

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1071 OF 2003**

The State of Maharashtra)
C.I.D. - Pune)Appellant/Complainant

V/s.

1. Mohammed Hanif Shaikh Chand Maniyar)
Age : 44 years, R/o. Chinchwad, Pune)
2. Chiraguddin Qasim Tamboli)
Age : 41 years, R/o. Chinchwad, Pune)Respondents/Accused

Ms. Pallavi Dabholkar, APP for appellant.

Mr. Ranjeet R. Gaikwad i/b. Mr. Prashant S. Hagare for respondent no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd JANUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment of acquittal passed by Judicial Magistrate First Class, Pimpri, on 27th May 2003 acquitting two accused of offence punishable under Section 330 (*Voluntarily causing hurt to extort confession, or to compel restoration of property*) of the Indian Penal Code (IPC).

2 I am informed that accused no.1 has expired. Therefore, the appeal against accused no.1 abates.

3 Mr. Gaikwad, whose appearance is mentioned above for accused no.2, was of no assistance to the Court as he was only seeking an adjournment on instructions from the Advocate on record and since after going through the papers, I had to come to the conclusion that the appeal has no merits, the Court did not grant the request of Mr. Gaikwad.

4 The accused were police officials. Accused no.1 was attached to Pimpri Police Station and accused no.2 was attached to Bhosari Police Station. The alleged incident is supposed to have taken place between 9.30 a.m. and 11.30 a.m. on 21st August 1999 at Nehrunagar, Pimpri. At the relevant time, the accused were deputed in the squad of D.C.P. Zone-III, Pune. One Prakash Maruti Waghmare (the deceased) was working for the said squad as an informer. On the day of the incident at about 9.30 a.m., the accused went to the house of deceased. The deceased was not there. The accused, thereafter, went to the house of one Trimbak Kakade at whose house deceased was playing cards. The accused asked the deceased to accompany them to trace out the house of one habitual criminal by the name Vishnu Maruti Shinde. Whilst the deceased was in the company of the accused, he was not feeling well and therefore, accused admitted the deceased in the hospital of one Dr. Sunil Lohade (PW-11) at Chinchwad Station, Pune. After giving preliminary treatment, Dr. Lohade advised the accused to take the deceased to Y.C.M. Hospital at Pimpri for further treatment. The accused, however, did not take the deceased to Y.C.M. Hospital but reached him to his house. At about 1.30 p.m. the condition of the deceased became serious and his brother Bibhishan Waghmare, his mother and relatives took the deceased to the Hospital of Dr. Lohade (PW-11) again. Dr. Lohade advised them to take the deceased to Y.C.M. Hospital for further treatment but despite the treatment being given at Y.C.M. Hospital, the deceased expired. On the very same day, the brother of

the deceased informed the Police about the death of deceased and Pimpri Police on the strength of statement given by the brother of the deceased registered an accidental death case.

5 On 22nd August 1999 P.I. Birajdar was directed by Additional D.C.P., C.I.D., Crime to investigate the accidental death. Investigation was commenced and P.I. Birajdar collected viscera from the Hospital and sent the same for chemical analysis examination. He also recorded the statement of witnesses, collected postmortem report of the deceased and all relevant papers from Y.C.M. Hospital and from Dr. Lohade. The postmortem report opined that the probable cause of death was reserved but the medical officer, who carried out the postmortem, opined that there was evidence of blunt abdominal injury. According to Dr. R.S. Bangal (PW-12), who carried out the postmortem and issued advance medical notification of death certificate, there was evidence of blunt abdominal injury. On 27th January 2000 PW-12 issued a final cause of death report in which he opined the cause of death as "Acute Myocardial Infraction with internal blunt injuries". After receipt of the final report regarding the probable cause of death of deceased, P.I. Birajdar sought an opinion from the Head of Department of Forensic Medicine, B.J. Medical College and Sasson General Hospital, Pune. Accordingly on 20th June 2001 Dr. M.S. Vable, the Head of Department of Forensic Medicine opined that injuries sustained by the deceased as mentioned in the postmortem notes, column nos.17, 19, 29 (a) and 21, collectively are not sufficient to cause death in ordinary course of nature. He

also opined that possibility of precipitating Myocardial infraction in the normal healthy person is very remote or very rare. He also opined that the said injuries individually or cumulatively cannot be classified or labelled as grievous hurt.

6 Prosecution considered the reports etc. and felt that due to assault by the accused while he was in the custody of the accused, the deceased died and on behalf of State, P.I. Birajdar lodged the FIR at Pimpri Police Station for offence under Section 330 of IPC against the accused. Both the accused were arrested and they were charge-sheeted. Charge was framed and both the accused pleaded not guilty and claimed to be tried. The defence is of total denial.

7 The prosecution has examined in all 15 witnesses. Out of them P.C. Rajesh Borade (PW-1) is the police official, who was in the squad of accused, Suresh Bahirwade (PW-2) is the owner of a lassi shop, Ayesh Patel (PW-3) is a neighbour of the deceased, Deepak Nair (PW-4) is also the neighbour, Dagadu Sasane (PW-5) is also the neighbour, Trimbak Kakade (PW-6) is the witness from whose house deceased was taken by the accused, Sangita Waghmare (PW-7) is the wife of the deceased, Lahanubai Waghmare (PW-8) is the mother of the deceased, Kalinda Waghmare (PW-9) is the wife of the brother of the deceased, Popat Jadhav (PW-10) is the witness who was also playing cards alongwith the deceased in the house of witness Trimbak Kakade, Dr. Sunil Lohade (PW-11) is a Private Medical Practitioner and who gave preliminary medical treatment to the deceased, Dr. Rajendra

Bangal (PW-12) is a Medical Officer, who carried out postmortem of the deceased, P.I. Birajdar (PW-13) is the Investigating Officer, Dr. Shankar Jadhav (PW-14) is a Medical Officer, Y.C.M. Hospital, who treated the deceased and P.I. Sagvekar (PW-15) is also the Investigating Officer. Defence has admitted panchnama dated 22nd August 1999 of video and audio cassettes at Exhibit 23, panchnama dated 22nd August 1999 of the clothes of the deceased at Exhibit 24, panchnama dated 16th November 2000 of audio and video cassette of the inquest panchnama and postmortem at Exhibit 25, arrest panchnama dated 30th June 2001 at Exhibit 25-A, spot panchnama dated 26th August 1999 at Exhibit 40-A, report of Dr. Lohade at Exhibit 42, map at Exhibit 43, inquest panchnama dated 21st August 1999 at Exhibit 59, report of histopathology at Exhibit 67 and report under Section 174 of the Code of Criminal Procedure at Exhibit 78.

8 Heard Ms. Dabholkar, learned APP. I have also carefully gone through the evidence of the prosecution witnesses available on record. Admittedly, in the present case there is no direct evidence on record regarding the fact that the deceased died due to the assault by the accused. The entire case of prosecution is rested upon the medical evidence.

9 It is the prosecution story that the accused were deputed in the squad of D.C.P. Zone-III and they were allotted a duty of apprehending certain absconding accused persons. On the day of incident, in the morning, both the accused brought the deceased from the house of one Trimbak Kakade (PW-6) to trace out the house of one habitual criminal called Vishnu

Maruti Shinde, as the deceased was working as an informant for the Police. After taking the deceased in their custody, they assaulted him to extort information of the habitual criminal and due to their assault, the said informant, i.e., deceased, died. The accused have not denied that they were working in the squad of D.C.P. Zone-III but they have denied the fact of assault.

10 Before we proceed further, it would be useful to have a look at Section 330 of IPC, which reads as under :

"Section 330 - Voluntarily causing hurt to extort confession, or to compel restoration of property.-- Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

11 Bare reading of above referred provision of law reveals that Section 330 of IPC has been provided in the Penal Code with the object of preventing use of third degree methods by the police/investigating officers or someone on their behest for extorting confession or information regarding commission of offence from the suspect or from any other person interested in the person suspected of commission of an offence. The basic ingredients which the prosecution is required to prove to bring home the charge under Section 330 of IPC are :

(a) That the accused voluntarily caused hurt to the victim/

sufferer;

(b) The hurt was caused with the purpose of extorting confession or information from the victim/sufferer;

(c) That the information is of such a nature, which would have lead to the detection of an offence or misconduct.

In this case, for reasons as mentioned below, by no stretch of imagination it can be said that the deceased Prakash Maruti Waghmare was hurt by the accused and that too with a view to extort information from him regarding commission of any offence. Thus, it is obvious that the most essential ingredient of Section 330 of IPC is not satisfied in this case.

12 The three medical witnesses are PW-11, PW-12 and PW-14. PW-11 Dr. Sunil Lohade, in whose Hospital the deceased was taken by accused no.2, has, in his examination in chief, stated that the deceased complaint about giddiness, he informed him that he has consumed alcohol the previous night and he had not taken any food orally. PW-11 also says that on specific enquiry, the deceased informed him that he did not have any major illness or head injury or vomiting. On examination, PW-11 found that the pulse of deceased was very weak, his blood pressure was low and therefore, he gave him certain emergency treatment. As there was no significant improvement despite the emergency treatment, PW-11 advised accused no.2 to shift the deceased to Y.C.M. Hospital for further treatment. PW-11 says that there were no mark of any injury on the body of the deceased. In his cross examination, PW-11 says giddiness may be possible if someone consumes alcohol without taking a food.

13 Prosecution relies substantially on the evidence of PW-12 – Dr. Rajendra Bangal, who conducted the postmortem to note the cause of death of deceased. PW-12 in his examination in chief says from the documents received from Y.C.M. Hospital, it was revealed that patient had history of acute myocardial infraction with shock. PW-12 also has noted certain injuries that he found on the body of the deceased. PW-12 has opined that there was evidence of blunt abdominal injury and his final opinion says the cause of death was acute myocardial infraction with internal blunt injury and that the injury was 24 hours before death. He has also opined that those injuries are possible only by kick or fists blows or any other blunt object. PW-12 was confronted with the opinion of Dr. M.S. Vable (Exhibit 58). Dr. Vable was the Head of the Department of Forensic Medicine, in which PW-12 was working. Dr. Vable has, in his opinion dated 20th June 2001, opined that the injuries sustained by the deceased as mentioned in the postmortem notes, column nos.17, 19, 20(a) and 21, collectively, are not sufficient to cause death in ordinary course of nature. Dr. Vable also has opined that possibility of precipitating myocardial infraction in a normal healthy person is very remote or very rare. But possibility of M.I. in a person having a diseased heart is more. Dr. Vable has also opined that the injuries listed in the postmortem report individually or cumulatively cannot be classified/labelled as grievous hurt. When this opinion of Dr. Vable (Exhibit 58) was shown to PW-12, he agreed that the opinion of Dr. Vable, who was the Head of the Department, defers from his

opinion regarding the possibility of injuries causing death. PW-12 also agrees at the same time that myocardial infraction is not possible in a case of normal healthy person but it is possible with a person who is having heart disease. PW-12 also admits in his cross examination that it is correct to say that an opinion can be different between two medical officers in a case of same patient upon same diagnosis.

14 PW-14, who was a physician at Y.C.M. Hospital, to whom the deceased was taken on 21st August 1999 states that he examined the deceased and also asked his history. PW-14 says that the deceased complained to him about chest pain and except that he stated nothing. PW-14 states that after entire investigation, he noticed that the deceased suffered from acute myocardial infraction, i.e., severe heart attack and when the deceased had come to his hospital, he was not having pulse palpable shock and when they were about to give him further treatment, he expired. In his cross examination, PW-14 says that the deceased when he reached to the hospital himself told him his history on his own accord and while giving history, the deceased did not mention about any assault by anyone. PW-14 also has opined that if any person consumes lot of alcohol without taking any food, then there must be chances of heart attack because of hypoglycemia.

15 Therefore, considering the evidence of all the three Doctors, one thing is clear that (a) the deceased did not tell anyone that he was assaulted by anybody, (b) the deceased had severe heart attack and (c) the

night before the deceased had consumed alcohol and had not taken any food orally.

16 I have to also note that one of the ingredients for Section 330 is that the confession or information extorted should be of such a nature which should lead to the detection of an offence or misconduct. No such information extorted has come on record. Moreover, it is the case of the prosecution that the deceased was a police informant and was working with them as informant of all criminals. If the deceased was working as an informant with the squad, why should the accused assault him or cause grievous hurt. This has not been answered anywhere.

17 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

1. (2007) 4 SCC 415

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

18 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

19 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

20 Appeal dismissed.

(K.R. SHRIRAM, J.)