

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1160 of 2000

Sunil Dewangan, S/o Balram Dewangan, aged about 24 years, Resident of Opposite Kumharpara School, Tahsil and District Bilaspur (Madhya Pradesh) (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, City Kotwali, Bilaspur (Madhya Pradesh) (now Chhattisgarh)

---- Respondent

For Appellant	:	Shri Alok Kumar Pandey, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

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

Judgment on Board

Per Navin Sinha, Chief Justice

4/5/2016

1. The Appellant stands convicted on 8.4.2000 to life imprisonment under Section 302 IPC and fine of Rs.2,000/-, in the event of failure to pay which he was required to undergo one year further simple imprisonment ordered by the 6th Additional Sessions Judge, Bilaspur in Sessions Trial No.59 of 2000. The appeal was filed on 28.4.2000. The Appellant was granted bail on 27.4.2001. It came to be cancelled on 9.9.2014 due to non-representation and warrants issued. I.A. No.1 of 2014 was then filed on 10.10.2014 under Section 70(2) Cr.P.C. for cancellation of the warrant. It was allowed on 24.11.2014 pursuant to undertaking that the Appellant would not misuse the privilege and would be properly represented when the appeal was taken-up for hearing.

2. The appeal was called out for hearing on 18.4.2016. Notwithstanding the undertaking no one appeared for the Appellant. The order also notices that the name of the Counsel was appearing in the cause-list and was also being displayed on the LED system installed in the Court premises and the Bar room. Referring to (2014) 14 SCC 222

(Surya Baksh Singh v. State of Uttar Pradesh), the Court nonetheless granted one more indulgence with the observation that if there was no representation on behalf of the Appellant on the next occasion, the matter may not necessarily be adjourned. Simultaneously, the High Court Legal Services Committee was also required to nominate a Panel Lawyer in the event that on the next date, there was no representation on behalf of the Appellant again. This matter was taken-up in the previous week when no one appeared for the Appellant and Shri Alok Kumar Pandey, Advocate informed us that he had been nominated by the High Court Legal Services Committee. At his request to prepare the brief for assisting us, the matter was passed over for the week and has now come-up for hearing before us. Today also, the name of the Counsel who has filed power appears in the cause-list and has been continuously displayed on the LED system of the Court throughout the hearing which continued for over 1½ hours, but there is no appearance on his behalf.

3. In Surya Baksh Singh (supra), anxiety was expressed with regard to cases like the present where coercive measures including non-bailable warrants had to be resorted to for non-appearance at the time of the hearing of the appeal as distinct from inadvertent non-appearance observing that the Apex Court was perturbed about the malaise regarding willful withdrawal from the proceedings after succeeding in gaining enlargement on bail. The observations at paragraph 25 are extracted as follows:

“25. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter willfully to become untraceable or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to become a mute

spectator to the spectacle of the convict circumventing his conviction. (See *Stirland v. Director of Public Prosecutions*, (1944) 2 All ER 13 (HL), quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*, (2003) 11 SCC 271.) If the court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of appeals. The inherent powers of the High Court, poignantly preserved in Section 482 CrPC, can also be pressed into service but with care, caution and circumspection.”

In view of the observations contained in paragraph 26 we were under no compulsion to request for assistance of the High Court Legal Services Committee by nominating a Panel Lawyer. Nonetheless, we proceed to do so as the Appellant may not feel that injustice had been done to him. We can do no more than express our disappointment at the discourtesy shown to the Court by the Learned Counsel for the Appellant despite the indulgence shown by us to him on more than one occasion. In (2008) 13 SCC 395 (*Deptt. of Horticulture v. Raghu Raj*) with reference to the solemn duty of lawyers to be present when the case is called out and assist the Court in dispensation of justice it was observed as follows :-

“23. Now, it cannot be gainsaid that an advocate has no right to remain absent from the court when the case of his client comes up for hearing. He is duty-bound to attend the case in court or to make an alternative arrangement. Non-appearance in court without “sufficient cause” cannot be excused. Such absence is not only unfair to the client of the advocate but also unfair and discourteous to the court and can never be countenanced.”

4. The deceased was the wife of the Appellant aged about 22 years. Theirs was a love marriage about six months ago against the wishes of their parents. She lived alone with the Appellant in a rented accommodation and died in the matrimonial home on 6.9.1999 at about 10:50 am supposedly due to burn injuries. Merg, Exhibit P-2 was lodged the same day at 11:45 hours by the landlord PW-4, Indrawan. Police inaction led to the submission of a written complaint to the Superintendent of Police on 30.9.1999 by PW-1, Mannulal Dewangan, father of the deceased after which formal FIR, Exhibit P-12 was registered the same

day. The witness alleged that the Appellant was making dowry demands and had killed his daughter by setting her on fire.

5. On 6.9.1999 at 4:30 pm, the post mortem of the deceased, Exhibit P-9 was done by a team of three doctors, Dr. R.K. Gupta, Dr. G.P. Naidu and Dr. Smt. S. Jitpure. The eyes were closed on left side, lid averted on right side, congested, mouth open, tongue protruded and caught between teeth of upper and lower jaw, bleeding was present from nostrils, tongue was cynosed, fecal matter had passed off and smell of kerosene was coming from the body. 94% burns were found on various parts of the body and only 1/3rd of the body did not have burn injuries. Carbon particles were not found in the trachea but the FSL Report, Exhibit P-16 confirmed presence of carbon monoxide in the blood. The doctors opined that no definite opinion could be given regarding cause of death which had occurred approximately 24 hours earlier. In addition to the above, a foetus, approximately 5 months old was found in the uterus of the deceased.

6. The Trial Judge opined referring to Medical Jurisprudence that if the deceased had set herself on fire while alive, carbon particles would have been present in the trachea. The presence of carbon monoxide in the blood indicated otherwise. Considering the extent of burns and the post mortem report were all indicative of a homicidal death. The Trial Judge further opined that if the deceased had committed suicide inside the room in the morning, residing in a crowded locality, surely she would have run helter skelter after her body was on fire and naturally there would have been certain shouting and screaming while also noticing that according to the Merg, Exhibit P-2, PW-4, Indrawan had stated that the children of the locality had come and informed him. The charge of dowry death was however disbelieved.

7. Learned Counsel for the Appellant Shri Pandey heavily relied on the medical report of three doctors confirming that the cause of death could not be ascertained and specified. It was submitted that if the experts were unable to give any positive opinion that the death was homicidal in nature, and the possibility of the deceased having committed suicide cannot be ruled out, the benefit of doubt must go to the Appellant. The presence of carbon monoxide in the blood cannot lead to any conclusive opinion by itself that the deceased was necessarily killed and then her body was set on fire as even if the deceased had committed suicide inhalation of smoke by her may have led to presence of carbon monoxide in the blood. Earlier on 12.5.1999 also the deceased had consumed phenyl in an attempt to commit suicide. She had also given a statement to the police that she had a love affair with another which indicates that she was not happy with her marriage. PW-4, Indrawan did not at any stage state that the Appellant was home at the time of occurrence.

8. Referring to Modi's Medical Jurisprudence and Toxicology, 24th Edition 2011, it was submitted that to distinguish an anti mortem and post mortem burn, three features distinctive features were (a) line of redness, (b) vesication and (c) reparative processes. In the present case, the line of redness was present and therefore it cannot be said with certainty that the burns were post mortem in nature. Skin with subcutaneous tissues from the left lower limb from burn areas to normal skin was taken out and preserved for examination of nature of burn, but no report in that regard was submitted which again leaves it in the arena of speculation whether they were anti mortem or post mortem burns.

9. It was next submitted that the Investigating Officer PW-12, T.P. Singh on 25.12.1999 made a query with regard to the post mortem report from the doctor, (a) whether in a case of death by burn, carbon particles would be found in the trachea, (b) if in a case of death by burn, the tongue

protruded between the teeth and (c) whether the burn was anti mortem. In the reply to the query PW-10, Dr. R.K. Gupta stated that (a) carbon particles may not be found in the trachea in a case of death due to burn, (b) tongue may be protruded and caught between the teeth in a case of burn and (c) it could not be said with certainty whether the burn was anti mortem or post mortem. If the possibility medically existed that carbon particles would not be found in the trachea in a case of death by burn and tongue may also be protruded and caught between the teeth, and it could not be said with certainty that the death was homicidal and not suicidal the benefit of doubt must be given to the Appellant.

10. Learned Counsel for the State submitted that the deceased and the Appellant were husband and wife residing together alone. There was no third person present in the house. The deceased was earlier also assaulted by the Appellant when she attempted to commit suicide by consumption of phenyl. The MLC, Exhibit P-7 discloses that it was not a simple case of the deceased trying to commit suicide due to an unhappy marriage, but there were 13 injuries on her person also signifying assault by the Appellant. In his defence under Section 313 Cr.P.C. the Appellant denied any knowledge that his wife had attempted suicide by consumption of phenyl due to his acts or the injuries on her person. A false defence is therefore an additional incriminating factor against the Appellant. He did not lead any evidence in his defence how his wife may have died in the matrimonial home in unnatural circumstances. The burden is on him under Section 106 of the Evidence Act in view of the post mortem report. Alibi is a weak plea. If the Appellant took the plea of alibi to support the theory of suicide, it was for him to lead evidence in support of the same. The query made by the Investigating Officer from PW-10, Dr. R.K. Gupta was itself incomplete and did not refer to the other corroborative factors of bleeding from the nostrils and escape of faecal matter which were but indicative of a homicidal death. The Investigating

Officer deposed that the door had to be broken open but no such seizure was made. Last but not the least it was submitted that it stands to reason why the deceased who was only 22 years old recently married and was carrying a foetus approximately 5 months old would commit suicide without rhyme or reason especially when the charge of dowry death has not been established. No police statement of the deceased at the time she had consumed poison was recorded on 15.5.1999 much less exhibited. The submission in this regard on behalf of the Appellant is completely untenable in view of the fact that his marriage with the deceased was a result of love affair and not a marriage solemnised under parental or social pressures. The conviction therefore calls for no interference at all especially in view of the fact that the Appellant not only killed his own wife but also in the process destroyed another that was soon to come to life.

11. We have considered the respective submissions, perused and applied ourselves to the evidence on record.

12. Death can be natural, homicidal or suicidal. The reasons or symptoms can vary from one person to another. There can be no copy book application of the principles of medical jurisprudence. A cumulative assessment will have to be made objectively on basis of the post mortem report. Normally the Doctors opinion would be entitled to great weight. But it may not always be conclusive especially when it does not clearly spell out any reason of death. If in the circumstances of a case the opinion regarding cause of death is not clear and homicidal death cannot be ruled out, justice will demand that the Court will not shirk its duty to search the truth rather than simply give the benefit of doubt leaving justice a casualty unmindful of justice to the victim also. It is only in such cases when there is clear evidence of a suicidal death and the possibility of a homicidal death can be safely ruled out, that the benefit of doubt theory will apply.

13. Even if there is no direct evidence with regard to how the deceased may have died, whether due to asphyxia or suicide by burning, men may lie but the facts and circumstances may not and legitimate inference from cumulative evidence assessed objectively can always be drawn as observed in (2004) 10 SCC 786 (Usman Mian v. State of Bihar) :-

“14. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or *factum probandum* may be proved indirectly by means of certain inferences drawn from *factum probans*, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue which taken together form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.”

14. Exhibit P-7, the earlier MLC report of the deceased barely months earlier reflected several injuries on her person when she had consumed phenyl in an attempted suicide. A false defence was taken by the Appellant under Section 313 Cr.P.C. that he was not aware of the injuries. The taking of a false defence is an additional incriminating factor against him. The injuries are clearly suggestive that the love marriage had turned sour for one reason or the other and that the Appellant was in the habit of assaulting the deceased. Alibi is weak a weak evidence. If an accused takes a plea of alibi, it is for him to lead evidence in support of the same and there can be no presumption of innocence based on such a plea sans evidence. The fact that PW-4, Indrawan may not have stated anything regarding the presence of the Appellant is considered irrelevant.

15. The Appellant lived alone with his wife in a rented accommodation. The landlord PW-4, Indrawan initially stated in the Merg that children of the locality came shouting that the deceased had died due to burns. The witness went and saw that the door was open and the deceased was lying

dead on the ground. Subsequently, he sought to turn hostile stating that his daughter told him that his house was afire. There is not an iota of evidence led by the prosecution with regard to the house being on fire and which is completely at variance with the defence of suicide by the accused. Apparently no one saw the occurrence and there is no evidence that the Appellant was not home at the time of occurrence. There was a time gap also till the witness reached hearing the commotion by children. Sufficient time was therefore available for the accused to slip away. The Investigating Officer, PW-12, T.P. Singh deposed that the door to the room was broken. There is no such reference either in the inquest report nor has any seizure been made of the broken door and no prosecution witness has deposed regarding the same.

16. The Appellant in his defence under Section 313 Cr.P.C. did not lead any evidence whatsoever why his wife may have taken the extreme step while she was five months pregnant. If he was living alone with her and it cannot be said with certainty that the cause of death was suicidal, the prosecution can well be said to have established a *prima facie* case and the burden of proof will shift to the Appellant Section 106 of the Evidence Act to explain the circumstances in which the deceased may have died. He has offered no explanation.

17. The query made by the police and answers to the same by PW-10, Dr. R.K. Gupta alone and not the team of doctors who conducted the post mortem are mere expression of general opinions and not express conclusions regarding the death of the deceased. Moreover, the query does not mention the specifics of the indicators which could exclude the possibility of a suicidal death. The Trial Judge has opined that if the deceased had set herself on fire to commit suicide, carbon particles would have been found in the trachea. In the facts of the case we see no reason to take a different view. Presence of carbon monoxide in the blood has

been confirmed in the post mortem report. Clearly there is evidence available regarding the culpability of the Appellant.

18. We shall now consider the submissions on behalf of the Appellant from Modi's Medical Jurisprudence and Toxicology, 24th Edition 2011 in support of the submission that the deceased died due to burn injuries attributable to suicide. In Chapter 21 dealing with injuries from burns, scalds, lightening and electricity regarding presence of line of redness to distinguish between anti mortem and post mortem burns, it is mentioned that it is not compulsory that in all cases of burns during life, a line of redness would be present around the injury part. It is possible that it may be absent in case of a person of a very weak constitution who dies immediately from shock due to burns. This chapter does not point out any view of medical jurisprudence that in case of suicide by burning the tongue would be protruded and caught between upper and lower teeth or that there would be bleeding from nostrils and faecal matter would pass off. If death occurred due to suffocation attributable to self imposed burn injuries, the nasopharynx, trachea and bronchial tubes may contain sooty carbon particles and chambers of heart are usually full of blood. The Trial Judge has already noticed absence of carbon particles in the trachea and the post mortem report is that the right chamber contained blood while the left chamber was empty. In (1992) 3 SCC 43 (Mulakh Raj v. Satish Kumar), it was noticed as follows:-

“11. Medical Jurisprudence by Raju and Jhala in Chapter XXV Death from asphyxia and death from drowning at p. 226 stated that the heart in asphyxia, specifically right chambers, is always found full of dark venous blood. This is important to note as usually with death, blood disappears from the heart.”

In case of a homicidal burn after killing tell tale injuries may not be visible because of the effect of burning on the skin. Modi's Medical Jurisprudence dealing with death by asphyxia in Chapter 19 under the

heading “Types of Strangulation” mentions throttling (manual strangulation – compressing with hand) as one of the methods. Under the heading “other signs” it has been observed that the eyes are closed or partly open. The tongue is drawn-in or caught between the teeth or protruded and bitten. Bloody froth is sometimes seen at the mouth or nostrils. Escape of urine and faeces is often found from sphincters. The past conduct of the Appellant in having assaulted the deceased thus also becomes relevant. It is obvious that due to the 94% burns of the body, the team of doctors who conducted the post mortem may not have been able to identify any other marks on the body or neck area.

19. The post mortem was conducted by the team of three doctors who were possessed of specialised medical knowledge. It was their duty to state the cause of death. Only one of them, PW-10, Dr. R.K. Gupta appeared to depose. In view of the extracts from the Medical Jurisprudence hereinbefore it is apparent that those who conducted post mortem did not do so properly and can be said to have been callously negligent or may be acted with a deliberate design to assist the accused, as observed in (2012) 13 SCC 213 (Sahabuddin v. State of Assam) :-

“30. Similarly, PW 1, the doctor who conducted the post-mortem of the corpse of the deceased was expected to categorically state the cause of death in which he miserably failed. He is a doctor who is expected to perform a specialised job. His evidence is of great concern and is normally relied upon by the courts. For reasons best known to him, he made his evidence totally vague, uncertain and indefinite. Given the expertise and knowledge possessed by a doctor, PW 1 was expected to state the cause of death with certainty or the most probable cause of death in the least. According to PW 1, the black spots noticed on the deceased may be because of poisoning or it could be because of suffocation, although he also mentioned in his report that the symptoms described above may occur due to epilepsy. It is not possible to imagine that there would be no distinction whatsoever, if such injuries were inflicted by assault or suffocation or be the result of an epileptic attack.

31. In our considered view, the doctor has also failed to discharge his professional obligations in terms of the professional standards expected of him. He has attempted to misdirect the evidence before the court and has

intentionally made it so vague that in place of aiding the ends of justice, he has attempted to help the accused.”

20. The facts in the present case bear a marked similarity from that in Mulakh Raj (supra) both with regard to demonstrating that the post mortem was done callously and negligently in the present case and also the death was not suicidal but attributable to asphyxia caused by strangulation, as observed in Mulakh Raj (supra) :-

“5. The crucial question is whether medical evidence of the doctor is reliable and acceptable and whether death due to suicide is probable? Due to 95 per cent burns PW 1, the doctor, did not find any visible ligature marks on the neck. Eyes were half closed. The mouth was closed. Blood stained froth was coming from both the nostrils. Tongue was swollen and cyanosed. On dissection of neck there was infiltration of blood in the upper part of the neck in front below chin. On further dissection he found fracture on right cornua of hyoid bone at the junction with its body and on opening the larynx and pharynx, he noted blood-stained froth in their cavities, they were ante-mortem in nature. The stomach was empty. Peritoneum, organs of generation, pleura, walls, ribs and cartilages were congested. The right side of heart was full of dark blood and left side contained scanty blood. Except both the feet there were burns all over the body. There was no line of redness. There were false vesicles. At places such vesicles were full of air, the base of which was yellow, dry and hard, not red and coppery. The burns were ante-mortem and it was 95 per cent. As stated earlier he opined that the death was due to asphyxia by strangulation which was sufficient to cause death in the ordinary course of nature. He opined that deceased must have been died on August 10, 1980 between 2.00 to 3.00 p.m. For suggestions given to the doctor by the defence counsel in the cross-examination that if the deceased had sprinkled kerosene on her and had set fire and while in the agony if she runs hither and thither and in that process if she fell in such a condition that her throat comes in contact with a protruding part of the wall resulting constriction of the windpipe he categorically negated that such a fall of the victim would cause only partial constriction and it is not possible to cause fracture to the hyoid bone. He further stated that the death could not be due to suffocation. He also ruled out the possibility that the hyoid bone is not likely to be fractured by fall against hard surface. He also stated that the burns were post-mortem because there were no soot present in the trachea or wind pipe. Thus he positively ruled out the theory of alternatives or suicide.”

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

22. We express our appreciation for the assistance rendered to us by Learned Counsel for the Appellant Shri Alok Kumar Pandey.

23. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE