

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 308 OF 2014**

1. Kamalabai Deelip Deore,  
Aged 52 yrs.,
2. Mangala Mahindra Shinde,  
Aged 55 yrs.,  
Residing at Shri Samarth Lane,  
Room No.806, Kamgar Nagar,  
Satpur, Nashik, Central Jail Nashik. ... Appellants

V/s.

1. State of Maharashtra,  
Through Police Inspector,  
Satpur Police Station, Nashik. ... Respondent

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Mr. Aniket U. Nikam a/w Mr. Aashish Satpute a/w Mr. Piyush Toshnival i/b. Mr. Vivek Arote for the Appellants.

Ms. P.P. Shinde, APP for the Respondent - State.

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**CORAM : SMT. SADHANA S. JADHAV &  
N.R. BORKAR, JJ.**

**RESERVED ON : 19<sup>th</sup> JANUARY, 2021**

**PRONOUNCED ON : 4<sup>th</sup>, FEBRUARY, 2021**

**JUDGMENT : (PER SMT. SADHANA S. JADHAV, J.)**

1. The appellants herein are convicted for the offence punishable under section 302 of Indian Penal Code and sentenced to suffer RI for life with fine of Rs.5,000/- each, in default to suffer further RI for one year by the learned Sessions Judge, Nashik in

Sessions Case No.35 of 2008 in Crime No.175 of 2006.

2. Such of the facts necessary for the decision of this Appeal are as follows:-

(i) The appellant No.1 happens to be the wife of deceased Deelip, whereas Appellant No. 2 happens to be his daughter.

(ii) On 19/12/2006 Lotan Phula Devare received an information that his brother Deelip had died of cardiac arrest. He rushed to the Civil Hospital, Nashik and inquired about the cause of death. He saw injury marks around the neck of his brother Deelip. He suspected that his brother had died of homicide death. Upon inquiry, the doctor had informed him that the cause of death would be known only after autopsy was performed on the dead body. On 28/12/2006 he again approached the Civil Hospital at Nashik to inquire about the cause of death and at that time he learnt that the cause of death was “asphyxia due to throttling”. He approached Satpur police station and lodged report on the same day i.e. on 28/12/2006. He had expressed his suspicion against the wife and daughter and son-in-law of Deelip. On the basis of the said report, Crime No. 175 of 2006 was registered against the wife, daughters and son in law of the deceased for the

offence punishable under section 302 read with 34 of the Indian Penal Code and investigation was set in motion. After committal of the case, the prosecution has examined as many as 12 witnesses to bring home the guilt of the accused.

3           The prosecution has examined P.W. 3 Kamal Wagh and P.W.  
4 Chhaya who are neighbours of the deceased. They have testified that in the intervening night of 18/12/2006 and 19/12/2006 they had heard loud voices from the house of Deelip Deore and had realised that the family members are quarreling amongst each other. And on 19/12/2006 they had learnt that Deelip Deore had expired. Similarly P.W. 6 Subhash Kale who was working with the deceased in United Engineering Works also testified that Deelip Deore had disclosed to him about the quarrels between his family members. He had complained that he was ill-treated at home and that there were quarrels between him and his wife on account of the misbehaviour of his daughter.

4           According to P.W.2 Lotan Deore, on every occasion he met his brother, he was informed about the harassment meted out to him

at the hands of his wife and daughter. That just four months prior to 19/12/2006 Deelip had disclosed to him that he was assaulted by his wife, daughter and brother-in-law and therefore, he has lost interest in life. P.W. 2 had deposed in consonance with FIR, which is marked at Exh.24. That deceased Deelip had purchased two row houses, one at Radhakrushna Nagar and another at Ashok Nagar just 3 years before 19/12/2006.

5           The evidence of P.W. 7 Dr. Sunil Ghadage would show that on 19/12/2006 on the request of the relatives of Deelip he examined him at about 2 a.m.. The blood pressure and pulse was not recordable. Accused No. 1 informed him that her husband had developed breathing problems and hence, she applied balm and adopted other measures to give him reliefs. According to him, Deelip had breathed his last even before he was examined. Hence, he had advised them to take the patient to Civil Hospital, Nashik.

6           On 19/12/2006 at about 11.45 a.m. the appellant No. 1 Kamalabai had taken one case paper to P.W. 10 Namdeo Wadgule who was on duty alongwith head constable Kadbhane at Civil Hospital at

Nashik and she informed him that she had brought her husband to the hospital, as her husband was feeling uneasy since 7 a.m. in the morning. The Medical officer on duty Dr. Mrs. Ranade upon examination, had declared the patient to be dead. P.W. 10 further transmitted the said information to the police station, Satpur, on the basis of which A.D. NO. 76 of 2006 was registered. The said information is marked at Exh. 40. P.W. W.10 is not the scribe of Exh. 40.

7 On 25/12/2006, the investigation was handed over to P.W. 9 Laxman Lohar. Subsequently, P.W. 2 lodged report with P.W. 9 and on 28/12/2006 the accused was arrested.

8 P.W.5 Dr. Gajanan Holey performed autopsy on the dead body of deceased Deelip Deore. The external injuries noticed by him are as follows :

- (i) Multiple contused abrasions over arterio-lateral aspect of neck, irregular in shape measuring about averagely 5 x 4 cm., blackish red in colour.
- (ii) CLW over arterio-lateral aspect 2 in number skin deep

measuring about 1 x 0.5 cm. each, clotted blood present.

No other injury was detected.

He had also noticed 9 internal injuries and has opined before the court as follows :

“The injury noticed on the neck of the deceased as has been described in para 17 of the examination report corresponding with the internal injuries as described in para 20 of the examination report were sufficient to cause the death of the deceased in the ordinary course of nature.”

He had opined that the death had occurred within 3 to 4 hours of the last meals taken by the deceased. According to him, a mob of 15 to 20 persons had inquired with him after he had performed autopsy of the dead body. He had orally informed them that the cause of death is throttling, but had not disclosed the final conclusion. The histopathological report as far as poisoning is concerned, was in the negative. After 18 days, one person had inquired with him about the post mortem conclusion and accordingly, he had issued a certificate regarding the exact cause of death of deceased Deelip Deore. The said certificate is marked at Exh. 31. He has admitted in the cross-

examination that he had not given copy of post mortem examination report to anyone including P.W. 2, as the same was forwarded to the Investigating agency.

9            P.W. 8 Vishnu Deore happens to be son-in-law of deceased Deelip Deore. He has thrown light on the nature and conduct of his mother-in-law by stating that she used to quarrel with the father in law quite often on trifling issues and that their relations were not cordial. The wife of P.W. 8 was original accused No. 2 and she had died on 22/9/2009 i.e. prior to the commencement of trial.

10           Learned Counsel for the appellants submits that this is a case of circumstantial evidence. That, the deceased was feeling uneasy in the intervening night and therefore, accused No. 1 had adopted all possible measures, which would give him relief. According to the learned Counsel, there is no iota of evidence on record even to remotely indicate that the accused No. 3 was in the house of the deceased in the intervening night of 18<sup>th</sup> and 19<sup>th</sup> December, 2006 and that she has been falsely implicated.

11           As far as accused No. 1 Kamalabai is concerned, it is submitted that since her husband Deelip was feeling uneasy, she had taken all efforts to extend timely medical aid to him and had therefore, called P.W. 7 Dr. Sunil Ghadage. She had also taken him to Civil Hospital on the very next day and therefore it cannot be said that she has caused homicidal death of her husband. It is further submitted that no doubt, there were trifling quarrels between the husband and wife, but that needs to be viewed as a friction in marital relationship and the same cannot be viewed as a motive to eliminate her husband. He has also submitted that P.W. 2 has taken an undue advantage of the quarrels between the husband and wife and falsely implicated her in this case. No satisfactory cause of quarrel is brought on record by the prosecution witnesses and that after 42 years of having been married, the accused No. 1 would not have eliminated the deceased over a trifling issue.

12           The learned Counsel for the appellants has placed reliance upon the judgment of the Supreme Court in the case of **Gargi V/s. State of Haryana**<sup>1</sup>, wherein the Apex Court had set aside the conviction of wife of the deceased on the ground that there cannot be a conviction

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**1(2019) 9 SCC 738**

merely on the basis of last seen theory. The Apex Court has observed that -

“Insofar as the ‘last seen theory’ is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn.

The said observation were made in the facts of that case, which cannot be considered in this case. In that case, the couple was residing in different portions of the same house. The corpse was found hanging. It was observed by the Apex Court that-

“the staircase from the ground floor was directly leading to the room in question where the dead body was found, acquires immense significance. Even if it be assumed that the deceased was putting up in the said room, some person or persons reaching there directly from the ground floor and carrying out the crime is not ruled out. In the alternative, some person or persons having executed the crime at some other place and then

having brought the dead body and hanged it in the room in question is also the possibility which cannot be brushed aside as entirely improbable.”

Moreover, the time that had elapsed between death and post-mortem was 24 to 72 hours. The accused was last seen in the company of the deceased on 29/4/97, whereas the dead body was recovered on 1/5/1997. In the present case, P.W. 7 had examined the deceased at about 2 am and his pulse was not recordable. It was a case of the accused herself that her husband had started feeling uneasy at about 7 am in the morning i.e. just four hours before he was declared dead.

13 As against this, Learned APP has supported the judgment of the Sessions Court and has submitted that in the intervening night of 18<sup>th</sup> and 19<sup>th</sup> December, 2006 the accused were present in the house. The evidence of prosecution witnesses 3 and 4 would clearly establish that there was a quarrel between the family members of deceased Deelip and therefore, the onus would lie upon the accused appellants to explain the transactions in which Deelip had died a homicidal death. That it is a case of custodial death and the accused have not discharged their onus under section 106 of the Indian Evidence Act.

14           Upon meticulous scrutiny of the evidence on record, it can be said that the prosecution has proved the following facts:

- (i)   That the accused No. 1 was residing with the deceased.
- (ii)   That there was marital discord between the accused No. 1 and her husband.
- (iii)   That on previous night i.e. on 18<sup>th</sup> December 2006 as well in the intervening night of 18<sup>th</sup> and 19<sup>th</sup> December, 2006 the neighbours had heard the family members quarreling right upto 2 a.m. of 19<sup>th</sup> December, 2006.
- (iv)   That at about 2 a.m. P.W. 7 Dr. Ghadage was summoned by the accused and the relatives for examining Deelip. That he could not record blood pressure or pulse at that time. He had directed them to take the patient to Civil Hospital Nashik.
- (v)   The patient was taken to the hospital at about 11.45 a.m. and was declared dead. The accused had not taken any steps in the intervening period between 2 a.m. to 11.45 a.m.
- (vi)   That no intimation was given either to P.W. 2 or any other relatives about the said incident.

(vii) That the cause of death is asphyxia due to throttling. The accused have failed to offer any explanation about the injuries on the person of the deceased.

(viii) The conduct of the accused needs to be appreciated under section 8 of the Indian Evidence Act.

15           That in fact, Deelip had died some time before 2 a.m. PW. 7 was informed that Deelip had developed a breathing problems at about 2 am.. whereas, P.W. 10 was informed that Deelip was feeling uneasy in the morning at 7 a.m. and therefore, he was brought in the hospital. No reason is assigned for taking the patient to the hospital at a belated stage. As is submitted by the learned Counsel for the appellant, the case rests on circumstantial evidence. However, the circumstances speaks for themselves.

16           It is true that the prosecution has failed to establish beyond reasonable doubt that the accused No. 3 was residing in her maternal house in the intervening night of 18<sup>th</sup> and 19<sup>th</sup> December, 2006. The motive for eliminating the deceased is not brought on record. Learned Counsel submits that on failure to demonstrate the

motive for causing homicidal death, the accused deserves to be acquitted. In any case, motive is an emotion or rather is a state of mind. The motive would be known to the assailant only and no one else, some times not even to victim.

17           Section 8 of the Evidence Act reads thus :

“8. Motive, preparation and previous or subsequent conduct.— Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.”

18           An implicit reliance can be placed on the Judgment of the Apex Court in the case of **Anant Chintaman Lagu v/s. State of Bombay**<sup>2</sup>. The Apex Court observes thus :

“A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material.”

19           In the statement under section 313 Code of Criminal Procedure, 1973, there is no plausible explanation offered by the accused No. 1. The defence of Appellant No. 2 is that upon failure on the part of her mother to transfer one house in the name of P.W.2, he has falsely implicated them. In fact, it is not the falsity of defence, which is being considered and therefore, an appropriate reference to section 8 of the Evidence Act has been made by us.

20           As there is no incriminating circumstance against appellant No. 2, her presence in the house of deceased and appellant No. 1 at the

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<sup>2</sup>AIR 1960 SC 500

relevant time is doubtful. Hence, she deserves to be acquitted of all the charges. Similarly, the original accused No. 3 Abhiman Sampat Ahire has been acquitted on the ground that his presence in the house of the appellant No. 1 and the deceased at the relevant time, has not been proved.

21 In view of the above discussion, the conviction of the appellant No. 2 for the offence punishable under section 302 of the Indian Penal Code deserves to be quashed and set aside. However, the conviction of the appellant No. 1 for the offence punishable under section 302 of the Indian Penal Code needs to be confirmed.

22 Hence, following order is passed :-

### **ORDER**

- (i) The appeal is partly allowed;
- (ii) The conviction passed against the appellant No. 2 Mangala Mahindra Shinde vide Judgment and Order dated 9/12/2013 by Sessions Judge, Nashik in Sessions Case No.35 of 2008 is quashed and set aside.
- (iii) The appellant No. 2 is acquitted of all the charges

levelled against her. The appellant No. 2 be released forthwith, if not required in any other offence.

- (iv) The conviction passed against the appellant No. 1 Kamalabai Deelip Deore vide Judgment and Order dated 9/12/2013 by Sessions Judge, Nashik in Sessions Case No.35 of 2008 is hereby confirmed.
- (v) The appeal is disposed of on above terms.

**(N.R. BORKAR, J)**

**(SMT. SADHANA S. JADHAV, J)**