

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.925 OF 2012

**KAMALAKAR GANESH DESHPANDE @)
BABASO GANPAT PATIL)...APPELLANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Supriya Kak, Advocate Appointed as Amicus Curiae for the Appellant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON 27th AUGUST 2019
PRONOUNCED ON 14th OCTOBER 2019**

JUDGMENT :

1 By this appeal, the appellant/convicted accused is challenging the judgment and order dated 27th September 2011 passed by the learned Additional Sessions Judge, Jaisingpur, District Kolhapur, in Sessions Case No.19 of 2008, by which he is convicted of offences punishable under Sections 328, 304 and 379

of the Indian Penal Code. For offences punishable under Sections 328 and 304 of the Indian Penal Code, on each count, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.3,000/- and in default, to undergo rigorous imprisonment for 6 months. For the offence punishable under Section 379 of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 3 years.

2 Facts, in brief, leading to the prosecution and resultant conviction of the appellant/convicted accused, can be summarized thus :

(a) PW3 Dattatraya Deshpande along with his wife Shubhangi Deshpande (since deceased) were at Jalna and he was serving as a Clerk in the office of the Collector thereat. On 12th April 2008, they decided to go for a pilgrimage to Pandharpur for darshan of Lord Vitthal. They reached Pandharpur by State Transport Bus on 12th April 2008. They took darshan of Lord Vitthal in the morning hours of 13th April 2008 and

then proceeded to Gondawale for celebrating Ram Navami. On reaching Gondawale, they kept luggage at the Ramanand Hall. The appellant/convicted accused was sitting in that hall. He had talk with PW3 Dattatraya Deshpande. After celebrating Ram Navami, the couple again returned to Ramanand Hall, Gondawale, where they had kept their luggage. The appellant/convicted accused was still sitting there. He insisted the couple to visit Narsobachi wadi for visiting Datta Mandir and taking darshan of Lord Datta. The appellant/convicted accused told his name as Deshmukh to PW3 Dattatraya Deshpande and his wife Shubhangi (since deceased). By accepting the proposal given by the appellant/convicted accused, the couple then went to Narsobachi wadi by taking the appellant/convicted accused with them. There, PW3 Dattatraya Deshpande booked Room No.6 at Math at Mhadba Patil Maharaj Trust. They, then, went for taking darshan of the deity at Narsobachi wadi at about 7.30 to 8.00 p.m. As on that day PW3 Dattatraya Deshpande and his wife Shubhangi Deshpande (since deceased) had observed fast,

they purchased potato chips and other eatables consumed during fast and again returned back to Room No.6 of Math at Mhadba Patil Maharaj Trust. The appellant/convicted accused, thereafter, gave pedas to PW3 Dattatraya Deshpande and his wife Shubhangi Deshpande(since deceased) for eating. They both ate pedas given by the appellant/convicted accused. Within five minutes of eating pedas, Shubhangi (since deceased) started fainting and therefore demanded for water. The appellant/ convicted accused did not allow PW3 Dattatraya Deshpande to provide water to her and dragged him away. Subsequently, two to three persons came inside and they assaulted PW3 Dattatraya Deshpande and his wife Shubhangi (since deceased). PW3 Dattatraya Deshpande then became unconscious.

- (b) On 14th April 2008, PW3 Dattatraya Deshpande regained consciousness and found one person named Shamim standing near him. PW3 Dattatraya Deshpande was then informed by him that he was at Miraj. From the mobile phone of said

Shamim, PW3 Dattatraya Deshpande then contacted his brother-in-law and informed him that he was at Miraj. PW3 Dattatraya Deshpande had lost his memory in respect of the events which took place after consuming peda till he regained consciousness and found himself at Miraj.

- (c) PW4 Prashant Chauthaiwale – brother-in-law of PW3 Dattatraya Deshpande, on getting telephonic call from PW3 Dattatraya Deshpande, immediately rushed towards Miraj by taking with him his friends and relatives. Elder brother of PW3 Dattatraya Deshpande on getting information about the incident, requested his disciple PW7 Pratap Jagtap, who was serving as teacher at Palus, to rush to Miraj and to trace out PW3 Dattatraya Deshpande. Accordingly, PW7 Pratap Jagtap came to Miraj and traced PW3 Dattatraya Deshpande, who, at that time, was in delirious condition. In the meanwhile, PW4 Prashant Chauthaiwale arrived at Miraj and found PW3 Dattatraya Deshpande along with PW7 Pratap Jagtap at Police Station Miraj.

- (d) In the meanwhile, PW5 Umesh Nikam, Secretary, Mhadba Patil Maharaj Trust, who resumed duty on 14th April 2008, was told by PW14 Bayaji Dhage – employee of the said Math that a male from Room No.6 of the Math, due to ill health, had gone to hospital. PW5 Umesh Nikam found a woman in that room namely Shubhangi (since deceased) in disoriented condition. She went out of the Math by telling PW5 Umesh Nikam that she was going out in search of her husband and to make a telephonic call.
- (e) PW11 Gajanan Nalvade, Police Constable of Police Station Shirol, got information on 14th April 2008 that one woman was sitting near Math. Taking along with him PW6 Devdatt Sunki, Peon from Gram Panchayat Nrusimhawadi, PW11 Gajanan Nalvade went to the spot. He found a woman lying near Babar plot area of Narsobachi wadi. Her eyes were closed and she was not in a position to speak. She started vomiting. Greenish froth was coming out of her mouth. They took her to the hospital at Nrusimhawadi and from there to

the Civil Hospital, Sangli, where she was admitted. However, Shubhangi Deshpande died within short span of time at the Civil Hospital, Sangli.

- (f) On 15th April 2008, PW3 Dattatraya Deshpande came to know about death of a woman at Civil Hospital, Sangli. He visited that hospital and found that the dead woman was his wife Shubhangi Deshpande. PW3 Dattatraya Deshpande revealed that Mangalsutra, finger ring and pair of ear tops – all made of gold, were missing from the dead body of his wife. He also noticed that his gold finger ring and mobile phone apart from cash on his person as well as from the purse of his deceased wife, were missing. As such, PW3 Dattatraya Deshpande lodged the report Exhibit 19 against the appellant/convicted accused by referring him as “Deshmukh” with Police Station Shirol and accordingly, Crime No.42 of 2008 came to be registered.

(g) During the course of investigation, the spot came to be inspected and Spot Panchnama Exhibit 16 came to be recorded in presence of PW2 Digambar Dalvi. Dead body of Shubhangi Deshpande was sent for autopsy after taking inquest notes. Investigation from PW9 Sangita Deshpande and PW10 Dharmendra Deshpande – daughter-in-law and son of the appellant/convicted accused, transpired that the appellant/convicted accused had sold a mobile phone to his son PW10 Dharmendra Deshpande for Rs.500/- with a condition that he would take it back again on paying Rs.500/- to him. The appellant/convicted accused came to be apprehended from Gondawale. The mobile phone belonging to PW3 Dattatraya Deshpande came to be seized from him vide Panchnama Exhibit 48. On the basis of voluntary disclosure statement made by the appellant/convicted accused, in presence of PW15 Bapu Chavan, gold ornaments came to be recovered vide Panchnama Exhibit 49 from jeweler shop of PW21 Shyam Dedgaonkar. On completion of

routine investigation, the appellant/convicted accused came to be charge-sheeted.

- (h) The learned trial court framed and explained Charge to the appellant/convicted accused. He pleaded not guilty and claimed trial.
- (i) In order to bring home the guilt to the appellant/convicted accused, the prosecution has examined in all 27 witnesses. The defence of the appellant/convicted accused was that of total denial. However, he did not enter in the defence.
- (j) After hearing the parties, the learned trial court was pleased to convict the appellant/accused and sentenced him accordingly, as indicated in the opening paragraph of this judgment.

3 I have heard the learned advocate appointed to represent the appellant/convicted accused at the costs of the

State. She vehemently argued that shouting of PW3 Dattatraya Deshpande, after consuming pedas given by the appellant/convicted accused, was not heard by any of the inmates of the adjoining rooms. The prosecution has not placed on record the register disclosing names of occupants of the adjoining rooms at Math at Mhadba Patil Maharaj Trust. Evidence regarding identification of the appellant/convicted accused, coming from mouth of PW22 Prashant Dhage, Executive Magistrate, is not at all reliable as no dummies were wearing caps. This is reflected from evidence of PW26 Babgonda Patil – panch witness. It is further argued that evidence of PW20 Dr.Sitadevi Mirajkar shows that Shubhangi died because of myocardial infarction and her death was not caused due to consumption of poison. Therefore, the Charge for the offence punishable under Section 304 of the Indian Penal Code is not proved. The learned advocate further argued that PW21 Shyam Dedgaonkar, jeweler, has candidly accepted the fact that he had given new gold ornaments to police when the police came along with the appellant/convicted accused to his shop. Therefore, it cannot be said that there is evidence of

recovery at the instance of the appellant/convicted accused. So far as the recovery of mobile phone is concerned, there is no proof of seizure of mobile phone and evidence of PW9 Sangita Deshpande and PW10 Dharmendra Deshpande shows that IMEI number of this mobile phone was not recorded by the Investigating Officer. Hence, according to the learned advocate for the appellant/ convicted accused, he is entitled for acquittal.

4 The learned APP supported the impugned judgment and order of the learned trial court.

5 I have considered the submissions so advanced and perused the record and proceedings including oral as well as documentary evidence.

6 As the appellant/convicted accused was charged with the offence punishable under Section 304 of the Indian Penal Code for causing death of Shubhangi Deshpande, the prosecution will have to establish the fact that Shubhangi Deshpande died

homicidal death. The prosecution has examined Autopsy Surgeon Dr.Sitadevi Mirajkar as PW20. She had conducted postmortem examination on dead body of Shubhangi Deshpande on 14th April 2008 in the Civil Hospital, Sangli. Her evidence shows that there were stains of blood found oozing from both nostrils of the dead body. Intra cerebral haematoma was noted in right cerebellum of the dead body. Lungs of the dead body were congested and oedematous. Greyish white patch of 2 x 1 cm was found over anterior wall of right ventricle of heart of the dead body. The Autopsy Surgeon further noted that atherosclerotic changes were seen in the large as well as coronary vessels. With these findings, the Autopsy Surgeon noted that Shubhangi Deshpande died due to myocardial infarction associated with intra cerebellar bleeding. She had preserved the viscera for chemical analysis. This Autopsy Surgeon, in the chief-examination itself, as stated that if a person is given some poisonous substance, death cannot be in the manner as noted in the postmortem examination. However, she stated that in case of administration of cardio toxic poisonous substance to a person, death due to myocardial infarction is possible and in

that case, cardio toxic substance can be found in the viscera. Chemical Analyzer's report at Exhibit 27 shows that no poison was detected in the viscera of deceased Shubhangi Deshpande. With such evidence, it is contention of the appellant/convicted accused that homicidal death of Shubhangi Deshpande is not proved.

7 On the aspect of homicidal death of Shubhangi Deshpande, the learned trial court has rightly taken help of Medical Jurisprudence by Lyon's 10th Edition as well as Modi's jurisprudence and Toxicology 23rd Edition. Perusal of these books of the celebrated authors makes it clear that in the early stage of Dhatura poisoning, blood pressure of the victim is greatly increased. A moderate dose of such drug causes rupture of cerebral vessel, so as to bring fatal result. Symptoms of dhatura poisoning is stated to be occurring in two stages. In the first stage, the patient goes in delirium and in the next stage goes in coma. As seen from these books of medical jurisprudence, if decoction of the dhatura is taken, symptoms almost appear immediately and the victim begins to feel queer and dizzy. His

face becomes hot and his throat dry. At this juncture, it is apposite to note that evidence of PW3 Dattatraya Deshpande reveals that deceased Shubhangi Deshpande, after consuming peda, had started fainting and demanding water. Confusion, delirium, vomiting, headache and disorientation are stated to be causes of dhatura poisoning. Perusal of evidence of prosecution witnesses including that of another victim PW3 Dattatraya Deshpande goes to show that deceased Shubhangi Deshpande was having these symptoms. She was found by PW11 Gajanan Nalvade, Police Constable and PW6 Devdatt Sunki near Babar plot area of Narsobachi wadi. PW6 Devdatt Sunki has stated that she was gasping and greenish froth was coming out of her mouth. PW11 Gajanan Nalvade has stated that eyes of Shubhangi Deshpande (since deceased) were closed and she was not in a position to speak. She started vomiting. Thus, with this evidence, the finding given by the learned trial court that deceased Shubhangi Deshpande died due to poisoning caused by dhatura cannot be said to be perverse or illegal. The learned trial court has appreciated evidence in this regard in proper perspective and

rightly concluded that death of Shubhangi Deshpande was homicidal. Lapse on the part of the Investigating Officer in not collecting sample of vomiting of Shubhangi Deshpande (since deceased) at Babar plot area of Narsobachi wadi, appears to have resulted in non-procurement of evidence regarding dhatura poisoning to the victim. However, that cannot enure to the benefit of the appellant/convicted accused. Rupture of cerebellar vessels, oozing of blood through nostrils with atherosclerotic changes in the large vessels are indicative of poisoning by dhatura, as seen from the book of Medical Jurisprudence by Lyon's. With this evidence, I conclude that the prosecution has established death of Shubhangi Deshpande as homicidal.

8 Now let us examine whether the prosecution has proved the fact that the appellant/convicted accused had administered some poisonous or stupefying substance to deceased Shubhangi Deshpande causing her death and to her husband PW3 Dattatraya Deshpande, in order to commit the offence of robbing them of their valuables.

9 Evidence of PW3 Dattatraya Deshpande, on this aspect, is clear. The appellant/convicted accused came in his contact at Gondawale on 13th April 2008 and on his suggestion, PW3 Dattatraya Deshpande and his deceased wife Shubhangi Deshpande accompanied him to Narsobachi wadi for darshan of the deity. Evidence of PW3 Dattatraya Deshpande regarding his visit to Narsobachi wadi along with deceased Shubhangi Deshpande and the appellant/convicted accused on 13th April 2008 is gaining corroboration from voluminous evidence adduced by the prosecution on record. Evidence of PW14 Bayaji Dhage – employee of Math of Mhadba Patil Maharaj Trust, Narsobachi wadi, shows that at about 7.30 p.m. of 13th April 2008, PW3 Dattatraya Deshpande along with his wife Shubhangi Deshpande (since deceased) and the appellant/convicted accused came to the Math and PW3 Dattatraya Deshpande booked Room No.6 by paying charges of Rs.100/-. In his evidence, PW5 Umesh Nikam, Secretary of Mhadba Patil Maharaj Trust, has proved extract of the Guest Register of Math of Mhadba Patil Maharaj Trust and it is

seen from this document that at about 7.30 p.m. of 13th April 2008, PW3 Dattatraya Deshpande booked Room No.6 and deposited amount of Rs.100/- under receipt bearing No.1473. A photocopy of the relevant page of the Guest Register is at Exhibit 24 whereas the receipt issued by the Mhadba Patil Maharaj Trust in favour of PW3 Dattatraya Deshpande on 13th April 2008 is at Exhibit 25. This contemporaneous documentary evidence corroborates version of PW3 Dattatraya Deshpande that along with his wife and the appellant/convicted accused, he stayed in Room No.6 at Math of Mhadba Patil Maharaj Trust at Nrusinghawadi from evening hours of 13th April 2008.

10 PW14 Bayaji Dhage was in-charge of allotment of rooms of that Math in the evening hours of 13th April 2008. Evidence of this witness shows that at about 7.30 p.m. of 13th April 2008, two males and one female came and PW3 Dattatraya Deshpande booked Room No.6. Evidence of PW14 Bayaji Dhage, as such, clearly corroborates testimony of PW3 Dattatraya Deshpande, in order to establish the fact that the

appellant/convicted accused was accompanying him at Narsobachi wadi.

11 What happened in the night intervening 13th April 2008 and 14th April 2008 at Room No.6 of the Math is stated by PW3 Dattatraya Deshpande but one will have to keep in mind the fact that PW3 Dattatraya Deshpande, at the relevant time, was under sedation, affected with dhatura poisoning, and he was virtually tranquilized after eating peda. His evidence shows that he had lost his senses after eating the peda given by the appellant/convicted accused and his wife Shubhangi Deshpande had ultimately died in the said incident. Therefore, keeping in mind this fact situation, evidence of PW3 Dattatraya Deshpande will have to be considered in proper perspective. Even otherwise, he has categorically deposed that he could not remember the events which took place after his eating peda till he was found at Miraj by one person on the next day. With this background, let us now put on record what PW3 Dattatraya Deshpande had narrated to the court regarding the actual incident. As per his version, after

taking darshan at Narsobachi wadi, he along with his wife Shubhangi Deshpande (since deceased) purchased some potato chips as they were fasting on that day. They, then, returned to the Room No.6 of the Math where they along with the appellant/convicted accused were staying. As per version of PW3 Dattatraya Deshpande, then appellant/convicted accused gave pedas to him as well as Shubhangi Deshpande (since deceased) and they both ate the pedas given by the appellant/convicted accused. PW3 Dattatraya Deshpande then deposed that within five minutes, his wife Shubhangi Deshpande (since deceased) started fainting and demanded water. However, the appellant/convicted accused did not allow him to give water to Shubhangi Deshpande (since deceased). The appellant/convicted accused was not allowing him to open the door of the room. Then, as stated by PW3 Dattatraya Deshpande, two to three persons came in and pushed away him as well as his wife. This version of the victim appears to be the outcome of hallucination after consuming the poisonous substance because thereafter, he came in senses on the next day i.e. on 14th April 2008 and that

too, at Miraj town. Memory during the intervening period was totally erased from his brain and he was not in a position to narrate the incident which might have taken place thereafter. With the help of one person at Miraj, this witness, then contacted his brother-in-law PW4 Prashant Chauthaiwale. He disclosed to PW4 Prashant Chauthaiwale that he was standing near Motibaug at Jalna though, infact, he was at Miraj. This implies that PW3 Dattatraya Deshpande was not oriented to time and place after he regained some consciousness on 14th April 2008 at Miraj. Even by that time also, he was in delirium state of mind. Then PW3 Dattatraya Deshpande narrated about visits of PW4 Prashant Chauthaiwale as well as PW7 Pratap Jagtap for helping him at Miraj and subsequent lodgement of the First Information Report (FIR) by him. While in the witness box, PW3 Dattatraya Deshpande has identified the appellant/convicted accused as “Deshmukh” whom he met at Gondawale and with whom he shared Room No.6 at Math of Mhadba Patil Maharaj Trust, Narsobachi wadi. PW3 Dattatraya Deshpande deposed about theft of gold mangalsutra, pair of ear tops and finger ring of his wife as

well as theft of his own gold finger ring, mobile phone so also cash amount with them. In the witness box, he has duly identified the mobile phone which was stolen in the incident.

12 There is nothing in cross-examination of PW3 Dattatraya Deshpande to disbelieve his version about the incident. On the contrary, it was suggested to this witness that it was the appellant/convicted accused who had purchased the mobile phone from his wife Shubhangi Deshpande (since deceased). Suggestion in the cross-examination of this witness is also to the effect that, that mobile phone was purchased by the appellant/convicted accused for giving the same to his own daughter-in-law and this transaction took place at Ramanand Hall at Gondawale. With these suggestions given by the defence, the defence has not disputed the fact that the appellant was in company of the victim during the relevant period. Thus, I see no reason to disbelieve version of PW3 Dattatraya Deshpande regarding the incident, though there are minor discrepancies in his evidence because of sedative effect of poison on him causing

mental confusion to him. His evidence has ring of truth so far as administration of some poison through pedas to him as well as to his deceased wife Shubhangi Deshpande by the appellant/convicted accused. Similarly, evidence of PW3 Dattatraya Deshpande so far as identity of the appellant/convicted accused is concerned, is also not challenged in the cross-examination. The victim was in company of the appellant/convicted accused from morning hours of 13th April 2008 and as such, facial and other features of the appellant/convicted accused were deeply imprinted on his mind because in the tragic incident, the victim had lost his wife. Therefore, this cannot be treated as case of mistaken identity nor such is the case of the defence.

13 PW19 Baburao Arde, Assistant Police Inspector, had taken search of the house of the son and daughter-in-law of the appellant/convicted accused on 14th May 2008. His evidence shows that he interrogated them. Even they are examined before the learned trial court by the prosecution. PW9 Sangita

Deshpande, who is daughter-in-law of the appellant/convicted accused has stated that her husband had given a mobile phone to her in the month of April or May of 2008 and ultimately that mobile phone came to be seized by the police. PW10 Dharmendra Deshpande – son of the appellant/convicted accused, has deposed that in the month of April or May of 2008, the appellant/convicted accused took Rs.500/- from him and in exchanged gave the mobile phone to him with an understanding that he would take back that mobile phone on payment of Rs.500/-. Ultimately, PW19 Baburao Arde, Assistant Police Inspector, apprehended the appellant/convicted accused at Gondawale. It needs to be noted that Gondawale is the same religious place where the appellant/convicted accused met the victim. The appellant/convicted accused came to be arrested in presence of PW15 Bapu Chavan – panch witness. Evidence of this panch witness goes to show that the appellant/convicted accused was brought to Police station Shirol and he had produced a mobile phone, which came to be seized vide Panchnama Exhibit 31 on 14th May 2008 itself. While in the witness box, PW3 Dattatraya

Deshpande has duly identified this mobile phone as belonging to him and which went missing after he ate peda offered by the appellant/convicted accused. It is, thus, clear that the mobile phone owned by PW3 Dattatraya Deshpande was subsequently found with the appellant/convicted accused and this evidence unerringly points out that the appellant/convicted accused was the robber, who robbed the victim and his wife of their valuables after administration of poison to them through pedas.

14 The prosecution has attempted to rely on recovery of gold ornaments at the instance of the appellant/convicted accused from jeweler PW21 Shyam Dedgaonkar. However, cross-examination of this witness goes to show that he had, infact, purchased gold ornaments from the appellant/convicted accused but what was produced by him were new gold ornaments. This was done by the jeweler in order to avoid penal liability. The jeweler further admitted in the cross-examination that what was given back by him to the police were ornaments equivalent in weight and price, which were purchased by him. Thus, even

though stolen articles were not recovered at the instance of the appellant/convicted accused, the fact remains that the appellant/convicted accused had sold the gold ornaments in the nature of finger ring, mangalsutra and ear tops to PW21 Shyam Dedgaonkar, on 25th April 2008 i.e. soon after the incident in question. Therefore, though not in respect of the recovery of stolen ornaments, evidence of PW21 Shyam Dedgaonkar corroborates the version of PW3 Dattatraya Deshpande to the effect that he was robbed of his valuables in the form of ornaments by the appellant/convicted accused in the night intervening 13th April 2008 and 14th April 2008. Though the prosecution has relied on evidence regarding the Test Identification Parade conducted by PW22 Prashant Dhage, Special Executive Magistrate, on 26th May 2008, in which the appellant/convicted accused is stated to be identified by prosecution witnesses, evidence of PW26 Babgonda Patil – panch witness to that Test Identification Parade shows that the Tahsil Office where the Test Identification Parade took place and the police station of Shirol are situated in the same complex and both

these offices are adjoining each other. This panch witness has also stated that whenever an accused is kept in jail of Police Station Shirol, such accused can be seen by anybody through the door made of iron bars. The panch witness further stated that at the time of Test Identification Parade, the accused was in custody of the police. It is, thus, clear that, this evidence regarding Test Identification Parade is not helpful to the prosecution.

15 The net result of the foregoing reasons requires me to hold that the prosecution has established the fact that the appellant/convicted accused had administered poisonous substance to PW3 Dattatraya Deshpande and his deceased wife Shubhangi Deshpande in the night intervening 13th April 2008 and 14th April 2008, due to consumption of which, Shubhangi Deshpande died homicidal death. The prosecution has also established the fact that thereafter, the appellant/convicted accused robbed the victims of their gold ornaments, mobile phone and cash.

16 In the result, no infirmity can be found in the
impugned judgment and order of conviction and the resultant
sentence. Hence the order :

ORDER

The Appeal is dismissed.

(A. M. BADAR, J.)