

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 848 of 2000**

T. Ashok S/o T. Chinnarao, aged 34 years, R/o 121, T/B Babu Kholi, Railway Colony, P.S. Torwa, District Bilaspur, Madhya Pradesh (Now Chhattisgarh).

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh) Through SHO P.S. Torwa, District Bilaspur, Madhya Pradesh.

---- Respondent

For Appellant	:	Shri Akhtar Hussain, Advocate.
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****01/02/2016**

1. The Appellant, husband of the deceased, stands convicted under Sections 302, 201 IPC to life imprisonment and five years rigorous imprisonment respectively with fine of Rs. 2000/- each. In the event of failure to pay fine, he was required to undergo one year further simple imprisonment for each default. The sentences were to run concurrently as ordered on 13.3.2000 by the 6th Additional Sessions Judge, Bilaspur in Sessions Trial No. 382 of 1999.

2. The deceased was residing in a one room tenement with the Appellant. She suffered 100% burn injuries on 5.8.1999 at about 2:00 pm and died before she could be taken to the hospital. Merg (Exhibit P-1) was lodged at 2:30 pm by PW-1, B.S.Rao, uncle of the deceased that he was informed by the children of the locality that the deceased had got burnt. The witness went with his wife, called for an ambulance. The driver refused saying that the victim was already dead.

3. Postmortem (Exhibit P-6) was conducted on 6.8.1999 about 11:30 am by Dr. R.K.Gupta (PW-3). The eyes were closed, tongue was protruded and caught between the teeth, bleeding was present from the nostrils and ears and the faecal matter had passed off. Smell of kerosene was coming from the body. There were burn injuries over most parts of the body. No external injuries were seen and carbon particles were not seen either in the trachea or the neck area. Death was opined to have been caused due to asphyxia. The cause of death was stated to be uncertain and the time elapsed since death 18-24 hours.

4. FIR (Exhibit P-15) was lodged by PW-8, B.S.Nishad, Officer Incharge of Police Station, Torwa on 12.8.1999 at 21:30 hours based on the query report to the Doctor that if the body was burnt after death, carbon particles would not be found in the trachea. Broken bangles were also found at the place of occurrence. The deceased was not taken to the hospital immediately. The body was burnt after suffocation to conceal evidence of homicidal death.

5. Learned Counsel for the Appellant submitted that the deceased committed suicide by setting herself on fire. The Appellant and his sister PW-7, Smt. M. Mohni tried to save the deceased and douse the fire with a blanket which has also been found at the place of occurrence. They had suffered burn injuries on their hands in the process and were sent for MLC as also deposed by the Investigating Officer, B.S.Nishad (PW-8). K. Gurunath Rao, (PW-4) father of the deceased had deposed that his daughter was married to the Appellant for six years and he had never heard of any complaint against the Appellant with regard to his behaviour towards his daughter. The deceased suffered from high blood pressure and at times had contemplated suicide also. No motive has been ascribed by the prosecution. It stands to reason why the Appellant would kill his own wife for no reason.

6. The postmortem report states that the cause of death was uncertain. There were no external injuries on the body. Merely because blood may have

come from the nostrils and ear cannot lead to any conclusive opinion that death was caused due to asphyxia by strangulation. The trachea was preserved but was never sent to the FSL for detecting if carbon particles were present in it or not as opined by Dr. R.K.Gupta (PW-3). The patch of skin and subcutaneous tissue from the right thigh preserved for examination to detect ante mortem or post mortem burns were also not sent to the FSL. The cause of death has therefore not been established as homicidal. The possibility that it was suicidal cannot be ruled out. If two theories with regard to the death was possible, that favourable to the Appellant should be accepted and he should be acquitted.

7. Even if the deceased had suffered 100% burns, still marks of strangulation could have been detected according to medical science. The postmortem on the contrary states that there were no external injuries on the body which rules out death by strangulation as sought to be suggested by the prosecution. Smt. M. Mohni, (PW-7) sister of the Appellant was an injured witness while trying to save the deceased. The credibility of her evidence has therefore to be high. The witness P.Ramu (PW-2), G.C.Behra (PW-5) and Smt. M. Mohni (PW-7) have all stated that the deceased was running helter skelter in the room after she had set fire to herself. P.Ramu (PW-2) has further deposed that the Appellant and Smt. M. Mohni, (PW-7) were trying to douse the fire after which the deceased fell on the ground.

8. The mere fact that the inquest report (Exhibit P-3) may have mentioned that the Appellant was present in the room reeking of alcohol cannot be considered as substantive evidence and conclusive proof of his being the assailant of the deceased. Reliance was placed on (1991) 4 SCC 341 (Malkait Singh v. State of Punjab) and (2009) CrLJ 4647 (Dhanpal v. State by Public Prosecutor, Madras).

9. No strangulation marks were seen on the neck. Such marks could well be identified in case of burning also. In view of the ocular evidence of the deceased

running helter skelter in the room, the absence of any carbon particles in the trachea coupled with blood oozing from the nostrils and the ears and the tongue protruded between the teeth, it was submitted that if there was conflict between the ocular evidence and the medical evidence, ocular evidence would prevail over medical evidence as observed in (2010) 10 SCC 259 (Abdul Sayeed v. State of Madhya Pradesh) and 2016 (1) MPLJ (Cri) 83 (SC) {Vijay Pal v. State (Government of NCT of Delhi)}.

10. Learned Counsel for the State submitted that the Appellant and the deceased lived alone in a one room tenement. P. Ramu (PW-2), G.C.Behra (PW-5), and Smt. M.Mohni (PW-7) have all confirmed the presence of the Appellant in the room. The plea of the Appellant that he along with his sister Smt. M.Mohni (PW-7) tried to douse the fire confirms his presence. There is no evidence that he tried to save the deceased much less suffered any burn injuries in the process or that his sister Smt. M.Mohni (PW-7) suffered any such injury. No evidence has been led by the Appellant with regard to where he may have been at the time of occurrence and came running from that place as claimed. The Inquest Report (Exhibit P-3) is signed by P. Ramu (PW-2), G.C.Behra (PW-5) amongst others. They have not denied their signatures. The inquest report states that the deceased was not taken to the hospital by the Appellant who was reeking of liquor himself at the time of occurrence. It is not the defence of the Appellant that after he tried to douse the fire, he took her to the hospital. Merely because the inquest report has been written by a police officer, it cannot be disbelieved for that reason. There will be a presumption under Section 114 (e) of the Evidence Act that the police officer wrote the facts in the inquest report correctly as seen by him. No questions have been put to any of the prosecution witnesses much less to the Investigating Officer, (PW-8), B.S.Nishad that the Appellant was not present when the inquest report was being drawn up and he was not reeking of liquor. The false plea taken that he was elsewhere and came running therefore becomes an incriminating factor against him. Under Section

313 Cr.P.C, a specific question No. 19 was asked with regard to presence of broken bangles at the place of occurrence, marked (Exhibit P-13) to which the Appellant stated he was unaware. The presence of broken bangles at the spot clearly suggests of a struggle in which the deceased may have attempted to save herself. Another question was asked with regard to the blood oozing out of the nostrils and the ear and the tongue protruded between the teeth to which the Appellant replied that he was not aware. If he was present at the place of occurrence and tried to save the deceased by attempting to douse the fire, the question of his not being aware with regard to the aforesaid simply does not arise. This false answer is therefore another incriminating factor against him. The aforesaid are sufficient indication that it was a homicidal death caused by the Appellant after which the body was set on fire for concealing the evidence. If the deceased had suffered an accidental fire and died because of the same and was running helter skelter in the room in that condition, there would have been some soot particles in her trachea. The fact that investigation may not have been very competently done by sending the trachea to the FSL as opined by the Doctor cannot demolish the prosecution case in view of the other surrounding circumstances and evidence available that it was not a case of suicide and death was due to burn injuries, but that the deceased was killed first by strangulation and the body then set on fire to conceal the cause of death. Likewise, the failure to send the patch of skin from the thigh to the FSL was equally not detrimental to the prosecution case in the facts of the present case.

11. We have considered the submissions on behalf of the parties and examined the evidence on record also.

12. The deceased and the Appellant lived in a one room tenement. It is not the case of the Appellant that any third person was residing with them. The deceased died of burn injuries inside the room. There is no evidence that the Appellant tried to save the deceased by attempting to douse the fire either

himself or along with his sister Smt. M. Mohini (PW-7). The defence that they suffered burn injuries in the process has not been established and there is no MLC report available. No such defence was also taken by the Appellant under Section 313 Cr.P.C and in response to the Court's query if he wanted to lead any further evidence, he answered in negative.

13. The fact that the Appellant was present in the room at the time of occurrence is established from his own defence that he tried to douse the fire. P. Ramu (PW-2), G.C.Behra (PW-5), and Smt. M.Mohni (PW-7) by their deposition have confirmed the presence of the Appellant at the time of occurrence. The defence that he tried to douse the fire has turned out to be false. Likewise, his defence that he was not at home and came running on learning that his wife had caught fire is again falsified by the fact that no evidence has been led as to where he was and from where he came running. The mere fact that his sister Smt. M. Mohni (PW-7) may have said that the Appellant came running on her shout is but a pretentious and false defence being taken by his own sister in an effort to save the Appellant. The inquest report has been drawn up by the Investigating Officer, B.S.Nishad (PW-8) in normal course of duty and has been proved by the prosecution witnesses also. It was for the Appellant to rebut the recitals in it that he was not present at the time of occurrence or was not reeking of liquor. No suggestion was given whatsoever by the Appellant in this regard and neither any question was put to the Investigating Officer, B.S.Nishad (PW-8) or to the prosecution witnesses whose signatures were available on the inquest report. In (1998) 3 SCC 625 (Ronny alias Ronald James Alwaris v. State of Maharashtra), the presumption with regard to the police acting in accordance with law during investigation was drawn under Section 114(e) of the Evidence Act with regard to the recovery of articles from possession of the Appellants after robbery and murder of the deceased and which remained unexplained by the defence. This again becomes a false defence of having attempted to save the

deceased and thus an additional incriminating factor against the Appellant. The deceased was not taken to the hospital by the Appellant but by B.S.Rao (PW-1).

14. The inquest report states that the torso was lying on the left side with the head inwards and legs stretched. If a person commits suicide by setting himself/herself afire, the question of the head being turned inwards does not arise. Unless there had been some scuffle or struggle leading to a homicidal death the head would be in a normal position.

15. If the deceased had died by committing suicide and was running helter skelter in the room, it obviously indicates that the death was not immediate. In that event, surely before the deceased died, she must have breathed for sometime and therefore carbon particles would have been found in her trachea or throat area. To the contrary, no carbon particles have been found. The absence of any FSL report with regard to the trachea is of no help to the Appellant in the facts and circumstances of the present case. Similar would be the position with regard to absence of any forensic report of the skin from the thigh. The FSL report is not a panacea for all defence and neither can the prosecution case collapse in absence of the same. All attending facts and circumstances would have to be collectively seen together for deciding what is the effect of the absence of a forensic report and the conclusions without the same. In (2013) 10 SCC 192 (Hema v. State Through Inspector of Police, Madras) it was observed that it is not every lapse in investigation that can become a ground for acquittal. In absence of the FSL report, it is the duty of this Court to examine all other surrounding circumstances to arrive at the ultimate truth. If the deceased lay on the ground with her head turned inwards, blood was coming out from her nostrils and ear and the tongue was protruded between the teeth, faecal matter had oozed out combined with the fact that the Appellant claims that he tried to save the deceased, surely he must have noticed the aforesaid factors. Therefore, for him to contend under Section 313 CrPC that he

was not aware whether blood was coming out or tongue was protruded is but a false plea being taken by him to cover up his own acts. The Appellant appears to be taking one false defence after another which takes the accusation against him beyond the shadow of any reasonable doubt. In response to the question under Section 313 CrPC, if the deceased had died of burn injuries, that the deceased had suffered extensive burn injuries, the Appellant replied that he did not know. This falsifies his entire defence of attempting to try to save the deceased by dousing the fire. In (2015) 1 SCC 323 (State of Karnataka v. Suvarnamma) on false defence being an incriminating factor it was observed as follows :-

“10.....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.”

16. Section 106 of the Evidence Act provides that the burden of proving the fact especially within the knowledge of a person is upon him. But merely because the deceased was the wife of the Appellant and may have died inside the one room tenement where they lived, the prosecution cannot rely upon Section 106 of the Evidence Act straightaway to shift the burden of proof upon the Appellant. It is for the prosecution to first lay out the facts and make out a prima facie case of an unnatural homicidal death in suspicious circumstances inside the room where the Appellant alone resided with his wife. Once this fact has been established by the prosecution, the burden shifts to the accused. We have already noticed the facts of the present case and concluded that the presence of the Appellant in the house at the time of occurrence has sufficiently been proved by the prosecution. The burden of proof therefore shifted to the Appellant for explaining how his wife died of a homicidal death inside a single room tenement. The Appellant has offered no defence and has taken frivolous

defence one after another all of which have become incriminating factor against him. In (2006) 10 SCC 681 (*Trimukh Maroti Kirkan v. State of Maharashtra*) it was observed as follows :-

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran* the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

17. Similar view has been taken in (2013) 9 SCC 283 (*Ravirala Laxmaiha v. State of Andhra Pradesh*)

18. In (2013) 8 SCC 60 (Babu @ Balasubramaniam v. State of Tamil Nadu) which also related to the death of wife inside the matrimonial home and the husband being an accused it was observed as follows:

"21...Besides, it is not contended by A-1 Babu that he was not present in the house when the incident occurred. To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased received injuries to her head and how she died must be within the exclusive personal knowledge of A-1 Babu. It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly present in the house at the material time..."

19. In the present case there is no conflict between ocular and medical evidence at all. The postmortem report confirms that it was a homicidal death due to strangulation after which the body was burnt. The submission with regard to the absence of any strangulation mark on the body is not considered very relevant in view of the 100% burns. Dr. R.K.Gupta (PW-3) in his deposition has stated that if the deceased died of burn injuries carbon particles would have been present in her trachea. Motive cannot be considered a conclusive factor either for guilt or acquittal. The presence of motive may be an aggravating factor for committing an offence but absence of motive cannot lead to a presumption of innocence. In case of circumstantial evidence, motive may assume importance but in such cases where the medical evidence is speaking for itself, the question for presence or absence of motive may lose its relevance as the manner of death may speak for itself.

20. The postmortem report reveals that the deceased was done to death before she was set on fire. The signs with regard to blood oozing out of the nostrils and ears, the tongue protruded between the teeth and fecal matter having passed out are all symptomatic and proof of the fact that the deceased was first done to death and then the body attempted to set on fire to make it appear as a case of suicide.

21. Abdul Sayeed (supra) relied upon by the Appellant is of no relevance to the present discussion in support of the submission that the credibility of an injured witness is high and the evidence of Smt. M. Mohni (PW-7) is of absolutely no help to the Appellant in the facts and circumstances of the case coupled with repeated false defences taken by him as discussed.

22. Vijay Pal (supra) to our understanding on the contrary supports the prosecution case against the Appellant when it observes as follows:

"13....Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. It is also true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant..."

23. The opinion in the postmortem report that cause of death was uncertain stands nullified by the Court statement of Dr. R.K. Gupta (PW-3) that if the deceased had died of burn injuries while alive, there would have been carbon particles present in her trachea. The present is not a case where there was any direct conflict between medical and ocular evidence so as to require discussion of any contradictions between the two.

24. The observations in Malkait Singh (supra) that inquest report was not substantive evidence need not detain us in view of our conclusion that in the facts of the present case, the reference to the presence of the Appellant therein has been considered as corroborative material and not the conclusive basis for conviction as a piece of substantive evidence. Likewise, Dhanpal (supra) also has no application to the facts of the present case in its discussion with regard to Section 106 of the Evidence Act as it did not relate to the deceased being the wife of the accused who died in a one room tenement.

25. In conclusion, we find no reason to interfere with the conviction of the Appellant.

26. At this stage, Learned Counsel for the Appellant submits that he has completed almost 13 years of custody. It shall be open for him to avail remedies in accordance with law.

27. The Appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE