

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM No.36491 of 2018 in/and
CRA No. 450-DB of 2015 (O&M)**

Reserved on 14.11.2018

Date of Decision: 29.11.2018

Paramjit Singh @ Pamma

.... Appellant

versus

State of Punjab

.... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. J.S.Bains, Advocate for the appellant.
Mr. Rajesh Bhardwaj, Sr. Deputy Advocate General, Punjab.

Rajiv Sharma, J.

1. Though the application was listed for suspension of sentence but with the consent of learned counsel for the parties, the main appeal itself is heard on merits.

2. This appeal is instituted against the judgment dated 19.01.2015 rendered by Additional Sessions Judge, Ludhiana in case No.223 of 2014, whereby the appellant was charged and tried for an offence punishable under Section 304-B IPC. He was convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of ₹ 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment of 6 months under Section 302 IPC.

3. The case of the prosecution in nutshell is that on 4.11.2013, a telephonic message was received from Police post, Civil Hospital, Ludhiana

about the death of deceased Puja wife of the appellant, by burn injuries. SI Kulwant Singh, SHO, PS Sahnewal alongwith police party reached at Civil Hospital. FIR was registered and the dead body was sent for postmortem examination. The investigation was completed and after completion of codal formalities, challan was put up.

4. The prosecution has examined a number of witnesses. The statement of appellant was recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He also examined one DW-1 Dr.Gurcharan Singh. The appellant was convicted and sentenced, as noticed above. Hence, this appeal.

5. The learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove its case. Learned counsel for the State supported the judgment.

6. We have heard learned counsel for the parties and gone through the judgment very carefully.

7. PW-1 Bagicha Singh is the uncle (Chacha) of deceased Amarjit Kaur. According to him, Amarjit Kaur met with an accident and due to burn injuries, she died. The appellant was not at all responsible for this incident. Appellant received burn injuries while extinguishing fire to save Amarjit Kaur.

8. PW-2 Bholi, sister of the deceased, deposed that the appellant used to maltreat her deceased sister. He was harassing her for bringing insufficient dowry. She came to know that accused has given a *danda* blow on her head and thereafter she was put on fire.

9. PW-3 Gurmeet Kaur @ Rani, cousin sister of deceased, has corroborated the statement of PW-2 Bholi. She has also stated that her

cousin was being harassed for bringing insufficient dowry.

10. PW-4 Dr.Davinder Kumar conducted the postmortem examination. He has noticed following injuries on the body of deceased Amarjit Kaur:-

- “1. Lacerated wound 2" x 1/3" on left posterior parietal region, extending up to bone.
2. Swelling 1" x 1/2" on the right occipital area.”

11. He found larynx and trachea congested and soot parietal was present in larynx and trachea. There was underline fracture of parietal bone with subdural heamotoma. Small intestine was also congested. The injuries and burns were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He proved carbon copy of the post mortem report as Ex. PW4/A.

12. PW-6 ASI Swaran Singh, Investigating Officer arrested accused Paramjit Singh and at his instance *danda* was recovered. Site plan was prepared.

13. PW7-HC Dhanwant Singh collected the blood on a cotton swab. He also collected one plastic canister of kerosene oil. He also took into possession melted burnt plastic opener and also match box. The blood stained hair of the deceased were also taken into possession. Burnt clothes of the deceased were taken into possession vide memo Ex.PW7/F.

14. According to the statement of PW-2 Bholi, sister of deceased and PW-3 Gurmeet Kaur @ Rani, the appellant used to harass the deceased for bringing insufficient dowry. The matter was reported to the police. The case put up by the prosecution is that the appellant has inflicted injuries on the head of the deceased and thereafter put her on fire.

15. The post mortem was conducted by PW-4 Dr.Davinder Kumar. He has noticed underline fracture on parietal bone with subdural heamotoma. According to him the injuries and burns were ante-mortem in nature and sufficient to cause death in normal course of nature. He proved carbon copy of the postmortem report as Ex.PW4/A.

16. Learned counsel for the appellant has vehemently argued that it was case of accidental fire. They were selling fire crackers from Karyana shop. He also examined DW-1 Dr. Gurcharan Singh who medically examined the appellant.

17. The appellant was running a Karyana shop. According to the site plan no fire crackers were found in the shop. The appellant and the deceased were alone in the shop at the time of incident. It is a fit case where Section 106 of the Evidence Act would be attracted.

18. The plea of the learned counsel appearing for the appellant that it was the case of accidental fire can not be believed. The prosecution has duly proved that the appellant has given *danda* blow on the head of the deceased and thereafter put her on fire. It is true that PW-1 Bagicha Singh, uncle (Chacha) has not supported the case of prosecution but in this case the chain is complete.

19. The learned counsel appearing for the appellant argued that *danda* was recovered belatedly. It was a case of faulty investigation and has not caused any prejudice to the appellant. PW-4 has opined about the fracture of parietal bone with subdural heamotoma. The recoveries made from the site have been duly proved. The argument of learned counsel for the appellant that deceased received injuries by fall on the hard surface can not be believed. The appellant has not explained under what circumstances

his wife had died, as he and his wife were only present in the shop.

20. Their Lordships of Hon'ble the Supreme Court in Trimukh Maroti Kirkan vs State of Maharashtra, (2006) 10 SCC 681 have held that where prosecution succeeds in leading evidence to show that (i) either the husband and wife were last seen together, (or) the offence was committed in the dwelling house, where husband also resided, and if the accused husband offers no explanation as to the injuries received by his wife or if the explanation is false, there is strong circumstance which indicates that he committed the crime. Their Lordships have further held that in a case based on circumstantial evidence where no eye witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the accused either offers no explanation or offers an explanation which is found to be untrue, the same becomes an additional link in the chain of circumstances to make it complete. Their Lordships have held as under:

“10. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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16. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T. N. v. Rajendran (1999) 8 SCC 679 (SCC para 6); State of U.P. v. Dr. Ravindra Prakash Mittal (1992) 3 SCC 300 (SCC para 39; AIR para 40); State of Maharashtra v. Suresh (2000) 1 SCC 471 (SCC para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (SCC para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (SCC para 4)].

17. 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.* (1972) 2 SCC 80, 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* (1992) 3 SCC 106 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 Cr.P.C. 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*, 1992 (3) SCC 300 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 Tamil Nadu 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.”

21. Their Lordships of Hon'ble the Supreme Court in *State of Rajasthan vs Kashi Ram*, (2006) 12 SCC 254 have held that the accused's failure to give satisfactory explanation to an incriminating circumstance which was within his special knowledge amounts to failure to discharge the onus which lies on accused under section 106 of Evidence Act. This itself provides an additional link in the chain of circumstances proved against him. Their Lordships have held as under:

“24. 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 *Re. Naina Mohd.* AIR 1960 Madras, 218.”

22. Their Lordships of Hon'ble the Supreme Court in *Dnyaneshwar vs State of Maharashtra*, (2007) 10 SCC 445 have held that when the deceased was found murdered in her matrimonial home and the possibility of any outsider committing the offence is ruled out, it is for the husband to explain the ground for unnatural death of his wife. Their Lordships have held as under:

“11. It has not been disputed before us that the deceased was murdered in her matrimonial home. It is not the case of the appellant that the offence was committed by somebody else. It is also not his case that there was a possibility of an outsider to commit the said offence. One of the circumstances which is relevant is that when the couple was last seen in a premises to which an outsider may not have any access. It is for the husband to explain

the ground for unnatural death of his wife. In *Raj Kumar Prasad Tamarkar v. State of Bihar & Anr.*, (2007) (1) SCALE 19, this court held:

"22. The conspectus of the events which had been noticed by the learned Sessions Judge as also by the High Court categorically go to show that at the time when the occurrence took place, the deceased and the respondent only were in the bedroom and the terrace connecting the same. There was no other person. The cause of death of the deceased Usha Devi i.e. by a gun shot injury is not disputed. The fact that the terrace and the bedroom are adjoining each other is not in dispute.

23. The autopsy report shows that 'a blackening and charring' existed so far as Injury No. (i) is concerned. The blackening and charring keeping in view the nature of the firearm, which is said to have been used clearly go to show that a shot was fired from a short distance. Blackening or charring is possible when a shot is fired from a distance of about 2 feet to 3 feet. It, therefore cannot be a case where the death might have been caused by somebody by firing a shot at the deceased from a distance of more than 6 feet. The place of injury is also important. The lacerated wound was found over grabella (middle of forehead). It goes a long way to show that the same must have been done by a person who wanted to kill the deceased from a short distance. There was, thus, a remote possibility of causation of such type of injury by any other person, who was not in the terrace. Once the prosecution has been able to show that the relevant time, the room and terrace were in exclusive occupation of the couple, the burden of proof lay upon the respondent to show under what

circumstances death was caused to his wife. The onus was on him. He failed to discharge the same."

23. Their Lordships of Hon'ble the Supreme Court in Swamy Shraddananda alias Murli Manohar Mishra vs State of Karnataka, (2007) 12 SCC 288 have held that failure of accused husband to explain how his wife met with an unnatural death in their bedroom, provides an additional link to the chain of circumstances. Their Lordships have held as under:

"36. If it is proved that the deceased died in an unnatural circumstance in her bed room, which was occupied only by her and her husband, law requires the husband to offer an explanation in this behalf. We, however, do not intend to lay down a general law in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused."

24. Their Lordships of Hon'ble the Supreme Court in Jamnadas vs. State of M.P., AIR 2016 SC 3270 have held that burden to establish case does not entirely lie on prosecution. Corresponding burden is on accused/inmates of house to give cogent explanation. Their Lordships have held as under:-

"20. In State of W.B. v. Mir Mohammad Omar and others, 2000 8 SCC 382 this Court, while interpreting the burden of extent of proof on prosecution, observed as under: -

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of

the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

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36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

21. Shri S.K. Jain, learned senior counsel, on behalf of the appellants drew our attention to the case of Tomaso Bruno and another v. State of Uttar Pradesh, 2015 7 SCC 178 and argued that to invoke Section 106 of the Evidence Act the prosecution must have proved presence of the appellants in their house at the time of the incident. We have carefully gone through the case cited before us. It was a case where CCTV footage of the hotel was available but not produced to show the presence of the accused in the hotel and, as such, the plea of alibi that the accused had gone to witness "Subah-e-Bararas" from the hotel was accepted. The present case relates to a different

kind of incident where a bride has been brutally murdered inside the house and her body, after cutting into pieces, was thrown in the park.

22. In Trimukh Maroti Kirkan v. State of Maharashtra, 2006 10 SCC 681 which is a case similar in nature to the present one, this Court has held as under:

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

25. The prosecution has proved the case against the appellant beyond reasonable doubt. Thus, there is no merit in the appeal and the same is dismissed.

(Rajiv Sharma)
Judge

29.11.2018
Raman/vs

(Harinder Sindh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No