



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 692 OF 2005

1. Chhagan Dhanji Gujar
Age 53 years, Occ. Business.
2. Nagin Dhanji Gujar
Age 38 years, Occ. Business.
**[appeal abated as against appellant
no.2 as per order dated 08.06.2016.]**
3. Jayesh Chhagan Gujar
Age 24 years, Occ. Business.
4. Umesh Chhagan Gujar
Age 25 years, Occ. Business.

All R/o. Wadi Budruk
Tq. Shirpur, Dist. Dhule.

... Appellants

Versus

The State of Maharashtra

... Respondent

.....
Mr. B. R. Warma, Advocate for the Appellants.
Mr. S. K. Shirse, APP for Respondent-State
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.09.2024

Pronounced on : 03.10.2024

JUDGMENT :

1. Convicts are hereby taking exception to the judgment and order dated 21.09.2005 passed by learned 2nd Adhoc Additional Sessions Judge, Dhule in Sessions Case No. 23 of 2005 recording guilt of the

appellants for offence under Sections 342, 323, 509 r/w 34 of the Indian Penal Code [IPC].

PROSECUTION VERSION

2. Prosecution version in brief is that, all four accused in furtherance of their common intention, abetted suicide of deceased Suresh by subjecting him to physical and mental cruelty on account of demand of Rs.1,400/-. For their demand, they wrongfully confined him, beat him and he was abused in filthy language. Only because of the same, Suresh consumed poison and died on 30.12.2004. Mother of deceased Suresh, namely, Gangubai, set law into motion, on the basis of which, Shirpur police registered crime.

3. After investigation and after gathering evidence, all four accused were chargesheeted and tried by learned 2nd Adhoc Additional Sessions Judge, Dhule for commission of offence punishable under Sections 306, 342, 323, 509 r/w 34 of IPC.

4. After appreciation of evidence, learned trial court held appellants guilty of offence under Sections 342 r/w 34, 323 r/w 34 and 509 r/w 34 of IPC and acquitted all of them from charge under Section 306 of IPC. Hence the above appeal.

SUBMISSIONS**On behalf of the appellants :**

5. Questioning the judgment, learned counsel for the appellants pointed out that in fact, though FIR is shown to be at the instance of mother Gangubai, she has admitted that contents of the FIR were narrated by one Bhagwan Patil, who himself was in police department and therefore, it is apparently false and afterthought version. He further submitted that here, main charge of Section 306 IPC has not been accepted by learned trial court. According to him, necessary ingredients for attracting Sections 342 and 509 IPC are patently missing in prosecution evidence. He pointed out that witnesses are not consistent and rather testimonies are full of material omissions, contradictions and variances. He pointed out that spot is not proved. According to him, medical evidence also does not support prosecution version. He pointed out that there were no injuries on the person of deceased and it is so evidence from the postmortem report, and therefore, he submits that, even charge of Section 323 IPC had failed.

On behalf of the State :

6. Supporting the judgment, learned APP submitted that there is ample evidence. Prosecution in trial court has based its case on the evidence on in all 6 witnesses. Their evidence inspired confidence and

therefore, learned trial Judge has accepted prosecution case regarding commission of offence under Sections 342, 323 and 509 of IPC. Learned APP submitted that when trial court has acquitted accused from charge under Section 306 IPC, this itself shows that there is meticulous and careful appreciation of evidence and as such, it is submitted that, there is no need to interfere and disturb the findings.

7. During pendency of appeal, appellant-accused no.2, namely Nagin Dhanji Gujhar expired and therefore, appeal is abated against such accused.

EVIDENCE BEFORE TRIAL COURT

8. The sum and substance of the evidence of six witness examined by prosecution in support of its case, and their role and status can be summarized as under :

PW1 Gangubai is mother of deceased. Sum and substance of her evidence is that, accused no.1 and his sons accused nos. 3 and 4 are looking after a grocery shop and accused no.1 is also working as agent for insurance policy as well as postal Recurring Deposit/C.T.D. Her deceased son Suresh had drawn and insurance policy and a recurring deposits under postal scheme through accused no.1. Her son Suresh had taken Rs.1,400/- from accused Chhagan. On 28.12.2004, in the morning, while she, her husband, deceased son and one

Baliram were in the house, accused no.1 came and demanded Rs.1,400/-. Her son informed that he had no money that day and that he had recurring deposit with accused and from it, amount of Rs.1,400/- be deducted. That time accused abused and beat her son and went away issuing threat that he needs money within one hour. Around 1.00 p.m., accused Umesh came and called them. So they went to the house of accused no.1. There, accused nos. 1 and 4 beat her son Suresh with fist blows and kicks. Accused also said to her son Suresh that if he does not have money to pay, then he should consume poison and die. Accused even threatened this witness to outrage her modesty. Around 7.30 p.m., she learned that blood and froth was oozing from the nostrils and mouth of her son Suresh and so he was taken to Dhule Civil Hospital. But he succumbed on 30.12.2004. Hence, she lodged report Exhibit 10.

While under cross, she admitted that there was long acquaintance between her son and accused no.1 and there were no quarrels or dispute except the alleged incident. She admitted that her son purchased grocery on credit from accused. She answered that at 1.00 p.m. on 28.12.2004, Suresh suffered injury to mouth due to beating and at that time, there was blood oozing from his mouth. Omission is brought about her son beaten and he receiving injuries. She admitted that on 28.12.2004, her son was not taken to hospital for treatment. She answered that Baliram Patil (PW3) was present at the time of morning's incident and that his brother Bhagwan Patil was a police officer. She admitted that said Bhagwan Patil had accompanied her to Shirpur police station for lodging complaint

and she categorically admitted that Bhagwan Patil had given information to police and she had merely appended mark on complaint Exhibit 10.

PW2 Damu stated that deceased was his son. On the day of incident, in the morning, when he, his wife, son and Baliram were available in the house, accused no.1 came and demanded Rs.1,400/- dues towards grocery. His son conveyed to accused that he had no money and that he would pay after 2 to 3 days. Therefore, he went to agricultural field and returned about 7.00 p.m. That time, he learnt from his wife about accused beating son Suresh. Then wife of deceased Suresh came and told about oozing of blood and froth from the mouth and nostrils of Suresh. So he was taken to cottage hospital Shirpur and thereafter to Civil Hospital Duhle on 29.12.2004, but he died on 30.12.2004, and on 31.12.2004 wife of this witness lodged report.

While under cross, this witness admitted that on 28.12.2004, accused no.1 came and demanded dues at the hand of their son Suresh and that he assured to repay it within two to three days and further said that, otherwise credit amount should be deducted from the recurring deposit. He admitted that, what happened thereafter was not personally seen by him.

PW3 Baliram stated that complainant is his brother's wife. On the day of incident at the house of complainant, accused no.1 came and demanded Rs.1,400/- from son of complainant, namely, Suresh. He deposed that Suresh told accused that he does not have money and the amount should be deducted from recurring

deposit amount. He stated that even he intervened and gave understanding to accused, but accused left directing Suresh to bring money within one hour. Accused went away and he too went away. He stated that around 1.30 p.m., he heard loud noise in the house of accused no.1 and so he went there and saw accused nos. 1 to 4 beating Suresh with fist blows and kicks. Complainant Gangubai was also present there. They beat Suresh by bringing him outside the house in the courtyard. When Gangubai intervened, they threatened to remove her clothes and outrage her modesty. He also deposed that again accused told Suresh that if you do not have position to repay credit amount, then consume poison and die. He submitted that around 7.30 p.m. he heard that Suresh consumed poisonous drug.

While under cross, he admitted that he gave application to police that accused should not be released on bail. That, he also gave affidavit in the court stating that accused should not be released on bail. Then he answered that he had seen the incident which took place at 1.30 p.m. and had seen injuries on the head and eye and swelling to foot. He admitted that police recorded his statement after two days of the incident. Omission is brought about Gangubai falling on Suresh at the time of incident. He admitted that he did not inform in his statement that accused were abusing Suresh in filthy language. Omission is brought that accused told Gangubai that she should not intervene or else they will disrobe her and outrage her modesty; that, accused took Suresh from the courtyard, closed the door from inside. Rest is denial.

PW4 Balu deposed that he is acquainted with both accused and deceased. That, incident in question took place around 1.30 p.m.. He claims to have seen accused nos. 1 to 4 beating Suresh with kicks and fist blows and abusing him on account of credit due towards him and accused telling Suresh to repay Rs.1,400/- and further saying that if he does not have money, then he should consume poison and die. Witness claims that he intervened. That time, Gangubai came and she fell on Suresh to avoid getting beaten and accused saying not to intervene or else they would remove her clothes. On the same day, around 7.30 to 8.00 p.m., he saw froth was oozing from the mouth of Suresh and blood was coming from his nose.

While under cross, he answered that Suresh is his wife's brother. He admitted that Suresh had credit balance towards accused no.1 since last 8 months. He admitted portion marked "A" in his statement to be correct, i.e. regarding he being afraid and therefore asking four accused from a distance not to beat and abuse and not to speak of consuming poison since deceased was the only son.

PW5 Kanchan is daughter of deceased. In her evidence at Exhibit 25, she stated that accused nos.1 to 4 beat her father with fist and kick blows.

PW6 PSI Barde is the Investigating Officer, who narrated all steps taken by him during investigation.

ANALYSIS

9. On complete re-appreciation, it is noticed that, here, two episodes seem to have occurred that day, i.e. around 8.00 to 8.30 a.m. in the house of complainant where only accused appellant Chhagan came demanding money, quarreled, abused and left asserting repayment within one hour. The second episode allegedly took place in the afternoon between 1.00 to 1.30 p.m.

Informant's evidence in this regard is that accused Umesh came to her house and told that she was called in their house and therefore she went there and, she claims that, there, accused nos. 1 to 4 beat her son by fist blows and kicks. Her husband PW2 Damu admittedly was not party to such episode in the afternoon as he was at his field. PW3 Baliram was shown to be present in the morning in the house of complainant as well as he claims that in the afternoon around 1.30 p.m. he heard noise and therefore he came out of the house and he claims to have seen accused nos. 1 to 4 beating Suresh by fists and kicks, and he claims that, that time informant came there. Accused nos. 1 to 4 brought Suresh out of the house in the courtyard and he was beaten and abused in filthy language.

PW4 Balu, immediate neighbour of accused, as regards the occurrence at 1.30 p.m., claims that at that time deceased Suresh was

in front of grocery shop of the accused. He does not speak that at that time Suresh was in the courtyard or in the house. He claims to have seen accused nos. 1 to 4 beating by fists and kicks and he claims that accused were abusing Suresh. Then he claims that at that time, informant came and requested accused to not to beat her son. Accused asked her to go away, otherwise he will remove her clothes from her person. Which accused has uttered this, has not been stated by him, nor learned APP has got it clarified from him.

10. Therefore, according to Baliram (PW3), Suresh was abused in filthy language and accused told Gangubai not to intervene otherwise they will remove her clothes and outrage her modesty, whereas PW4 Balu attributed utterance about removing clothes of Gangubai, which she herself has not stated in her evidence, as she stated that she was asked to go away by the accused or else they would outrage her modesty. Again, which of the accused said this, has not been clarified by her.

11. Spot panchanama is at Exhibit 14 and scene of occurrence of the incident at 1.30 p.m. is shown to be in the front courtyard of accused. None of these witnesses have stated that deceased was intending to proceed or even run away or escape from beating, but

was caught hold of and he was prevented from proceeding in any direction so as to hold that there was wrongful confinement. Therefore, essential ingredients for attracting Section 342 IPC, in the considered opinion of this Court, are missing in the evidence of prosecution.

12. As pointed out above, regarding commission of offence under Section 509 IPC, informant has merely stated that all accused said that they would remove her clothes. It is difficult to hold such utterance to be made in chorus by all four accused. It is also pertinent to note that informant's husband PW2 Damu deposed only about incident at around 8.00 a.m. in the morning and then he claims that he went to agricultural field and returned in the evening by 7.00 p.m. and that time, his wife reported about accused beating her son Suresh. He does not speak about offence of Section 509 IPC being committed by accused against his wife.

13. Therefore, cumulative effect of such evidence is that here, except evidence of beating by fist and kick blows, there is no convincing, cogent and reliable evidence. However, as pointed out by learned counsel for the appellants, deceased was not treated for any injury on the day of occurrence or immediately thereafter. PM report

is also silent about any external injury so as to hold commission of offence under Section 323 IPC. Therefore, here, as patently required essential ingredients for attracting Sections 342, 323 and 509 being missing, it is not just and proper to impute such charges, more particularly in the light of quality of above evidence. Hence, I proceed to pass following order :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants by learned 2nd Adhoc Additional Sessions Judge, Dhule in Sessions Case No. 23 of 2005 under Sections 342 r/w 34, 323 r/w 34 and 509 r/w 34 of IPC on 21.09.2005 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 342 r/w 34, 323 r/w 34 and 509 r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

[ABHAY S. WAGHWASE, J.]