

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1377 OF 2000

Janaklal, S/o Manrakhan, aged about 25 years, R/o Kutela Bhata,
P.S. Pulgaon, District- Durg

... Appellant

Versus

The State of M.P. (now Chhattisgarh)

... Respondent

For Appellant	:	Mr. Rajesh Jain, Advocate.
For Respondent-State	:	Ms. Madhunisha Singh, Panel Lawyer

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

C A V Judgement

Per P. Sam Koshy, J.

12/04/2016

1. The Appellant in the present appeal has challenged the judgement dated 15.4.2000 passed by the Fourth Additional Sessions Judge, Durg in Sessions Trial no. 305 of 1999. Vide the impugned judgement, the Court below finding the Appellant to be guilty of offence punishable under Section 302 IPC has sentenced him to undergo rigorous imprisonment for life with fine of Rs.5000/- and in default to pay which he was further required to undergo two years rigorous imprisonment.

2. The case of the prosecution in brief is that on 7.2.1999 at around 1:30 pm, PW-6, Manrakhan, gave a Merg intimation at Police Outpost Jevra Sirsa under Police Station Pulgaon, District Durg, intimating that his daughter-in-law, Shashibai, was found dead on the bed and the cause of death is not known. He had also submitted that the deceased was working in the kitchen in the morning when she complained of

uneasiness and went inside the room and subsequently when his daughter, Panchbai had gone to call upon her she found her dead on the bed.

3. After recording of the Merg, investigation started, the body of the deceased was sent for post-mortem and an FIR was lodged against unknown on 8.2.1999 at the instance of the Police Constable, Chhotelal. Vide Exhibit P-6, a team of Doctors conducting the post-mortem found the following injuries on the person of the deceased:-

“Rigor mortis present, eye close, mouth close, tongue inside the mouth, blood stain from both side of nose, cyanosis present, 29 cm faint ligature mark round the neck above thyroid & below mastoid, width of ligature mark in 3/4cm, (1) semi lunar 1/2cm abrasion 2 in number right side of neck below ligature mark (2) semi lunar abrasion 1/2cm left side of neck (3) abrasion 2cm x 1/2cm right side of neck below ligature mark, several petechial hemorrhage in face & upon tongue, 6x6cm skin patch containing ligature mark on left side of neck preserved. On dissection hemorrhage spot & blood clot within tissue seen. Skin preserved in spirit. Trachea congested & blood clot 3cm x 1/2cm within trachea seen.”

It was opined that the cause of death was asphyxia as a result of throttling and the time passed prior to the post-mortem and the time of death was approximately 24 to 36 hours.

4. The prosecution examined 19 witnesses in all. After appreciating the entire evidence which has come on record, the Court below found the Appellant to be guilty of the offence under Section 302 IPC and sentenced him as aforesaid.

5. Learned Counsel for the Appellant, referring to the entire case of the prosecution particularly the evidence which has come on record, submitted that the impugned judgement is not proper, legal and justified for the reason that the Court below has not appreciated the evidence properly and the finding of the Court below is contrary to the evidence.

It was also argued that the Court below has not properly appreciated the fact that the Appellant was not at home at the time of incident. This was a specific defence taken by the Appellant all along and which has emphatically been stated also by the two sisters of the Appellant that he was not at home at the time of the death of his wife as such it was the duty cast upon the prosecution to establish that the Appellant was present at the house when the deceased had died so as to implicate him for the offence of murdering his wife. According to the Appellant, as per law the duty is cast upon the prosecution to first establish a prima facie case so as to reach to the conclusion that it was the Appellant alone who would have committed the offence. As per the Appellant, since the prosecution has failed to establish beyond all reasonable doubts regarding the presence of the Appellant at the place of incident at the time of the death of the deceased, the benefit of which should be given to the Appellant.

6. It was also contended by the Counsel for the Appellant that the prosecution has not investigated the case from the point of view of there being other inmates of the house present at the time of incident and when the Appellant had taken the plea of his not being at home at that point of time there could have been all possibilities of the other inmates of the house having committed the offence and the prosecution has not probed the matter from this angle. It was also submitted by the Appellant that the investigating agency has miserably failed to ascertain the fact in the course of investigation as to whether the Appellant was on duty on the date of incident or not and that whether at the time of commission of the offence the Appellant was present in the house or not. Without any evidence in support of this contention, the prosecution

case cannot be accepted and it has to be looked upon with an element of doubt and the benefit of doubt would always go to the advantage of the Appellant.

7. According to the Appellant, the defence of the Appellant of not being present at the house when the deceased had died, apart from the evidence of the prosecution witnesses, also gets strengthened from the stand taken by the Appellant in his statement under Section 313 Cr.P.C. Thus, firstly the prosecution having failed to establish and prove its case beyond all reasonable doubts as is required under the criminal jurisprudence, the automatic inference is that the charge against the Appellant has not been substantiated or proved. Secondly, the defence of the Appellant which was consistently been taken by the prosecution witnesses from the stage of the recording of the statements under Section 161 CrPC till the statement of the accused under Section 313 CrPC was recorded has not been properly thrashed out either at the time of investigation or during the course of trial so as to disprove the defence of the Appellant. Thus, the benefit of the above said two factors has to be given to the Appellant.

8. Per contra, learned Counsel representing the State supporting the impugned judgement submitted that the prosecution has in fact been able to prove its case from all angles and that there is no element of doubt whatsoever of the offence to have been committed by anyone else other than the Appellant. According to the Counsel for the State, the medical evidence particularly the finding of the team of the Doctors conducting the post-mortem, makes it very clear that the death of the deceased was unnatural and that it clearly appears to be a case of homicidal death on account of throttling. From the medical evidence it

is evidently clear that death was unnatural and homicidal and the only person present with the deceased at the time of her death was the Appellant alone and that the place of incident also is the bedroom of the Appellant and the deceased, and therefore the possibility of the Appellant alone to have committed the offence gets further strengthened.

9. Counsel for the State further drew the attention of the Court to the prosecution evidence which has come on record to establish that there were disputes between the Appellant and the deceased and they used to fight very often which has also been corroborated by the father and mother of the deceased and to which there is not much cross-examination also done thereby proving the fact of strained relations and intermittent fights. The fact that the Appellant used to assault his wife, apart from the statement of the mother and father of the deceased, is also reflected from the second wife of the Appellant who also has stated that he used to drink liquor and often used to assault her. It was further submitted that the Appellant has not been able to give proper, cogent, reliable and satisfactory explanation on the aspect that if it was not the Appellant then who else could have committed the offence; neither is it the case of the Appellant that some third person had entered the house of the Appellant and committed the murder of the deceased. It was further submitted that if the Appellant has taken the plea of alibi then as per law the burden of proof to prove alibi shifts upon the Appellant and in the instant case he has not been able to prove his case of alibi that he was not present at the house at the time of the commission of the offence.

10. Counsel for the State further submitted that since the body was found inside the room of the house of the Appellant and the fact that he had been in the house on the previous night when he and the deceased had gone to sleep, he has not made any statement so far as the fact that when he allegedly had gone for duty at around 7 O'clock his wife was alive. In addition, the fact that the Appellant had taken a wrong defence which he has not been able to establish further becomes another incriminating factor for proving the guilt of the Appellant. Thus, the State Counsel prayed for rejection of the appeal.

11. Considering the submissions put forth by the Counsel for the parties and on perusing the records, if we look at the date of incident, though the matter has been reported to be an incident of 7.2.1999 of at around 9:30 am, that is the time when PW-1 Panchbai, first went to the room of the deceased and found her dead but when the post-mortem is taken into consideration the team of Doctors has clearly opined that the death had occurred some 24 to 36 hours prior to the post-mortem. Thus, if the duration of the death is taken note of it clearly leads us to the night of 6.2.1999. From the prosecution evidence particularly that of PW-1, Panchbai and PW-17, Parwati Bai, the two sisters of the Appellant who were present in the house, it is proved that the Appellant was at the house the previous night and he had gone for duty only in the morning of 7.2.1999. Thus, the Appellant after having committed the offence during the night of 6.2.1999 and in the morning must have left for his duties without informing anybody about his wife cannot be ruled out. It is only at about 9:30 am that the sisters of the Appellant found the deceased dead on her bed. Since the death took place inside the house of the Appellant and that he was there in the house inside the room till

around 7 O'clock in the morning, the burden shifts upon him to explain regarding the death of the deceased and an adverse inference can be safely drawn invoking Section 106 of the Evidence Act.

12. Another aspect which has to be borne in mind is the fact that the death admittedly was an unnatural one and it is also undisputed that it is not a case of suicide but is a case of homicidal death and the cause of death also has been found to be that of throttling. The fact that the case of the Appellant is not of a third person or an intruder having committed the offence, the inference that could be drawn up is only that of the Appellant to have committed the offence. PW-1, Panchbai and PW-17, Parwati Bai being the sisters of the Appellant and being interested witnesses, their statement to protect their brother cannot be considered to be totally reliable. From the overall facts and circumstances of the case it is evidently clear that the Appellant has not been able to prove his defence of alibi of his not being present at the house at the time of murder of his wife, is an incriminating factor coupled with the fact that the deceased was found on the bed inside the bedroom of the Appellant and there being clear and unambiguous evidence of the prosecution that no third person or intruder had entered the house on the said date, the circumstances again lead us to the Appellant of having committed the offence. The fact that the Appellant was in a habit of assaulting the deceased has been proved and established by PW-2, Pratap Singh and PW-3, Kera Bai and also PW-18, Baijanti Bai, the second wife of the Appellant.

13. Further, from the evidence of PW17, Parwati Bai, sister of the Appellant, in paragraph 7 of the judgement, she has stated that the Appellant used to go for duty at around 7 O'clock in the morning and

she further has stated that he used to come home any time and would go back after some time. Thus, the chance of the Appellant after reporting for his duty having come back again to his house and after committing the offence has left the house also cannot be ruled out. From the Court statement of the two sisters of the Appellant it appears that they are trying to protect him by not disclosing these facts to the police authorities. PW-17, Parwati Bai in her statement under Section 161 Cr.P.C. which was recorded on 9.2.1999 immediately after the incident, has stated that at around 9-9:30 am the Appellant had come back from duty, went straight to the bedroom, where he called upon his wife into the bedroom and then after some time he left the room. Thereafter when PW-1, Panchbai had gone to the room of the deceased, she found her lying dead on the bed.

14. Another incriminating factor going against the Appellant is that PW-1, Panchbai and PW-17, Parwati Bai in their evidence have not stated regarding the Appellant coming to the house in the morning but PW-15, Ramesh Kumar and the Appellant in his statement under Section 313 Cr.P.C., have stated that he had come to the house in the morning, thereafter he with PW-15, Ramesh Kumar had gone to the house of the Commandant and then since the Commandant was not in the house he informed to the wife of the Commandant and had come back to the house. Thus, it is evidently clear that the prosecution witnesses PW-1, Panchbai and PW-17, Parwati Bai have tried to suppress material facts from the Court and likewise the Appellant also has not been able to substantiate his defence of alibi by bringing cogent and reliable piece of evidence to prove that he was not at home at the time of occurrence and that on the fateful morning he was on duty. In

the absence of any reliable evidence from the Appellant, an adverse inference can safely be drawn that the Appellant alone to have committed the offence.

15. Thus, for the foregoing, though there was no direct evidence or eyewitness of the incident but circumstantial evidence particularly in the given facts and circumstances of the case and also taking into consideration the place of occurrence and that the Appellant alone having access to the room, who was present in the room before 7 O'clock in the morning, leads us to safest inference of the Appellant alone having committed the offence. The said inference also gets strengthened more particularly for the reason that the Appellant has not been able to give any satisfactory explanation of who else could have committed the offence. Though the recovery, the seizure and FSL report do not give any positive report in support of the prosecution case, but the fact that the death took place inside the house of the Appellant more particularly inside the bedroom of the Appellant and there being no allegation of any third person or intruder committing the offence, the only inference is which can be drawn against the Appellant. In addition, the prosecution has evidently been able to establish the motive also as it has come on record that the Appellant was in the habit of drinking and assaulting the deceased often plus the evidence that the Appellant only a couple of days back had gone to the Aurvedic Doctor, PW-7, Rajkumar with a complaint of he being incapable of satisfying the deceased while making sex and which fact he never wanted both his wives disclosing to others.

16. Section 106 of the Evidence Act is not intended to shift the burden of proof on the accused, but the same has been enacted to take

care of a situation where the fact is known only to the accused and it is extremely difficult or impossible for the prosecution to prove that fact. In a case where the husband ordinarily resides with his wife and there is evidence that he was there in the house on the previous eve when she was found dead and the Husband offers no explanation as to under what circumstances wife had died, then such circumstances would indicate that the Husband is the person responsible for the death wherein the accused is alleged of having committed the murder of his wife and the offence takes place in the dwelling house, more particularly in the bedroom where the husband and wife was sharing. There is sufficient evidence to show that before the commission of the crime, the accused/appellant was in the house and if the accused does not offer any explanation or explanation which he gives is either false or is hard to believe, then it is a strong circumstances which indicates that he is responsible for the commission of crime.

17. In the instant case, the Appellant has not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider in committing the offence. It was for the husband to explain the grounds for the unnatural death of his wife. There is sufficient evidence in the prosecution case which shows that the Appellant and the deceased were the only occupants of the room where the deceased was found dead. Therefore, all suspicion leaves to the Appellant of having committed the offence.

18. Accordingly, the principles laid down in Section 106 of the Evidence Act becomes applicable to the facts of the present case and therefore, there is a strong presumption of the Appellant to have committed the murder of the deceased. This view of the Court stands

fortified from the decision of Supreme Court in case of **State of Rajasthan Vs. Kashi Ram** [2006 (12) SCC 254], wherein it has been observed in para 23 as under :

“**23.** 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 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.”

19. For the foregoing reasons, since there is sufficient material brought by the prosecution to show that the Appellant was seen with the deceased last, the burden was upon him to prove that what happened thereafter. As the Appellant has failed to give any plausible explanation, the circumstances therefore provides the missing link in the chain of circumstances which proves his guilt beyond reasonable doubts.

20. Thus, in the opinion of this Court there is sufficient materials on record to draw inference against the Appellant and which the Court below has rightly and justifiably drawn, the impugned judgment therefore does not warrant any interference and upholding the conviction of the Appellant, the instant appeal deserves to be rejected.

21. In the result, the appeal is dismissed. The Appellant is stated to be on bail. His bail-bonds are cancelled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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