

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1289 OF 1999

1. Durga Bai @ Munni, Wd/o Ramnath Satnami, aged about 35 years, R/o Singhora, P.S. Palari,
2. Laxmi Narayan Satnami, S/o Ramnath Satnami, aged 17 years, resident of Singhora, P.S. Palari, District Raipur (M.P.) (now C.G.)

... Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh), through Station Incharge, P.S. Palari, District Raipur (M.P.) (now C.G.)

... Respondent

For Appellants	:	Mrs. Renu Kochar, Advocate.
For Respondent-State	:	Mr. Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

30/11/2015

1. The Appellants, who are the wife and son respectively of the deceased, assail their conviction dated 28.04.1999 under Sections 302/34 and 201 IPC sentencing them to life imprisonment with fine of Rs.1000/- each on the first count and 7 years rigorous imprisonment with fine of Rs.500/- each on the second count, in the event to failure to pay fine, they were required to undergo 6 months further simple imprisonment, as ordered by the Second Additional Sessions Judge, Baloda Bazar, in Sessions Trial No. 246 of 1994.

2. Merg, Exhibit P-18, was lodged by Appellant No.2 on 17.2.1994 at 8:30 am that his father had come home the previous night drunk and went to sleep without eating. Appellant No.1 woke up at around 3:00 am to answer the call of nature. She tried to wake up the deceased and

found that he had died on account of excess consumption of alcohol. Formal F.I.R, Exhibit-P-17 was registered on 18.2.1994 by the police after preparation of inquest report, Exhibit P-5. Post-mortem, Exhibit P-29, conducted by PW-28 Dr. B.R. Deshlehre reported ligature mark on the lower anterior side of the neck measuring 4inch x 2cm. The tongue was protruding and cyanosed with bleeding and froth from the nostrils. The pupil was dilated and the face cyanosed. Semen had emanated along with faeces. Death was opined due to asphyxia caused by strangulation, to conclude that the death was homicidal.

3. Learned Counsel for the Appellants submitted that there was no eye-witness to the occurrence. Merely because death may have taken place inside the house at night, it cannot raise a presumption of the Appellants alone being the assailants on mere suspicion. Referring to the evidence of PW-21 Radheshyam, it was submitted that he had brought the deceased home in a drunken condition at about 9 O' Clock. One Deendayal had also come. Likewise, PW-13 Sukhau had also come along with PW-21 Radheshyam. The possibility that they may have been the assailants cannot be ruled out. The two defence witnesses had deposed that the deceased had taken loans and was unable to pay. The possibility that a creditor may have killed him cannot be ruled out. The Appellants had taken a specific defence under Section 313 Cr.P.C that the deceased was an alcoholic and had committed suicide unable to pay his loans.

4. The recovery of a nylon rope allegedly on the confession of Appellant No.1 is inconsequential in absence of any forensic evidence that it had been used for strangulation. Likewise, the recovery of broken bangles in the room where the occurrence took place similar to that

Appellant No.1 was wearing, does not lead to any conclusion beyond all reasonable doubt that she was the assailant. The house was open and accessible. The possibility of an intruder or creditor having come in the middle of night and killed the deceased cannot be completely ruled out. The two defence witnesses and also PW-21 Radheshyam, had deposed of the deceased being upset because he was unable to repay the loans. Suspicion, no matter how strong cannot substitute proof beyond reasonable doubt to sustain the conviction. Reliance was placed on AIR 1996 SC 2868 (Mulak Raj v. State of Haryana) that merely because death may have taken place inside the house liability cannot be fixed on the Appellants alone in the facts of the case. The prosecution has also not established any motive why the Appellants may have assaulted and killed the deceased. In the facts of the case and nature of evidence available motive was an important factor to establish guilt.

5. It was next submitted that Appellant No.2 was a minor, aged 17 years at the time of occurrence. An affidavit has been filed today that in view of the amendment made to Section 2 (l) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act'), in the year 2006 enhancing age for juvenility to 18, as settled by judicial precedents, Appellant No.2 is entitled to get the benefit of the same retrospectively. In the appeal, ground (C) specifically urged that being a juvenile aged 17 years he could not have been tried by the Sessions Court. There is no evidence whatsoever of any complicity by Appellant No.2 in the crime much less of common intention. Merely because he may have been home common intention cannot be presumed and had to be established by the prosecution. If he was a

minor with undeveloped mental faculties and the absence of any evidence led by the prosecution with regard to any role performed by him, at best he went to police for lodging Merg in accordance with what his mother may have told him. He would at best be liable under Section 201 IPC for having lodged Merg giving wrong information. He has remained in custody for approximately one year which may be considered as sufficient and the matter may not be sent to the Juvenile Justice Board at this late stage.

6. Learned Counsel for the State submitted that the occurrence has taken place in the dead of night inside the house. The spot maps, Exhibits P-21 and P-22 proved by PW-18 Chetan Arya of Bhatapara Police Station and PW-19 Parasram Dewangan, the Patwari, both speak of a door to the house. There is no evidence in the spot map or in the inquest report, Exhibit P-5, or by any witness that the door was found broken or any other signs of forcible entry having been found. A '*bidi bandal*' and match box was lying on the ground near the cot on which the deceased lay. No sign of suicide by hanging has been found in the room. The body was lying in supine position covered by a sheet. The presence of pieces of broken bangles similar to that worn by Appellant No.1 along with scratch marks on the earthen floor suggested of a possible struggle that may have been put up by the deceased. The post-mortem report confirms death by strangulation. The defence of a death by suicide, completely contrary to the post-mortem report, becomes an incriminating factor against the accused. In the facts and circumstances of the case, Section 106 of the Evidence Act is attracted against the Appellants and they have failed to discharge that burden.

7. If Appellant No.2 was a juvenile he may be entitled to the benefit of the Act but provided he had taken the plea along with proof in support of the same. No explanation has been furnished why this defence was not taken in the appeal at any point of time after 2006 by filing additional documents. PW-2 Sadhram had stated in his police statement under section 161 Cr. P.C that Appellant No.1 had made an extra judicial confession to him that she had strangled the deceased.

8. We have considered the submissions on behalf of the parties and perused the evidence on record also.

9. The deceased was stated to be an alcoholic and is alleged to have been under debts. According to medical report the cause of death was not excess consumption of alcohol but strangulation. There were no signs that the deceased had committed suicide. The body was found lying in a supine position covered with cloth. There were no signs of forcible entry into the house by an outsider. The house had a door which was not found broken to suggest any forcible entry by an outsider or open access for all like a house having no door. PW-13, Sukhau, PW-21, Radheyshyam and Deen Dayal had brought the deceased home at about 9:00 pm in an inebriated condition and left. There is no evidence that they had stayed on at night and the Appellants had gone to sleep in their presence. The defence that they may have killed the deceased and which was discovered when Appellant No.1 woke up about 3:00 am cannot be accepted as a plausible defence. The false plea of death by excess consumption of alcohol contrary to the medical report of strangulation, or either suicide or forcible entry by an outsider therefore become incriminating factors against the Appellants. DW-1 deposed that DW-2 was also a creditor. But DW-2 acknowledged he

had not brought the account register or got executed any promise to pay by the deceased. No evidence has been led by the prosecution with regard to the nature of pressure that the deceased may have been under because of the loan. It is possible that he may have taken loans but there is no evidence led that he was being harassed by his creditors.

10. The deceased came home drunk and went to sleep without food. A '*bidi bandal*' and match box was found lying near the cot. Pieces of broken bangles similar to that the Appellant No.1 was wearing were found lying on the floor near the cot on which the deceased lay. Both were seized marked Exhibit P-20. The earthen floor bore fresh scratch marks as mentioned in the inquest report. Appellant No.1 has offered no explanation how her bangles broke or how the fresh scratch marks had been occasioned on the earthen floor. All these suggest that a scuffle took place leading to the strangulation and death. The deceased who was highly inebriated may not have been able to resist Appellant No.1. An adult female in our opinion was capable to strangle him alone in that condition and it cannot be held that Appellant No.1 could not have strangled the deceased alone. In (2014) 12 SCC 419 (*Madhu v. State of Karnataka*) it was observed as follows :-

“25. It is obligatory on the part of the accused while being examined under Section 313 CrPC, to furnish some explanation with respect to the incriminating circumstances associated with him, and the court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete. (*Vide Musheer Khan v. State of M.P. and Sunil Clifford Daniel.*)

11. The taking of different false pleas at different times, that the deceased died due to excess alcohol, he committed suicide or that he may have been killed by third persons become incriminating factors

against the Appellants as death has taken place inside the house at the dead of night and the Appellants alone were present inside the house with no presence of outsiders. The Appellants do not dispute their presence in the house alone with the deceased. The onus therefore lay on them under Section 106 of the Evidence Act, in the facts and circumstances of the case to explain how death had occurred. The mere absence of any forensic report with regard to the rope is not considered very relevant in the facts of the case. In (2015) 1 SCC 323 (State of Karnataka v. Suvarnamma) it was observed :-

“10.....In the absence of direct evidence, the circumstantial evidence can be the basis of conviction if the circumstances are of conclusive nature and rule out all reasonable possibilities of the accused being innocent. Once the prosecution probabilises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Though Article 20(3) of the Constitution incorporates the rule against self-incrimination, the scope and the content of the said rule does not require the court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused.”

12. The prosecution having established a prima facie case ruling out the possibility of death either by excess consumption of alcohol, suicide or by an intruder, the Appellants not denying their presence alone with the deceased inside the house when death took place, the onus lay on them to lead evidence under Section 106 of the Evidence Act how death had taken place as it was a fact specifically to their knowledge in the facts of the case. Reference in support can appropriately be made to (2006) 12 SCC 254 (State of Rajasthan v. Kashi Ram) holding as follows :-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is

upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in *Naina Mohd., Re.*"

13. The absence or presence of motive by itself cannot be a presumptive factor for innocence or guilt. Undoubtedly in cases like the present motive may have a bearing, but if the prosecution from all the surrounding circumstances has been able to establish the guilt of the Appellants, the mere absence of any evidence in support of motive cannot lead to any presumption of innocence ignoring the other evidence on record.

14. The alleged extra judicial confession disclosed in his police statement by PW-2, Sadhram as having been made by Appellant No.1 is not considered relevant both because it is a weak piece of evidence and no statement to that effect was made by the witness in his Court statement. After he denied his police statement, and it was confirmed by PW-18, Chetan Arya, the Investigating Officer, the former was not cross-examined on the same again.

15. In *Mulak Raj* (supra) relied upon by the Appellants, the dead body of the two month old bride was found in the kitchen. Death was

held to be homicidal. Motive by way of dowry demand was also present. Conviction was however interfered with on the ground that extra judicial confession being a weak piece of evidence could not form the basis of conviction coupled with the subsequent conduct of the accused as it was not strong and clinching link in the chain of circumstantial evidence. In those specific facts circumstances the benefit of doubt was given holding that suspicion could not take place of proof.

16. In view of the discussion we find no reason to interfere with the conviction of the Appellant No.1.

17. That brings us to the question of the juvenility of Appellant No.2. Learned Counsel for the State has very fairly acknowledged that from the materials available on record by the prosecution, Appellant No.2 was aged 17 years on the date of occurrence. In the facts of the case no useful purpose would be served by keeping the appeal pending and calling for an enquiry for age determination at this belated stage. We therefore proceed on the premise that Appellant No.2 was a minor on the date of occurrence in view of amendment in 2006 to the Act.

18. The prosecution has not led any evidence with regard to involvement of Appellant No.2 in the crime as distinct from the broken bangles of Appellant No.1 in support of any common intention. We have further opined that it was possible for an adult female to have strangled the deceased alone without necessarily requiring the assistance of another especially when the deceased was in a highly inebriated condition and may not have been in a condition to resist properly. The possibility cannot be ruled out that Appellant No.2 with mental faculties not fully developed as a minor went and lodged the Merg on basis of what Appellant No.1 may have told him. As a minor he

had no motive to kill his own father also. He would therefore at best be liable under Section 201 IPC. Considering that the occurrence took place in 1994 when he was barely 17 years of age, conviction followed in 1999, he was also taken into custody and released on bail, he has had the scepter of the uncertainty in criminal appeal pending over his head for no fault of his for over approximately 16 years with the allegation of having killed his own father which undoubtedly must have at least affected him socially if not in his life and career prospects, we are therefore satisfied that at this stage no useful purpose is going to be served by sending his case to Juvenile Justice Board for trial. Keeping in mind the provisions of Section 201 IPC, we consider the period of custody undergone by him of approximately one year as sufficient punishment.

19. The appeal is therefore partly allowed with regard to Appellant No.2 and dismissed in so far as Appellant No.1 is concerned. The bail-bonds of Appellant No.1 are cancelled and she is directed to surrender and/or be taken into custody forthwith for serving out her remaining period of sentence.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge