

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 2 OF 1998

The State of Maharashtra

.....Appellant

V/s.

1. Milind Shridhar Kulkarni	}	
Occupation : Service,	}	
Resident of Karad, Taluka Karad,	}	
District : Satara.	}	
2. Balasaheb Tukaram Jadhav	}	
Occupation : Service	}	
Resident of Umbraj, Taluka Karad,	}	
District : Satara.	}	Respondents
3. Hambirrao Dhondiram Kumbhar	}	
Occupation : Service,	}	
Resident of Patan, Taluka Patan,	}	
District : Satara.	}	
4. Changdev Shankar Agawane	}	
Occupation : Service	}	
Resident of Satara, Taluka and	}	
District : Satara.	}	
5. Ramesh Vitthal Toraskar	}	
Occupation : Service	}	
Resident of Karad, Taluka Karad,	}	
District : Satara	}	
6. Anil Vishnu Choudhari	}	
Occupation : Service,	}	
Resident of Umbraj, Taluka Karad,	}	
District : Satara.	}	

Mrs. A. A. Mane APP for the State

Mr. Rahul Kate for Respondent nos. 2, 4, 5 & 6.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 7, 2016.

JUDGMENT:

State of Maharashtra being aggrieved by Judgment and Order passed by Additional Sessions Judge, Satara dated 22/01/1997 thereby acquitting the respondents herein of the offence punishable under section 306, 323, 342 r/w 34 of Indian Penal Code in Sessions Case No. 229 of 1995, has filed the present appeal. During the pendency of appeal accused Milind Kulkarni has expired on 07/12/2012. Death certificate is taken on record and marked as article 'X' for the purpose of identification.

2) It is the case of the prosecution that respondents herein were working with Detection Branch at Karad City Police Station. That in the midnight of 16th and 17th February 1993 a telephonic message was received at Karad City Police Station that a person has been accosted by the public while he was committing theft in front of the bus stand at Karad. Assistant Sub Inspector Balasaheb Jadhav asked Police Head

Constable Hambirrao Kumbhar and Police Constable Changdev Agawane, Ramesh Toraskar & Anil Chaudhari to go to the said place and bring the person concerned. Pursuant to the said direction, officers had been to the scene. They had taken Shivaji Bhojgaonkar in custody along with property that was attached. He was detained in the lock up room and the police personnel had left in search of the owner of the scooter.

3) Police had arrested one Sanjay Nimbalkar and brought him to the police station. They had left the police station in search of the owner of the scooter. It is the case of the prosecution that Shivaji was dealt with in the interrogation room. He was again kept in a lock up. Entries in the police station record as well as arrest register showed that Shivaji was arrested on 12.45 noon on 17/02/1993. At about 3.00 p.m., one of the inmate in the lock up room had noticed that Shivaji had committed suicide by hanging in the latrine of the said lock up room with the use of the strings of the mat provided to under trial prisoners. Police Inspector in charge of Karad City Police Station was informed about the said incident. Initially it was registered as A.D. No. 9 of 1993 and the

investigation was entrusted with local Crime Branch Satara. Investigation was completed and charge-sheet was filed on 15/12/1995. Case was committed to the court of Sessions. Prosecution examined as many as 12 witnesses to bring home the guilt of the accused.

4) P. W. 1 Ananda More happens to be Panch for seizure of the scooter from the deceased Shivaji. He has admitted before the court that deceased was giving evasive answers in respect of his possession of scooter. That the employees of Video Parlour had caught Shivaji Tupe. Scooter was attached and the accused was arrested.

5) P. W. 2 Kamalakar Kamat was attached to C.I.D. Crime Unit, Kolhapur as Police Inspector. He had received the papers of inquiry in A.D. No. 9 of 1993. He had received the orders to lodge F.I.R. and accordingly on 23/01/1994 on behalf of the State, he had lodged the report at Karad Police Station. He has proved the contents of F.I.R. And it is marked at Exhibit 36. On 23rd itself he had seized the registers from the police station. He had submitted a report for seeking sanction to prosecute the accused. It is admitted in the cross-examination that

ism

there is no reference to accused no. 1 Milind Kulkarni in the said crime. It is admitted by P.W. 2 that section 41 of Code of Criminal Procedure, 1973 empowers the police officer to arrest any person who is found in possession of any property in suspicious circumstances and for it he could not account for his possession. It was revealed in the course of investigation that the scooter did not belong to deceased Shivaji. That one Parekel had lodged complaint of theft of his scooter. It is further admitted in the cross-examination that he had not ascertained as to who was the scribe of the entries in the duty register or who had made the entries in the station diary of 16th and 17th February 1993. It is also admitted that he had not seized lock up register.

6) P.W. 3 Dr. Pandurang Pawar who was working as Medical Officer in Cottage Hospital at Karad has described the external injuries on the person of the deceased including a ligature mark on the neck, contusions, abrasions etc. He had opined that all injuries were anti mortem in nature and caused by hard and blunt object. The age of injuries was said to be about 1 – 4 days. He had further opined that the principal cause of death is “Asphyxia due to hanging”. Post mortem

ism

notes are at Exhibit 38 whereas the advance death certificate is at Exhibit 39. In the cross-examination he has stated that even after death the process of change in colour continues. Colour of contusion was bluish brown and therefore according to P. W. 3 he has opined that deceased had sustained injuries 2 – 4 days prior to his death. The possibility of withdrawal symptoms was not ruled out.

7) P. W. 4 Siddhanath Shirtode. He has deposed before the court that except accused no. 2 Balasaheb other accused were interrogating Shivaji in the detection room. At about 12.30 noon one more person was taken in the lock up room. At about 12.45 p.m., Head Constable Kumbhar brought deceased Shivaji in the room of P.W. 4. At about 3.00 p.m., police had come to the said room to produce accused Shivaji before the Magistrate and at that time it was revealed that Shivaji had committed suicide in the latrine by hanging. That Shivaji had used torn pieces of the mat to commit suicide. P.W. 4 therefore, lodged a report. On the basis of which A.D. No. 9 of 1993 was registered. It is elicited in the cross-examination that deceased had explained the contusions on his person to the police by saying that he was assaulted two days back

when he was drunk. It is also elicited in the cross-examination that Detection Branch Room and the lock up room have windows.

8) P. W. 5 Arjun Chorage. He has deposed before the Court that on 17/02/1993 at about midnight, a message was received from Chetna Vedeo Parlour that a person was caught while he was committing theft of scooter. Shivaji was taken into custody by the police.

9) P.W. 6 was also brought to the police station as an accused and he was being prosecuted for offence punishable under section 122 of Bombay Police Act. He was detained in the lock up room. At about 9.30 a.m., Shivaji was also kept in the same lock up room. The said witness was declared hostile.

10) Upon perusal of the substantive evidence, it can be seen that there is no cogent and convincing evidence to hold the accused liable for offence punishable under section 306 of Indian Penal Code. The scene of offence Panchanama clearly shows that deceased Shivaji had committed suicide by hanging himself with the aid of torn mat to the 'L' angle of the pipe in the toilet. He was found in a bent position.

11) In any case, it cannot be said that accused who are police officers

ism

had abetted the commission of suicide. That accused had taken custody of Shivaji on the basis of an information by received by him and the said act was done by the accused in discharge of their official duties. At night he was taken into custody. There is evidence that they had supplied food to the accused Shivaji. Since he was giving evasive answers, officers had found it necessary to hold custodial interrogation and the same would not amount to facilitate the commission of suicide.

12) Section 107 of Indian Penal Code defines abetment as follows:

“Abetment of a thing – A person abets the doing of a thing, who –
First – Instigates any person to do that thing; or
Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

13) In the present case, by no stretch of imagination, it can be said that accused persons who had arrested Shivaji in the course of administrative of Law and Order had not facilitated or abetted the commission of suicide. It is true that there were injuries on the person

of the deceased, however, there is no admission in the cross-examination by the Medical officer that injuries found on the person of the deceased were 2 – 4 days old. The said fact is corroborated by the evidence of P.W. 5 who has categorically stated in the course of interrogation that deceased himself had disclosed to the police that he was assaulted two days ago by the public while he was committing theft. Hence, the accused, by way of cross-examination have offered an explanation for the injuries on the person of the deceased and therefore, it cannot be said that deceased was assaulted by the police. In any case, assault by itself would not amount to abetment, commission of suicide. Learned Sessions Judge has recorded justifiable reasons for recording acquittal in favour of the accused persons.

14) It is settled principle of Criminal Jurisprudence that in cases wherever there are two view possible, the Court should normally tilt in favour of the evidence which is in favour of the accused. It is in these circumstances that the findings recorded by Sessions Court do not call for any interference. Hence, appeal deserves to be dismissed. Legal heirs of Milind Kulkarni would be entitled to the consequential benefits

of the dismissal of the appeal.

ORDER

- (i) Appeal stands dismissed.
- (ii) The Judgment and Order dated 22/01/1997 passed by Additional Sessions Judge, Satara in Sessions Case No. 229 of 1995 is maintained.
- (iii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)