

GAHC010097432020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/58/2020

KULAI MURA @ KULEN
LAKHIMPUR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR H GUPTA, AMICUS CURIAE

Advocate for the Respondent : MS. B.BHUYAN(ADDL.PP, ASSAM)

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant	: Mr. H Gupta, Amicus Curiae
For the State respondent	: Ms. B. Bhuyan, Addl. Public Prosecutor, Assam.
Date of hearing	: 20.07.2023
Date of Judgment	: 25.7.2023.

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. H Gupta, learned Amicus Curiae appearing for the appellant. Also heard Ms. B Bhuyan, learned Additional Prosecutor, appearing for the State respondent.

2. This appeal has been preferred against the Judgment dated 04.11.2019, passed by the court of the learned Sessions Judge, Lakhimpur in Sessions Case No. 205(NL)/2017, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default rigorous imprisonment for 6 (six) months, for killing his wife.

3. The prosecution case in brief is that the father of the appellant/prosecution witness-1 (PW-1) submitted an FIR dated 29.10.2017 to the Officer-In-Charge of the Ghilamara Police Station stating that on the night of 28.10.2017, his son, the appellant had killed his daughter-in-law by assaulting her. In pursuance to the FIR submitted by PW-1, Ghilamara P.S. Case No. 130/2017 under Section 302 IPC was registered. After investigation of the case, the Investigating Officer filed a charge-sheet, having found a *prima facie* case against the appellant under Section 302 IPC.

4. Charge under Section 302 IPC was framed against the appellant to which he pleaded not guilty and claimed to be tried. Thereafter, 16 (sixteen)

prosecution witnesses were examined by the learned Trial Court. After examination of the appellant under Section 313 Cr.PC and after hearing the parties, the learned Trial Court came to a finding on the basis of circumstantial evidence and as he could not give any explanation for the death of his wife, in terms of Section 106 of the Evidence Act that the appellant was guilty of having killed his wife. Accordingly, the appellant was convicted under Section 302 IPC for having committed the offence of murder under Section 300 IPC. He was accordingly convicted and sentenced by the learned Trial Court.

5. The learned counsel for the appellant submits that the entire case of the prosecution is based on circumstantial evidence as there is no eye-witness to the crime. He submits that in a case of circumstantial evidence, the motive for the crime has to be present and proved by the prosecution. However, in the present case, the prosecution had not been able to show the presence of any motive for the appellant to have murdered his wife. He submits that the evidence adduced by the prosecution witnesses do not show the involvement of the accused in the death of his wife and the explanation given by the appellant in his examination under Section 313 Cr.PC, wherein he has stated that he had slept in his father's room and not in his own room with his wife, proved that the appellant could not have been the perpetrator of the crime.

6. The learned counsel for the appellant submits that in the absence of motive, the case of the prosecution has to be discarded and in this respect he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Nandu Singh –vs- State of Madhya Pradesh (now Chattisgarh)***, reported in ***(2022) Live Law (SC) 229***. He also submits that as there is no evidence to

show the involvement of the appellant in causing the death of his wife, the learned Trial court erred in convicting the appellant on the basis of suspicion. He submits that in the case of ***Sharad Birdhichand Sarda -vs- State of Maharashtra***, reported in ***(1984) 4 SCC 116***, the Hon'ble Supreme Court had held that suspicion howsoever strong, cannot substitute the requirement of the prosecution to prove it's case beyond reasonable doubt.

7. The learned counsel for the appellant also submits that in the administration of criminal justice, where heavy reliance is placed on circumstantial evidence and where two views are possible, one pointing to the guilt of the accused and another towards his innocence, the one which is favourable to the accused must be adopted. He further submits that in the case of ***Sharad Birdhichand Sarda*** (supra), the Hon'ble Supreme Court has laid down 5 (five) conditions to be fulfilled before a case against an accused could be fully established on the basis of circumstantial evidence. He submits that the 5 (five) conditions laid down by the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda*** (supra) are not present in the present case. He submits that there is nothing to link the injuries sustained by the deceased with the appellant. The learned counsel for the appellant thus prays for setting aside the impugned judgment and for acquittal of the appellant from the charges framed against him.

8. The learned Additional Public Prosecutor, on the other hand submits that the present case is not a normal case involving circumstantial evidence. The death of the deceased having occurred within the secrecy of the four walls of the house occupied by the appellant, his wife, minor daughter and his parents,

Section 106 of the Evidence Act would come into play. She also submits that it was the father of the appellant, who is the informant in the case and who had submitted the FIR stating that the appellant had killed his wife. She also submits that the evidence adduced by the brothers of the appellant also show that the appellant had run away from the house and had been subsequently caught and tied up by his brothers, before being handed over to the Police.

9. The learned Additional Public Prosecutor also submits that there is no evidence adduced or suggestion made by the appellant, to the effect that some other person had entered the house of the deceased, who could have been involved in the killing of the deceased. Further, no explanation has been forthcoming from the appellant, as to how his wife could have died. She also submits that absence of motive is not a ground to reject the prosecution case when a crime has been committed within the four corners of a house. She further submits that there is no dispute with regard to the fact that the appellant was present in the house when the deceased died at the relevant point of time. The learned Additional Public Prosecutor thus submits that the circumstantial evidence points to the guilt of the appellant in having caused the death of his wife and as such, this Court should uphold the impugned judgment passed by the learned Trial Court.

10. We have heard the learned counsels for the parties.

11. The evidence of PW-1 is to the effect that he and his wife were living in one part of the house, while the appellant, the deceased wife and one three year old daughter were living in another part of the house. When he rose up

early morning, he found the door to the room occupied by the appellant open. He found the appellant seated in a corner of his room with a sullen face and when he went to the room of his son (appellant), he found his daughter-in-law lying dead on the bed. PW-1 further states that he has three other sons living separately from his house. He went to the house of his other sons and told them about the incident. His other sons came to PW-1's house and tried to apprehend the appellant. However, the appellant ran away. The other sons of PW-1 followed the appellant and caught him in a village, the residents of which comprised of Nepali people. The appellant was then brought into the house of PW-1. The President of the Tea Garden Labourers thereafter informed the police, who came and took the dead body for Post Mortem examination. The police also arrested the appellant and took him to the police station from the house of PW-1. PW-1 also states in his evidence that when he had asked the appellant as to how his wife had passed away, the appellant did not give any answer. He also states that on the night of the occurrence, the appellant along with his wife had been in their room, while their minor daughter had been in his room.

In his cross-examination PW-1 states that the appellant and his deceased wife were habitual drunkards and when they were under intoxication, they were not afraid of each other. PW-1 also states that he does not know whose fault it was, with regard to the passing away of the deceased. He also states that on one occasion, he put his son (appellant), daughter-in-law (deceased) and appellant's mother-in-law in the Ghilamora Police Station because they were very drunk. He also states that he did not know who had committed the murder of his daughter-in-law.

12. The evidence of PW-2, who is the Secretary of the Labourers of Madhupur Tea Garden, is to the effect that the brother of the appellant told him that the appellant had murdered his wife in his house. He along with others thereafter went to the house of the appellant and found the dead body lying on the ground in the room. Thereafter the President of the Labourers of Madhupur Tea Garden informed the police, who came and took custody of the dead body as well as the appellant. He also states that he did not know who had murdered the deceased.

In his cross-examination, PW-2 states that he did not state before the police that he came to know of the occurrence of the crime from the brother of the appellant or that the President of the labourers of the garden had informed the police, who thereafter took the appellant in their custody.

13. The evidence of PW-3, PW-4, PW-6, PW-7, PW-8 & PW-9 is to the effect that they did not know how the deceased had passed away.

14. The evidence of PW-5, who is the President of the Labourers of Madhupur Tea Garden, is to the effect that when he heard that the wife of the appellant had passed away, he went to the house of PW-1 and saw the dead body lying in the kitchen. He found the parents, brothers and other family members of the appellant in the said house. However, he did not find the appellant in the said house. PW-1 thereafter told him that the appellant had run away. Thereafter the brothers of the appellant apprehended the appellant and brought him into the house and tied him to a tree. The police came and took the dead body and also took custody of the appellant.

In his cross-examination, PW-5 states that he did not state before the police that PW-1 had stated that the appellant had run away.

15. The evidence of PW-10 is to the effect that he did not know anything regarding the death of the deceased.

16. The evidence of PW-11, who is the elder brother of the appellant, is to the effect that the morning following the occurrence, his father PW-1 came to his house at 4 a.m. and told him that the appellant had murdered his wife. PW-11 then went to the house of PW-1 and found the dead body of the deceased. He also found the appellant in the house. However, the appellant fled. The appellant was thereafter apprehended by the PW-11 and other persons at Nepali village, which was located at a distance from their house. PW-11 also states that the appellant was living with his wife in a part of his parent's house. Further, they had a daughter about 2 years old. When the police came to the house of PW-1 at around 8 a.m., PW-11 handed over the appellant to the police. The police took away the dead body and Post Mortem Examination was thereafter done in the North Lakhimpur Civil Hospital. PW-11 also stated that he had given his statement under Section 164 Cr.P.C., which was exhibited as Ext.1.

In his cross-examination, PW-11 stated that he did not know how the deceased had died.

17. The evidence of PW-12 and PW-13 is to the effect that they went to the house of the appellant and found the dead body of the deceased lying on the ground of the house with severe injuries upon the face and other parts of the

deceased. PW-12 found the appellant had been tied up in the house of PW-1 and the police thereafter took away the dead body and also the appellant. However, PW-13 did not see the appellant, as by that time, police had taken away the appellant.

In their cross-examination, they stated that they had not stated before the police that they went to the house of the appellant and found the dead body of the deceased within the house with injuries upon the face and other parts of the body. They also stated that they do not know how the deceased died.

18. The evidence of PW-14, who was working as the Medical and Health Officer-I at North Lakhimpur Civil Hospital, is to the effect that he conducted the Post Mortem Examination upon the dead body and his examination revealed that there were injuries to the scalp and skull and a membrane rupture at the right parietal area. Blood clot was present in the brain at the site of skull bone fracture. Further, multiple bruises were present in the chest walls of the deceased. The heart contained clotted blood. There were multiple bruises on the right buttock. The more detailed description of injury on the body of the deceased as described by the PW-14 is reproduced below as follows :

“A female dead body with rigor mortis had fractured right parietal bone, frontal bone, ruptured membrane, sub-dural haematoma at right parietal and frontal area, brain matter injured at right parietal and frontal areal. Injuries are antemortem in nature and caused by blunt object.”

In the opinion of PW-14, the deceased died of coma, as a result of injuries sustained in her vital organs like brain and the injury was antemortem in nature.

In his cross-examination, PW-14 has stated that he did not mention the time

of conducting the post mortem examination upon the dead body of the deceased, nor the age of injury in the post mortem examination report.

19. The evidence of PW-15, who is the younger brother of the appellant is to the effect that the appellant was living in the same house along with his mother and father. PW-15 also states that he was living with another elder brother i.e. one Sita Ram Murah, which was at some distance from the house of his father. At the time of the occurrence, the appellant was living with his deceased wife. PW-15 said that his father had come to his house and told him that the appellant had done something to his wife. He thereafter went to the house of his father and found the dead body of the deceased lying on the bed. He further states that he did not like to see whether the deceased had sustained injuries or not upon her person. He also saw the appellant in the house. Thereafter he along with another person caught hold of the appellant and tied him up. Police came and took the body of the deceased along with the appellant. In the evening of the said date, the dead body of the deceased was given a funeral. He also states that at the time of occurrence, the daughter of the appellant used to stay at night with her grandfather (PW-1) and grandmother. The appellant and his deceased wife used to stay alone in their part of the house.

In his cross-examination, PW-15 states that he did not know how the deceased had passed away, as he did not ask the appellant anything regarding the manner in which the deceased passed away.

20. The evidence of PW-16, who is the IO of the case is to the effect that PW-1 lodged an FIR, accusing his son (appellant) of having murdered his wife. On

conducting the investigation and visiting the place of occurrence the IO prepared the sketch map. The Circle Officer was informed to conduct an inquest upon the dead body, which was thereafter conducted. The Post Mortem Examination on the body of the deceased was done. PW-16 further states that when he reached the place of occurrence, he found the appellant had been confined by the local people. He took the statements of the witnesses and the statement of the appellant. The appellant was arrested and after collecting the Post Mortem Examination Report and completing the investigation, he filed the charge-sheet, as he had found a *prima facie* case under Section 302 IPC against the appellant.

In his cross-examination, PW-16 submits that he had not seized any articles in the course of investigation of the case and in the sketch map he did not make any mention regarding the dead body of the deceased.

21. The evidence of PW-17 who is the Circle Officer, Dhakuakhana is to the effect that he conducted the inquest over the body of the deceased.

22. As can be seen from the evidence adduced by the prosecution witnesses, the appellant, his wife and minor daughter were living in one part of the house, while his father and mother were living in another part of the house. However, the evidence also shows that the minor grand-daughter stayed in her grandparents side of the house at night. The evidence of PW-I further shows that the appellant and the deceased were still alive on the night of the occurrence. However, the wife of the appellant was found dead in the said house, the next morning. There is nothing to show in the evidence nor any

suggestion made by the appellant to the prosecution witnesses during cross-examination before the learned Trial Court, that any person had entered their home, on the fateful night, who might have had any involvement with the death of the deceased. On the other hand, the appellant was awake in the morning and when asked by his father as to how his wife had passed away, the appellant remained silent did not give any answer to his father. Besides the above, the evidence also shows that the appellant had fled away from the house of his father and he had to be apprehended in Nepaligaon, which was at some distance from the house of his father.

23. In the examination of the appellant under Section 313 Cr.P.C., the appellant has stated that he did not kill his wife and that he had been sleeping in his father's room after watching TV. This explanation is however in contradiction to the evidence given by his father who stated that on the night of the occurrence, the appellant and his wife were in their room. The appellant in his examination under Section 313 CrPC also denies the evidence adduced that he had fled away from the house. However, he does not deny the fact that he had been tied up in his house.

The above facts thus shows that there has been no explanation forthcoming as to how the appellant's wife had died, while the only people living in the said house was the appellant, his wife, his three year old daughter and his parents.

24. In the case of ***Nandu Singh (supra)***, the Supreme Court has held that in a case based on circumstantial evidence, motive assumes great significance. It

is not as if motive alone becomes a crucial link in the case to be established by the prosecution and in its absence the case of the prosecution must be discarded, but at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

25. In the case of *Shivaji Chintappa Patil vs. State of Maharashtra*, reported in **(2021) 5 SCC 626**, the Supreme Court has held that in case of circumstantial evidence, motive plays a complete link to complete the chain of circumstances. In the case of *Anwar Ali vs. State of Himachal Pradesh*, reported in **(2020) 10 SCC 166**, the Supreme Court has held that absence of proving the motive cannot be a ground to reject the prosecution case. It has also been held by the Supreme Court in *Suresh Chandra Bahri vs. State of Bihar*, reported in **(1995) Supp (1) SCC 80** that motive if proved, would supply a link in the chain of circumstantial evidence, but the absence thereof cannot be a ground to reject the prosecution case. In the case of *Babu vs. State of Kerala*, reported in **(2010) 9 SCC 189**, the Supreme Court held that absence of motive in a case depending on circumstantial evidence, is a factor that weighs in favour of the accused. On considering all the above judgments of the Supreme Court, it is quite clear that while motive plays an important link to complete the chain of circumstantial evidence, the absence of motive cannot be a ground in itself, to reject the prosecution case.

26. The silence on the part of the appellant as to how his wife was murdered and his complete denial of the circumstantial evidence in examination under Section 313 Cr.PC, in our view is not fatal to the prosecution case. In this

regard, the Judgment of the Apex Court of the Supreme Court in the case of ***Sukhpal Singh Vs. State of Punjab, 2019 15 SCC 622*** has held that inability of the prosecution to establish motive in a case of circumstantial evidence is not always fatal to the prosecution case, more so, when the accused person could not establish any alibi or cogent defence.

27. With respect to the decision of the Supreme Court regarding the conditions to be fulfilled in a case involving circumstantial evidence, this Court is aware that when there are two views possible, the view favourable to the accused has to be adopted. Further, the conditions required to be fulfilled for proving a case on the basis of circumstantial evidence would naturally have to be fulfil the conditions laid down by the Supreme Court.

28. In the case of ***Sharad Birdhichand Sarda*** (supra), the Suprme Court had held that following conditions must be fulfilled before a case against an accused can be said to be fully established on the basis of circumstantial evidence

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrI LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures

from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

29. As stated above, the facts of the case herein is that the wife of the appellant was found dead in the morning in the room occupied by the appellant and his wife. The Post Mortem Report and the evidence of the doctor clearly goes to show that the deceased had died due to the result of the injuries sustained on vital parts of her body like the brain, where blood clot was present. The silence on the part of the appellant when asked by his father as to how his wife had passed away speaks volumes. The further fact that the appellant had fled away from his home and had to be caught by his own brothers also speaks volumes on the conduct of the appellant and implies that he was guilty of the murder of his wife.

30. Section 106 of the Evidence Act states as follows :

“106. Burden of proving fact especially within knowledge. —

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

31. In the case of ***Trimukh Maroti Kirkan vs. State of Maharashtra***, reported in ***(2006) 10 SCC 681***, the Supreme Court has held that where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

32. In the case of ***Ram Pratap vs. The State of Haryana***, reported in ***(2022) LiveLaw (SC) 1025***, the Supreme Court held that suspicion, howsoever strong, cannot substitute the requirement of the prosecution to prove its case beyond reasonable doubt. This Court is respectfully aware of the law laid down in the above case and is of the view that the non-explanation of the cause of death of the appellant's wife and his running away from the scene

of the crime could imply that he felt guilty of the crime or he was scared and traumatized by the incident. It could also be due to panic or shock for self preservation. However, in the facts and circumstances of this case, the evidence shows that the door leading to the room where the appellant stayed with his wife was open. Further, PW-1 stated that they were in the said room the night before the discovery of the dead wife. It is not anybody's case that some third person had entered the house and had murdered the wife of the appellant by inflicting serious injuries on the deceased. As such, it would be inconceivable for the appellant not to have known the condition of his dead wife, as he apparently came out of the room, either when his wife was still alive or dead. Thus, in our view, it could only have been the appellant, who had caused the death of this wife. The fact that the appellant chose to keep quiet when asked by his father as to how his wife died and the fact that he fled the place of occurrence after his brothers arrived proves that he was guilty of the crime that was committed and which could have been known only by him. We are accordingly of the view that the conditions required to be fulfilled for proving a case of guilt against the appellant on the basis of circumstantial evidence has been made out.

33. In view of the reasons stated above, we do not find any ground to interfere with the impugned Judgment and Order passed by the learned Trial Court. The appeal is accordingly dismissed. Send back the LCR.

34. In appreciation of the assistance provided by the learned Amicus Curiae, the appropriate fee payable to her should be paid by the State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant