

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

Crl. A. No. D-1650-DB of 2015

Reserved on : 21.01.2019

Date of decision : 23.01.2019

Ravi and another

.... APPELLANTS

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Ms. Divya Sharma, Advocate,
for the appellants.

Mr. S.P.S.Tinna, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment and order dated 14.10.2015, rendered by learned Additional Sessions Judge, Amritsar, in Sessions Case No. 12/73 of 25.02.2015, whereby the appellants, who were charged with and tried for the offence punishable under Section 302/201 IPC, were convicted and sentenced to undergo imprisonment for life and to pay fine of ₹ 15,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year each, for the offence under Section 302 IPC.

2. The case of the prosecution, in a nutshell, is that on 31.08.2014, Inspector Rachhpal Singh, SHO Police Station Khilchian was present at

Police Station. Constable Dharamvir Singh, Police Station Rajgarh (Rajasthan), came with Zero FIR.

3. According to the case of the prosecution, on 24.08.2014, at Police Station Rajgarh, one Chaina Ram son of Harlal, aged 40 years, moved a complaint Ex.PA to the effect that his sister Jamni was married with Ravi son of Gudan Ram. She along with her husband was living at Rayya Mandi, Tehsil Baba Bakala. On 22.08.2014, during night, at about 11.00 PM, her husband Ravi had committed her murder in connivance with his second wife Soma. He brought the dead body of Jamni from Rayya Mandi to village Gajuwas. His sister Rajo was living near the *Jhugi* of accused Ravi. She also disclosed that Ravi and his second wife Soma had committed the murder of Jamni. The statement of Rajo was also recorded. According to her statement, her *Jhuggi* was adjacent to the *Jhugi* of accused Ravi. There used to remain quarrel between Jamni and her husband Ravi. On 22.08.2014 at about 10.00/11.00 PM, quarrel took place between Jamni, Ravi and his second wife Soma. Accused Ravi and Soma put a rope around the neck of her sister. They strangled her. She herself was married with elder brother of accused Ravi. In the morning, accused Ravi took a truck on rent and put the dead body of Jamni in the same. He went to village Gajuwas. She was also threatened. She narrated the incident to her brother Chaina Ram. Chaina Ram informed the police. The investigation was carried out and the challan was put up after completing all the codal formalities.

4. The prosecution has examined a number of witnesses. Statements of the accused were recorded under Section 313 Cr.P.C. They

denied the case of the prosecution. They were convicted and sentenced, as noticed above. Hence, this appeal.

5. PW.1 Chaina Ram is the complainant. According to him, his sister Jamni was married with accused Ravi. He recognized him in the Court. They were residing at Rayya Mandi, District Amritsar. He did not know what happened on 22.08.2014. His sister died due to illness. The accused were not responsible for the death of his sister. He was declared hostile and was cross-examined by the learned Public Prosecutor. He admitted his signatures on the complaint Ex.PA.

6. PW.2 Rajo testified that her sister was married with Ravi. They were residing at Rayya Mandi. They were also residing at Rayya Mandi. Their *Jhuggis* were situated nearby the place of occurrence. There was no dispute between Ravi and her sister Jamni. Her sister Jamni died due to breathing problem. She was also declared hostile and was cross-examined by the learned Public Prosecutor. She admitted her signatures on the statement Ex.PB.

7. Similarly, PW.3 Deep Chand deposed that he did not know what happened on 22.08.2014. His cousin sister had died due to illness. The accused were not responsible. He too was declared hostile and was cross-examined by the learned Public Prosecutor. He denied statement Mark D.

8. PW.5 Dr. Mohan Lal Meena conducted the post-mortem examination. In his opinion, the cause of death was asphyxia caused by hanging as ligature mark was found on the neck which was sufficient to cause death in ordinary course of nature. He proved post-mortem report Ex.PW5/B. The probable time that elapsed between hanging and death

could not be ascertained as body was decomposed. The time between death and post-mortem was two to five days. In his cross-examination, he deposed that one of the cause of asphyxia could be chronic tuberculosis. The possibility of appearance of ligature mark on the neck due to long journey of dead body could not be ruled out.

9. PW.6 Bagla Ram deposed that he made endorsement Ex.PW6/1 on the complaint Ex.PA, on the basis of which he registered Zero number FIR dated 24.08.2014 vide Ex.PW4/1. The post-mortem examination of the dead body was got conducted.

10. PW.7 Inspector Amolak Singh deposed that he arrested accused Ravi and prepared his arrest memo. He was interrogated. He made disclosure statement Ex.PW7/4. He deposed that he had kept the rope used by him in killing his wife Jamni underneath the bricks lying on backside of his hut. The disclosure statement was thumb marked by accused Ravi and signed by SI Balwant Singh. The rope was got recovered from backside of his hut. It was taken into possession vide memo Ex.PW7/5. He prepared the rough site plan of recovery Ex.PW7/6. He arrested accused Soma on 05.11.2014. In cross-examination, he admitted that rope which he had produced in the Court was easily available in the market.

11. The marriage of the deceased was solemnized with appellant Ravi about 17-18 years back. The complaint Ex.PA was made by PW.1 Chaina Ram. Though he was declared hostile but he admitted his signatures on Ex.PA. Similarly, PW.2 Rajo was declared hostile, but she admitted thumb impression on statement Ex.PB. The cause of death, as per the statement of PW.5 Dr. Mohan Lal Meena, who conducted post-mortem

examination, is asphyxia caused by hanging as ligature mark was found on the neck.

12. There is no merit in the contention of learned counsel appearing on behalf of the appellants that ligature mark could appear on the neck due to long journey of the dead body. The probable time between hanging and death could not be ascertained as body had decomposed. However, time between death and post-mortem was two to five days.

13. In the statements Ex.PA and Ex.PB, it is specifically stated that the appellants were responsible for the murder of Jamni. There is not an iota of evidence that Jamni was suffering from tuberculosis. The rope was got recovered on the basis of the disclosure statement of appellant Ravi. Jamni had died in the house of the appellants. It was for them to explain the circumstances in which she died.

14. There was ligature mark on the neck. PW.5 Dr. Mohan Lal Meena has deposed, as discussed above, that the cause of death was asphyxia caused by hanging. He was not cross-examined on this point. It has also come in the inquest report that there were boils on her both hands. This has also not been explained by the appellants. The appellants have also not explained as to why the dead body was taken to Rajasthan in great hurry.

15. Their Lordships of the Hon'ble 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:

“12. In the case in hand there is no eye-witness 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.

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.

21. 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 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 Tamil Nadu v. Rajendran (1999) 8 SCC 679 (para 6); State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 (para 40); State of Maharashtra v. Suresh (2000) 1 SCC 471 (para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (para 4)].

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 Himachal Pradesh AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' 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 were 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 AIR 1992

SC 2045 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 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 (1999) 8 SCC 679 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.”

16. Their Lordships of the Hon'ble 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:

23. 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.”

17. Their Lordships of the Hon'ble Supreme Court in **Dnyaneshwar vs State of Maharashtra, (2007) 10 SCC 445** have held that when the deceased 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 :

“10. 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 short 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 the 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 at 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."

18. Their Lordships of the Hon'ble 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:

“34. 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.”

19. Their Lordships of Hon'ble 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.”

20. Their Lordships of the Hon'ble Supreme Court in **Rajendra and another Vs. State of Uttar Pradesh, 2009**, AIR 2009 (SC) 2558 : 2009 (13) SCC 480, have held that evidence of a hostile witness may not be totally rejected, subject to closer scrutiny, a portion of testimony, which is consistent with the case of prosecution or defence, may be accepted. Their Lordships have held as under :-

*“17. Thus, the fact that immediately after the death a crowd had assembled and people were talking about the death having been caused to the deceased by Narpat and Rajendra, to some extent, supported the prosecution case. Both, Munna and Surajbhan were named as witnesses in the FIR. Although they were declared hostile, a part of their statement can be taken into consideration for the purpose of finding out as to whether the appellants are guilty of commission of the said offences or not. It is a well settled law that the evidence of a hostile witness may not be totally rejected, and subject to closure scrutiny, a portion thereof which is consistent with the case of prosecution or defence, may be accepted. {See **State of U.P. v. Ramesh Prasad & Anr., [AIR 1996 SC 2766]**}.*

21. Though the majority of the witnesses have turned hostile, but the Court has to look into other attending facts and circumstances. The

witnesses have tried to help the accused being closely related. Rajo has turned hostile because she was married to elder brother of appellant Ravi. All the circumstances point towards guilt of the accused. The appellants have not explained the un-natural death of the deceased, which took place in their house. The chain is complete.

22. There is no occasion for us to interfere with the well reasoned judgment of the trial court. Accordingly, the appeal is dismissed. The judgment and order of the trial court are upheld. Appellant Soma is on bail. Her bail bond and surety bond are cancelled. She is directed to surrender before the concerned Chief Judicial Magistrate within 48 hours to undergo remaining part of her sentence.

(RAJIV SHARMA)
JUDGE

January 23, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes