

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 305 OF 2015**

Sudarshan Rajayya Bingi
Prisoner No.6156,
Kolhapur Central Prison.

...Appellant

Versus

The State of Maharashtra
Through PSO, Solapur, Jodbhavi Police
Station, Solapur.

...Respondent

Mr. Sushil Inamdar, Appointed Advocate for the Appellant.
Ms. P. P. Shinde, APP for the State.

**CORAM: SMT. SADHANA S. JADHAV
& N. J. JAMADAR, JJ.**

**RESERVED ON : 8th October, 2020
PRONOUNCED ON: 29th October, 2020**

JUDGMENT : (Per: N.J. Jamadar, J.)

1. This appeal takes exception to the judgment and order dated 3rd January, 2014, passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.124 of 2012, whereby and whereunder the appellant – accused came to be convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (“the Penal Code”) and sentenced to suffer imprisonment for life and pay fine of Rs.5,000/- with default stipulation.

2. The gravamen of indictment against the accused was as under:

(a) Kanaklaxmi ("the deceased"), the sister of Malleshham Dasari ("the first informant") and Rajeshwari Karampuri, was the wife of the accused. They were blessed with son Arun and daughter Sukanya. They were residing at plot no.12 Jaylaxmi Nagar, Shelgi. The accused was given in to the vice of consuming liquor. The accused was also not gainfully employed. The accused used to rake up quarrels with the deceased frequently. The deceased ran the household out of the income she generated by rolling *bidis*.

(b) On 16th February, 2012, the first informant was apprised on telephone by Nagraj Dasari, a cousin, that the deceased was critically ill and he should reach Solapur immediately. Nagraj had also informed Rajeshwari. The latter, who resided at Vidi Gharkul, Hyderabad Road, Solapur, immediately rushed to the house of the deceased at Jaylaxmi Nagar. She found that the deceased lay supine on the floor. On inquiry, it was informed that the deceased had taken ill and died. Rajeshwari noticed that there were marks of injury on the throat of the deceased. Thus, Rajeshwari approached Jodbhavi Peth Police Station, Solapur and apprised the police.

ADR was registered at AD No.6 of 2012. Inquest was held. The body was sent for postmortem examination. The autopsy surgeon opined that the probable cause of death was compression around the neck.

(c) In the meanwhile, Mallesham Dasari, the first informant, reached Solapur from Sirsilla (Andhra Pradesh), where he had been residing since one year prior to the occurrence. After noticing the situation of the dead body of the deceased and ascertaining the facts, Mallesham lodged report against the accused of having committed the murder of the deceased in her matrimonial home prior to 7.00 am. on 16th February, 2012.

(d) Crime was registered at CR No.20 of 2012 for the offence punishable under Section 302 of the Penal Code. The Investigating Officer interrogated the witnesses and recorded their statements. The accused came to be arrested. Postmortem report was obtained. After finding the complicity of the accused charge-sheet came to be lodged against the accused for the offence punishable under Section 302 of the Penal Code.

(e) Charge was framed against the accused for the offence punishable under Section 302 of the Penal Code. The accused abjured his guilt and claimed for trial.

(f) At the trial, the prosecution examined six witnesses including Rajeshwari (PW-2); the sister and Malleshham (PW-3); the brother of the deceased, Dr. Naim Akhtar Anis Ahmad (PW-6); the autopsy surgeon and Mr. Sikandar Nadaf (PW-5); the then Senior Police Inspector, who furnished the details of investigation. After the closure of the prosecution evidence accused was examined under Section 313 of the Code of Criminal Procedure ("the Code"). The accused did not lead any evidence in his defence which consisted of false implication. An endeavour was made by the accused to deny that the deceased was in his custody on the night of occurrence by asserting, in his examination under Section 313 of the Code, that at the time of alleged occurrence he was not present in their house.

3. After appraisal of the evidence and material on record the learned Sessions Judge was persuaded to enter the finding of guilt. It was, *inter alia*, held that the accused failed to explain the circumstances in which the deceased met the homicidal death when only accused and deceased were present in their home at the time of the occurrence. The failure of the accused to substantiate the claim that at the time of the alleged occurrence he was not present at home and was, in fact, on duty at Mandhoni Weaving Mill, Akkalkot Road, Solapur was reckoned as an additional link in the chain of circumstances

which incriminate the accused. Thus, the accused was convicted and sentenced, as indicated above.

4. Being aggrieved by and dissatisfied with the impugned judgment of conviction and order of sentence the accused has preferred this appeal.

5. We have heard Mr. Inamdar, the learned Counsel for the Appellant, who has been appointed to espouse the cause of the appellant and Ms. Shinde, the learned APP, at considerable length. With the assistance of the learned Counsels, we have also perused the evidence and material on record.

6. Mr. Inamdar, the learned Counsel for the appellant would urge that the learned Additional Sessions Judge committed a grave error in entering the finding of guilt against the accused sans legal evidence. Evidently, according to Mr. Inamdar, there was no witness to the occurrence and the prosecution case was based on circumstantial evidence. The learned Additional Sessions Judge lost sight of the principles which govern the aspect of basing a finding of conviction on the strength of circumstantial evidence. In fact, according to Mr. Inamdar, the very factum of homicidal death was not established to the hilt. Nor could it be shown that at the time of the alleged occurrence the accused and the deceased were the only inhabitants of the

room. Admittedly, the brothers of the accused were residing in the adjacent rooms, and the accused and deceased were much married, and had children, who had crossed 10 years of age. In this backdrop, the mere fact that the deceased died in unnatural circumstances, even if taken at par, is not sufficient to fasten the liability upon the accused for the homicidal death of the deceased, urged Mr. Inamdar.

7. In opposition to this, Ms. Shinde, the learned APP, stoutly submitted that the impugned judgment and order, being well merited, does not warrant any interference. There is evidence to indicate that on the night, preceding morning on which the deceased was found dead in her house, there was nobody except the accused with the deceased. In this backdrop, it was incumbent upon the accused to explain the circumstances in which the deceased met the death. Not only the accused failed to offer a plausible explanation but also made an abortive attempt to show that the deceased died by suicide and that the accused was away from home on the night of the alleged occurrence. The falsity of both these explanation is borne out by the evidence and material on record. Thus, the learned Additional Sessions Judge committed no error in returning the finding of guilt, canvassed Ms. Shinde.

8. As the nature of death which the deceased met was sought to be put in contest, we deem it appropriate to deal with the said aspect, at the threshold. Before adverting to deal with the evidence of autopsy surgeon, we find it expedient to note the evidence of Rajeshwari Karampuri (PW-2), the sister of the deceased.

9. After apprising the Court about the nature of the marital relationship between the accused and the deceased and their situation in life, Rajeshwari (PW-2) claimed to have rushed to the house of the deceased, on the morning of 16th February, 2012, upon being informed by Nagraj Dasari, her cousin. Rajeshwari (PW-2) claimed to have found the deceased lying in her house. She affirmed that she noticed ligature mark on the throat of the deceased. She further affirmed that, on enquiry, the sister-in-law of the deceased informed her that the deceased was unwell. Thereupon she claimed to have approached the police and gave the report (Exhibit-16), leading to AD No.6 of 2012. Though Rajeshwari (PW-2) conceded that she did not report the police that the accused committed the murder of the deceased, yet she did not cave in to the suggestion that the deceased committed suicide as she was suffering from stomach ailments.

10. It is evident that Rajeshwari (PW-2) realised that the deceased had died in suspicious circumstances. Her suspicion was stoked by the fact that marks of injury were visible on the throat of the deceased. Rajeshwari (PW-2) found the explanation that the deceased died as she was unwell unpalatable. Thus, Rajeshwari (PW-2) approached the police and lodged the report. It would be contextually relevant to note that the inquest (Exhibit-11), which was admitted in evidence by the defence, records that a ligature mark of 1.5 cm. with circumference of around 27 cm. was found over neck of the deceased.

11. At this stage, recourse to the testimony of autopsy surgeon Dr. Naim Akhtar (PW-6) become imperative. Upon external examination, Dr. Naim Akhtar (PW-6) claimed to have found following injuries:

- (i) Abrasion 2 X 1 cm., over right side of gastic region red in colour.
- (ii) Ligature mark over neck with circumference of 29 cm., 8 cm., from right mastoid region, 8 cm from left mastoid, 1 cm., from mentum and of maximum thickness of 1 cm, and Bare over 8 cm., over left anterior part of neck running obliquely downward and forward, dark hard, parchment like skin of ligature mark.

Upon internal examination, Dr. Naim Akhtar (PW-6) claimed to have noticed haematoma under right sternocleidomastoid muscles.

12. In the opinion of Dr. Naim Akhtar (PW-6), the external and internal injuries found on the persons of the deceased were possible if a person compresses the neck by rope or cloth etc. He further affirmed that in majority of the cases, the aforesaid injuries were not possible by hanging. Dr. Naim Akhtar (PW-6) thus opined that the probable cause of death was compression around the neck. Dr. Naim Akhtar (PW-6) categorically declined that the ligature mark found on the person of the deceased could have been caused by self-hanging. The suggestion that the deceased might have died a suicidal death, was flatly denied.

13. The evidence of Dr. Naim Akhtar (PW-6) leads to an inescapable inference that the deceased met an unnatural death. It is pertinent to note that an endeavour was made on behalf of the accused to demonstrate that the deceased died by suicide.

14. Apart from the medical evidence, there is circumstantial evidence in the nature of recovery of the blood stained clothes of the deceased and a pillow cover which had blood stains thereon.

The seizure of blood stained pillow evidenced by panchnama (Exhibit-21) was sought to be established by examining Subhash Pandhare (PW-4). The CA report (Exhibit-26) revealed that the *saree* which the deceased wore had moderate number of blood stains ranging from 0.1 cm. to 5 cm. in diameter, spread at places. Whereas the pillow cover had one blood stain of about 2 cm. in diameter situated at corner. Though the blood group could not be identified. Yet the blood stains were of human origin. To add to this, the CA report (Exhibit-31) reveals that violet fibers were detected on the slides containing the material lifted from around the ligature mark. It is recognized that a careful search of the neck may reveal minute fibers and any other material over the ligature, upon scientific examination.

15. The aforesaid circumstances, if considered in conjunction with the abrasion on gastic region are suggestive of force and struggle. Moreover, it is not the case that the deceased was found hanging by the ceiling fan, the existence which was sought to be elicited in the cross-examination of the prosecution witnesses. It was not suggested to any of the prosecution witnesses that the deceased was found hanging and her body was brought down by either the inhabitants of the house or the neighbours and relatives. In the circumstances, the medical

evidence, especially the testimony of Dr. Naim Akhtar (PW-6) that it was not the case of suicidal death, merits acceptance. Thus, we are persuaded to hold that the deceased met a homicidal death.

16. The learned Sessions Judge was of the view that as there was material to indicate that only accused and the deceased were residing in the room on the night of the occurrence and the deceased met a homicidal death, onus lay upon the accused to explain the circumstances in which the deceased died. Drawing support from the provisions contained in Section 106 of the Indian Evidence Act and the failure of the accused to offer a plausible explanation despite being confronted with the incriminating material under Section 313 of the Code, the learned Sessions Judge was persuaded to hold that only the accused was the author of the homicidal death of his deceased wife.

17. Mr. Inamdar, the learned Counsel for the appellant urged with tenacity that the aforesaid approach of the learned Sessions Judge is not legally sustainable. It was for the prosecution to establish its case beyond reasonable doubt. The fact that the accused did not lead any evidence in support of the explanation, furnished in his examination under Section 313 of

the Code that on the night of the occurrence the accused was working at Mandhoni Weaving Mills, Akkalkot Road, could not have been construed as one relieving the prosecution of its primary burden of establishing the charge. The learned Sessions Judge, according to Mr. Inamdar, was swayed by the nature of the death which the deceased met and went on to unjustifiably fasten the liability upon the accused for the said homicidal death on the basis of surmises and conjunctures.

18. On the first principles if a wife is shown to suffered an unnatural death, within the four walls of room, which was occupied by the deceased and her husband, the sheer weight of the circumstances warrants an explanation of the husband as regards the circumstances of the transaction which resulted in the death of the deceased. Albeit, this is always subject to the facts of the case.

19. In the case of *Swamy Shraddhananda vs. State of Karnataka*¹ it was enunciated by the Supreme Court that if it is proved that the deceased died in an unnatural circumstance in her bedroom which was occupied only by deceased and her husband, law requires the husband to offer an explanation in this behalf. Indeed, the Supreme Court went on to qualify the generality of the aforesaid principle by observing that, “We,

1 (2007) 12 SCC 288.

however, do not intend to lay down a general rule 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.”

20. In this context, the learned Sessions Judge placed reliance on the judgment of the Supreme Court in the case of *Trimukh Maroti Kirkan vs. State of Maharashtra*.² In the said case the deceased wife had died due to asphyxia and the accused husband and his relatives reported that the deceased died due to snake bite (which was found out to be a false explanation). The Supreme Court, after adverting to the provisions of Section 106 of the Indian Evidence Act expounded the nature of onus, in such a case, in the following words:

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the

2 (2006) 10 SCC 681.

facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him.”

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.

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21. 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 (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 H.P.*, 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 “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 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 T. N. 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.” (emphasis supplied)

21. On analysis of the evidence, we are impelled to hold that the learned Sessions Judge was justified in placing reliance upon the propositions enunciated in the aforesaid case. There is evidence to indicate that the accused and the deceased were residing together in the said house. Though, the family consisted of a son and a daughter, there is evidence to indicate that the children of the accused used to reside in the house of

his brother, which was part of the same residential building. It was brought out in the evidence of Bhimashankar Mane (PW-1) that on the night of the occurrence, only accused and the deceased were residing in their room. In any event it cannot be disputed that the accused was an ordinary resident of the said house along with the deceased. The dead body of the deceased was found in the said house on the early hours of 16th February, 2012. The deceased had met an unnatural death.

22. In the backdrop of circumstances, the onus lay upon the accused to explain the circumstances of the transaction leading to the death of the deceased as they were within his special knowledge.

23. The defence of the accused, in this context, wavered from one end to another. A half-hearted attempt was made to show that the deceased met a suicidal death without putting concrete suggestion to the prosecution witnesses. Neither the manner of committing suicide nor the circumstances in which the accused, or for that matter, other relatives or neighbours of the deceased came to know about suicidal death were brought on record either during the cross-examination of the prosecution witnesses or otherwise. Even otherwise, the medical evidence and the attendant circumstances militate against the theory of suicidal death.

24. The endeavour of the accused to wriggle out of the situation by asserting that on the night of occurrence he was not present in the house and was working in Mandhoni Weaving Mill, stands on even weaker foundation. The said explanation saw the light of the day when the accused was examined under Section 313 of the Code. It is imperative to note that none of the prosecution witnesses was confronted with the said aspect. Onus lay on the accused to establish the said fact, which was in the nature of defence of alibi, either by eliciting admissions in the cross-examination of prosecution witnesses or otherwise bringing material on record in support thereof. In the face of positive evidence to show that on the night of occurrence the accused and the deceased were the only inhabitants of the said house, which is ordinary abode of the accused, the bald assertion that, on the night of occurrence, the accused was working in Mandhoni Weaving Mill, was rightly held by the trial court to be unworthy of credence. The learned Sessions Judge was thus justified in observing that the false explanations offered by the accused constituted additional incriminating circumstances against the accused.

25. The upshot of the aforesaid consideration is that the learned Sessions Judge appreciated the circumstantial evidence

in the correct perspective. The circumstances are of conclusive tendency. The circumstances lead to no other inference than that of the guilt of the accused. Neither they are compatible with the innocence of the accused nor explainable on any other hypothesis than that of the guilt of the accused. We do not find any infirmity in the impugned judgment. Thus, the appeal deserves to be dismissed.

26. Before parting, we record that Mr. Sushil Inamdar rendered able assistance in the determination of this appeal.

27. Hence, the following order:

: O r d e r :

The appeal stands dismissed.

[N. J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV J.]

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