

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

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.458 OF 1999**

The State of Maharashtra,  
Through Police Station, Kuntoor,  
Tq-Biloli, Dist-Nanded.

**...APPELLANT**

**VERSUS**

- 1) Geetabai w/o Digamber Thete,  
Age-36 years, Occu:Household,  
R/o-Barbada, Tq-Biloli, Dist-Nanded,
- 2) Ejajbeg s/o Hasanbeg,  
Age-25 years, Occu:Agril.,  
R/o-Barbada, Tq-Biloli, Dist-Nanded.

**...RESPONDENTS**

...  
Mr.P.G. Borade A.P.P. for Appellant - State.  
Mr.N.R. Shaikh Advocate appointed for  
Respondent Nos.1 and 2.  
...

**CORAM: S.S. SHINDE AND  
S.M. GAVHANE, JJ.**

**DATE : 28TH JUNE, 2017**

**JUDGMENT [PER S.S. SHINDE, J.] :**

1. This Appeal is filed by the State

challenging the Judgment and order dated 27th August, 1999, passed by the Additional Sessions Judge, Biloli in Sessions Case No.6 of 1999, thereby acquitting Respondent Nos.1 and 2/original accused Nos. 1 and 2 for the offences punishable under Sections 302 and 201 both read with Section 34 of the Indian Penal Code (For short "I.P. Code").

2. The prosecution case, in nut-shell, is as under :-

A) Accused No.1 Geetabai is the wife of the deceased Digambar. She was residing with her husband Digambar, two daughters and one son at village Barbada. Accused No.2 Ejaj is the resident of same village. The deceased Digambar had employed accused No.2 Ejaj for cultivation of his land on crop share basis. Accused No.2 Ejaj used to pay visits to the house of deceased Digambar. Thereupon illicit relations were developed in between accused No.1 Geetbai and accused No.2

Ejaj. The marital relations in between accused No.1 Geetabai and her husband Digambar became strained. Accused Nos. 1 and 2, in furtherance of their common intention, during the night in between 24th September, 1998 and 25th September, 1998 in the house of the Digambar, strangulated the neck of Digambar by means of a cloth after causing him to drink liquor and thereby both the accused killed Digambar. Both the accused then put the dead body in gunny bag and tied it with a Sari and took the dead body outside the house during that night and they threw the same at the river bank outside the village.

B) The said bundle of gunny bag containing dead body was noticed by people of village Barbada on 27th September, 1998. The informant Shriram (PW-1), the police patil of the village, lodged a report Exhibit 21 on 27th September, 1998 at police station, Kuntoor giving the information about the said dead body. On his report, crime was registered on the same day at police station,

Kuntoor for the offence punishable under Section 302 of the I.P. Code. The inquest panchnama Exhibit 10 of the dead body and the spot panchnama Exhibit 11 were prepared on 28th September, 1998. Thereafter the said dead body was identified by accused No.1 Geetabai as of her husband Digambar. The clothes of the said dead body were seized under panchnama Exhibit 12 on 28th September, 1998. On postmortem examination of the said dead body, it was found that the death of that person was occurred due to Asphyxia due to strangulation leading to Cardio respiratory failure. Accordingly, Certificate of cause of death Exhibit 42 and postmortem report Exhibit 41 were issued by PW-12, the concerned medical officer.

C) The statements of the witnesses were recorded and accused Nos.1 and 2 were arrested during the course of investigation. On completion of investigation, police filed charge-sheet against both the accused in the Court of Judicial Magistrate, First Class, Nilanga.

D)           Thereafter the case was committed to the Court of Additional Sessions Judge, Biloli. Charge at Exhibit-4 was framed against both the accused for the offences punishable under Sections 302 and 201 read with Section 34 of the I.P. Code and the same was explained to them. The accused persons pleaded not guilty and claimed to be tried, with the defence of total denial.

3.           After recording the evidence and conducting full fledged trial, the trial Court acquitted both the accused persons from the offences with which they were charged, as stated herein above in Para-1 of the Judgment. Hence this Appeal.

4.           Heard learned A.P.P. appearing for the State and learned counsel appearing for Respondent Nos.1 and 2/ accused Nos.1 and 2, at length. With their able assistance, we have carefully perused the entire notes of evidence so

as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. The prosecution examined PW-12 Dr. Ashalata w/o Digambarrao Gaikwad. She deposed that on 28th September, 1999 she was attached to the primary health center of Barbada as a Medical Officer. On that day she did the post-mortem examination of the dead body of Digambar Maroti Thete. She further deposed about the injuries noticed by her on the dead body of Digambar. She stated that the last meal was taken four hours before the death. Probably the death was more than 3 days prior to the post-mortem examination, as it is seen from the decomposition and maggots present on whole body. She further deposed that, the probable cause of death was "Asphyxia due to strangulation leading to cardio respiratory failure". During the course of her cross-examination, she denied that wrong opinion given by her that the death occurred more than 3 days

before the postmortem examination. However, she admitted that maggots appear in between 18 to 36 hours of the death.

6. The prosecution has examined PW-1 Shriram Ramji Kumbhargave, who at the relevant time was working as Police Patil at Barbada. He is the informant. He deposed that on 27th September, 1998, Mahajan Kotwal came to his house and told that one bundle of gunny bag in tied condition was lying at the bank of river. Then they went to the river bed and they saw one tied bundle at the bank of river over clay. They opened the said bundle. He saw the dead body at 2.00 p.m. He went to Kuntoor police station and lodged report.

7. It is the case of the prosecution that there were illicit relations between accused Nos.1 Geetabai and accused No.2 Ejaj, and hence there was motive. In order to prove the said fact, the prosecution has examined PW-2 Shivaji Maroti Thete, PW-3 Naibrao Bapurao Sarje, PW-4 Pandit

Kerba Modad, PW-8 Kewalbai w/o Mahajan Thete, PW-9 Ananda Maroti Thete, PW-11 Govind Bhujang Jadhav and PW-13 Mahadev Gangaram Mohajad. Upon careful perusal of the evidence of these witnesses and so also their cross-examination, it is clear that they have seen accused No.1 Geetabai and accused No.2 Ejaj talking with each other in the house of Geetabai and also in the field. However the defence has brought on record that accused No.2 Ejaj was cultivating the land of deceased Digambar on crop basis. Merely because accused No.2 Ejaj was visiting the house of deceased Digambar, it cannot be concluded that there were illicit relations between accused No.1 Geetabai and accused No.2 Ejaj. As Ejaj was engaged by deceased Digambar to cultivate his agricultural land on crop basis, it was obvious for Ejaj to visit the house of Digambar and his agricultural land. None of the above witnesses deposed that deceased Digambar during his life time, told them that there were illicit relations between his wife Geetabai and Ejaj. The trial Court has rightly

observed that, admittedly accused No.2 was engaged by the deceased Digambar for cultivating of his field and thus in the natural course of conduct, accused No.2 was going to the house of Digambar and it cannot be said that his paying visits to the house of Digambar were with an intention of keeping illicit relations with Digambar's wife Geetabai. The trial Court has concluded that no inference of illicit relation can be drawn from the talking terms in between the accused Nos.1 and 2.

8. The case of the prosecution is based only on the circumstantial evidence and there is no eye witness in this case. It is the case of the prosecution that deceased Digambar was lastly seen in the company of accused No.2 Ejaj. In order to prove 'last seen theory', the prosecution has relied upon the evidence of PW-3 Naibrao Sarje, PW-10 Anjana Mundphale and PW-13 Mahadev Mohajad. PW-3 Naibrao deposed that, on Wednesday at 10 p.m. he took meal and came outside the house. At

that time Digambar had sat in front of the door of his house and one man was sitting over the cot by the side of Digambar and that man and Digambar were talking to each other. Thus evidence of this witness PW-3 Naibrao is not at all helpful to the prosecution as he not specifically stated that he saw deceased Digambar in the company of accused No.2 Ejaj.

. PW-10 Anjana is a child witness, 11 years old. She deposed that her family runs shop in their house and sales eggs. She further deposed that Digambar had come to her shop before his death to purchase eggs. When he came to the shop, there was one man with him, and the time was 9.00 p.m. She further stated that the person who had accompanied Digambar was a Muslim fellow, and she can identify him. She identified accused No.2 Ejaj, who was present in the Court and stated that he is the same person who came with Digambar. However, during her cross-examination, PW-10 Anjana admitted that on the last date of hearing

while returning to her house she sat in the police vehicle, and at that time both the accused were also there in the said police vehicle. Therefore the identification of accused No.2 Ejaj by PW-10, child witness, cannot be believed.

. PW-13 Mahadev Mohajad deposed that on Thursday, he returned from the field to the house at 6.00 p.m. After taking meal, he started going to the field. When he was going to the field, he saw Digambar and Ejaj on the way in front of the house.

9. If we consider the evidence of PW-3 Naibrao, PW-10 Anjana and PW-13 Mahadev, they have deposed that they have seen deceased Digambar in the company of accused No.2 Ejaj during late night hours on 24th September, 1998, and it is the case of the prosecution that dead body of Digambar was found on 27th September, 1998. There is time gap of three days in between deceased was allegedly last seen in the company of the accused

and recovery of dead body. Therefore said circumstance of 'last seen' cannot be relied upon. The Supreme Court in the case of Shyamal Ghosh vs. State of W.B.<sup>1</sup>, on the basis of the evidence in that case, in Para 74 of the Judgment, observed that reasonableness of the time gap is of some significance. If the time gap is very large, then it is not only difficult but may not even be proper for the Court to infer that the deceased had been last seen alive with the accused and the accused, thus, was responsible for commission of the offence.

. The Supreme Court in the case Rambraksh alias Jalim vs. State of Chhatisgarh<sup>2</sup> held that, it is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap,

---

1 (2012) 7 S.C.C. 646

2 A.I.R. 2016 S.C. 2381

between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

10. The Supreme Court in the case of Inderjit Singh and another vs. State of Punjab, supra, in Para-2 of the Judgment held that:-

"2. After giving our careful consideration, we are unable to agree with the Courts below. These circumstances are not sufficient to establish guilt of the accused. It is well settled that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the

accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Among the circumstances relied upon by the prosecution, in the light of these principles we find that except the circumstance No.1, the other circumstances are not incriminating. In number of cases it has been held that the only circumstance namely that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the accused. It is no doubt true that deceased's death was homicidal but since there is no direct witness connecting any of the appellants with the crime we should fall back on the circumstantial evidence and we are of the view that circumstances relied upon by the prosecution are hardly sufficient to establish the guilt of the accused. The circumstance, i.e. the accused also had no enmity between the accused and the deceased and the witness would also show that the accused also had no enmity against the deceased. Therefore, this circumstance is neutral. However, now coming to the recovery of the gun, the High Court has acquitted him of that charge. The only relevant circumstance as pointed above is that the appellants and

the deceased left the house together in a friendly manner for bird-shooting. It is needless to say that no conviction can be passed on this sole circumstance. In the result, the convictions and sentences awarded by the Courts below are set aside. The appeal is allowed. The appellants be set at liberty."

11. The trial Court has observed that, the prosecution has not established the material circumstances, on which reliance was placed by the prosecution. The trial Court has further observed that the chain of circumstances is not so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The trial Court has held that the circumstances relied upon by the prosecution, if accepted to be proved for the sake of argument, then also those circumstances are not conclusive in nature, though some suspicion may be raised as against the accused. The trial Court placed reliance on the reported Judgment in the case of

Shivaji Vithl Barde vs. State of Maharashtra<sup>3</sup> and held that suspicion which may be grave, cannot form the ground for conviction. After considering the entire evidence on record the trial Court held that benefit of doubt is to be given to both the accused. Accordingly the trial Court has acquitted both the accused from the offences with which they were charged.

12. After considering the entire evidence brought on record by the prosecution, we are convinced that the finding of acquittal recorded by the trial Court are in consonance with the evidence brought on record. There is no perversity as such. The view taken by the trial Court is plausible and therefore there is no reason to cause interference in the order of acquittal. It is settled principle of law that when the plausible view is taken on the basis of material on record, in that case even if another view is possible, is no ground to interfere in the order

---

3 1998(1) B.Cr.C. 567

of acquittal.

13. The Supreme Court in the case of ***Muralidhar alias Gidda and another Vs. State of Karnataka***<sup>4</sup> in para 12 held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu Vs. State*, AIR 1954 SC 1, *Madan Mohan Singh Vs. State of U.P.*, AIR 1954 SC 637, *Atley Vs. State of U.P.*, AIR 1955 SC 807, *Aher Raja Khima Vs. State of Saurashtra*, AIR 1956 SC 217, *Balbir Singh Vs. State of Punjab*, AIR 1957 SC 216, *M.G. Agarwal Vs. State of Maharashtra*, AIR 1963 SC 200, *Noor Khan Vs. State of Rajasthan*, AIR 1964 SC 286, *Khedu Mohton Vs. State of Bihar*, [1970] 2 SCC 450, *Shivaji Sahabrao Bobade Vs. State of Maharashtra*, [1973] 2 SCC 793, *Lekha Yadav Vs. State of Bihar*, [1973] 2 SCC 424, *Khem Karan Vs. State of U.P.*, [1974] 4 SCC 603, *Bishan Singh Vs. State of Punjab*, [1974] 3 SCC 288, *Umedbhai Jadavbhai Vs. State of Gujarat*, [1978] 1 SCC 228, *K. Gopal Reddy Vs. State of A.P.*, [1979] 1 SCC 355, *Tota Singh Vs. State of Punjab*, [1987] 2 SCC 529, *Ram*

---

4. 2014 [4] Mh.L.J.[Cri.] 353

Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by

the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified; and (iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court.

[Underlines added]

14. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal filed by the State. The Criminal Appeal

stands dismissed. Bail Bonds, if any, shall stand cancelled.

15. We appreciate the able assistance rendered by the learned counsel Mr. N.R. Shaikh during the course of hearing of this Appeal, to come to the right conclusion. We quantify his fees to Rs.7500/- (Rupees Seven Thousand Five Hundred).

**[S.M. GAVHANE, J.]**

asb/JUN17

**[S.S. SHINDE, J.]**