingh Rajaram Gaikwad, |] | ... Abated on |
| Age : 25 yrs. |] | 25/08/2014 |
| 6. Piraji Shiva Sutar, |] | |
| Age : 26 yrs. |] | |
| 7. Subhash Gundappa Patil, |] | |
| Age : 26 yrs. |] | |
| 8. Akaram Ishwara Patil, |] | |
| Age : 51 yrs. |] | |
| Police Head Constable |] | |
| Buckle No.1785, R/o. Kolhapur. |] | |
| 9. Ashok Maruti Nimbalkar, |] | ... Abated on |
| Age : 35 yrs. |] | 01/09/2010 |
| Police Constable B.No.1217, |] | |
| R/o Kolhapur. |] | |
| Accused Nos.1 to 7 R/o. Hupari, |] | |
| Taluka Hatkanangale, Dist.Kolhapur. |] | |

Mrs. A. S. Pai, APP for State/Appellant.
 Mr. Ganesh Gole for Respondent No.3.
 Smt. Varsha Palav for Respondent Nos.4, 6 and 7.
 Mr. B. R. Patil for Respondent No.8.

WITH
CRIMINAL APPEAL NO.643 OF 1992

The State of Maharashtra	]	... Appellant/ (Orig.Complainant)
Versus		
1. Ananda Shiva Sutar,	]	... Abated on
Age : 32 yrs.	]	19/09/2014
2. Babaso Shivapa Mhetar,	]	... Abated on
Age : 25 yrs.	]	25/08/2014
3. Shivanand @ Nanakumar,	]	
Vishwanath Swami,	]	
Age : 27 yrs.	]	
4. Laxman Dattatraya Giribuva,	]	
Age : 25 yrs.	]	
5. Udaysingh Rajaram Gaikwad,	]	... Abated on
Age : 25 yrs.	]	25/08/2014
6. Piraji Shiva Sutar,	]	
Age : 26 yrs.	]	
All residents of Hupari,	]	
Taluka Hatkanangale, Dist.Kolhapur.	]	
7. Akaram Ishwara Patil,	]	
Age : 51 yrs.	]	... Respondents/
Police Head Constable	]	Orig.Accd.Nos.
Buckle No.1785, R/o. Kolhapur.	]	1 to 6 & 8

Mrs. A. S. Pai, APP for State/Appellant.
Smt. Varsha Palav for Respondent Nos.4 and 6.
Mr. B. R. Patil for Respondent No.7.

**CORAM :- SMT. V. K. TAHILRAMANI AND
SMT. I. K. JAIN, JJ.**

**RESERVED ON :- JANUARY 30, 2015
PRONOUNCED ON :- MARCH 05, 2015**

JUDGMENT (PER SMT. I. K. JAIN, J.) :-

Criminal Appeal No.642 of 1992 arises out of the Judgment and Order dated 30/06/1992 passed by the learned 5th Assistant Sessions Judge, Kolhapur, in Sessions Case No.114 of 1991. By the said Judgment and Order, the learned Assistant Sessions Judge acquitted Respondent Nos.1 to 9 of the offences under Section 330 of the Indian Penal Code. The learned Assistant Sessions Judge acquitted Respondent Nos.8 and 9 also, of the offences under Sections 167, 177, 217, 218 and 201 IPC.

2. By the very same Judgment and Order, the learned Assistant Sessions Judge convicted Respondent Nos.1 to 6 for the offence under Section 365 of IPC and sentenced each of them to R.I. for 2 years and fine of Rs. 1,000/- each, in default further rigorous imprisonment for 6 months. Respondent No.8 was convicted for the offence under Section 342 of IPC and instead of sentencing him at once, the learned Judge released him on probation of good conduct on bond of Rs.5,000/- with surety for two years.

3. Being aggrieved by the inadequacy of the sentence imposed against the above Respondents, the State

of Maharashtra has sought enhancement of sentence in Criminal Appeal No.643 of 1992.

4. During the pendency of Appeals, Respondent Nos.1, 2, 5 and 9 have expired. By the order dated 19/09/2014, Appeals against Respondent No.1 stood abated. By the order dated 25/08/2014, Appeals against Respondent Nos.2 and 5 stood abated and by the order dated 01/09/2010, Criminal Appeal No.642 of 1992 against Respondent No.9 stood abated. Thus, these Appeals are being heard only in respect of Respondent Nos.3, 4, 6, 7 and 8.

5. For the sake of convenience, we shall refer the Appellants as they were referred before the trial Court.

6. The prosecution case briefly stated is as under :-

(i) Accused no.1 was dealing in business of making silver ornaments at Village Hupari, Taluka Hatkanangale, District Kolhapur. Netaji Balu Lohar was employed as a dye maker in the shop of accused no.1. At the relevant time, accused nos.8 and 9 were the Police Head Constable and Police Constable respectively at police outpost, Hupari.

(ii) A theft was committed in the shop of accused no.1. He suspected that Netaji had stolen silver from the shop. Netaji was staying in a house of his father-in-law at Shirguppi. On 18/04/1990, accused nos.1 to 7 had been to village Shirguppi. They assaulted Netaji on the suspicion of theft of silver from the shop of accused no.1 and brought him to police outpost Hupari. Accused no.8 was in-charge of the said police outpost. No offence was registered against Netaji at the outpost. Accused no.8 detained Netaji in the police outpost without any complaint from accused no.1.

(iii) On 19/04/1990, accused had taken Netaji to village Shirguppi and compelled him to dig the earth at the rear portion of the house of his in-laws to find out whether stolen silver was concealed there. Accused nos.1 to 9 tried to extort confession from Netaji regarding theft of silver from the shop of accused no.1. He was detained in custody without following the legal procedure.

(iv) Thereafter on 20/04/1990, accused allowed Netaji to go from police outpost Hupari. He was asked to return to police outpost on the next day with stolen silver. On 21/04/1990, on his return to police outpost, accused nos.8

and 9, at the instance of accused nos.1 to 7, again detained Netaji in the custody. His relatives came to see him but accused no.8 did not allow them to see Netaji.

(v) On 23/04/1990, Netaji committed suicide in the police lock-up at police outpost Hupari. Accused Nos.8 and 9 were on duty. At around 7.30 a.m., it was revealed by them that Netaji committed suicide. Accused nos.8 and 9 then prepared a false panchanama to show that Netaji was arrested during night intervening 22/04/1990 and 23/04/1990 under Section 122 (c) of the Bombay Police Act as he was found concealing himself near Vithoba temple and could not give satisfactory explanation. Accused no.8 avoided to record complaint of the relatives of Netaji. So there was a riot in the village. Thereafter PSI Ingale recorded complaint of PW 2 Mangal. Crime no.59 of 1990 was registered against the accused. On completion of investigation, charge-sheet came to be filed. In due course, the case was committed to the Court of Sessions.

7. The charge was framed against the Respondents/accused. They pleaded not guilty to the charge and claimed to be tried. The defence of accused was of total denial and

false implication.

8. We have heard the learned Advocates for the parties. After giving our anxious consideration to the facts and circumstances of this case, arguments advanced, the evidence on record and the Judgment delivered by the learned Assistant Sessions Judge, for the below-mentioned reasons, we are of the opinion that there is no merit in the Appeals.

9. On the law relating to Appeal against acquittal, Mr.B.R.Patil, learned Advocate for Respondent No.8, submitted that well-settled principles laid down in catena of decisions are to be kept in view if the Court is going to disturb the Judgment of acquittal. In support, Mr. Patil relied upon following authorities :

- (i) ***Muluwa son of Binda and Others V/s. The State of Madhya Pradesh***¹ in which it has been held that -

“18. All said and done, this is a case where two views on the evidence are reasonably possible, one taken by the trial Court and the other reached by the High Court. It is well-settled that in the

¹ (1976) 1 Supreme Court Cases 37

absence of any material irregularity, manifest error or illegality, the High Court should not interfere with the order of acquittal, merely because it thinks that it would, sitting as a trial Court, have taken the other view of the evidence.”

- (ii) **Mohammed Ankoos and Others V/s. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad²**, wherein it was held -

*“15. This Court has, time and again, dealt with the scope of exercise of power by the Appellate Court against judgment of acquittal under Sections 378 and 386 Cr.P.C. It has been repeatedly held that if two views are possible, the Appellate Court should not ordinarily interfere with the judgment of acquittal. This Court has laid down that the Appellate Court shall not reverse a judgment of acquittal because another view is possible to be taken. It is not necessary to multiply the decisions on the subject and reference to a later decision of this Court in **Ghurey Lal v. State Of Uttar Pradesh**³ shall suffice wherein this Court considered a long*

² (2010) 1 Supreme Court Cases 94

³ (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60

line of cases and held thus: (SCC p. 477, paras 69-70).

69. *The following principles emerge from the cases above:*

1. *The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*

2. *The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

3. *Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.*

70. *In light of the above, the High Court and other appellate courts should*

follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. *The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

A number of instances arise in which the appellate court would have 'very substantial and compelling reasons' to discard the trial court's decision. 'Very substantial and compelling reasons' exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;*
- (ii) The trial court's decision was based on an erroneous view of law;*
- (iii) The trial court's judgment is likely to result in 'grave miscarriage of justice';*
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- (v) The trial court's judgment was manifestly unjust and unreasonable;*
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material*

*documents like dying
declarations/report of the ballistic
expert, etc.*

*(vii) This list is intended to be
illustrative, not exhaustive.*

*2. The appellate court must always give
proper weight and consideration to the
findings of the trial court.*

*3. If two reasonable views can be
reached--one that leads to acquittal, the
other to conviction--the High
Courts/appellate courts must rule in favour
of the accused."*

(iii) Another decision on which reliance is placed by
Respondent No.8 is ***Babu V/s. State of Kerala***⁴.

In this case, it has been held as under -

*"20. The findings of fact recorded by a
court can be held to be perverse if the
findings have been arrived at by
ignoring or excluding relevant material
or by taking into consideration
irrelevant/inadmissible material. The
finding may also be said to be perverse
if it is "against the weight of evidence",
or if the finding so outrageously defies
logic as to suffer from the vice of*

⁴ (2010) 9 Supreme Court Cases 189

*irrationality. (Vide **Rajinder Kumar Kindra v. Delhi Admn.**⁵, **Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons**⁶, **Triveni Rubber & Plastics v. CCE**⁷, **Gaya Din v. Hanuman Prasad**⁸, **Aruvelu**⁹ and **Gamini Bala Koteswara Rao v. State of A.P.**¹⁰.*

21. In **Kuldeep Singh v. Commr. of Police and Ors.**¹¹, this Court held that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.”

10. Keeping in view the above well-settled principles crystallized by the Supreme Court, it is to be seen in the present case whether the entire approach of the trial Court in dealing with the evidence was patently illegal and the impugned decision is based on erroneous view of law.

5 (1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805

6 1992 Supp (2) SCC 312

7 1994 Supp (3) SCC 665

8 (2001) 1 SCC 501

9 *Arulvelu v. State*, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288

10 (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372

11 (1999) 2 SCC 10 : 1999 SCC (L&S) 429 : AIR 1999 SC 677

11. Mrs. Pai, learned APP for State, submitted that there is sufficient evidence on record to prove the case against accused nos.3, 4, 6, 7 and 8 under Section 306 of IPC and also under Sections 167, 177, 217, 218 and 201 against accused no.8. She pointed out that Netaji was illegally detained in the police outpost. He was mentally and physically harassed by the accused to the extent that he was compelled to put an end to his life. Mrs. Pai submitted that accused no.8 was the in-charge of police outpost at the relevant time. He prepared false panchanama of arrest of Netaji after it was revealed that he committed suicide in the police lock-up. The said panchanama was prepared deliberately with a view to protect them from the consequences of the wrongful act of illegally detaining Netaji from 18/04/1990 to 23/04/1990 without any report and without any valid order of police custody remand from the Judicial Magistrate. She vehemently contended that accused nos.3, 4, 6 and 7 were instrumental in kidnapping Netaji and taking him to police outpost. According to her, they abetted commission of suicide by Netaji and so their act was squarely covered under Section 306 of IPC. She submitted that acts of accused no.8 were also covered under the various sections referred above but the trial Court misdirected itself while

considering the evidence and wrongly acquitted the accused. The learned APP then submitted that the sentence imposed under Sections 365 and 342 of IPC is grossly inadequate and hence urged to enhance the same.

12. On applicability of Section 360 Cr.P.C., Mr. Patil placed reliance on ***Bishnu Deo Shaw V/s. State of West Bengal***¹². The Supreme Court laid down -

“26. Apart from Section 354 (3) there is another provision in the Code which also uses the significant expression 'special reasons'. It is Section 361. Section 360 of the 1973 code re-enacts, in substance, Section 562 of the 1898 Code and provides for the release on probation of good conduct or after admonition any person not under twenty one years of age who is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or any person under twenty one years of age or any women who is convicted of an offence not punishable with death or imprisonment for life, if no previous offence is proved against the offender, and if it appears to the Court, having regard to the age, character or

12 (1979) 3 Supreme Court Cases 714

antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct or after admonition. If the Court refrains from dealing with an offender under Section 360 or under the provisions of the Probation of Offenders Act, or any other law for the treatment, training, or rehabilitation of youthful offenders, where the Court could have done so, Section 361, which is a new provision in the 1973 Code makes it mandatory for the Court to record in its judgment the 'special reasons' for not doing so. Section 361 thus casts a duty upon the Court to apply the provisions of Section 360 wherever it is possible to do so and, to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and

rehabilitation of offenders, and not mere deterrence, are now among the foremost objects of the administration of criminal Justice in our country. Section 361 and Section 354 (3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology.

The Supreme Court further held that :

27. *Criminal justice is not a computer machine. It deals with complex human problems and diverse human beings. It deals with persons who are otherwise like the rest of us, who work and play, who laugh and mourn, who love and hate, who yearn for affection and approval, as all of us do, who think, learn and forget. Like the rest of us they too are the creatures of circumstance. Heredity, environment, home neighbourhood, upbringing, school, friends, associates, even casual acquaintances, the books that one reads, newspapers, radio and TV, the economics of the household, the opportunities provided by circumstances and the calamities resulting therefrom, the success and failure of one's undertakings, the affairs*

of the heart, ambitions and frustrations, the ideas and ideologies of the time, these and several other ordinary and extra-ordinary incidents of life contribute to a person's personality and influence his conduct. Differently shaped and differently circumstanced individuals react differently in given situations. A Judge has to balance the personality of the offender with the circumstances, the situations and the reactions and choose the appropriate sentence to be imposed. A judge must try to answer a myriad questions such as was the offence committed without premeditation or was it after due deliberation? What was the motive for the crime? Was it for gain? Was it the outcome of a village feud? Was it the result of a petty, drunken, street brawl, or a domestic bickering between a hapless husband and a helpless wife? Was it due to sexual jealousy? Was the murder committed under some stress, emotional or otherwise? What is the background of the offender? What is his social and economic status? What is the level of his education or intelligence? Do his actions betray a particularly callous indifference towards the welfare of society or, on the other hand, do they

show a great concern for humanity and are in fact inspired by such concern? Is the offender so perpetually and constitutionally at war with society that there is no hope of ever reclaiming him from being a menace to society? Or is he a person who is patently amenable to reform? Well may one exclaim with Prof. Vrij: "What audacity is involved in these three tasks : to interpret life, explain an act, predict the latest inclination of a human mind."

28. *'Special reasons', we may, therefore say, are reasons which are special with reference to the offender, with reference to constitutional and legislative directives and with reference to the times, that is, with reference to contemporary ideas in the fields of Criminology and connected sciences. Special reasons are those which lead inevitably to the conclusion that the offender is beyond redemption, having due regard to his personality and proclivity, to the legislative policy of reformation of the offender and to the advances made in the methods of treatment etc."*

13. Needless to state that the scope of present

Appeals is in narrow compass. The factum of suicidal death is not seriously in dispute. It is not disputed that Netaji was related to accused no.1 and he was working in the shop of accused no.1. There is no dispute that on 18/04/1990, he was given in the custody of accused no.8. In his statement under Section 313 of Cr.P.C., accused no.8 admitted that during the period of incident, he was working at Hupari police outpost. He did not dispute that accused nos.1 to 6 brought Netaji to police outpost as they suspected that he had stolen silver from the shop of accused no.1. Accused no.8 had not recorded information regarding the cognizable offence. Accused no.1 did not lodge report that he suspected Netaji for commission of theft of silver articles from his shop.

14. Considering the evidence, trial Court came to the conclusion that the offence of wrongful confinement of Netaji was committed due to bonafide mistake as accused no.8 was informed by his higher authority to inquire into the matter. It appears that accused no.8 had completed 33 years service and only 2 years had remained for his retirement at the time of decision in the case. His intention was to get the information regarding commission of theft as alleged by accused nos.1 to 6. The son of accused no.8 was studying at

that time. He was the only bread-winner in the family. Based on these circumstances, trial Court thought it fit to extend the benefit of Section 360 of Cr.P.C. to accused no.8 instead of sentencing him at once. We do not find any reason to take a view different then taken by the trial Court.

15. Prosecution examined 20 witnesses in the case. It can be seen from the evidence of witnesses that there is no nexus between the suicide committed by Netaji and the alleged ill-treatment/harassment at the hands of accused persons. Absolutely there is no iota of evidence to show that accused abetted commission of suicide by Netaji. In view of the evidence on record, trial Court found that accused had not assaulted Netaji and they were not responsible for the suicidal death of Netaji. For want of legal evidence, accused were acquitted under Section 306 of IPC. We do not find any perversity in the Judgment of the trial Court. Thus, we are not inclined to interfere with the same.

16. So far as the offences punishable under Sections 167, 177, 217, 218 and 201 of IPC are concerned, it would be appropriate to reproduce here Section 161 of the Bombay Police Act, 1951. It reads as under :

“161. Suits or prosecution in respect of acts done under colour of duty as aforesaid not to be entertained, or to be dismissed if not instituted [within the prescribed period].--

(1) In any case of alleged offence by [the Revenue Commissioner, the Commissioner], a Magistrate, Police Officer or other person, or of a wrong alleged to have been done by [the Revenue Commissioner, Commissioner], Magistrate, Police Officer or other person, by any act done under colour or in excess of any such, duty or authority as aforesaid, or wherein it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of:

[Provided that, any such prosecution against a Police Officer may be entertained by the Court, if instituted with the previous sanction of the State Government within two years from the date of the offence.]”

17. In the present case, accused no.8 was discharging his official duty at the police outpost Hupari. The Sanction

(Exh.71) was accorded by District Superintendent of Police, Kolhapur. The incident occurred between 18/04/1990 and 23/04/1990. On 20/04/1990, Netaji was allowed to go home with an understanding to report back on 21/04/1990. Complaint was filed on 24/04/1990. Charge-sheet was submitted on 15/03/1991. Sanction Order was issued by Superintendent of Police on 05/03/1991. The Sanction Order apparently shows that it was after the expiry of six months.

18. As contemplated under proviso to Section 161 of the Bombay Police Act, previous sanction of the State Government within two years from the date of offence was required in such a case. No sanction was accorded by the State Government. Therefore, prosecution of accused no.8 for these offences was held to be barred by limitation as prescribed under Section 161 of the Bombay Police Act. In consequence, accused were acquitted. We find that the view taken by the learned Additional Sessions Judge is reasonable and possible view. Hence, we do not find it fit to interfere in the impugned Judgment and Order. In the result, Appeals are dismissed against accused nos.3, 4, 6, 7 and 8.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)