

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

**CRA-D-146-DB-2012 (O&M)
Date of decision: 9.11.2020**

Satbir Singh

....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Ravinder Singh Randhawa, Advocate,
for the appellant.

Mr. Aman Bahri, Addl. AG, Haryana.

RAJESH BHARDWAJ, J.

The present appeal has been preferred by the appellant-Satbir Singh against the judgment dated 04.11.2011 passed by learned Sessions Judge, Faridabad wherein he has been convicted under Section 302 of Indian Penal Code (for short 'IPC') and sentenced to undergo imprisonment for life with a fine of Rs.10,000/- vide order dated 08.11.2011.

Facts and case history:

Succinctly, the case of the prosecution is that on 16.05.2010, complainant Smt. Seema Devi presented an application Ex.PF before ASI Krishan Kumar mentioning therein that her marriage was performed 10-12 years ago with Satbir (appellant) and she has two

children namely, Abhishek and Radhika from that marriage. The complainant had alleged that she was being tortured by husband Satbir Singh repeatedly on provocation by her father-in-law Om Parkash, brothers-in-law, Mukesh and Vikas and phupha Bhola Ram. There are allegations of beating the complainant on their part as well. She had further alleged that time and again she was turned out of the matrimonial home and it is on the intervention of the Panchayat and by the assurance given by the husband, she was brought back to the matrimonial home. It was alleged that on 15.05.2010, she was given beating by her husband and she disclosed the same to her cousin Jitender son of Jagdish when he had come to take her along for the marriage of her cousin. She had deposed that her cousin Jitender and husband after consuming beer, slept on Deewan in the room and at about 04:00 am, she noticed that her husband was trying to leave the house by snatching her purse. She resisted the same and called upon her cousin Jitender. She was surprised to see that Jitender was lying dead on his bed. She noticed that ligature marks were there on his neck. On this, she telephonically informed her mother and other family members. On their arrival, Jitender was taken to Sarvodaya Hospital, Sector-8, Faridabad wherein he was declared brought dead by the doctors. ASI Krishan Kumar made his endorsement Ex.PD/2 on the application Ex.PF moved by the complainant Seema Devi and on the basis of the same, the formal FIR Ex.PD was recorded by SI Mahinder Singh. Thereafter, the police carried out further proceedings and inquest report Ex.PG was prepared. The site plan Ex.PI was also prepared. On 27.05.2010, accused namely, Satbir Singh was arrested and during

interrogation, he suffered disclosure statement Ex. PJ. On his disclosure, the police made the recovery of a rope which is Ex.P1. On conclusion of the investigation, report under Section 173 Cr.P.C. was prepared and presented in the Court. The accused was charge-sheeted for the offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial.

The prosecution in order to prove the charges besides the documentary evidences, examined 11 witnesses before the trial Court. Among the prominent witnesses, PW1 Dr. Ajender Kumar Yadav was examined, who proved the postmortem examination of the dead body. He tendered in evidence his affidavit Ex.PW1/A and has proved the postmortem report Ex.PA and his opinion Ex.PB. PW2 Dr. Narinder Kaur was examined, who tendered in her evidence her affidavit Ex.PW2/A and proved MLR Ex.PC which pertained to the medico legal examination of the complainant Seema Devi. The complainant PW-7 Seema Devi appeared before the Court and supported the prosecution case in *toto*. Further, the uncle of Smt. Seema Devi, Sh. Nandvir appeared as PW-9 and supported the prosecution version. Besides this, PW10 Inspector Dalbir Singh who partly investigated the case, appeared for prosecution. On conclusion of the evidence of prosecution, the complete evidence were put to the appellant and his statement under Section 313 Cr.P.C. was recorded. The appellant pleaded false implication. Though he was granted opportunities to lead the evidence in his defence but he produced no defence evidence. On the conclusion of the trial, learned trial Court after examining the oral as well as documentary evidence came to the conclusion that the prosecution

remained successful in proving its case beyond reasonable doubt and thus, convicted the appellant for the charge under Section 302 IPC and as a result, sentenced him to undergo life imprisonment.

Aggrieved by the same, the appellant has preferred the present appeal.

Contention of the parties:

Sh. Ravinder Singh Randhawa, Advocate appeared for the appellant and Sh. Aman Bahri, Additional Advocate General Haryana appeared for the State.

Learned counsel for the appellant has vehemently contended that the prosecution has miserably failed in proving the case against the appellant. He has contended that the case of the prosecution is totally based on circumstantial evidence and there being no direct evidence available with the prosecution, the conviction imposed by the learned trial Court is unsustainable in the eyes of law. The main limb of his arguments is that the appellant was not present in his house and thus the chain of circumstances as per the mandate of the law settled was never complete and therefore, there was no evidence on record for convicting the appellant.

On the other hand, Learned State counsel has strongly opposed the contentions of the appellant and has submitted that the place of occurrence is the house of the appellant and thus, the appellant cannot wriggle out legal proposition that he was bound to explain the circumstances in which the homicidal death took place in his house. He has further contended that in view of the provisions of Section 106 of Evidence Act (in short 'the Act'), the chain of circumstances is

completed as the appellant failed to explain the manner in which the homicidal death took place and therefore, the conviction as well as sentencing the appellant for life imprisonment by the learned trial Court is totally justified.

Analysis:

We have heard learned counsel for both the parties and perused the documentary as well as the oral evidence on record.

There is no doubt that the case of the prosecution is totally based on the circumstantial evidence. As per the case of the prosecution, the FIR is based on the statement of Seema Devi who is no other than the wife of the appellant. It is the consistent case of the complainant that since her marriage, she was being tortured mentally and physically by the appellant. Repeatedly, she was being beaten and at number of occasions she was even turned out of her matrimonial home. But on the intervention of the family members, she remained with the appellant in the matrimonial home. It has come in her evidence that on 15.05.2010 when she was beaten then it was her cousin Jitender (since deceased) who came to her matrimonial home to whom she disclosed about the maltreatment given by her husband. Her husband and the cousin Jitender both slept in the room whereas she slept outside, room on the open terrace. At about 04:00 am, her cousin Jitender was found dead on his bed. The evidence on record clearly shows that the occurrence took place in the intervening night of 15/16.05.2010 in the house of the appellant. When the complainant found her cousin dead, her husband that is the appellant escaped from

the house. On registration of the FIR, he was subsequently, arrested on 27.05.2010. The postmortem of the dead body conducted was proved by PW1 Dr. Ajender Kumar Yadav. As per the postmortem, there were injuries on the body, ante-mortem in nature and the cause of death was declared to be asphyxia due to strangulation. Dr. Narinder Kumar was examined as PW2 who proved the medico legal report dated 16.05.2010 of complainant Seema Devi which was exhibited as Ex.PC. As per the same, 8 injuries were found on the body of the complainant. From the oral as well as the documentary evidence it stands established that there was a physical assault on the complainant by the appellant as she had alleged in the FIR. Not only this, the presence of the appellant as last seen at the relevant time is also proved from the evidence on record. From the perusal of the inquest report Ex.PG, it is found from the Column No.1 that the place where death has occurred is Sanjay Colony Ralson Chowk which is not other than the house of the appellant. The complainant while appearing in the Court had categorically deposed that after taking meal the deceased and the appellant slept in the room and thus, there is no doubt that the occurrence took place in the presence of the appellant in his house. The prosecution has successfully discharged the initial burden as required under Section 106 of the Act in proving the presence of the appellant at the relevant time and thus, now it was the onus on the appellant to explain the manner and the circumstances in which the death of Jitender took place in his house but he failed in discharging the requisite onus that lied on him.

Hon'ble the Supreme Court in Sharad Budhichand Vs.

State of Maharashtra (1984) 4 SCC has laid down the parameters to be

satisfied in case based on circumstantial evidence. This is the mandatory requirement that the circumstances proved on record should be incompatible with the innocence of the accused and they should be of definite tendency unerringly pointing towards the guilt of the accused. In the present case, there are overwhelming evidence on the record that is, the first informant being the wife of the appellant, the place of occurrence being the house of the appellant and the presence of the appellant at the place of occurrence where he was last seen with the deceased. The ocular version of the complainant wherein she had deposed that before the incident she was beaten by the appellant is medically corroborated by the MLR Ex.PC. When the complete evidence were put to the appellant wherein his statement under Section 313 Cr.P.C. was recorded, he simply denied the allegations and took the plea of false implication without leading any evidence. The counsel for the appellant had drawn out attention to the observations made in Para 4 of the order of sentence dated 08.11.2011 wherein he has contended that the appellant had moved an application contending that the prosecution witnesses have deposed falsely against him as he was allegedly not present in his house at the relevant time but the same has been dismissed by the learned trial Court without any appreciation. From the bare perusal of the observations by the trial Court, it is amply clear that the appellant was offered the opportunities for 23.08.2011, 08.09.2011, 23.09.2011, 04.10.2011, 14.10.2011, 21.10.2011, 25.10.2011, 31.10.2011, 02.11.2011 and 04.11.2011 for defence evidence but despite this, no evidence was led by the defence and the evidence was closed. Not only this, thereafter, no efforts were made to

challenge the order of dismissal of the application or lead any evidence by way of additional evidence. It clearly shows that the appellant intentionally remained silent and chose not to explain the circumstances under which the homicidal death took place in his house and therefore, in view of the provisions of Section 106 of the Act, adverse inference is liable to be drawn against the appellant.

We are supported by the various rulings of the Hon'ble Supreme Court which are as follows:

1. In State of W.B. Vs. Mir Mohammad Omar and others, (2000) 8 SCC 382, the Hon'ble Supreme Court has held as under:-

“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.”

2. In State of Rajasthan Vs. Kashi Ram, (2006) 12 SCC 254, it has been held that-

“It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the 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 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 Naina Mohd., Re. AIR 1960 Madras, 218:1960 Cri LJ 620”

3. The Hon'ble Supreme Court in Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681, while dealing with Section 106 of the Act has held-

“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.”

4. Finally, in Gajanan Dashrath Kharate Vs. State of Maharashtra, (2016) 4 SCC 604, the Hon'ble Supreme Court again while dealing with

Section 106 of the Act, laid down as follows:-

“As seen from the evidence, appellant Gajanan and his father Dashrath and mother Mankarnabai were living together. On 7-4-2002, mother of the appellant-accused had gone to another Village Dahigaon. The prosecution has proved presence of the appellant at his home on the night of 7-4-2002. Therefore, the appellant is duty-bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation 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 the accused to offer. On the date of the occurrence, when the accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime.”

Thus, it is the established law that Section 106 of the Act is an exception to Section 101 Evidence Act. Though the onus which lies on the prosecution does not shift but in the circumstances wherein the fact is especially within the knowledge of any person the burden of proving that fact is upon him. As the prosecution has discharged the initial burden of proving the presence of the appellant in the house, thereafter, it was the onus upon the appellant to prove the circumstances under which the death of Jitender took place in his house. But he intentionally chose to keep mum in such circumstances which is totally against the mandate of law.

Conclusion:

In view of the overwhelming evidence on record and the law settled, we are unable to accept the contentions of the counsel for the appellant. We find no reason to interfere with conviction of the appellant.

Resultantly, the appeal being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

(AJAY TEWARI)
JUDGE

9.11.2020
m. sharma

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