

A

STATE OF M.P.
v.
MUNNIBAI & ANR.
(Criminal Appeal No. 1298 of 2002)

B

AUGUST 28, 2008
[DR. ARJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ]

Penal Code, 1860:

C

ss. 302/34 and 328/34 – Murder by poisoning – Conviction by trial court – Acquittal by High Court – HELD: High Court was right in holding that there was no evidence to show that any of the accused persons administered poison – The witness who, along with the deceased, shared the food item stated to have contained poison did not know from where it came – There was no forensic examination of food item shared by witness and the deceased – Besides, motive for crime seemed to be improbable – Judgment of acquittal passed by High Court upheld.

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CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1298 of 2002

F

From the final Judgment and Order dated 25.1.2001 of
the High Court of Madhya Pradesh at Jabalpur in Crl. Appeal
No 361 of 1989

Vishwajit Singh, Siddharth Sengar, Sunny Choudhary,
Vairagya Vardhan, Aditya Singh and C.D. Singh for the
Appellant.

G

B.K. Satija for the Respondents.

The Order of the Court was delivered by

Dr.ARIJIT PASAYAT, J. Heard learned counsel for the
parties.

H

Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court directing acquittal of the respondents Munnai Bai and Gendalal. The accused persons faced trial for alleged commission of offences punishable under Section 302 and Section 328 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). The accused persons were found guilty and sentenced to undergo imprisonment for life and five years by learned Additional Sessions Judge, Gadawara.

The prosecution version as unfolded during trial is as follows:-

Munnai Bai (PW.3) is a professional dancer and prior to the date of incident, she used to reside with the Tirath Singh (hereinafter referred to as 'deceased') as his keep. Accused Gendalal and accused Mulayam Singh (since absconding) wanted that Munnai Bai should live with them as keep, but she was not willing. While Munnai Bai was staying with deceased Tirath Singh accused Gendalal and accused Mulayam Singh came to the village and invited them for dance function in the village. On their invitation, the deceased and Munnai Bai came to village Sirsiri, where they were kept at the residence of one Shankar Barua. There they ate Roti and Dal; brought by Gendalal and accused Mulayam Singh spent the night in the house of Shankar Barua. In the morning, (Munnai Bai) PW.3, intended going to village Oriya but was stopped by accused Mulayam Singh and he stated that dance and song programme shall be held. Around noon time accused Mulayam Singh took her and deceased Tirath Singh for taking food at the residence of Gendalal. Munnai Bai and deceased Tirath took food at the residence of Gendalal and slept there. When they woke up in the evening, deceased and accused persons smoked 'Ganja' and took 'Thandai'. Thereafter, accused Mulayam Singh and Gendalal Singh brought two plates containing food articles including 'Halua'. While P.W.3 Munnai Bai ate Halua, she found the taste to be pungent and thereafter she did not further eat the Halua. After taking the food, deceased Tirath Singh and Munnai

A Bai became unconscious and thereafter they were taken by Gendalal and accused Mulayam Singh to the residence of Shankar Barua and thereafter to the house of (Bhagwat Singh) P.W.13 From there, the deceased was taken to village Oriya Ghat in a bullock cart . While he was being taken to Udaipur hospital by his brother (Khet Singh) PW.12 , he died and the dead body was taken to the Udaipur Police Station. Information was recorded at the village and the same was forwarded to Saikheda Police Station on the basis of which offence under Sections 328 and 302 of the Indian Penal Code was registered.

C During the course of investigation, dead body of Tirath Singh was sent for post-mortem examination which was conducted by Dr. Narendra Kumar Palod (PW.19). According to the post mortem report, death of Tirath Singh had occurred because of respiratory and circulatory failure and may be because of poison. The viscera of deceased was sent to the State Forensic Science Laboratory, Sagar for chemical examination. The same was found to contain zink phosphide. Police after investigation submitted charge-sheet against the appellants and Mulayam Singh (since absconding) for offence under Sections 328 and 302 of the Indian Penal Code. Appellants denied to have committed any offence and their plea is that they have been falsely implicated in the case.

F As the appellant denied to have committed any offence and took the plea of false implication, trial was held. In order to further its case, the prosecution examined nine witnesses. Munnibai (PW3) was stated to be the star witness. Her witness was to the effect that the food was served to the deceased and to her by the accused persons and one Mulayam Singh who had absconded. The Trial court found the evidence of PW3 to be reliable and directed conviction and imposed sentences as afore-noted. The accused persons preferred appeal before the High Court. The primary reason for the High Court directing acquittal was that it was inconceivable that accused Munnibai would be a party to a plan that her husband would keep Munnibai (PW3) as his keep. It was also found rather improbable that

absconding accused Mulayam Singh and Gendalal would have a common motive to keep Munni Bai (PW3) with them when one of them was married to accused Munnibai. So far as the question of administering poison is concerned, the High Court found that there was no evidence to show that any of the accused persons administered poison. The evidence of Munni Bai (PW3) was to the effect that the poison was mixed with the Halua and she found the taste to be pungent and did not have the whole of halua served to her; but the deceased took the whole quantity which was offered to him. The High Court noted that she did not know from where the Halua came. Interestingly, there was no forensic examination of the halua which is supposed to have contained the poison by PW3 and shared by the deceased. In that view of the matter, we are not inclined to interfere with the judgment of the acquittal impugned in this appeal which is accordingly dismissed.

R.P.

Appeal dismissed.