

then attempted to run away. It is the case of the prosecution that the appellant got married to the deceased in the year 2006 and that two children were born to them. There were certain quarrels between husband and wife and it is stated that one day prior to the incident i.e. on 27.12.2014, the appellant had attempted to commit suicide by jumping into a well. He was taken out of the well and the family members as also the father of the deceased had tried to reason with him, due to which he came back home.

3. On the next day i.e. on 28.12.2014, early in the morning, according to appellant's father i.e. PW3-Rohidas More, the appellant assaulted his wife with an axe in their room and when he attempted to run away, PW3 caught hold of him and with the help of his other son, restrained the appellant by tying him with rope. The police was informed, who reached at the spot and arrested the appellant. PW3 stated that he saw the deceased i.e. his daughter-in-law lying on bed in a pool of blood with grievous injuries on her head. He also saw the axe at the spot of the incident.

4. The first informant in the present case was the father-in-law of the appellant. When he was informed that an incident had taken place involving his daughter, he rushed to the spot and lodged an FIR. The investigation was undertaken and on completion thereof, charge-sheet was filed. Upon charge being framed, the Trial Court took up the matter for recording of evidence. Eventually, the impugned judgment and order was delivered, holding the appellant guilty of the offence.

5. During the course of trial, the prosecution examined the following 10 witnesses:

- (i) PW1-Bhagwant Pawar was the first informant and father of the deceased.
- (ii) PW2-Vijay Pawar was the cousin of PW1, who accompanied him on the date of the incident to the house of the appellant.
- (iii) PW3-Rohidas More was the father of the appellant, who first saw the appellant coming out of his room, after having assaulted the deceased.
- (iv) PW4 and PW5 were panch witnesses for the spot panchanama and the axe being taken to the Medical Officer for examination. Both of them turned hostile and they were cross-examined on behalf of the prosecution.
- (v) PW6 was the doctor who conducted the postmortem and deposed with regard to the extent of injuries suffered by the deceased and prepared the postmortem report.
- (vi) PW7 and PW8 were panch witnesses for the panchanama drawn with regard to the weapon of assault i.e. the axe being taken to the Medical Officer as also, for collection of clothes of the deceased and the appellant. Both turned hostile and they were cross-examined by the prosecution.
- (vii) PW9 was the panch witness for inquest panchanama. In his cross-examination, he stated that he did not know the contents of the panchnama.
- (viii) PW10 was the investigating officer, who deposed regarding the recoveries and panchanamas drawn during the course of investigation.

6. The articles, including axe and clothes, recovered during the course of investigation, were sent for chemical analysis. The Chemical Analysis Reports (CA reports) were on record, including report regarding blood group of the deceased. Upon completion of

recording of evidence, the incriminating circumstances were put to the appellant and his statement was recorded under Section 313 of Code of Criminal Procedure, 1973 (CrPC). He raised the defence of *alibi*, claiming that he was at a *paan* stall of one Sunil Sathe during the night and he also raised the defence of false implication. As noted hereinabove, the Trial Court accepted the prosecution case and convicted and sentenced the appellant in the aforesaid manner.

7. Ms. Reshmarani Nathani, the learned counsel appearing for the appellant, submitted that in the present case, there was no direct evidence in the form of an eye-witness, who had seen the actual assault on the deceased. It was submitted that the star witness i.e. PW3-appellant's father, conceded that he did not hear any shouting or cries, when the alleged assault was undertaken by the appellant. It is further submitted that specific questions were put to the said witness with regard to the property dispute between the appellant and his own father-PW3, which indicated the possibility of false implication.

8. It was further submitted that in the present case, all the panch witnesses had turned hostile and therefore, recoveries were not proved at all. It was submitted that the recovery of weapon of assault i.e. the axe was also in serious cloud of doubt and therefore, the prosecution had failed to prove its case beyond reasonable doubt. PW1-first informant deposed only on the basis of hearsay material and therefore, the evidence fell short of proving that the appellant was responsible for the gruesome assault on his wife i.e. the deceased. On this basis, it was submitted that this Court may allow the appeal.

9. On the other hand, Ms. Sharmila Kaushik, the learned APP submitted that there was sufficient oral and documentary material on record to prove the guilt of the appellant. The Trial Court had analyzed the evidence in a cogent manner to come to proper conclusions against the appellant. It was submitted that in the present case, since the dead body of the victim was found with grievous injuries on her body and the appellant was the only person with her in the room, Section 106 of the Indian Evidence Act, 1872 (Evidence Act) clearly applied and the burden was on the appellant to explain the circumstances in which the deceased suffered such serious injuries. It was submitted that the surrounding circumstances and the evidence on record clearly pointed towards the guilt of the appellant.

10. It was further submitted that merely because the panch witnesses had turned hostile, it cannot be concluded that the recoveries were not believable. As per settled law, the investigating officer can certainly prove the panchanamas and the recovery of weapon of assault, as also other incriminating material. Reliance was also placed on the CA reports, which demonstrated that the deceased had blood group 'O' and the blood found on the clothes of the appellant also had the same blood group, thereby proving the involvement of only the appellant in the aforesaid incident. It was submitted that the postmortem report demonstrated the ferocity of the assault and in the backdrop of matrimonial dispute between the two, it was clear that the appellant had assaulted his wife, which resulted in her death. On this basis, it was submitted that the appeal deserved to be dismissed.

11. We have considered the rival submissions after perusal of evidence and material on record as also, the impugned judgment and order passed by the Trial Court. An analysis of the evidence shows that the FIR was registered at the behest of the father-in-law of the appellant. He was not present at the time of the incident and therefore, he reported the matter after visiting the appellant's house in the morning immediately after the incident. He clearly stated that his daughter i.e. the deceased was lying in a pool of blood on her bed and she had multiple injuries on her head and chest. Appellant's parents and brother were also present and that the appellant was tied by rope by his father. He also deposed about a big axe lying in a corner with blood-stains on it.

12. The said witness PW1 also specifically stated that the deceased had suffered ill-treatment in the matrimonial home and that one day prior to the incident, i.e. on 27.12.2014, he had received a call from one Sunil Sathe that his son-in-law i.e. the appellant had jumped into a well. PW1 stated that he immediately went to the house of the appellant and along with his family members, went to the well, from where the appellant was taken out. Thereafter, PW1 stated that he spoke to the appellant and tried to make him understand about not taking such an extreme step. In cross-examination, nothing much could be extracted from the said witness.

13. Thus, the testimony of the said witness (PW1) gives the backdrop of the matrimonial discord between the appellant and his wife i.e. the deceased, to the extent that one day prior to the incident, the appellant had even attempted to commit suicide by jumping into a well. This is significant as it demonstrates that the relationship between the appellant and his wife i.e. the deceased was

not normal and this could have been a reason to take extreme step of assaulting his wife.

14. PW2-Vijay Pawar i.e. cousin of PW1, had accompanied him on both days i.e. on the date of the incident (28.12.2014) as also one day prior (27.12.2014). This witness also deposed about the appellant having jumped into the well on 27.12.2014, from where he had to be taken out. PW2 further stated that he had accompanied PW1, when information about the incident was received in the morning of 28.12.2014. He also saw the deceased lying in a pool of blood on the bed and a big, blood-stained axe lying near her body. The appellant was tied with a rope and the parents as well as brother of the appellant were present in the house. Thus, the testimony of this witness supports the version of PW1.

15. PW3-Rohidas More, being the father of the appellant, is a crucial prosecution witness. He has described as to the manner in which the entire family was residing in the house. It was stated that the two rooms in the house were occupied by his two sons and their wives, while he along with his wife, used to reside with them and they used to sleep in the *verandah*. He stated about the manner in which the appellant had jumped into the well one day prior to the incident and how he had to be extricated. It was stated that PW1 i.e. the father-in-law of the appellant, had tried to reason with the appellant and all of them had returned home. As regards the day of the incident, PW3 stated that the appellant i.e. his own son assaulted his wife i.e. the daughter-in-law of PW3 with a big axe at about 05:00 a.m. It was stated that PW3 was outside the house and he saw the appellant attempting to run away. PW3 caught hold of the appellant and tied him with a rope. Thereafter, he saw his daughter-

in-law dead on the bed in a pool of blood, with a big, blood-stained axe lying at the spot.

16. The aforesaid description of the incident by PW3 does clearly support the prosecution version. Being the father of the appellant and living in the same house, his evidence assumes great significance. In the cross-examination, attempts were made to indicate that there were disputes between PW3 on the one hand and the appellant as also his wife on the other hand, with regard to their demand of share in an agricultural field. Such suggestions were stoutly denied by PW3.

17. Much emphasis was placed on behalf of the appellant on a statement by PW3 made in cross-examination that on the day of the incident in the morning, when he woke up from sleep, he did not hear any noise of quarrel or beating. We find that the aforesaid aspect cannot come to the aid of the appellant, simply for the reason that PW3 clearly stated that he saw the appellant trying to run away from the room at about 05:00 a.m. At such an early hour in the morning, PW3 would have woken up due to some commotion and thereafter, when he saw the appellant (his son) trying to run away, he caught hold of him and with the help of his other son, restrained and tied him. The said witness also specifically stated that he saw his daughter-in-law lying dead in a pool of blood on her bed in the room occupied by the appellant and the deceased, with the blood-stained axe lying at the spot. The aforesaid testimony of PW3 does clinchingly prove the prosecution case and therefore, it cannot be said that his testimony was disturbed in any manner in the cross-examination.

18. It is to be noted that the statements of PW3 as well as his wife i.e. appellant's mother, were recorded under Section 164 of CrPC before the Magistrate. In the said statements also, they described the incident in the aforesaid manner. No questions were put to PW3 in cross-examination, with regard to his statement made under Section 164 of CrPC, which was exhibited. Hence, we find the testimony of PW3 to be believable.

19. At this stage, a crucial aspect needs to be discussed with regard to Section 106 of the Evidence Act, which pertains to the burden of proving a fact especially within the knowledge of a person. The said provision is an exception to the general rule of evidence of burden of proof, found in Section 101 of the Evidence Act. In the present case, the evidence led by the prosecution, particularly the testimony of PW3-appellant's father, sufficiently proves that only the appellant and his wife i.e. the deceased were in the room, when the incident took place. The appellant was found running away from the room, when he was apprehended by his father-PW3 and the deceased was found lying in a pool of blood inside the room with grievous injuries on her head and other parts of her body. The blood-stained axe was also found in the room.

20. In such a situation, the burden was on the appellant to explain as to how his wife i.e. the deceased suffered such grievous injuries, leading to her death and also, the presence of blood-stained axe in the room. The appellant was unable to give any explanation for the same in his defence. He merely stated that he was not at home and that he was with one Sunil Sathe and he had reached home in the morning, thereby indicating that he was falsely implicated.

21. The aspect of *alibi* was not taken forward by the appellant as the aforesaid Sunil Sathe was never examined. In any case, the defence of *alibi* appeared to be self-contradictory, as the appellant also claimed that he was to repay certain amount to the said Sunil Sathe, which could also have led to the incident. We are unable to accept that a person, who could be responsible for assault on the appellant's wife, was the very person with whom the appellant was spending time during the night immediately prior to the incident.

22. The law with regard to the burden of proof, as per Section 106 of the Evidence Act, has been explained by the Supreme Court in various judgments, including judgments in the cases of *Shambhu Nath Mehra vs. State of Ajmer* [(1956) 1 SCC 337], *Trimukh Maroti Kirkan vs. State of Maharashtra* [(2006) 10 SCC 681], *State of Rajasthan vs. Thakur Singh* [(2014) 12 SCC 211] and *Shivaji Chintappa Patil vs. State of Maharashtra* [(2021) 5 SCC 626].

23. In **Shivaji Chintappa Patil vs. State of Maharashtra** (*supra*), the Supreme Court has observed as follows:

“20. That leads us to the reliance placed by the High Court as well as the trial court on the provisions of Section 106 of the Evidence Act. In *Subramaniam vs. State of T.N.* [(2009) 14 SCC 415] this Court had occasion to consider the similar case of the husband and wife remaining within the four walls of a house and death taking place. It will be relevant to refer to the following observations of this Court: (SCC p. 426, para 23)

‘23. So far as the circumstance that they had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily when the husband and wife remained within the four walls of a

house and a death by homicide takes place it will be for the husband to explain the circumstances in which she might have died. However, we cannot lose sight of the fact that although the same may be considered to be a strong circumstance but that by alone in the absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that the husband and the husband alone was responsible therefor.'

24. In the said judgment, the Supreme Court also clarified that Section 106 of the Evidence Act would not directly operate against either the husband or the wife staying under the same roof. It is only when the prosecution discharges its primary burden that the accused would have to give a cogent explanation in his or her defence. We are conscious of the fact that merely because the appellant is the husband of the deceased, the said fact cannot *ipso facto* lead to his conviction by applying Section 106 of the Evidence Act. But as noted hereinabove, the prosecution has indeed discharged its burden of proof. The circumstances were duly proved by the prosecution witnesses, particularly PW3 i.e. appellant's father himself, demonstrating that the deceased had been brutally assaulted with axe, which was found in the very room with blood stains on it and that the appellant was seen running out of the room by his own father, who had to restrain him. We find that the rigour of Section 106 of the Evidence Act applied with full force against the appellant and he failed to discharge the burden, to explain the circumstances especially within his knowledge. Thus, the prosecution case stood proved against the appellant.

25. It was vehemently submitted on behalf of the appellant that in the present case, the panch witnesses i.e. PW4, PW5, PW7 and PW8

had all turned hostile. Even PW9 i.e. the only remaining panch witness stated in his cross-examination that he did not know the contents of the panchanama. On this basis, it was submitted that none of the panchanamas were proved and therefore, the recoveries, including recovery of weapon of assault, were not proved. This was claimed to be fatal to the prosecution case.

26. In such cases, where the panch witnesses turn hostile, it has been laid down by the Supreme Court that the recoveries could still be proved by the investigating officer. In the case of *Modan Singh vs. State of Rajasthan* [(1978) 4 SCC 435], the Supreme Court categorically held that if the evidence of the investigating officer, who recovered the material objects, is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version.

27. The said position of law has been consistently followed in various judgments, including in the cases of *Rameshbhai Mohanbhai Koli and others vs. State of Gujarat* [(2011) 11 SCC 111] and *Mallikarjun and others vs. State of Karnataka* [(2019) 8 SCC 359].

28. The relevant portion of the judgment of the Supreme Court in the case of **Rameshbhai Mohanbhai Koli and others vs. State of Gujarat** (*supra*) reads as follows:

Evidence of the investigating officer

“32. An argument was advanced about reliance based on the evidence of investigating officer. This Court in *State of U.P. v. Krishna Gopal* [(1988) 4 SCC 302] has held that courts of law have to judge the evidence before them by applying the well-recognised test of basic human probabilities.

‘3.... prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case.’ (Vide *State of Kerala v. M.M. Mathew* [(1978) 4 SCC 65] at SCC p. 68, para 3.)

33. In *Modan Singh v. State of Rajasthan* [(1978) 4 SCC 435] it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in *Mohd. Aslam v. State of Maharashtra* [(2001) 9 SCC 362].

34. In *Anter Singh v. State of Rajasthan* [(2004) 10 SCC 657], it was further held that: (SCC p. 661, para 10)

"10... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."

35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide *Modan Singh* case, *Krishna Gopal* case and *Anter Singh* case)"

29. Thus, the position of law is sufficiently clear that even if the panch witnesses turned hostile, the evidence regarding recovery of the material objects can be proved on the basis of testimony of the investigating officer alone.

30. In this context, we have perused the evidence of PW10-Investigating Officer. We find that he has deposed in detail about the panchanamas executed during the course of investigation. These include the panchanamas executed, when the blood-stained axe was produced before the Medical Officer for opinion as to whether the axe could cause the injuries suffered by the victim. The opinion of the Medical Officer supported the prosecution case. PW10-Investigating Officer also proved recovery of blood-stained clothes of the deceased as well as the appellant and the manner in which they were sent for obtaining CA reports. He has also deposed about the recovery of axe from the spot of the incident and the manner in which the panchanamas, including the spot panchanama and inquest panchanama, were executed. There is no reason to disbelieve the testimony of PW10-Investigating Officer and the cross-examination has not brought out any discrepancy in the evidence of the said witness. Therefore, following the aforesaid position of law, we accept the evidence of PW10 as the basis for proving the panchanamas.

31. The evidence of PW6-doctor shows that the postmortem report was proved, which recorded as many as 12 injuries on the body of the deceased, including 8 chop wounds on her head, face and neck. The said witness specifically opined that such injuries could be caused by the axe recovered during the course of investigation. The said witness also deposed about the manner in which the blood sample of the deceased was collected and sent for examination.

32. We find substance in the contention of the learned APP that the CA reports also bring out incriminating circumstance against the appellant. A perusal of the CA reports at Exhibits 40 and 41 show that the blood group of the deceased was 'O' and that blood of the

same group was found on the appellant's T-shirt. This further strengthens the prosecution case.

33. We find that in the present case, the Trial Court considered the evidence and material on record in the correct perspective and reached the conclusion regarding guilt of the appellant. We also find that the prosecution has proved its case beyond reasonable doubt and that therefore, the impugned judgment and order does not deserve any interference.

34. In view of the above, the appeal is dismissed. The conviction and sentence imposed upon the appellant is confirmed. Pending applications are also disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)

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