

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 62 of 2013

- Satyaprakash Kurrey, S/o Laindas Kurrey, aged about 37 years, by caste-Satnami, R/o Village- Pendri, P.S. Masturi, District Bilaspur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Bilaspur, District Bilaspur (C.G.)

---- Respondent

For Appellant : Shri Rahil Kochar, Advocate

For Respondent/State : Shri Pawan Kesharwani, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board by Justice Prashant Kumar Mishra

21.10.2019

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.11.2012 passed by learned Third Additional Sessions Judge, Bilaspur, District Bilaspur (C.G.) in Sessions Trial No. 76 of 2012, whereby the appellant stands convicted under Section 302 of IPC for committing murder of his wife namely Naveli Bai on 25.01.2012 and sentenced to undergo life imprisonment and fine of Rs.500/-, in default of payment of fine to undergo additional rigorous imprisonment for three months. The appellant has been further convicted under Section 201 of IPC and sentenced to undergo rigorous imprisonment for one year, and fine of Rs.100/-, in default of payment of fine to undergo additional rigorous imprisonment for one month. Both the sentences were directed to run concurrently.
2. The appellant Satyaprakash Kurrey and deceased Naveli Bai were married in the year 2008. They have a daughter aged about 2 years out of the said marriage and at the time of death Naveli Bai was carrying two months pregnancy. It is said that the appellant, an Assistant Professor in

Government College, was having illicit relations with his own Aunt (*Chachi*) and due to this, his relations with the deceased were strained and dispute used to occur every now and then. The appellant, therefore, committed murder by throttling his wife in the morning of 25.01.2012 and thereafter dead body was burnt to make it appear as if the deceased has died of burn injuries. The appellant also concealed the evidence of crime.

3. Merg intimation Ex.-P/13 was lodged by PW-6 Arvind Kumar at 11:50 AM informing the police that Anish Kurre informed him at about 11:00 AM that deceased Naveli Bai has locked herself in the room. On Anish's request Arvind Kumar quickly went to the house and found the door locked from inside and there was smoke inside the room. Arvind Kumar and neighbour Sudhir Kosale (PW-12) opened the door and witnessed that Naveli Bai has died of burn injuries. FIR Ex.P/21 was registered on 25.01.2012 against the appellant under Section 302 & 201 of IPC. In the postmortem report Ex.-P/1 the cause of death was found to be asphyxia due to throttling and the burn injury was postmortem in nature. Duration of death was found to be within 24 hours.
4. During investigation, the Investigating officer prepared the spot map vide Ex.-P/4 which is part of crime detail form, inquest Ex.-P/3 and *panchnama* Ex.-P/5. Blood stained and burnt clothes of the deceased, a piece of stone, hair of her head lying on the floor, broken pieces of bangle and a piece of scratched plain cement having sand from the place of incident were seized vide Ex.-P/6. As per Ex.-P/7 viscera of the deceased were seized. One 5 litres plastic jerrican and one match-stick box containing 2 half-burnt match-sticks and 16 unused match-sticks were recovered vide Ex.-P/8. The appellant was wearing the same full-pant which he was wearing at the time of incident. The same was having smell of kerosene, therefore, his full-pant and shirt were recovered vide Ex.-P/9. However, no memorandum statement

of the accused was recorded nor any other article recovered from him. This apart, neither the viscera report has been filed with the charge-sheet nor during the course of trial. FSL report Ex.-P/26 did not find any traces of poisoning in the internal organs of the deceased.

5. Prosecution examined as many as 21 witnesses to bring home the charges. Based on the evidence, trial Court convicted the accused for offence under Sections 302 & 201 of IPC.
6. Shri Rahil Kochar, learned counsel for the appellant, would submit that there is no cogent and reliable evidence against the appellant for sustaining his conviction. He would submit that the appellant having stated in his statement under Section 313 Cr.P.C. that at the time of incident, he had gone to attend duties in the college, burden was on the prosecution to prove that the appellant was alone with his wife in the house at the time of incident, however, the same has not been proved and therefore, the conviction deserves to be set aside.
7. Per contra, Shri Pawan Kesharwani, learned Panel Lawyer would support the impugned judgment.
8. As per the prosecution case itself, there is no eyewitness to the crime, therefore, prosecution would rely on circumstantial evidence to prove the guilt of the appellant. The circumstantial evidence put forth by the prosecution is in the nature of presence of the accused in the house at the time of incident; his illicit relations with his aunt Uttra Bai and his sored relation with the deceased which furnish motive for him to commit the crime; and seizure of his full-pant having smell of kerosene.
9. To bring home the charge for committing murder on the basis of circumstantial evidence, the prosecution has to prove chain of circumstantial evidence which only proves the guilt of the accused to the exclusion of any other person who might have committed the crime. The principle has been

succinctly laid down by the Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, wherein it has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-153 as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and “must be or should be proved” as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622)* where the following observations were made:

'Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.'

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

10. In a case where the husband has committed murder of his wife or vice versa

the principle under Section 106 of the Evidence Act is pressed into service as the offence having been committed within the four walls of the house, the facts are within the exclusive knowledge of the perpetrator of the crime and if he fails to explain the circumstances, an adverse presumption is drawn against him and that by itself becomes a missing link in the chain of circumstantial evidence.

11. In a recent judgment in the matter of ***Jose alias Pappachan v. Sub Inspector of Police, Koyilandy and Another*** {(2016) 10 SCC 519}, the Supreme Court has held thus at para 52:

“52.....
.....
In the absence of any persuasive evidence to hold that at the relevant time the appellant was present in the house, it would also be impermissible to cast any burden on him as contemplated under Section 106 of the Evidence Act. The consistent testimony of the appellant and his son to the effect that after alighting from the bus on their return from Potta, the deceased was made to accompany DW 1 back home while the appellant did go in search of labourers for works in his compound on the next day and that thereafter till the time DW 1 had departed for his ancestral house, the appellant did not return home, consolidates the defence plea of innocence of the appellant.”

12. In the case in hand, PW-17 Rekha Banjare, PW-18 Vijay Kumar Banjare and PW-19 Kusum Bai have stated that the appellant had illicit relations with Uttra Bai (PW-7). They have also stated that the appellant used to commit cruelty on the deceased, however, at the same time there are witnesses who would depose that the appellant was pulling on well with the deceased and there was no dispute between them. This has been stated by PW-14 Lata Koshle and PW-8 Beenu Kurre.

13. Be that as it may, assuming that the appellant had illicit relations with her

aunt Uttra Bai, yet in a case of circumstantial evidence the prosecution has to bring on record such evidence which furnishes prima facie proof that in order to attain the motive the accused has committed the murder and was present in the house at the time of incident. On this aspect of the matter PW-2 Parasram Sandey would state that at about 09:00 AM the appellant was in the village. PW-6 Arvind Kumar would also state that he had gone to do some labour work under Rozgaar Guarantee Scheme at about 06:00 AM and came back at 09:00 AM and at that time appellant was preparing to go to attend his duties in the Government College. He would also state in the next breath in para-3 in the cross-examination that when he reached back after performing labour work, he had seen his uncle/appellant Satyaprakash going to the college. He also says that at this time, he was provided food by the deceased. Similar is the statement of PW-7 Uttra Bai who has stated that when she returned from her Aganbadi Centre at 09:00 AM she had seen the appellant preparing for going to college. PW-7 states that Laindas was also present in the house. PW-5 Gulaba Bai had also seen the deceased alive in her house in the morning on the date of incident. PW-14 Lata Koshle had rushed to the place of occurrence on witnessing smokes coming out from the house and she met Laindas, father of the appellant, in the courtyard. According to this witness, when she informed Laindas that smoke is coming out from the house of the appellant, he ignored the same.

14. A perusal of the maps (Ex.-P/4 and Ex.-P/5) would demonstrate that the courtyard is located in the middle of the house and on one side of the courtyard, house of the appellant is situated and on other side house of Uttra Bai is situated. Thus, statement of PW-14 Lata Koshle that when she reached the place of occurrence, she met Laindas in the courtyard (*Aagan*) is duly corroborated from the spot map. PW-17 Rekha Banjare, sister of the deceased, states that the deceased was not having good relation with

Laindas and that she is not sure whether it is accused or Laindas who has committed the offence.

- 15.** The oral evidence is thus to the effect that at the time of incident, appellant was preparing to move out of his house to attend his duties in the college and Laindas being his father, was available in the house. In his statement under Section 313 Cr.P.C. the appellant in reply to question No. 30 has also stated that he was not present in the house as he had gone to the college. Thus, the prosecution has not been able to prove beyond all reasonable doubt that the appellant was present in the house at the time of incident.
- 16.** The trial Court has discussed the evidence impliedly holding that the murder might have been committed in between 04:00 PM of 24.01.2012 and 09-10:00 AM of 25.01.2012 meaning thereby that murder might have been committed during intervening night and thereafter the dead body was burnt. This implied story is thought to apply the principle under Section 106 of the Evidence Act. However, when there are witnesses who would state that they have met the deceased at 09-09:30 AM in the morning and in fact PW-6 Arvind Kumar would say that the deceased had provided him food at 09:30 AM, it cannot be said that the deceased might have died during the intervening night.
- 17.** The trial Court has also discussed another circumstance of seizure of full-pant having Kerosene smell from the appellant. However, even if seizure is proved, the fact remains that the full-pant was never sent for FSL examination to confirm presence of kerosene. It is also seen that the clothe of the appellant was never put to identification or produced in Court at the time of trial. It might be possible that soon after the incident the appellant arrived at his house and since kerosene oil was spread in the room, his clothe might have caught smell of kerosene oil but that by itself is not such a circumstance which can independently nail the accused in absence of any

evidence to establish his presence in the room at the time of commission of offence.

18. Only circumstance which raises some doubt over the appellant is that there might have been scuffle between him and his wife. In his MLC vide Ex.-P/24 three abrasions were found over his person. However, this only creates a doubt but it is not a proof of commission of murder. Suspicion howsoever strong cannot take place of actual proof of guilt of the accused. In the matter of ***Sujit Biswas v. State of Assam, AIR 2013 SC 3817***, the Supreme Court has held that suspicion, however, strong cannot take place of proof. Para 6 is quoted below :

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely

probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: *Hanumant Govind Nargundkar & Anr. v. State of M.P.*, AIR 1952 SC 343; *State through CBI v. Mahender Singh Dahiya*, AIR 2011 SC 1017; and *Ramesh Harijan v. State of U.P.*, AIR 2012 SC 1979)".

19. In view of the above, we are not convinced that the prosecution has proved its case beyond reasonable doubt against the accused/appellant. He deserves to be acquitted by giving him benefit of doubt. Accordingly, we set aside the impugned judgment of conviction and acquit the accused/appellant of the charges under Sections 302 & 201 IPC. The appellant is in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months from today as required under the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

20. In the result, the instant criminal appeal is allowed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge